



Independent
Mediators

Mediation Briefing “Lessons from the Coalface”

London Solicitors Litigation
Association

22nd November 2011

www.independentmediators.co.uk

Agenda

- Introduction
- Preparing for Mediation/Opening Joint Meetings
- Solicitors Role at Mediation
- Negotiation Tactics
- Why do some mediations not settle?



Independent
Mediators

Independent Mediators

www.independentmediators.co.uk



Independent Mediators

What we are

- Europe's only dedicated Chamber of independent Commercial Mediators
- Centrally-managed, independent practices

What we offer

- Quality & Experience
- Convenience
- Value for money

Preparing for mediation

- Who should attend
- Brief your clients
- Know your case/Draft Mediation Case Summary
- Consider alternatives to settlement
- Liaising with the Mediator

Opening joint meetings

- Too often a missed opportunity – assumed to be a waste of time
- What do you want to achieve?
- Who to speak?
- Who to speak to?
- How to speak - persuasion not speech
- Content

Role of a solicitor at a mediation

Multi-tasking:

- litigator <--> commercial advisor
- spokesman/advocate <--> back-seat listener
- run every argument <--> overall risk analysis
- fighting the opposition <--> managing the client
- litigator <--> contract draftsman

Role of a solicitor at a mediation

Mind set:

- listening to understand not just to rebut
- looking at the positive not just the negative – “leadership implications”
- focusing on future not past
- getting into problem solving frame of mind – do more than transfer the fight to a different venue
- managing team through the “depression stage”

Negotiating at mediations

- Do something different or unexpected
- Making offers
 - Value of pro-activity and early concessions -
“The right offer at the wrong time is the wrong offer”
 - All offers contain (1) an offer and (2) a message – consider both
 - Give a rationale where you can
 - When to make offers face to face
 - Preparing your client for early “disappointment”

Negotiating at mediations

- Concede weak points early
 - enhances the credibility of your strong points
 - focuses attention and discussion on your strong points
- Consider timing issues
 - mediation is a *process*, not an amount of time
- Use the mediator effectively – eg:
 - information –
 - feedback – how might the other party react if we offered X?
 - fresh perspective – on the *dispute* and on the *negotiation*

Negotiating at mediations

- It's about the people, not just the issues:
 - Try to put yourself in their shoes
 - Make connections with key opponents where possible
 - Note the significance of *process* – it can help or hinder making connections
- Rigorous risk analysis



Why do some mediations not settle?

- Alienating your opponents
 - The importance of language and style of speaking
- Insisting on success
 - “You must agree with us”
- Insufficient or under-preparation

Why do some mediations not settle?

- Over-valuation of your settlement position
 - Unrealistic negotiation stance
 - Lack of pragmatism
- Absence of decision making authority
- Inability or unwillingness to let go



Independent
Mediators

Mediation Briefing “Lessons from the Coalface”

London Solicitors Litigation
Association

22nd November 2011

www.independentmediators.co.uk