
Kluwer Mediation Blog

Global Pound Conference, London – The Grand Finale!

Nicky Doble (Independent Mediators) · Wednesday, July 19th, 2017

On 6 July I attended the finale of the Global Pound Series held in London, the last in the series of events held worldwide to an audience of over 2000 over 30+ events.

I will say now I am not a mediator, I know you are asking why did I get asked to write a blog on mediation! I manage a chambers of commercial mediators so spend a lot of time with mediators, speaking to users of mediation and trying to spread the word about mediation at every possible opportunity. My background is in business management and marketing.

I signed up to this event feeling a little sceptical as a great deal of conferences I have attended since joining the mediation community have been on very similar topics bringing little new to the table. There is often an emphasis on mediators speaking to other mediators which isn't the way to grow the profession.

I then read an article by Alexander Oddy of HSF before I attended entitled; 'Why A GPC Event is like no other conference you've attended' and he was not wrong. There was no quiet catching up on emails or daydreaming about dinner, this was a truly interactive event.

The use of technology and interactivity intrigued me. The area of commercial mediation in which I operate isn't an area (correct me if I'm wrong) known for its ground-breaking use of technology. I know other areas of the mediation world are making up for this. After initial hiccups and reservations, I found the interactive nature of the event very compelling and the immediacy of the feedback was extremely informative. The fact the audience was made up of users of dispute resolution services, lawyers, arbitrators, mediators, researchers and educators to name a few strengthened the value of the results.

The added dimension of the panel moderator being able to compare results there and then from data collected from the previous events around the world provided fascinating insights.

I am aware that the sample size for data is small and while many of the answers will come as no surprise some of the points raised are of interest. There are many areas covered at the conference that I haven't touched on. This is not a definitive review but a snapshot of points that struck me and interested me in relation to feedback I pick up when speaking to mediation users.

What did I learn ...

You definitely did need a fully charged phone to get through this but also on a more constructive note...

Some of the key points from users of mediation:

The enthusiasm for mediation from users, such as in-house counsel and insurers, was welcome affirmation of our hopes for the future growth of mediation.

The factors they most value are the cost/time efficiency possible through mediation.

They also recognise and value the relationship factor in mediation. Given the high cost of building new business again, mediation/ADR is viewed as an opportunity to keep key relationships going.

Enforceability was mentioned and this is something which is currently being discussed internationally by UNCITRAL (United Nations Commission on International Trade Law) on mediation. It is reviewing as part of its remit, whether there should be a mechanism in international trade law which ensures standard legal enforceability across borders for mediated settlement agreements. It was clear from the general reactions (not voted on) in the room that there were mixed views on the desirability of such a mechanism.

The users were not fans of compulsory mediation. Parties must be there because they want to resolve the dispute. They want the choice and for mediation not to become another stop on the way to trial. Couldn't agree more!

Both parties and lawyers favour a combination of adjudicative and non-adjudicative processes. This all reflects the feedback I receive when speaking to solicitors around the UK, where mediation is widely used in combination with litigation and arbitration, although I suspect more work could be done on combining it with adjudicative ADR processes such as Expert Determination and Adjudication.

Looking at the results from non-adjudicative providers, it seems it is easy to underestimate the importance of the following to parties: confidentiality provisions, predictability of outcome, the action focus – wanting to prevent further action or require an action from one of the parties.

One of the questions I found very interesting was what are the main obstacles or challenges facing parties when seeking to resolve commercial disputes. All groups cited financial and time constraints as the main obstacles. However, over 40% of parties and lawyers cited uncertainty (unpredictable behaviour or lack of confidence in providers) as a challenge. It is hard to determine the exact source of this. At Independent Mediators we tend to deal with sophisticated, repeat commercial users of mediation, so they seem an unlikely group to lack confidence! Equally there is no place for complacency, and all professions need to listen hard to their users. What is more, the mediation market is wide and varied, with a lot of new mediators entering the market and we need to ensure the quality is there for the overall good of the profession. Any mature profession should be willing to ask itself the hard questions about quality and reputation. The CMC (Civil Mediation Council) has a register of Mediators and Mediation providers, and sets standards in mediation (e.g. for accredited mediation training, observing experienced mediators following training, ongoing mediation practice, CPD (Continuing Professional Development) in relation to mediation, appropriate Professional Indemnity Insurance cover, complaint handling and following an appropriate code of conduct such as the European Code of Conduct for Mediators). Initiatives such as this should help to provide reassurance for the market, but I would encourage the CMC to take seriously an expressed lack of confidence in providers.

Although technology (I mentioned this earlier) is something we should not ignore I must say it is

not a subject raised when I am talking to solicitors about commercial mediation. However, at the conference 42% of users and 30% of lawyers said technology could be used to enable faster, cheaper procedures. Only 17% of non-adjudicative providers flagged this. Perhaps the interactive nature of the event had a subliminal effect on answers. I think mediators would tell you the value of face to face meetings is invaluable but perhaps there is more scope to use technology leading up to mediation. Technology was also raised again with users and external lawyers ranking it highest in having the most significant impact on future policy making in commercial dispute resolution.

Another key question for mediators moving forward was what is the most effective way to improve parties' understanding of their options in resolving commercial disputes. Four of the five respondent groups ranked education in business and/or law schools and the broader business community highest. I think the business aspect is an area in the UK that the CMC can assist with and around the world their equivalent mediation industry body. That and speaking to government/ministries of justice on behalf of the mediation community to promote better access to justice in commercial dispute resolution.

From my experience of speaking to mediators (at those other conferences I mentioned) I think there is a feeling that mediation could have grown more quickly than it has. Some of that is down to the fact that ADR is not right for all disputes, coupled with the number of people qualifying as mediators. However it is increasingly considered and more widely available and where appropriate is being used. As Lord Justice Briggs said perhaps ADR should be Appropriate Dispute Resolution rather than Alternative.

Some of the questions raised are for people wiser than me, some need further discussion that can't be accommodated in my word limit here. I left the conference feeling very positive about the future of mediation and buoyed by the enthusiasm of users for ADR. The work that must have gone into planning and delivering the GPC events worldwide has produced some fascinating data and I look forward to seeing the report at the end of the year. We in the ADR community must make sure we use it wisely to ensure we meet users' needs in 21st century dispute resolution and the profession continues to grow its presence.

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