

Optimising the use of Joint Sessions in Mediation

Kluwer Mediation Blog

March 30, 2018

John Sturrock (Core Solutions Group)

Please refer to this post as: John Sturrock, 'Optimising the use of Joint Sessions in Mediation', Kluwer Mediation Blog, March 30 2018, <http://mediationblog.kluwerarbitration.com/2018/03/30/optimising-use-joint-sessions-mediation/>

Much has been said and written about the demise of the joint meeting in mediation. In my experience, such a view is premature and, I fear, is potentially wasteful of the power that mediation brings for creative problem-solving. I am also aware of how much the clients and others appreciate a creative approach to the structure of meetings in mediation.

I illustrate my point with this (somewhat abbreviated) example of a series of meetings in a recent two-party construction-related mediation with independent experts involved. This is not an unusual example in my practice and I am sure others find this too. And this is not a prescriptive template. Much of what is described here is improvised on the day.

Anna Howard and I have tried to exemplify the length of time for each meeting and the numbers involved in each by using boxes. But we have not been able to achieve that! However, this gives a flavour. Imagine a line down the middle to denote when a meeting involved participants from both parties.

(* denotes occasions when the mediator would pop into private rooms to discuss progress)

Mediator in private with Party A

Mediator in private with Party B

Mediator in private with Party A

All participants together in main room for refreshments and informal mingling, followed by a welcome and introduction by the mediator, setting out guidelines and the next steps

Mediator alone with the two principals (the key decision-making clients) to enable them to exchange views

Mediator with the two principals and the two lead instructing lawyers (solicitors) to plan an agenda

Mediator, two lead experts, the two principals, four solicitors, selected relevant team members from each party: Party B's expert presents Party B's response to Party A's claim (claim presented in advance)

Party A reflects in private*

Party B reflects in private*

Party A's principal alone with Party B's secondary expert and one Party B technical adviser: information gathering on technical issue; held concurrently with:

Mediator with in house technical specialists from each party exchanging information, with four solicitors, discussing and seeking to resolve a series of specific quantum issues

Party A reflects in private*

Party B reflects in private*

Mediator with the two principals, four solicitors and in house specialists from each

party, reporting back on the previous concurrent meetings

Mediator, two experts, two principals, four solicitors, relevant team members from each party: Party A's expert presents a response to Party B's expert's comments earlier

Party A reflects in private*

Party B reflects in private*

Mediator with the two principals and the two lead solicitors to summarise progress and articulate further action steps and ensure recording of these

All participants together in main room for summary by the mediator, thanking all for participation and looking forward to a second day of mediation; handshakes and good humour all round.

This is merely an example. The danger is that we think we know or do it better than others. I hope this may further stimulate discussion on a very important aspect of our practice.