

Kluwer Mediation Blog

Statistics – What’s Really Going On?

Bill Marsh (Editor) (Bill Marsh Mediator) · Wednesday, June 27th, 2012

It’s never easy to get a grasp on national statistics for mediation. The closest we come in the UK is a biennial (that’s once every two years, not twice a year!) survey carried out by CEDR, for which I for one am very grateful. The latest survey results have recently been released and these are some highlights.

The survey was completed by 238 practicing UK mediators. That’s not the whole number in the UK by a long way, but hopefully a statistically significant number at least. In parallel, lawyers were also surveyed as users of the process, and their views provided an interesting comparison.

The Mediation Marketplace

The survey indicated that approximately 8,000 civil and commercial mediations took place in the UK last year. That is a 15% increase year on year since the last (2010) survey. Of those 8,000:

- About 60% of mediations were ad hoc referrals (ie not part of a pre-agreed mediation scheme, such as an industry scheme).
- Around 71% were referred direct to mediators, rather than via mediation organisations. This shows a marked increase from 2003 (45%), 2005 (55%), 2007 (60%) and 2010 (65%).
- A small number of mediators still dominate the market. Just over 100 people conducted 85% of all commercial cases (excluding industry mediation “schemes”). I note in passing that this pattern I suspect bears repetition in many countries, and probably deserves a blog entry of its own. It begs some important questions about the next generation(s) of mediators.
- Diversity is limited – 22% of commercial and civil mediators are women, and 4% from an ethnic minority. My observation on this is that it is hard to see the field of mediation gaining a serious foothold in society’s wider social structures whilst this persists.

Sources of Work

The survey asked both mediators and lawyers “to assess the relative importance of a number of factors in determining why individuals secured commercial mediation appointments”. Those factors included the following (the list is too long to repeat verbatim here):-

- Professional reputation – experience/status
- Availability
- Professional background/qualifications
- Sector experience
- Recommendation – by Provider [ie mediation organisation]
- Recommendation – by lawyer in previous case

Not surprisingly, “Professional reputation – experience/status” was the predominant factor in the minds of both mediators and the lawyers appointing them. “Availability” is growing in importance, suggesting (to me, at least) a growth in the demand for mediators without a corresponding growth in the supply of mediators who are perceived to be acceptable to clients. Or possibly that there is enough choice for the parties to focus more on their own availability, and then find a mediator who can manage that date.

Recommendations by Providers (mediation organisations) are still perceived by mediators to be important, but not so by the lawyers who appoint mediators. This reflects the statistic quoted above that 71% of cases were referred direct to mediators, rather than via a mediation organisation.

Finally, sector experience (eg shipping, real estate, pharmaceuticals, etc) continues to rank only in mid-table in terms of securing mediations appointments. This suggests to me that the idea of the “generalist commercial mediator” remains valued in the market, and that there is a recognition that the central skills required from a mediator are specialist mediation skills, rather than knowledge of the given industry sector. This is particularly interesting to those of us who have operated in a mediation market since it started. One of the early bones of contention in new mediation markets (and the UK was no exception) is often the extent to which any non-expert in the given sector can make a valuable contribution to resolution. Specialist sector skills are, in my experience, more usually sought after by those with little or no mediation experience. The fact that UK lawyers do not regard those as significant in appointing mediators speaks to me of a more accurate grasp of exactly what mediators seek to bring to a dispute, in terms of mediator skills rather than sector expertise.

As a gloss on the above, however, I would suggest that sector familiarity, as opposed to expertise, can be of value to a mediator. Most sectors have their own “feel” and language. An awareness of that, a facility with the ways contractual relations are structured, an ability to “speak their language”, may play a valuable role in enhancing the confidence of parties in the mediator, cut out the need for some basis education of the mediator in those areas, and perhaps add a cutting edge to reality-testing.

However none of this detracts from the basic reality that what we contribute as mediators is not about “knowing the answer” so much as “managing the negotiations”.

Other areas

The survey contains some other interesting data on areas such as “Performance in mediation”, “Standards and Regulation”, “Future Aspirations”, “Growth Areas”, and “Contribution of the Field”, which I haven’t got space for here. Another day perhaps, but in the meantime read the results for yourself [here](#).

Your comments

Finally, I would welcome views on the above. What do these statistics mean? What challenges do they present? Are the trends replicated in your country, or is your situation very different? Answers please!

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The circle is divided into four colored segments: blue, green, red, and white.

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