

Kluwer Mediation Blog

Restoring Autonomy to the Clients – A Mediator’s True Calling?

John Sturrock (Core Solutions Group) · Wednesday, November 29th, 2017

A whole day of mediation without a “joint meeting”. The only time the lawyers met was to begin drafting the settlement agreement. The experts played no part. The day before, the principals had exchanged correspondence deprecating perceived personal insults directed at professional advisers which, it was felt, had damaged reputations. This was a long-running commercial dispute which was on its way to a lengthy arbitration and involved multiple claims on both sides. Very large sums and a lot of time had been expended so far in adversarial processes. At mediation, all matters were resolved in seven and a half hours.

What happened? Following initial private meetings with the parties, the mediator had sensed that the first step should be a clearing of the air meeting, facilitated by the mediator, between the two principals, who were senior business people. The mediator confirmed that they had full authority to negotiate. The principals agreed to that suggestion. The advisers were fully supportive and encouraging.

As it turned out, the meeting lasted until lunchtime. The two had a wide-ranging conversation about the contract, what had happened, the impact commercially and professionally on both parties and the realities of the present commercial situation. There was also recognition of the possibility of further contractual relationships in the future and, at the same time, of the damage done by antagonistic advocacy in previous procedures and in the summaries prepared in advance of the mediation. The directness and apparent honesty, encouraged by the mediator, meant that understanding was achieved in a way that had not been possible in all the months of adversarial engagement. “If you had only lifted the phone when....rather than....”. A familiar refrain, reflected the mediator.

With further information being exchanged between the principals, and reassurances sought about the validity of certain information, the meeting continued into the afternoon. Pauses were taken occasionally. At other times, each sought private counsel from the mediator. He guided them and acted as a sounding board but never advised, encouraging the principals to return to their rooms if they needed to check their approach with colleagues and advisers, while emphasising the need for them to retain control of decision-making. At one point, the mediator was able to adopt a more customary role working between the principals to navigate resolution of a difficult point when direct negotiation was difficult.

The settlement reached was easily and quickly memorialised by the lawyers in a Resolution

Agreement. More than that, the principals had restored a working relationship. They reflected with the mediator on what they had learned from what had gone wrong and what they would do differently on a future occasion. Other meetings, held as the agreement was being drawn up, helped rebuild confidence with professional advisers who had felt personally attacked. Strictly speaking these were unnecessary to the agreement itself but they meant that, the next time they had to work together, the difficult conversation had already been had.

Why is all this important? For me, it gets to the core of what mediation can be about. The opportunity which mediation provides is restoration of decision-making to the clients themselves. Perhaps more than that, it gives them autonomy to make informed choices, albeit within a structure. Self-determination when, so often, others make the decisions. It is profoundly not about the mediator. Paradoxically, the powerlessness of the mediator is an enormous strength. Properly utilised, this provides a unique forum for facilitating conversations, creating opportunities and providing context for the key players to take responsibility. As mediators, this, it seems to me, is our true calling.


To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).


Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

This entry was posted on Wednesday, November 29th, 2017 at 1:22 pm and is filed under [Commercial Mediation](#), [Decision making](#), [Dispute Resolution](#), [Future of mediation](#), [Joint Sessions](#), [Lawyers](#), [lawyers in mediation](#), [mediated settlement agreement](#), [Mediation Agreement](#), [Mediation Lawyering](#), [Mediation Outcomes](#), [Mediation Practice](#), [mediation process](#), [Mediators' Conduct](#), [Negotiation](#), [Promoting Mediation](#), [Scotland](#), [Settlement Agreements](#), [shuttle mediation](#), [Stages of mediation](#), [Success in mediation](#), [Tips](#), [Transformation](#), [Understanding mediation](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.