Tony Bingham told us more about the prejudices of some parts of the legal profession that about mediation in his recent article. Here’s what the mediators really do

**It’s a tough job, but …**

As a mediator, I learned a lot from A recent article by Tony Bingham – mostly about how little understanding there is in parts of the judiciary and the legal profession about what mediation is (13 April, page 60).

In telling us about judges who want to be mediators, Tony has done an excellent job of summarising common misconceptions. There is, of course, no reason why judges cannot be mediators but, like anyone else, to do so they require training and to have the right aptitudes. Let’s look at the misconceptions in the article:

Mediators do not wear jeans and Che Guevara T-shirts “when on duty”. They parties’ first impressions of a mediator are important. In those first few minutes a mediator has to gain the respect and trust of the parties and an important skill is to build relationships quickly with the parties so that they have confidence in the mediator. Most mediators rely on suits and ties to help them achieve this.

Mediators are not cajolers. They explain to parties that they are not judges, adjudicators or decision makers in any form; they are there to assist the parties to find their own solutions to their disputes. Mediators have no powers to force the parties to do anything and to attempt to do so would be a cardinal sin for the mediator.

Mediators do not warm the parties up with “leg-pulls and wise cracks”. Humour can be a useful, gentle tool when dealing with impasses, emotions and entrenchment but the process does not start with a comedy act.

Mediators do not try to get the parties “to love them”. A mediators will try to gain the parties’ respect, trust and confidence but will also be required to say things that the parties may not want to hear, particularly when in private. Reality testing parties’ positions and perceptions can be a tough process.

Tony got something right when he said that the mediator becomes a “confidant” but not when he said the mediator becomes “a pal, a mate”.

Mediators remain objective. They empathise rather than sympathise. Pals and mates are not the best people to help resolve differences because they are partisan and emotionally involved.

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