

Mediation continues its success despite the challenges of the pandemic

Submitted by: Centre for Effective Dispute Resolution (CEDR)

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- The Commercial Mediation Market grows by 38% before the pandemic
- The rapid growth of Online Mediation helps the market to continue to operate.

CEDR has announced the key finding from its 9th Mediation Audit that in the 12 months to March 2020 approximately 16,500 commercial mediations were performed in the UK, an increase of 38% from the 12,000 figure announced in 2018. The full audit can be viewed at <https://adobe.ly/3nSaYbC>

Whereas in previous audits increases were attributable mainly to the introduction of mediation schemes or pathways introduced by the Courts as well as Trade Associations and Regulators (in the current Audit this growth was 11% from 2018), the latest Audit shows that much of the recent growth is due to 'ad-hoc' referral of cases (which increased by 53% since 2018).

Online uptake

The pandemic did not cause a collapse in the commercial mediation market because of the substantial move to online mediation. In the 12-months prior to the pandemic the Audit shows that around 10% of all commercial mediations were being conducted online by a very small group of mediators. The position changed markedly with the start of the first lockdown, and after an initial disruption the mediation profession pivoted remarkably quickly to the online world. The first six months of the pandemic saw 71% of mediators switching their practice to online, and overall mediation activity fell by only 35% during the first lockdown period.

When asked to predict what proportion of their mediation activity would be conducted online during 2021, over three-quarters of mediators expected to be undertaking more online rather than face-to-face mediations, with 65% of their work conducted online, a reduction from the 89% online activity level that we saw in mid-2020 but still significantly ahead of the 10% pre-pandemic pattern. Lawyer respondents also agreed that 65-70% of mediation work would be conducted online in 2021.

Success and performance in mediation

The proportion of mediations settling has increased from 89% in 2018 to 93% (72% settling on the day of the mediation and another 21% shortly afterwards).

Lawyers and clients are both doing better in mediations, according to mediators who rated 71% of Lawyers as performing quite well or very well in mediations (up from 63% in 2018) and 70% of clients (up from 61% in 2018). However, mediators did note that in around half of all cases they observed an over-reliance on advisers and poor negotiation strategy (both small increases from 2018).

It was a mixed picture on mediators, however, where lawyers felt there were more mediators performing very well (up from 53% in 2018 to 62%) but the proportion of mediators rated as quite poor or very poor rose from 4% in 2018 to 13%.

The average time spent by mediators on a mediation case has decreased by 2 hours to just under 15 hours, possibly explained by the 11% growth in scheme mediations which are often time limited and fixed fee.

Benefit to the economy

The audit also shows that some £17.5 billion worth of commercial claims are now mediated annually and that through mediation businesses will save £4.6 billion per annum in management time, relationships, productivity and legal fees.

Improving diversity

Over the years the Audit has been tracking the demographics of the profession, which historically has been older, white and male. While the number of female mediators did grow significantly from 24% of respondents in 2018 to 41% (which is far closer to the number of female solicitors in private practice) the number of non-white mediators remained low at 8% (compared to 17% of solicitors).

Incidentally diversity in the mediator profession continues to remain an area where CEDR is committed encouraging improvement to overcoming obstacles for those from diverse backgrounds, through its foundation activity.

Other facts and background to the Audit

The audit also considers other areas such as the impact of the professional backgrounds of mediator, how they find work and how much they earn. On the latter point the audit found that more junior mediators were earning approximately £1,500 per case (broadly equivalent to the level in 2018) whereas experienced mediators' fees had increased from approximately £3,600 in 2018 to £4,250 per case.

The CEDR Audit, which started in 2003 and is conducted approximately every two years, received 361 eligible respondents from practicing mediators and 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.

Graham Massie, the author of the Audit Report and a Director of CEDR, who announced the findings at a special seminar last night commented: "There is a consistent message coming through in this data, namely that commercial mediation is firmly established in the dispute resolution landscape and continues to grow from strength to strength. Performing an audit such as this, the only one of its kind in the world, lets us as a profession identify the areas that are in need of improvement and take action so we can continue to help benefit those in dispute and the wider economy."

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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 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 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, guidance for public inquiries and rules for settlement in arbitration.

To find out more information, please visit www.cedr.com

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