

Mediation & legal costs disputes: still underused ?

By Patrick Taylor¹ & Arran Dowling-Hussey²

Introduction.

The high level of legal costs has been discussed since before Dickens' *Bleak House* was published, in 1853, (where two of the characters discuss the infamous fictional case of *Jaryndce v Jaryndce* said to be based on several real-life 18th and 19th century chancery cases):

'I don't know who does. The Lawyers have twisted it into such a state of bedevilment that the original merits of the case have long disappeared from the face of the earth. It's about a Will, and the trusts under a Will – or it was, once. It's about nothing but Costs now. We are [Thialways appearing, and disappearing, and swearing, and interrogating, and filing, and cross-filing, and arguing, and sealing, and motioning, and referring, and reporting, and revolving about the Lord Chancellor and all his satellites, and equitably waltzing ourselves off to dusty death, about costs. That's the great question. All the rest, by some extraordinary means, has melted away.'

Closer in time last year Master Cook commented that estimated costs of £38.8 million in the case brought by Prince Harry and others against the Daily Mail were 'manifestly excessive.' He went on to say 'We (Master Cook and trial judge Nicklin J) *have concluded that the sums sought by both sides are clearly outside the range of reasonable and proportionate costs.*'³ Also from 2024 and 2025 the costs in *Various Claimants v Mercedes Benz Group AG & Others*⁴ notwithstanding it is an extremely large collective action catch the eye. This case deals with what is described as the UK 'Dieselgate' Pan-Nox emissions litigation. Two years ago, the Claimants estimated future costs were reduced from £208 million to a budget of £52 million. Whereas the Defendant's costs were cut from £212 million to £114 million. In making the deductions the High Court commented on some of the proposed fees as being 'absurd.'

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³ [add citation]

⁴ [2025] EWHC 2307 (KB) (accessed February 23, 2026)

Role of Mediation.

To return to the title of this commentary: mediation & legal costs- what role does mediation play ? Well broadly as is well established, by 2026, mediation can see the expedited resolution of a dispute saving time and costs.⁵ It is not proposed for reasons of space, and due to the focus of the commentary, to discuss in any great detail the nature of mediation. In short mediation can be seen to be a confidential, facilitative and voluntary process in which the parties to a dispute, with the assistance of a mediator attempt to reach a mutually acceptable agreement to resolve the dispute. It can be distinguished from adjudicative processes such as litigation and arbitration. Not all disputes are amenable to mediation, but many are. In certain instances where there is a necessity to make complex findings of fact, or law, this will not be best suited to mediation. However, this is not a novel point at this stage. Nor is the fact that a party who unreasonably refuses to mediate can be penalised in costs with the principle being developed over the years since *Halsey*⁶. Rather the issue that is underscored at this time is that legal costs themselves can be dealt with by mediation.

Costs Mediation.

It is possible to resolve costs disputes by Alternative Dispute Resolution ('ADR'). It may be that some parties will look to avail of arbitration, whereas others will wish to avail of mediation. Both parties share one of the advantages of any type of ADR process: privacy. However, arbitration shares many similarities to litigation and is therefore more adversarial than mediation. It can, as may be needed, be difficult for the parties to maintain a relationship after an arbitration. The differing nature of mediation means that ensuring an outcome that leaves open the possibility of ongoing contact can be possible. Regardless of which specific type of ADR is availed of again both processes if successful will avoid the risk that there is an award of indemnity costs.

Conclusion

⁵ See inter alia 4-5 Gray's Inn Information Hub- 'Advantages of Mediating International Trade Disputes, by Patrick Taylor & Arran Dowling-Hussey, August 29, 2024.

⁶ *Halsey v Milton Keynes General NHS Trust* [2004] 3 Costs LR 393.

Like any other dispute that notionally might be mediated not all costs disputes will in fact be suitable for mediation. But in many instances this dispute resolution process can be used. As set out some parties to a costs dispute will for various reasons prefer to elect to deal with their dispute before an arbitrator. But where any adversarial process be it litigation, or arbitration, involves the 'whiff of grapeshot' often neither party is happy with the outcome. The 'winner' does not win in the manner, time frame or to the budget they expect and the 'looser' often feels more bruised than they allowed for if they had considered the risk of an adverse outcome. Mediation can lead to a more positive outcome for all; and mediating a costs dispute can depending on all of the underlying facts be an advantageous path for parties to follow. Whilst there have been references to 'eye watering' legal costs above there will also be costs disputes over much more modest sums albeit what will still be for most a large amount of money. It may take many months for a costs hearing, over small to medium size claims in court to be listed. Mediations can be very quickly arranged. As with mediations success rate in general regardless of the type of dispute- there is a very high success rate seen in relation to costs mediation.

Members of 4-5 Gray's Inn Square Chambers Mediation group act as mediator and counsel in a range of disputes dealt with by mediation. There are 28 members of the group with two silks allowing for prompt coverage of a range of mediations from members with a range of experience. Biographical details of the Mediation Group can be found here: [ADR Mediation | 4-5 Gray's Inn Square](#) Queries as to the professional availability of members of the group can be directed by email to clerks@4-5.co.uk