

# Commercial Mediation Market shoots up with 20% growth

Submitted by: Centre for Effective Dispute Resolution (CEDR)

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Centre for Effective Dispute Resolution

The key finding from the 2018 CEDR Mediation Audit for the UK is that 12,000 commercial mediations (excluding small claims mediations) were performed in the last 12 months, an increase of 20% on 2016.

The biennial audit shows that in the last 12 months GBP 11.5 billion worth of commercial claims were mediated and that through mediation this year businesses will save GBP 3 billion in wasted management time, damaged relationships, lost productivity and legal fees. As a profession, Mediators and Service Providers in the last year earned GBP 30 million giving a 100:1 return on investment for the UK economy.

The results of the Audit, which is conducted every two years, were announced at a special event at Norton Rose Fulbright last night in London. The Audit received 336 eligible respondents from practicing mediators and was conducted alongside a survey of lawyers who use mediation, giving a useful client perspective. The Audit is made possible through collaboration with the Civil Mediation Council. This 2018 Audit was conducted in partnership with the International Institute for Conflict Prevention and Resolution (CPR) who added international mediators to the survey so a transatlantic mediation audit report will be published in September 2018.

Some of the key findings from the UK Audit are as follows:

- o The survey reveals remarkable growth in scheme-related activity, meaning organised mediation systems such as those supported by NHS Resolution, by leading employers and by the County Court Mediation Pilots and the Court of Appeal. This area of activity has grown by 45% in just the past two years, and now accounts for some 4,500 cases, or 37.5% of all mediation activity. In contrast, ad-hoc referrals of individual cases to mediators and service providers has shown more modest growth - up 9% since 2016).

- o The overall success rate of mediation remains high with an aggregate settlement rate of 89% (86% in 2016). The proportion of cases that achieve settlement on the day of mediation is 74% and the proportion of cases that settle shortly after mediation is at 15%. The settlement rates reported by mediators were validated by the findings of our separate survey of lawyers' views, which revealed a very similar pattern.

- o Looking at trends in mediation, 25% of all comments referred to an increasing resistance to joint meetings at the start of a mediation day. This resistance appears to be largely driven by lawyers who argue that no purpose is served by such meetings given that the parties are already familiar with each other's cases— a view which the majority of mediators do not appear to accept. Yet a number of mediators report seeing an increase in joint meetings between lawyers and/or clients later on in the course of the mediation (as opposed to at the start of the day).

- o Lawyers in mediations reported that 83% (2016: 81%) of mediators performed quite well or very well. Mediators said that the majority of lawyers and clients performed well in mediation but where there was an issue it was most likely to be a poor negotiation strategy (cited by 43%) or over-reliance of the client on their advisers (mentioned by 42%).

o Around 200 individuals are involved in around 85% of all non-scheme commercial cases (an average of nearly 40 cases each). The size of this group has grown from the 145 reported in 2016, suggesting that more competition is developing.

o The changing shape of the marketplace is having an impact on average fees for more experienced mediators where fees have seen a significant 19.34% drop to GBP 3,627 from in GBP 4,500. (This is explained by more entrants graduating into the experienced group and diluting the average).

o Those undertaking between 20 and 30 mediations a year are earning an average of GBP 68,000. Those mediators undertaking between 30 and 50 mediations a year are earning an average of GBP 175,000 and those with over 50 cases a year are earning an average of GBP 330,000 pa. One mediator earned GBP 780,000.

o The story on diversity amongst mediators was not great as we see just 35% of respondents being women (the same as in 2016) and women under-represented in the Advanced group, 24%, down from 29% in 2016. Another aspect of diversity that remains a concern is just 10% of respondents categorising themselves as being from Black, Asian and minority ethnic (BAME) groups.

o For the first time our survey asked lawyers whether they were satisfied with the current levels of diversity in the pool of available mediators. This revealed a wide range of views: 35% said they were satisfied, 26% were not satisfied and a surprising 39% reported that they had not considered the issue.

Graham Massie, Director of CEDR, author of the Audit Report said:

“One definition of Disruptive Innovation is: ‘An innovation that creates a new market and value network and eventually disrupts an existing market and value network, displacing established market-leading firms, products, and alliances’. As the results of this Audit demonstrate, mediation qualifies under virtually every aspect of the definition – the only point it hasn’t hit is ‘displacing established market-leading firms’ but that is because it has over-achieved by changing law firms and lawyers’ behaviours and attitudes. The vast majority have espoused the mediation approach as part of their professional skillset, and not only do a high proportion of lawyers perform very well in mediations, but many have become very successful mediators in their own right.”

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About the Audit

Read the full Mediation Audit at [https://www.cedr.com/docslib/The\\_Eighth\\_Mediation\\_Audit\\_2018.pdf](https://www.cedr.com/docslib/The_Eighth_Mediation_Audit_2018.pdf)  
The primary focus of this biennial survey conducted by CEDR is to assess how the market and mediation attitudes have changed over the past two years. This is a survey of the civil and commercial mediation landscape, a field we have very loosely defined as encompassing any and all mediation activity that might reasonably fall within the ambit of the Civil Mediation Council.

About CEDR

The Centre for Effective Dispute Resolution (CEDR) is Europe’s largest independent Alternative Dispute Resolution service 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 under the European Union Directive on 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 7000 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, guidance for public inquiries and rules for settlement in arbitration.

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