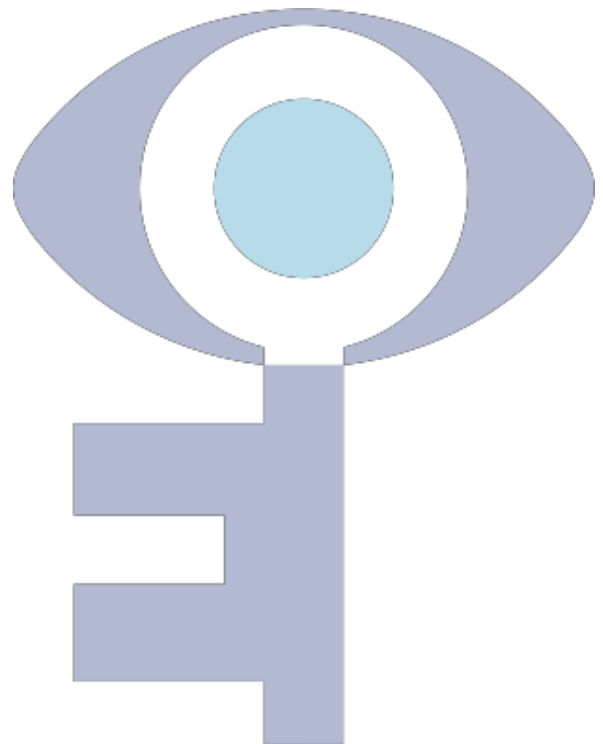


# The Eighth Mediation Audit

A survey of commercial mediator attitudes and experience  
in the United Kingdom



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## **Introduction**

This marks the eighth occasion on which CEDR (The Centre for Effective Dispute Resolution) has undertaken a survey of the attitudes of civil and commercial mediators on a range of issues concerning their personal background, mediation practice and experience, professional standards and regulation, and priorities for the field over the coming years. The primary focus of the survey is to assess how the market and mediation attitudes have changed over the past two years.

The survey was undertaken using an internet-based questionnaire, which was open to all mediators in the United Kingdom, regardless of organisational affiliation. It was publicised by way of CEDR's website and direct e-mail to the mediator contacts both of CEDR and of other leading service providers and members of the Civil Mediation Council.

In a new development this year, the survey also sought out the views of mediators based in other jurisdictions, particularly the United States where the survey was publicised through CEDR's collaboration with The International Institute for Conflict Prevention and Resolution (CPR).

This particular report is based upon the 336 responses that were received from mediators based in the United Kingdom. This is a statistically significant sample that represents over 50% of the individual membership of the Civil Mediation Council. As in any survey, not all participants answered every question.

A separate report will be developed from the responses received from mediators based in the United States.

Alongside our survey of mediator attitudes, we conducted a parallel survey of lawyer attitudes in order to provide a client-oriented perspective to some of the questions raised. We plan to release these findings separately, but where relevant, we have cross-compared the responses from the lawyers' survey with that of the mediators' survey.

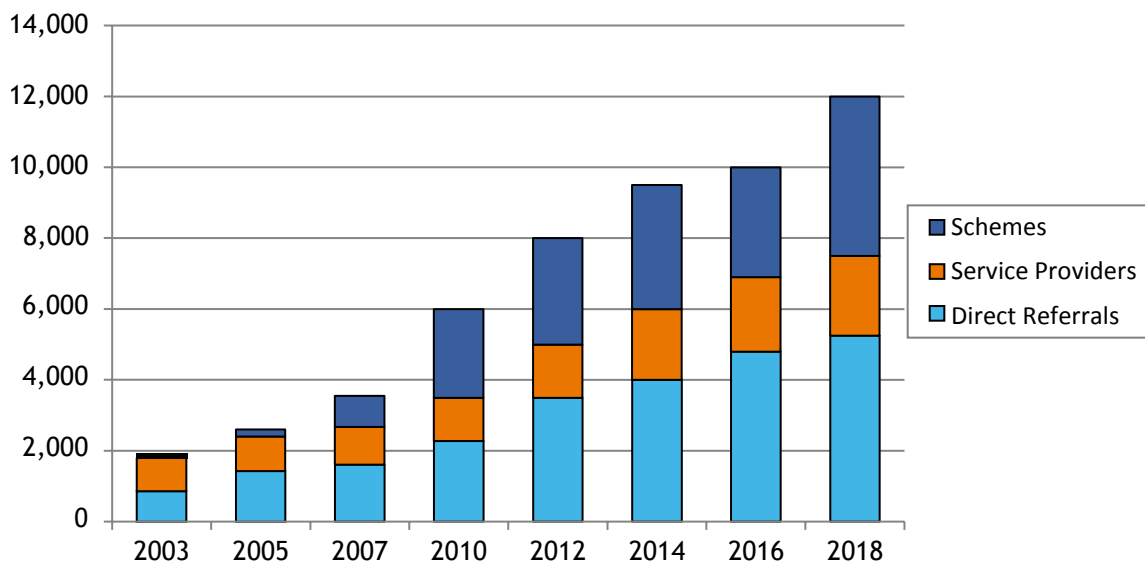
It is important to emphasise that this is a survey of the civil and commercial mediation landscape, a field we have very loosely defined as encompassing any and all mediation activity that might reasonably fall within the ambit of the Civil Mediation Council. This reflects the background of the surveying organisation, CEDR, and the channels through which survey responses were canvassed.

We do not, therefore, claim to cover either community or family mediation (although some of our respondents do report also being active in those fields).

Furthermore, we do not include the statutory ACAS service or the HMCS Small Claims Mediation Service, quite simply because the scale of their activities would each far outweigh the other findings of this survey.

### ***The mediation marketplace***

On the basis of mediators' reported caseloads, we estimate that the current size of the civil and commercial mediation market in England & Wales is now in the order of 12,000 cases per annum. This is 20% more than the 10,000 cases we estimated in 2016, suggesting that there has been an acceleration of growth after what had seemed to be a slowing down two years ago.



This conclusion may not, however, reflect the experience of many mediators or mediation service providers. This is because it appears that the shape of the market is undergoing further change:

- Whereas historically it has been ad hoc referrals of individual cases which has marked the expansion of mediation activity, this growth has tailed off such that this work is only up by 9% since 2016, the slowest rate of increase that this survey has ever seen.
- Furthermore, the shape of this sector of the market seems to have stabilised. Whereas one of the key variables over the past 15 years has been the shifting balance of ad hoc mediations between direct referrals and those going through service providers, our latest survey shows that 70% of ad hoc cases are being handled on a direct referral basis, unchanged from 2016 (as compared to 66% in 2014; 71% in 2012, 65% in 2010, 60% in 2007, 55% in 2005 and 45% in 2003).
- Offsetting this steadying of the ad hoc market, our survey reveals remarkable growth in scheme-related activity, that is organised mediation schemes such as those supported by NHS Resolution, by leading employers and by the Court of Appeal and other courts. This area of activity has grown by 45% in just the past two years, and now accounts for some 4,500 cases, or 37.5% of all mediation activity.

Finally, the market remains dominated by a select few, with a group of around 200 individuals involved in around 85% of all non-scheme commercial cases (i.e. an average of 35-40 cases each). The size of this group has, however, grown markedly from the 145 reported in 2016, suggesting that more competition is finally developing.

### ***The mediators***

In terms of personal mediation experience, respondents were split between three broad categories:

- 62% Advanced mediators – who described themselves as “*reasonably*” or “*very*” experienced;
- 19% Intermediates – who categorised their lead mediator experience as “*some*” or “*limited*”; and
- 19% Novices – who were generally accredited but had no experience as a lead mediator.

This overall profile is slightly different to that observed in previous Audits as an increasing proportion of mediators are identifying themselves in the Advanced category (up to 62% from 54% in 2016).

The vast majority of Novice and Intermediate mediators reported personal involvement in no more than four mediations a year. Advanced mediators reported more extensive practices and we can no longer claim that commercial mediation remains a part-time profession as, for the first time, we saw 60% of Advanced mediators characterising themselves as “full-time” mediators, a significant increase on the 40% identified in 2016 (2014: 47%; 2012: 39%; 2010: 37%). Clearly, however, “full-time” is a term of art, as 59% (2016: 56%; 2014: 46%) still report undertaking less than 10 mediations a year.

The age of the average female mediator is 51 (2016: 50), whilst the average male mediator is considerably older, at 59 (2016: 57). The Advanced mediator group are only a year or so older than the average.

In previous audits, we have seen signs of increased female involvement in the field. However, this progress may have stalled again as we see just 35% of respondents were women (2016: 35%; 2014: 26%; 2012: 22%; 2010: 19%). Furthermore, women remain under-represented in the Advanced group at 24%, down from 29% in 2016 (2014: 25%; 2012: 18%). In contrast, the latest statistics from the Law Society, perhaps the nearest comparable profession, report that 50.1% of practising certificate holders are women.

Other aspects of diversity remain a concern, with just 10% of respondents categorising themselves as being from Black, Asian and minority ethnic (BAME) groups (compared to 16.5% of solicitors). Furthermore, statistics from the Disabled Living Foundation describe disabled people as representing about 19% of the working population in the UK, so our survey response of just 5% mediators reporting a disability seems disproportionately low. However, our result of around 2% identifying themselves as lesbian, gay or bisexual is consistent with estimates from the Office for National Statistics.

Less than half (49%) of our respondents were legally qualified (2016: 43%; 2014: 52%; 2012: 62%), but the proportion of lawyers within the Advanced group remains higher, at 61% (2016: 57%; 2014: 60%; 2012: 70%). Both of these latest figures mark a slight reversal of the trend away from lawyer mediators that were identified in previous Audits.

For the first time, our survey asked lawyers whether they were satisfied with the current levels of diversity in the pool of available mediators. This revealed a wide range of views: 35% said they were satisfied, 26% were not satisfied and a surprising 39% reported that they had not considered the issue. One respondent signalled a possible way forward: *“Most full-time mediators with substantial caseloads in my line of work are male and almost all are white. This can alienate clients in some situations. Mentoring might help. Experienced mediators bringing juniors from more diverse backgrounds to observe might also help as it would give solicitors a wider exposure to those juniors”*.

### Sources of work

We asked both mediators and lawyers to assess the relative significance of a number of factors in determining why individuals secured commercial mediation appointments and then compared the aggregate rankings as set out in the table below:

Mediators						Lawyers				
10	12	14	16	18		18	16	14	12	10
1	1	1	1	1	Professional reputation – experience/status	2	1	3	1	1
4	2	2	4	2	Availability	1	6	1	3	4
8	6	5	7	3	Fee levels	4	4	5	2	2
2	3	3	2	4	Professional background/qualifications	6	5	4	6	5
6	4	6	3	5	Sector experience	3	3	6	7	6
9	8	4	6	6	Recommendation – by lawyer in previous case	8	8	7	5	7
5	7	7	5	7	Professional reputation – mediation style	5	2	2	4	3
3	5	9	9	8	Recommendation – by provider	12	13	10	14	10
10	10	10	10	9	Location	7	12	8	9	12
7	9	8	8	10	Repeat business – with lawyer	9	7	9	8	8
12	12	14	14	11	Recommendation – by client in previous case	10	10	13	10	9
15	11	12	12	12	Marketing activity (e.g. mailshots, website)	15	16	17	12	15
16	17	15	17	13	Repeat business – with client	17	11	11	11	9
17	13	13	16	14	PR activity (e.g. articles, speeches)	13	17	15	16	16
13	14	11	11	15	Professional reputation – settlement rate	11	9	12	13	11
14	16	17	13	16	Recommendation – by directories	14	14	16	15	14
11	15	16	15	17	Recommendation – by other mediators	16	15	14	17	17

Within this ranking, “*professional reputation – experience/status*” has long been the clear winner with both mediators and lawyers, but it is interesting that “*availability*” has returned as a significant factor after its dip in 2016. “*Fee levels*” are also rising in significance, at least in the eyes of mediators.

We also asked mediators how often they emphasised their profession when promoting themselves; how often was it a significant factor in their securing appointments; and, finally, how often did it turn out to be actually relevant and needed in the subsequent mediation, including assisting in reaching settlement. As the table below indicates, there are still marked differences in the respective proportions of lawyer and non-lawyer mediators reporting these situations as occurring “almost always” or “frequently”:

Lawyer Mediators				Non-Lawyer Mediators		
2014	2016	2018		2018	2016	2014
43%	49%	56%	Used in self-promotion	62%	58%	64%
65%	65%	67%	Influential in getting work	57%	55%	55%
62%	67%	64%	Relevant in practice	55%	50%	43%
63%	62%	59%	Factor in getting settlement	53%	51%	47%

The gap between the extent to which lawyer and non-lawyer mediators market their professional background is decreasing, but it is still the non-lawyer mediators who are working harder to promote their professional background, albeit this does not seem to be working for them as well as it does for the lawyers.

In the meantime, the debate about the respective merits of different backgrounds continues without any sign of likely resolution. There are, however, an increasing number of pragmatists who recognise that legal advisers play a large part in influencing mediator appointment decisions and that, as one respondent put it: *“since lawyers are usually more comfortable dealing with fellow lawyers, there is an ingrained tendency for lawyers to choose lawyers over non-lawyers. I think they think that non-lawyers do not have the necessary legal knowledge to assist in reaching settlement. It tends to be only where complicated numbers or technical issues are involved that they will look beyond this to other professions”*. Many lawyer mediators feel this attitude plays into their hands, but conversely, it clearly provides a spur for non-lawyer mediators to take greater steps to promote their particular expertise and to differentiate themselves from the crowd.

### **Performance in mediation**

The overall success rate of mediation remains very high, with an aggregate settlement rate of 89% (2016: 86%).

The proportion of cases that achieve settlement on the day of mediation has risen back to 74% after the previous audit’s drop to 67%, and conversely, there has been a decrease in the proportion of cases that settle shortly after mediation, falling from 19% to 15%. Settlement rates amongst the Advanced mediator group are similar.

These settlement rates reported by mediators were validated by the findings of our separate survey of lawyers’ views, which revealed a very similar pattern. However, it is interesting to note that individual mediators’ reported settlement rates remain a relatively insignificant factor in determining appointments. This would seem to confirm the accounts of many mediators and lawyers that the value of the process goes far beyond the binary question of whether or not settlement is achieved, and that many less tangible impacts, such as clarifying the issues and narrowing areas of difference, are also of real importance.

We asked mediators to provide a breakdown of the number of hours they spent on a typical mediation. This revealed that the average time spent has fallen by about 2 hours, back to the level reported in the 2014 Audit. This may well reflect the increased proportion of scheme cases, which are more likely to operate under a fixed budget. A significant proportion of mediator time continues to be unremunerated – an average of 3-4 hours was unpaid, either because the mediator did not charge for all of the hours incurred or because he/she was operating a fixed fee arrangement.

	2018	2016	2014
Preparation			
Reading briefing materials	4.8	5.8	4.7
Client contact	2.2	2.3	2.2
Mediation			
Working with clients on the day	7.4	8.2	7.8
Post-mediation			
Follow-up / on-going involvement	1.9	2.3	1.7
<b>Total</b>	<b>16.3</b>	<b>18.6</b>	<b>16.4</b>

Although most mediators are still working with this standard structure, there are some signs from more established mediators that the traditional one-day model of mediation is now being supplemented by more flexible sessional models of engagement in more complex cases as well as in deal-making as opposed to dispute resolution contexts. Similarly, our survey has received increased accounts of how mediators are making use of their professional skill set in other aspects of their personal and professional lives.

We asked mediators for their views on the performance those lawyers and clients they encountered in their mediations:

- 63% of lawyers (2016: 69%; 2014: 71%; 2012: 64%) and 61% (2016: 64%; 2014: 62%; 2012: 59%) clients were rated as having performed very well or quite well
- 23% (2016: 19%; 2014: 15%; 2012: 21%) of lawyers and 24% (2016: 21%; 2014: 23%; 2012: 24%) of clients were rated as having performed adequately
- 14% (2016: 12%; 2014: 14%; 2012: 15%) of lawyers and 15% (2016: 15%; 2014: 15%; 2012: 17%) of clients were rated as performing less than adequately (with 5% of lawyers and clients rated as having been very poor).

These findings are broadly consistent with the findings of our separate survey of lawyer perceptions. Lawyers rated 70% (2016: 60%; 2014: 54%; 2012: 52%) of their counterparts, and 72% (2016: 70%; 2014: 70%; 2012: 56%) of clients, as having performed well or very well in mediation, with 14% (2016: 13%; 2014: 20%; 2012: 17%) of lawyers and 10% (2014: 4%; 2014: 15%; 2012: 15%) of clients performing poorly. Thus, both surveys confirm that the majority of lawyers are familiar with the process and getting better at working within it, but there still there remains a rump of around 15% who are lagging behind.

Turning the tables, our separate survey of lawyers also asked for their ratings of mediator performance:

- 83% (2016: 81%; 2014: 82%; 2012: 69%) of mediators were reported as performing very well or quite well, with 53% (2016: 60%; 2014: 53%; 2012: 48%) in the highest category.
- 13% (2016: 14%; 2014: 12%; 2012: 22%) were reported as performing adequately.
- 4% (2016: 5%; 2014: 6%; 2012: 9%) performed less than adequately, of which 1% (2016: 1%; 2014: 2%; 2012: 4%) were rated as being very poor.

In order to try to obtain further insights into the challenges that mediators encounter when working with parties and their advisers, we asked about the frequency with which they encountered particular behaviours within client negotiation teams:

	Frequently or almost always	
	2018	2016
Poor negotiation strategy	43%	39%
Over-reliance on advisers	42%	48%
Groupthink	36%	41%
Avoidance	26%	24%
Inter-personal conflict within team	21%	14%
Disagreement about strategy	16%	7%

As for more positive behaviours, mediators reported encountering effective leadership of client negotiation teams on 34% of occasions (2016: 40%), and good negotiation strategies on just 23% (2016: 24%).

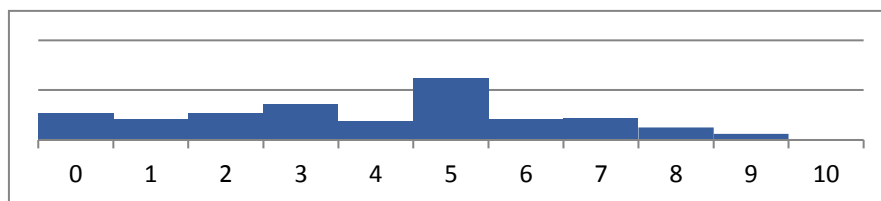
We also asked mediators to describe the piece of advice that they most frequently wished to give to parties (or actually gave them) about how to improve their own performance in the mediation process and get the best out of it. Nearly all of the 150 separate responses to this question would be familiar to any recent participant in a high-quality mediator skills training course, so their value is not so much to highlight differences of approach as between individuals but, rather, to highlight those areas where mediators have felt a need to give advice. The following capture thoughts expressed by many:

- *Prepare for the day - not only by thinking about your needs and expectations but also doing the same thing thinking about your opponents. Read Getting Past No. Arrive early. Check the parking.*
- *Being in the right does not bring anybody closer to a mutually beneficial position*
- *Reflect on the offer you are making to the other party – if this offer was put to you how would you feel? Is the offer realistic?*
- *Do more preparation! come to the mediation with a properly executed risk assessment and a realistic range of acceptable outcomes, based on needs rather than just regurgitating a position that has already been stated in correspondence, pleadings and the position statement (which is frequently itself a rehash of the pleadings).*
- *I always want to tell very senior lawyers to try to take their own emotion out of the process - it isn't about them, it's about their client!*

Finally, we asked mediators about the approach that they adopted within mediation as there has been a long-running discussion in the field about the respective merits of facilitative and evaluative approaches.

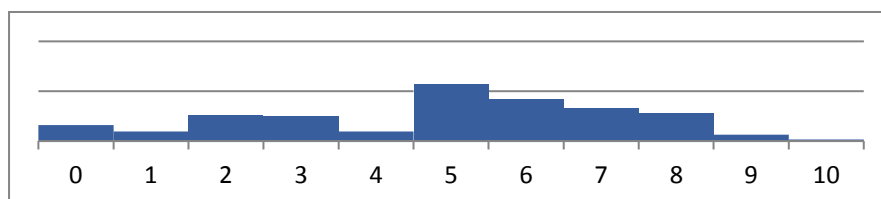
Firstly, we asked mediators about their personal philosophy for mediation. As might be expected given the nature of most mediator skills training, respondents showed a marked preference towards the lower end of the spectrum (on the basis that a score of 0 means fully facilitative, 10 means fully evaluative and 5 is 50/50).

*Personal philosophy of mediation*



However, this did not always match with where mediators believe that parties and their advisers expect them to be (based on what is said during mediations) – clearly, they are looking for a more evaluative approach.

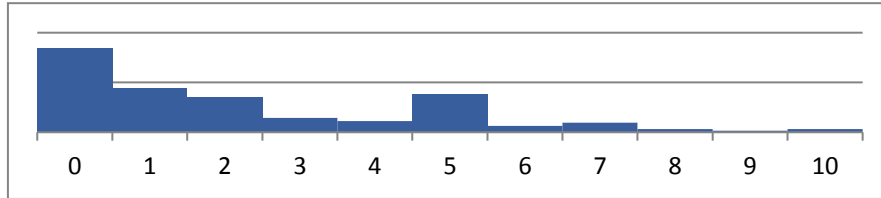
*Parties' expectations*



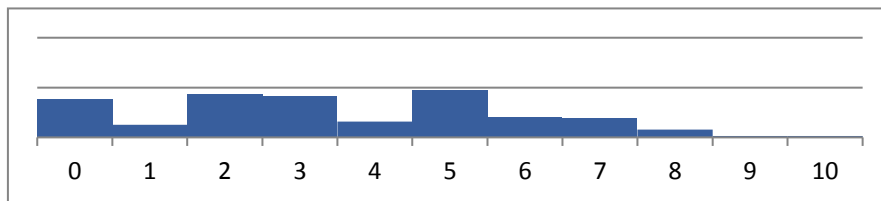


We then asked mediators for more details about the approaches they adopted at different stages of the mediation process.

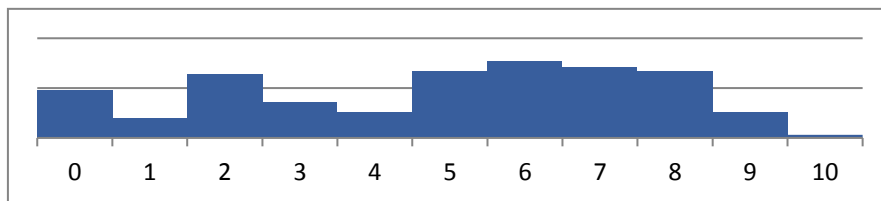
*First phase of mediation – when you are uncovering information*



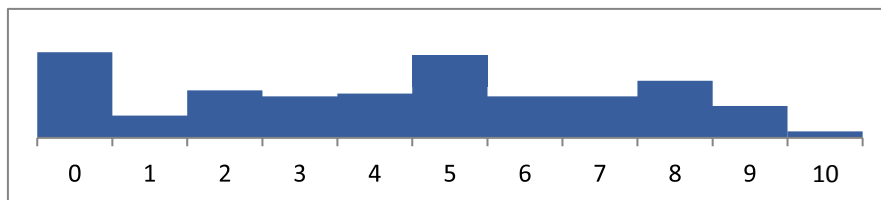
*Trying to get negotiations moving*



*When everything is stuck*



*Closing the deal*



Arguably this sort of pattern is what one might expect – mediators trained in a facilitative doctrine tend to favour that approach and start out using it, but many (although clearly not all) veer towards more evaluative strategies when the going gets tough.

Further analysis on this topic will be provided in a subsequent report. Particular questions still to be addressed include (a) does a mediator’s preferred approach vary according to their level of experience; (b) is there any correlation between mediator approach and settlement rates; and (c) are lawyer mediators more, or less, evaluative than non-lawyer mediators. These questions, along with feedback on respondents’ views about mediation techniques which did or did not work, will be published in a separate report dealing specifically with professional skills issues.

### ***Changes and trends***

We asked mediators what procedural trends or other changes they have noticed in the conduct of mediations in the past two years. As might be expected, this question attracted a wide range of comments, but what was particularly noticeable was that 25% of all of those comments referred to an increasing resistance to joint meetings, particularly at the start of a mediation day. This resistance appears to be largely driven by lawyers who argue that no purpose is served by such meetings given that the parties are already familiar with each other's cases— a view which the majority of mediators do not appear to accept.

The next most frequently mentioned change, at 10%, was that negotiations are becoming tougher. Some saw this as being attributable to the fact that the simpler cases are settling before getting to mediation, but others point to increasing late document bundles which then turn out to contain no more than “pro forma” position papers.

More positively, a number of mediators report more skilful engagement in the mediation process by lawyers (and barristers in particular), although clearly some do not view this development as helpful and refer to their being told by solicitors how to run the mediation.

Finally, a number of mediators report seeing an increase in joint meetings between lawyers and/or clients during the course of the mediation (as opposed to at the start of the day).

Lawyers' comments on what changes they had seen largely mirrored those of mediators in that they too noted, and welcomed, mediations becoming more streamlined, and on the negative side they also noted a decline in the standards of mediation bundles.

### ***Growth areas***

Mediators' views as to which types of dispute or sector are likely to see the most growth in mediation usage over the next two years are largely unchanged from our previous audit.

The mainstream area of general commercial disputes remains the most frequently mentioned sector, whilst Employment/Workplace, Professional Negligence and Personal Injury were also prominent. The most notable new entrant near the top of the list was Probate.

### ***Standards and regulation***

In response to our request for mediators' views on what should be the main priorities of the Civil Mediation Council for the next two years, the number of critical comments about the CMC was far lower than we saw in our 2016 Audit. The one issue that did attract criticism from a few was about what they saw as steps to get closer to, and possibly even merge with, the Family Mediation Council. That is not to say that respondents were critical of the FMC, or averse to collaboration, and in fact, a number suggested that the CMC could learn lessons from some of FMC's successes. There was, however, an underlying concern that the CMC still had a lot to do within its original mission.

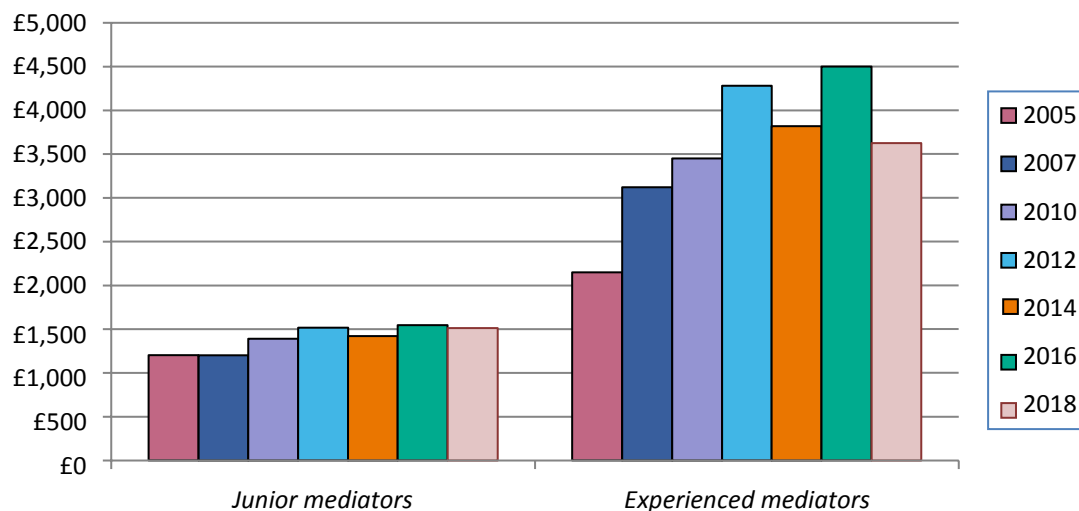
As to what that mission should be, a clear consensus has emerged around the notion of the CMC as a professional body whose primary role is work with governments, clients and advisers to increase the take-up of mediation. There are differing emphases as to which audience should be the primary target of promotional work, but the majority of all suggestions about CMC priorities fell into this category.

A small proportion (7%) of mediators' priorities for the CMC made reference to regulation of mediation practice, but a larger group (18%) simply referred to a need to set higher standards in areas such as accreditation and continuing professional development. Some justified this by referring to CPD requirements of only six hours or permitting mediation observations to be treated as actual practical experience, as setting the bar too low, whilst a small number of individuals took the opportunity to make colourful criticisms of others.

Lawyers' views on the priorities for the CMC largely mirrored those of mediators in that they still see a significant need for further promotion of the benefits of mediation. Interestingly, only one lawyer respondent made reference to any need to improve standards or regulate the mediation profession.

### Mediator earnings

The changing shape of the marketplace is also having an impact on fees:



- Average fees of the less experienced mediator group for a one-day mediation have dropped by 2.1% over the past two years to £1,512 (2016: £1,545; 2014: £1,422; 2012: £1,517; 2010: £1,390).
- Average fees for more experienced mediators have seen a more significant 19.4% drop to £3,627 (2016: £4,500; 2014: £3,820; 2012: £4,279; 2010: £3,450).

As usual, the averages conceal a wide variation in individual rates. However, these drops in average fees are consistent with our findings of overall mediation activity. Not only are schemes less remunerative than ad hoc referrals, but as membership of the Advanced group increases, the less experienced members tend to reduce the average as they cannot yet achieve the higher fees of more established practitioners (for whom there are no signs of any reductions).

By combining fee rates with reported activity levels, we can project average incomes for differing levels of mediator activity:

- Those undertaking between 20 and 30 mediations a year are earning between £22,000 and £106,000 with an average of £68,000 (2016: £55,000; 2014: £70,000; 2012: £90,000; 2010: £73,000).
- Those mediators undertaking between 30 and 50 mediations a year are earning between £65,000 and £400,000, with an average of £175,000 (2016; £175,000; 2014: £128,000; 2012: £145,000; 2010: £126,000).

- o Those undertaking over 50 cases a year are earning between £130,000 and £780,000, with an average of £330,000 pa (2016: £400,000; 2014: £370,000; 2012: £414,000; 2010: £296,000).

*Average earnings for a one-day mediation:*

	2018	2016	2014	2012	2010	2007
Pro bono only	3.1%	10.4%	8.1%	7.4%	10.3%	9.1%
Under £500	5.0%	6.3%	4.0%	5.3%	5.8%	8.5%
£501 - £1,250	22.6%	17.4%	22.1%	24.0%	22.4%	29.1%
£1,251 - £2,000	22.0%	17.4%	16.8%	18.1%	19.2%	17.0%
£2,001 - £2,500	18.2%	8.3%	14.8%	14.6%	10.9%	10.3%
£2,501 - £3,000	5.7%	9.7%	12.1%	8.2%	7.7%	9.7%
£3,001 - £3,500	7.5%	8.3%	7.3%	4.7%	9.0%	6.7%
£3,501 - £4,000	5.7%	4.9%	3.4%	4.1%	4.5%	2.4%
£4,001 - £4,500	2.5%	3.5%	2.0%	1.2%	1.3%	1.2%
£4,501 - £5,000	2.5%	2.1%	2.0%	4.1%	5.1%	3.0%
£5,501 - £6,000	0.6%	4.2%	3.4%	3.5%	2.6%	1.2%
£6,001 - £6,500	-	1.4%	2.0%	0.6%	-	1.8%
£6,501 - £7,000	0.6%	-	0.7%	1.8%	-	-
£7,001 - £7,500	0.6%	1.4%	-	-	0.6%	-
£7,501 - £8,000	0.6%	0.7%	-	0.6%	0.6%	-
£8,000 +	2.5%	4.2%	1.3%	1.8%	-	-

The most successful mediator we surveyed reported average earnings of over £9,500 per case on a workload of around 80 cases, giving an annual income of some £780,000.

### **Contribution of the field**

Finally, by combining the results of the Mediator Audit surveys with detailed operational statistics taken from CEDR's own caseload, we can update our assessment as to the overall economic impact of the commercial mediation field as a whole:

- o The total value of cases mediated (i.e. the amount at issue) can be significantly influenced by the impact of mega-cases. If, however, the effect of such cases is excluded, the value of cases mediated each year is approximately £11.5 billion (2016: £10.5 billion).
- o Since 1990, effectively the launch point of civil and commercial mediation with England & Wales, the total value of mediated cases is approaching £110 billion.
- o By achieving earlier resolution of cases that would otherwise have proceeded through litigation, the commercial mediation profession this year will save business around £3 billion a year in wasted management time, damaged relationships, lost productivity and legal fees.
- o Since 1990, our profession has contributed savings of £28.5 billion.

By way of a comparator to these figures, our Audit results suggest that the aggregate value of the mediation profession in terms of total fee income is around £30 million.

## Conclusion

Although the CEDR Mediation Audit focuses largely on the attitudes and experiences of commercial mediators in the United Kingdom, perhaps the most compelling summary of the state of the profession comes from our parallel survey of lawyers' views. We asked them to tell us about those client matters on which they have worked in the past year and which are now concluded:

Settled by negotiation - pre issue	24%
Settled by negotiation - post issue (pre directions)	7%
Settled by negotiation - post issue (post directions)	12%
Settled by mediation	45%
Settled by arbitration	4%
Settled by other ADR process	4%
Settled at trial	4%

That such a small proportion of cases go all the way to trial is well known, but the fact that 45% of all cases now achieve settlement by way of mediation shows how far the field has come in terms of disrupting the *ancien regime* of attritional conflict.

Since its introduction into the UK litigation marketplace in the late 90s, commercial mediation has progressed from being a self-confessed alternative from California to become an established feature in the conflict landscape, with its use increasingly mandated by commercial contracts, corporate policy and procedural rules. Alongside this, an entirely new profession has emerged – a profession which is now well established, albeit one that still faces the tensions of activity largely being in the hands of a small group whilst so many more are still stuck in the Catch 22 that specifies that appointments only come after experience, but experience only comes from appointments. This issue still needs to be resolved, ideally by growing the demand for mediation services, an activity which our respondents still regard as the main priority for the Civil Mediation Council. In addition, there is a role for our service providers in breaking down the barriers. The lack of diversity in our profession remains a concern, and this goes far beyond race and creed. Our field will only continue to thrive if we can offer the market new talent rather than just the same old faces, but that talent must be of high quality – and a number of our respondents suggest that the bar for entry needs to be set higher.

One definition of Disruptive Innovation is: *“An innovation that creates a new market and value network and eventually disrupts an existing market and value network, displacing established market-leading firms, products, and alliances”*. As the results of this Audit demonstrate, mediation qualifies under virtually every aspect of the definition – the only point it hasn't hit is *“displacing established market-leading firms”* but that is because it has over-achieved by changing law firms and lawyers' behaviours and attitudes. The vast majority have espoused the mediation approach as part of their professional skill set, and not only do a high proportion of lawyers perform very well in mediations, but many have become very successful mediators in their own right.

Nevertheless, the debate about the respective merits of lawyer and non-lawyer mediators will continue, as will many other healthy discussions about professional skills, approaches and areas of application. For whilst we may have successfully disrupted the traditional adversarial litigation culture, our own field is not immune to disruption and further evolution is assured.

Graham Massie  
CEDR Director  
10 July 2018



The Mediation Audit is a biennial initiative undertaken by CEDR as part of its public mission to cut the cost of conflict and create a world of choice and capability in conflict prevention and resolution.

CEDR is grateful for the support of its members.

For further details, see our website: [www.cedr.com](http://www.cedr.com)

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