
Kluwer Mediation Blog

Winners and Losers

Christopher Cox (Borneo Martell Turner Coulston LLP Solicitors) · Wednesday, January 11th, 2017

“Life is a lottery and a lot of people lose but the winners, the gridders with money colour eyes eat all the nuggets and order extra fries” – Paul Simon, *The Werewolf*

Lawyers who think their clients have ticked the ADR process box by saying their clients have tried ADR in their own negotiations without a mediator, just don't get it.

Unless you are in the arms business or a litigation lawyer being paid by a client on the hours you spend, conflict is an unprofitable, woeful business and costs us all dearly. So how do you avoid it? The way you avoid it is to invest in mediation and other alternative dispute resolution processes so life becomes so much less of a lottery.

The need for litigation is to give access to justice. Justice in our jurisdiction (England and Wales) is traditionally somewhere on the spectrum between lax at one end and zero tolerance at the other. So how badly do you need it? Most people don't; they can resolve disputes by discussion.

Further, recent efforts to deter parties from going to court have been to increase the court fees. In an attempt to counter-balance this, new proposals for cases up to £25,000 will see the parties able to get legal advice direct from the court.

Lawyers are still the go-to profession to establish legal rights. The side effect of that is they have become the gatekeepers of dispute resolution. But once you know your legal rights, arguably their job is done. If they can't add value by being experts in all the dispute resolution processes, they can't offer their clients a clear time-cost-benefit alternative. In such a situation, the client might be better approaching a mediator direct.

Understanding alternative dispute resolutions processes saves clients billions of pounds. If you can get a deal between yourselves, fine, but if you fail, don't make the mistake of thinking that, because you've failed in a negotiation, mediation is not for you. Instead, make sure you speak to a lawyer who has actually followed a mediator at work and ask for his or her view of the difference they can make. What they will tell you is that there was an impasse and so they couldn't talk any more, but the mediator, who is trained to overcome log-jams, did so by enabling them to come to the problem from a completely different angle.

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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 background is accented with horizontal lines in blue and green.

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