

# Mediation remains a dependable and successful feature of Dispute Resolution in the UK says Biennial Audit

Submitted by: Centre for Effective Dispute Resolution (CEDR)

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2023 marks the tenth occasion on which CEDR has released its biennial audit of the Commercial Mediation marketplace, in recent years in cooperation with the Civil Mediation Council of England & Wales. For over 20 years CEDR has tracked the development of commercial mediation in the UK as well as identifying key trends, challenges and possible solutions to issues.

## MEDIATION GROWS DESPITE THE COVID-INDUCED SLUMP

Following a 35% market activity dip during the COVID period, case numbers bounced back to reach 17,000 in the year to 30 September 2022, a 3% increase above the pre-pandemic level. This may be a modest increase, but is a strong bounce back from more diminished activity during the pandemic.

## ONLINE MEDIATION IS HERE TO STAY

Of the 17,000 cases, 64% were conducted online. Necessity, being the mother of invention, drove the rise of online mediation from March 2020 onwards. It emerged from the fringe but many questioned whether it would be a flash in the pan or part of the landscape moving forward. However, whilst the online proportion is down from the 89% high during the pandemic, as the report author Graham Massie notes “it would seem the nature of the field has permanently changed.”

We also know anecdotally from the research that Mediators are increasingly using the online forum to assist with things such as pre-mediation contact and follow-up which was traditionally conducted on the phone.

## MEDIATION SETTLEMENT RATES REMAIN STEADFASTLY STRONG

Mediation’s settlement rate has always been impressive both on the day and in the days and weeks following the engagement. This Audit’s findings reaffirm this. It reports a 73% on-the-day settlement rate followed by a further 20% in the immediate period thereafter, giving an overall success rate of 92%.

## CAPACITY IN THE MEDIATION MARKET FOR AUTOMATIC REFERRALS TO MEDIATION BY THE COURTS

The Ministry of Justice plans to introduce mandatory mediation for all contested claims under £10,000 in the County Courts, and is considering doing the same for claims from £10,000 to £25,000. Our Audit therefore sought to explore whether, if there was to be an increase in demand at these slightly higher levels, there would be sufficient capacity in the market to handle the additional work.

The Audit reports that the combined Registered Mediator membership of the Civil Mediation Council has surplus capacity of 54,000 days. It is, therefore, safe to assert that a significant expansion of mediation activity following the introduction of mandatory mediation would easily be accommodated by the UK mediation profession.

## LITIGANTS IN PERSON (LIPs) AND MEDIATION

The discussion around Automatic Referral to Mediation, particularly as it pertains to claims up to £25,000 where a significant portion of claims will involve unrepresented parties, raises the question of their experience and effectiveness in mediation as well as possible challenges for the mediators.

The Audit shows that, particularly in small claims of under £10,000, mediators reported frequent issues around LIPs' understanding of the legal and commercial aspects of their case as well as their ability to represent themselves properly. This naturally led to instances where the mediator was asked for assistance when it came to advice on the merits of their case for example. However, mediators reported being able to cope with this misunderstanding of their role, and overall the frequency of problems or delays in settlement of cases involving LIPs was less common than the frequency of the issues (although still high, with about 50% of cases involving LIPs being so affected).

Importantly, mediators noted that there is nothing inherently wrong with LIPs in mediation, and that a well prepared and sensible individual can generally be more helpful in achieving settlement than a dogmatic lawyer. However, our findings are consistent with an earlier finding about the HMCTS Small Claims Mediation Service which attributed the relatively low levels of take-up (15-21%) and case settlement (55%) to the fact that many court users do not understand the mediation process and its benefits.

Moving forward, therefore, the field may need to be diligent in providing appropriate guidance and support for unrepresented individuals to make sure they can maximise the opportunity the process presents.

## THE CONTRIBUTION OF COMMERCIAL MEDIATION TO THE ECONOMY

In every Audit there are figures on the contribution that mediation makes to commercial life in the United Kingdom. The most notable are three key figures.

- Roughly £20 billion worth of cases are mediated each year
- Since 1990, around £195 billion worth of cases have gone to mediation
- Mediation save business around £5.9 billion per year in wasted management time, legal fees, lost productivity and damaged relationships

## FINAL THOUGHTS

Audit author Graham Massie notes: "mediation has arrived at its desired destination within the mainstream of the litigation system, but its race is far from run. The move towards mandatory mediation appears to be the next challenge on the horizon, and this Audit suggests that our profession is well placed to meet the need."

In terms of the opportunity still out there, he comments "Our historic growth to a total of around 17,000 mediations a year is certainly an impressive achievement, but with some 247,000\* contested Civil

law cases in England and Wales each year, the need (and opportunity) is still vast. So, with new approaches, and new areas for implementation of mediation, we are still evolving, but the journey has not ended.”

[\*1.3 Million claims were brought in 2020, but only 19% of claims are defended (and therefore necessitate a court hearing). This figure does not include family law cases, employment tribunal cases or criminal cases.]

The full report can be found here:

<https://www.cedr.com/wp-content/uploads/2023/02/Tenth-CEDR-Mediation-Audit-2023.pdf>

## ABOUT THE AUDIT

The CEDR Audit, which started in 2003 and is conducted approximately every two years, was conducted alongside a survey of lawyers who use mediation, giving a useful client perspective. The Audit's key findings are made possible through collaboration with the Civil Mediation Council of England & Wales.

Its importance stretches far beyond the UK and is used internationally as both a source of inspiration and a north star for the development of mediation.

Authored by CEDR Director, Graham Massie, this iteration is based on the detailed responses of 328 commercial mediators as well as other source materials.

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## ABOUT CEDR

CEDR is Europe's largest independent Alternative Dispute Resolution Centre for both commercial and consumer disputes handling thousands of referrals a year. CEDR operates the Court of Appeal's Mediation Service and is certified by the Chartered Trading Standards Institute for Consumer Alternative Dispute Resolution. CEDR is a leading negotiation and conflict management trainer internationally in the field and its acclaimed Mediator Skills Training Accreditation has been awarded to over 7,000 mediators in 70 countries. As a non-profit organisation with a public mission to innovate and develop conflict management and dispute resolution, CEDR undertakes unique foundation activities such as the national negotiation competition and skills for life initiative for young people.

To find out more information, please visit [www.cedr.com](http://www.cedr.com)

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