



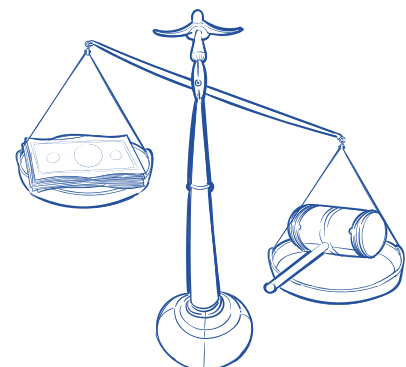
The Ninth Mediation Audit

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

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Personal Note from the Author,
Graham Massie

"Since it was launched in 2003, CEDR's Mediation Audit has tracked the growth and success of the commercial mediation profession; and I am pleased to report further progress, particularly in how we have stepped up to the challenges of social distancing in the past year. There is, however, much more to be done, not just in broadening diversity and inclusion within our profession but also in continuing to raise standards and increase the impact that mediation can deliver for society. This is CEDR's mission, but our true strength will come if we can work together, so I hope you will join us to continue to make a difference."

Introduction

This marks the ninth occasion on which CEDR (The Centre for Effective Dispute Resolution) has undertaken a survey of the attitudes of civil and commercial mediators to 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.

In addition, the Audit has sought mediators' views and experience on two particularly topical issues this year, namely the emergence of online mediation in the light of the covid-19 pandemic and the ongoing debate about diversity and inclusion in society as a whole.

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.

This particular report is based upon the 361 responses that were received from mediators based in the United

Kingdom. This is a statistically significant sample that represents about 50% of the individual membership of the Civil Mediation Council. As in any survey, not all participants answered every question.

Alongside our survey of mediator attitudes, we conducted a parallel survey of lawyer attitudes in order to provide a user-oriented perspective to some of the questions raised.

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).

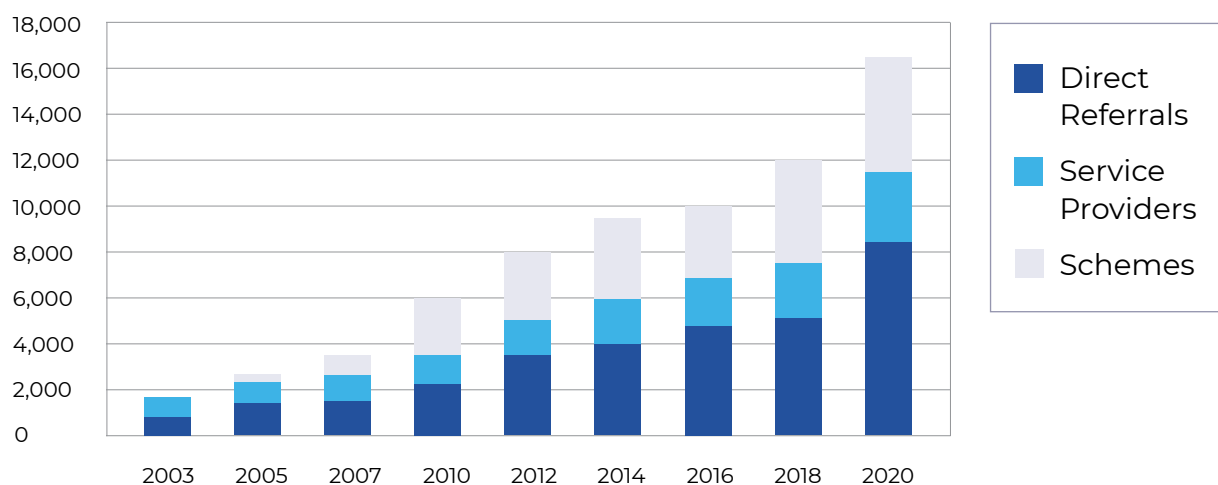
Furthermore, we do not include the statutory ACAS service or the HMCS Small Claims Mediation Service, quite simply because the scale of their activities would each far outweigh the other findings of this survey.



The Mediation Marketplace

On the basis of mediators' reported caseloads, we estimate that, for the year to 31 March 2020 (i.e. immediately before the covid-19 pandemic), the size of the civil and commercial mediation market in England & Wales was in the order of 16,500 cases per annum. This is 38% more than the 12,000 cases we estimated in 2018, suggesting that there has been a further acceleration of growth beyond what was observed two years ago.

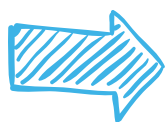
Commercial mediation case numbers



Reversing the trend of previous Audits, the major proportion of this growth came in ad hoc referrals of individual cases which are up by 53% over 2018's level. Linked to this, there was a further shift in the balance of ad hoc mediations between direct referrals and those going through service providers, with our latest survey showing that 74% of ad hoc cases were being handled on a direct referral basis in 2020, up from 70% in 2018 and continuing the continuous pattern of growth which goes back throughout the history of these Audits.

Alongside this growth in ad hoc referrals, there was steady 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 grew by 11% since 2018, and in 2020 accounted for some 5,000 cases, or just over 30% of all mediation activity.

Sadly, the impact of the covid-19 pandemic triggered a downturn in mediation activity, and overall activity dropped by 35% over the period March to September 2020. As detailed in the fuller discussion below, this drop would undoubtedly have been far more severe were it not for the rapid upsurge in online mediation over this period.

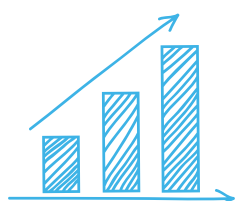


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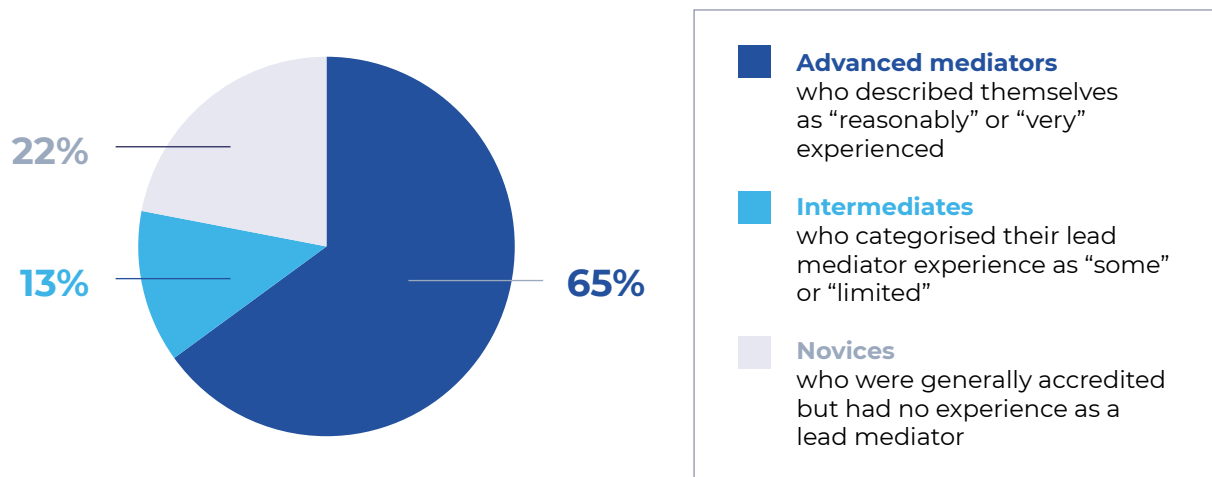
and in 2020/21 accounted for some 5,000 cases.

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The Mediators

The marketplace remains dominated by a select few, with a group of around 200 individuals involved in around 85% of all ad hoc commercial cases (i.e. an average of 35-40 cases each). The size of this group has not changed since the level reported in 2018 and indeed there are some signs of further consolidation - within that group of 200, the 120 busier mediators (i.e. those undertaking over 20 cases a year) now handle 73% of cases, up from 69% in 2018.

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



This overall profile is only slightly different to that observed in previous Audits with an increasing proportion of mediators now identifying themselves in the Advanced category (up to 65% from 62% in 2018 and 54% in 2016).

In terms of professional background, 44% of all respondents are qualified lawyers, a reduction from the 49% reported in 2018 with most of that reduction taking place amongst Novice and Intermediate mediators (i.e. generally newer entrants into the profession). Amongst Advanced mediators, qualified lawyers remain in the majority, at 56%, but that proportion has fallen since the 61% reported in 2018).

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 with 67% characterising themselves as "full-time" mediators (up from 60% in 2018). Clearly, there is still a wide variation of activity within this group, with 51% (2018: 59%) reporting undertaking less than 10 mediations a year.

The age of the average female mediator is 53 (2018: 51), whilst the average male mediator is considerably older, at 60 (2018: 59). The Advanced mediator group are nearly two years older than the average (i.e. 62 for men).

Age	All		Senior levels	
	Mediators	Solicitors	Advanced mediators	Partners in practice
under 30	2%	12%	-	Average age is 49. No further details available.
30 - 40	7%	35%	5%	
40 - 50	20%	27%	20%	
50 - 60	27%	18%	25%	
60 - 70	33%	7%	37%	
70 - 80	11%	1%	14%	

Female involvement in the field continues to increase and, for the first time, we have a significant proportion of women, 41% (2018: 24%) in the Advanced group. In this regard, at least, the mediation profession is, therefore, at last catching up with comparators such as the Law Society¹ where 49% of solicitors in private practice (or 31% of private practice partners) are women.

The mediation profession does, however, still fall short in the area of ethnic diversity where only 8% of mediators report coming from a Non-White background compared to 17% of solicitors.



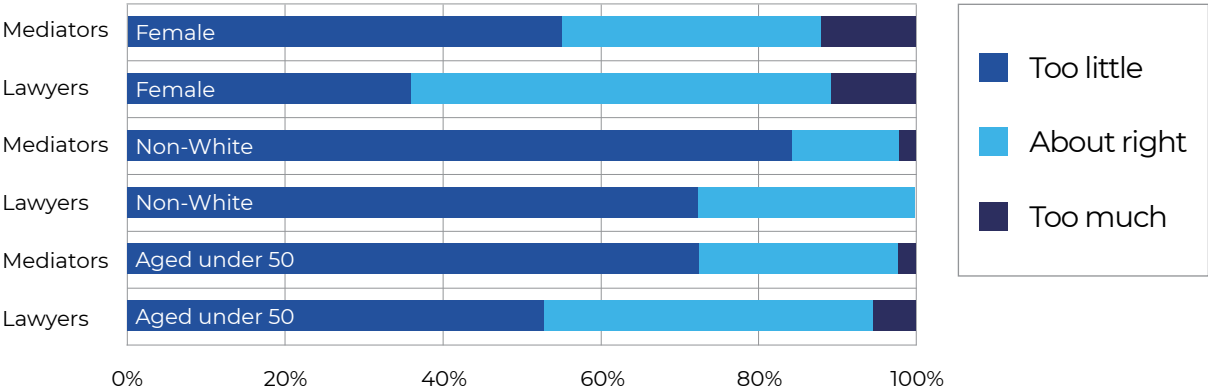
¹ Source of Law Society data: "Diversity Profile of the Solicitors' Profession 2019", The Law Society (November 2020)

Addressing Diversity in Commercial Mediation

In the light of the recent public focus on this issue, the Audit also sought respondents' subjective views about the level of diversity within the mediation field. We asked about gender, age and ethnicity.

There was strong support amongst mediators for the proposition that there is insufficient diversity with the profession, particularly in relation to Non-White individuals and, to a lesser extent, people aged under 50. Notably, however, it was only on Non-White participation that a majority of lawyers perceived a problem with the present position.

How do you feel about the levels of diversity within the mediation profession?



CEDR's 2019 Foundation research report: *Improving diversity in commercial mediation* identified a series of stages on the path to becoming a successful commercial mediator and suggested barriers that might be adversely affecting diversity at each stage along that journey. The following table shows respondents' rankings of the significance of categories of those barriers – our separate mediator

Ranking of perceived barriers to greater diversity

- 1. Getting selected for cases
- 2. Getting early experience
- 3. Choosing to become a mediator
- 4. Getting put forward for cases
- 5. Selection for panels
- 6. Gaining accreditation

This simple ranking of categories has to be interpreted with a degree of caution as, from a prospective mediator's perspective, there is likely to be some causation between items (for example, individuals may not choose to become a mediator if they perceive later difficulties in obtaining experience and being selected for cases).

However, the overall conclusion is clear from the following more detailed analysis of responses, namely that the most significant perceived barrier to greater diversity relates to the challenge of career progression (i.e. getting selected for cases). There are also obstacles at the start of the process, including insufficient awareness and economic challenges around obtaining training and early experience.

Ranking of perceived barriers to greater diversity	Mediators	Lawyers
Getting early experience - Insufficient networks to generate opportunities	1	3
Getting selected for cases - Lawyer aversion to unknown names	2	1
Getting selected for cases - Lawyer lists of preferred mediators	3	2
Choosing to become a mediator - Insufficient means and time to train	4	4
Getting early experience - Lack of means to afford unpaid observerships	5	6
Choosing to become a mediator - Insufficient awareness of commercial mediation	6	5
Getting selected for cases - Lawyer unconscious bias or views of the stereotype mediator	7	11
Getting early experience - Lack of support from established mediators	8	9
Selection for panels - Provider reluctance to promote new names	9	14
Choosing to become a mediator - Do not consider themselves as able to succeed	10	12
Gaining accreditation - Unhelpful stereotypes of a mediator	11	17
Getting put forward for cases - Provider staff aversion to unknown names	12	7
Getting put forward for cases - Provider staff lists of preferred mediators	13	10
Getting put forward for cases - Provider staff unconscious bias when shortlisting mediators	14	15
Selection for panels - Overly rigid panel criteria	15	13
Selection for panels - Unclear selection criteria	16	8
Gaining accreditation - Unconscious bias in training delivery	17	18
Gaining accreditation - Unconscious bias in assessment	18	16

Whilst there is a broad consistency of views between mediators and lawyers (who are, of course, often the key influencers in mediation appointments) it is interesting to note the areas where views diverge although it is hard to discern any underlying pattern. On the one hand, lawyers place greater emphasis on panel administrator behaviours (panel selection criteria, aversion to unknown names) but on the other they do seem as concerned about provider reluctance to promote new names as do mediators.

The Audit also explored respondents' perspectives of the workability of various initiatives that might address perceived barriers to diversity and their preparedness to support them:

	Likely to make a difference		I would support	
	Mediators	Lawyers	Mediators	Lawyers
Diversity pledge by law firms regarding mediator selection	53%	47%	83%	92%
Mediator service provider recommendation lists to always include diverse candidates	62%	59%	85%	100%
Fixed fee mediations operating cab rank style with limited mediator selection for parties	53%	31%	69%	42%
Increased use of new mediators as assistants working with more senior mediators on cases	87%	76%	96%	92%
Bursaries/financial incentives to help people onto training programmes	68%	53%	83%	85%
Training programmes specifically targeted at minority groups	52%	59%	86%	92%

Amongst those respondents who indicated that they would support any particular initiative, less than half said that they would be prepared to actively participate in it, with the exception of the suggestion for an increased use of new mediators as assistants working with more senior mediators on cases – for this initiative, 84% of supporting mediators and 88% of lawyer respondents said they would be prepared to actively participate.

This finding is consistent with the concern expressed by a number of respondents expressed that the real lack of diversity in the profession arises from the relatively small number of mediators who have so far been able to establish a successful practice.

As one respondent wrote:

“I do not agree with discrimination of any sort, and that includes positive discrimination or the selected promotion of some based on factors such as race, above others. I am in favour of helping everyone, with no regard to race etc, who is new to this profession, and the biggest diversity problem we have is that the established mediators dominate the profession, and it is virtually impossible for newcomers to enter. This is even further damaged by the lack of observations available and the shortage of established mediators agreeing to allow their mediations to be observed. I am very disappointed in the lack of support from mediators to newcomers - they are pulling the ladder up after they have climbed it”.



When invited to offer suggestions of other initiatives that might address diversity issues, a number of respondents suggested more scholarships and mentoring and promotion of diverse role models whilst others argued that little should be done to affect the supply side of the mediation marketplace but, instead, we should focus on addressing diversity issues through greater education of mediation purchasers, including lawyers, clients and society as a whole.

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Finally, there were a number of respondents who did not see a significant issue around diversity. A number counselled against token gestures, short-term initiatives or “box-ticking” whilst there were also a few who argued that market forces will prevail without any intervention – as one mediator wrote:

“I do not see the absence of diversity in the mediator field as an issue that requires this form of intervention. Parties must be free to select mediators in whom they feel confidence. True excellence will always win out”.

One lawyer was equally robust:

“Diversity is tilting at windmills. Talent, ability, experience, and so forth, are most important. Lack of diversity is exaggerated. Over-promotion and positive encouragement of weak professionals/mediators to tick woke boxes undermines the value of ADR and decent mediators”.

Professional Background as a Distinguishing Feature

We asked how often mediators 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.

The gap between the extent to which lawyer and non-lawyer mediators market their professional background has disappeared, but it is still the lawyer mediators who seem to accrue the greater benefits in terms of securing work and making use of their background in progressing mediations towards settlement, as the table below indicates:

Lawyer Mediators				Non-Lawyer Mediators		
2016	2018	2020		2020	2018	2016
49%	56%	54%	Used in self-promotion	54%	62%	58%
65%	67%	63%	Influential in getting work	54%	57%	55%
67%	64%	65%	Relevant in practice	57%	55%	50%
62%	59%	73%	Factor in getting settlement	56%	53%	51%

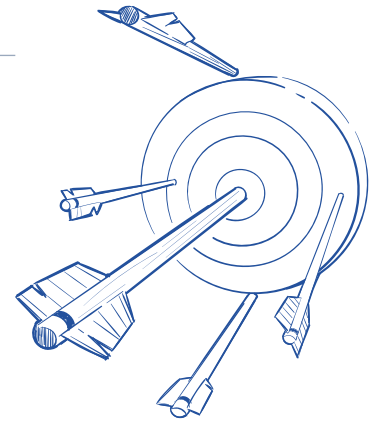
Mediators expressed a variety of views about the relevance of technical expertise about the subject matter of any dispute, but one respondent voiced a sentiment expressed by many:

“The UK mediation profession is particularly sensitive to status. Parties and their agents are reassured by legal and commercial experience – hence the profession is dominated by those who dominate legal and commercial life”.

In addition, for the first time, this year's Audit has surfaced a difference between those describing themselves as full-time mediators and those who have other occupations. Whilst for many full-time mediators their original professional background no longer seems particularly significant, the fact that this is now their “day job” does, in their view, provide additional credibility.

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		
2016	2018	2020		2020	2018	2016
1	1	1	Professional reputation – experience/status	1	2	1
2	4	2	Professional background/qualifications	5	6	5
4	2	3	Availability	2	1	6
3	5	4	Sector experience	4	3	3
7	3	5	Fee levels	6	4	4
6	6	6	Recommendation – by lawyer in previous case	8	8	8
5	7	7	Professional reputation – mediation style	3	5	2
8	10	8	Repeat business – with lawyer	9	9	7
9	8	9	Recommendation – by provider	15	12	13
10	9	10	Location	7	7	12
11	15	11	Professional reputation – settlement rate	10	11	9
14	11	12	Recommendation – by client in previous case	14	10	10
12	12	13	Marketing activity (e.g. mailshots, website)	16	15	16
16	14	14	PR activity (e.g. articles, speeches)	17	13	17
13	16	15	Recommendation – by directories	12	14	14
17	13	16	Repeat business – with client	13	17	11
15	17	17	Recommendation – by other mediators	11	16	15

Within this ranking, “professional reputation – experience/status” has long been the clear winner with both mediators and lawyers but it is notable that “professional background/qualifications” continues to show a mismatch between mediators’ and lawyers’ priorities. It is also interesting that “professional reputation – mediation style” is rising in importance for lawyers, whilst “recommendation – by provider” is falling back.

Performance in Mediation

*The overall success rate of mediation remains very high, with an aggregate settlement rate of **93%** (2018: 89%).*

	2020	2018	2016
Settle on the day of mediation	72%	74%	67%
Settle shortly after mediation day	21%	15%	19%
Total settlement rate	93%	89%	86%

According to mediators, the proportion of cases that achieved settlement on the day of mediation, at 72%, is not significantly different from the 2018 Audit, but there has been a marked increase in the proportion shortly after mediation, rising to 21% of all cases compared to 15% in 2018. Settlement rates reported by lawyers were slightly lower, at 85% overall.

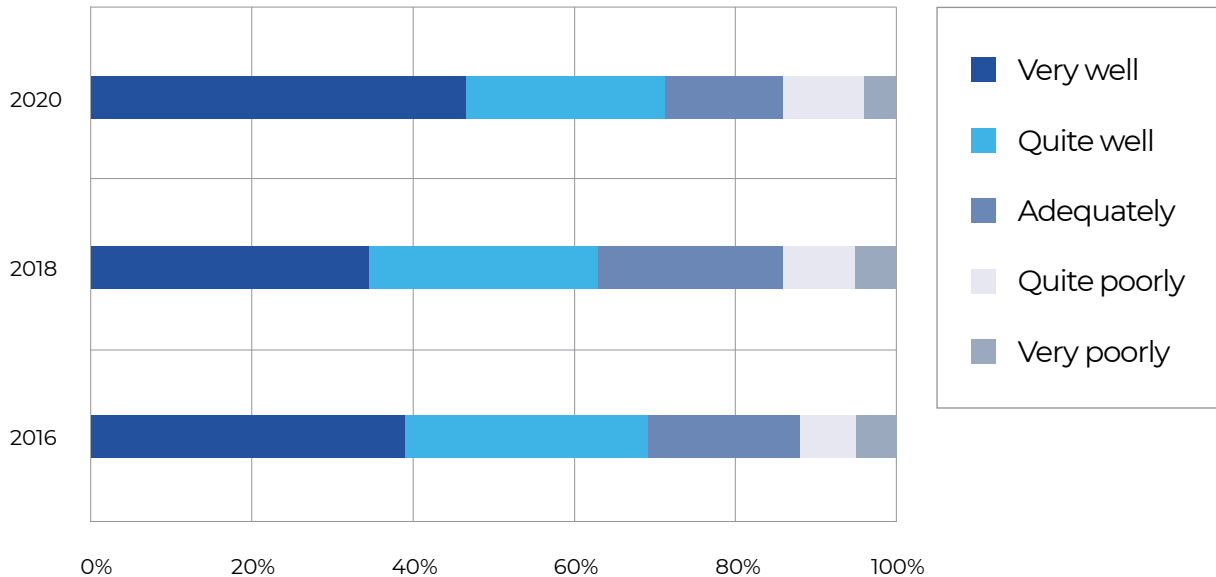
We asked mediators to provide a breakdown of the number of hours they spent on a typical mediation.

This revealed that the average time spent has fallen by 2 hours since the 2018 Audit, a continuation of the trend observed then. 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.

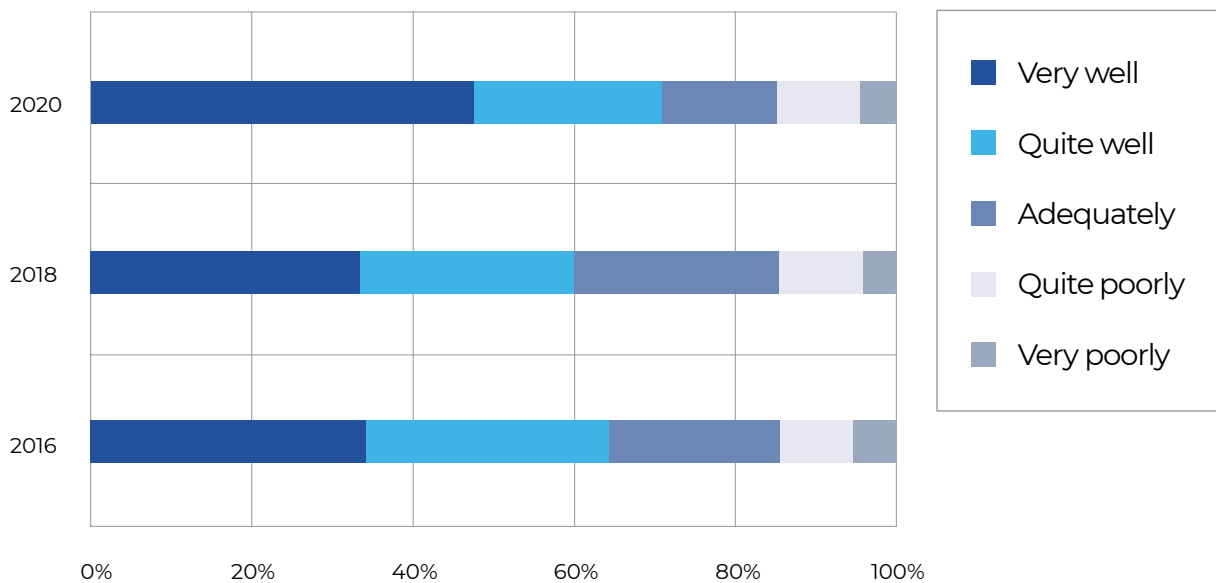
	2020	2018	2016
Preparation			
Reading briefing materials	4.0	4.8	5.8
Client contact	2.0	2.2	2.3
Mediation			
Working with clients on the day	6.8	7.4	8.2
Post-mediation			
Follow up / on-going involvement	1.8	1.9	2.3
Total	14.6	16.3	18.6

We asked mediators for their views on the performance of those lawyers and clients they encountered in their mediations. This showed that 71% of lawyers (2018: 63%) and 70% (2018: 61%) of clients were rated as having performed very well or quite well:

How did lawyers perform in mediation?



How did clients perform in mediation?

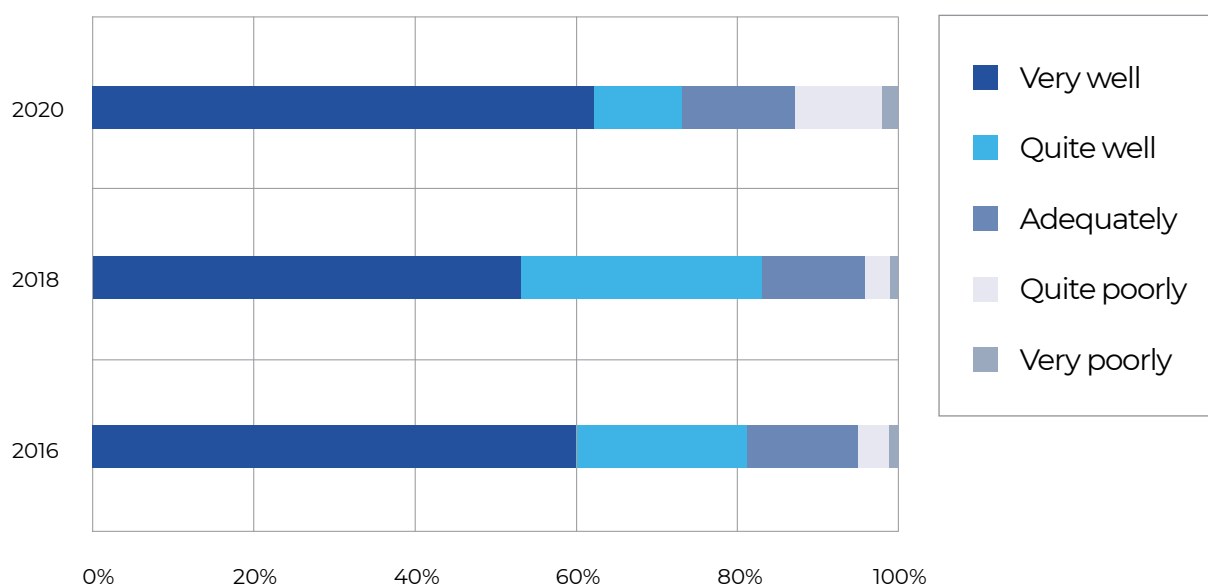


Unfortunately, there is still a rump of about 14% of lawyers and 16% of clients who are rated by mediators as performing poorly or very poorly.

These findings are broadly consistent with the findings of our separate survey of lawyer perceptions. Lawyers rated 71% (2018: 70%) of their counterparts, and 71% (2018: 72%) of clients, as having performed well or very well in mediation, with just 9% (2018: 14%) of lawyers and 14% (2018: 10%) of clients performing poorly. Thus, both surveys confirm that the majority of lawyers are very familiar with the process, 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 – it is encouraging that the increased proportion reported as performing very well has risen to 62% (2018: 53%) but less positively the proportion performing poorly has also risen to 13% (2018: 4%).

How did mediators perform in mediation?



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 observed by mediators			
	2020	2018	2016
Over-reliance on advisers	53%	42%	48%
Poor negotiation strategy	48%	43%	39%
Group think	42%	36%	41%
Avoidance	24%	26%	24%
Inter-personal conflict within team	14%	21%	14%
Disagreement about strategy	14%	16%	7%

As for more positive behaviours, mediators reported encountering effective leadership of client negotiation teams on 43% of occasions (2018: 37%, 2016: 40%), and good negotiation strategies on just 31% (2018: 23%, 2016: 24%).

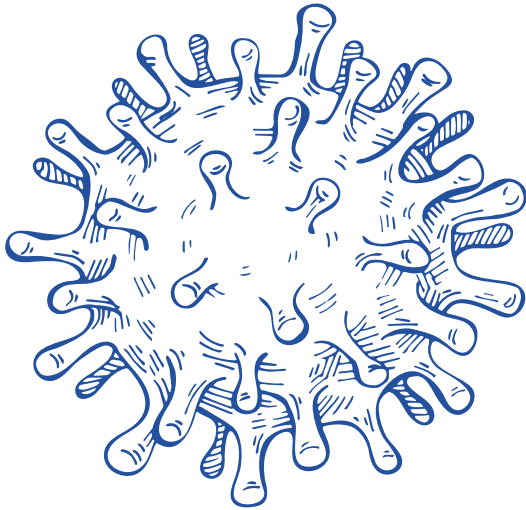
We also asked mediators to describe the piece of advice that they most frequently wished to give to parties (or actually gave them) about how to improve their own performance in the mediation process and get the best out of it. The responses to this question would be familiar to any recent participant 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. This year, the need for more thorough preparation was far and away the most common piece of advice offered. In addition, a number of respondents highlighted the importance of remembering that negotiation in mediation is a process of persuasion. One mediator recommended parties to *“think about what you can say or do that will help the other party walk towards you”* whilst another made essentially the same point more colourfully:

“You are trying to persuade the other side to say yes, not batter them down. No one likes to agree with someone who is punching them in the face. Therefore, you need to think beforehand and during the mediation about how you are going to encourage the other side to say yes and think from their perspective as to what they need, not yours”.



Mediation in the Time of Covid



In the 12-month period immediately prior to the pandemic, our Audit shows that around 10% of all commercial mediations were being conducted online. However, that work was largely being undertaken by a very small group – only 2% of our respondents reported undertaking more than 10 online mediations in the year to 28 February 2020.

The position changed markedly with the start of the lockdown in March 2020. After an initial disruption caused by the loss of the conventional face-to-face model, the mediation profession pivoted remarkably quickly to the online world, and whilst our Audit shows that, in the six-month period

from March to September 2020, the number of commercial mediations fell by 35%, 89% of those cases were conducted online. Within these figures, workplace mediation was understandably the most severely affected by the lockdown (activity down 43%) and reported a high online element (at 93%).

Although it is not the primary focus of the Audit, it has been our custom to invite respondents also to report on their community and family work. Due to our focus on commercial mediators, the results from these questions cannot be regarded as reliable indicators of the overall state of either field but nevertheless it is interesting to note that, amongst our commercial mediators at least, their community workload fell by a similar amount (26%), but their family work actually grew by 24%. In both cases the online element was over 90%.

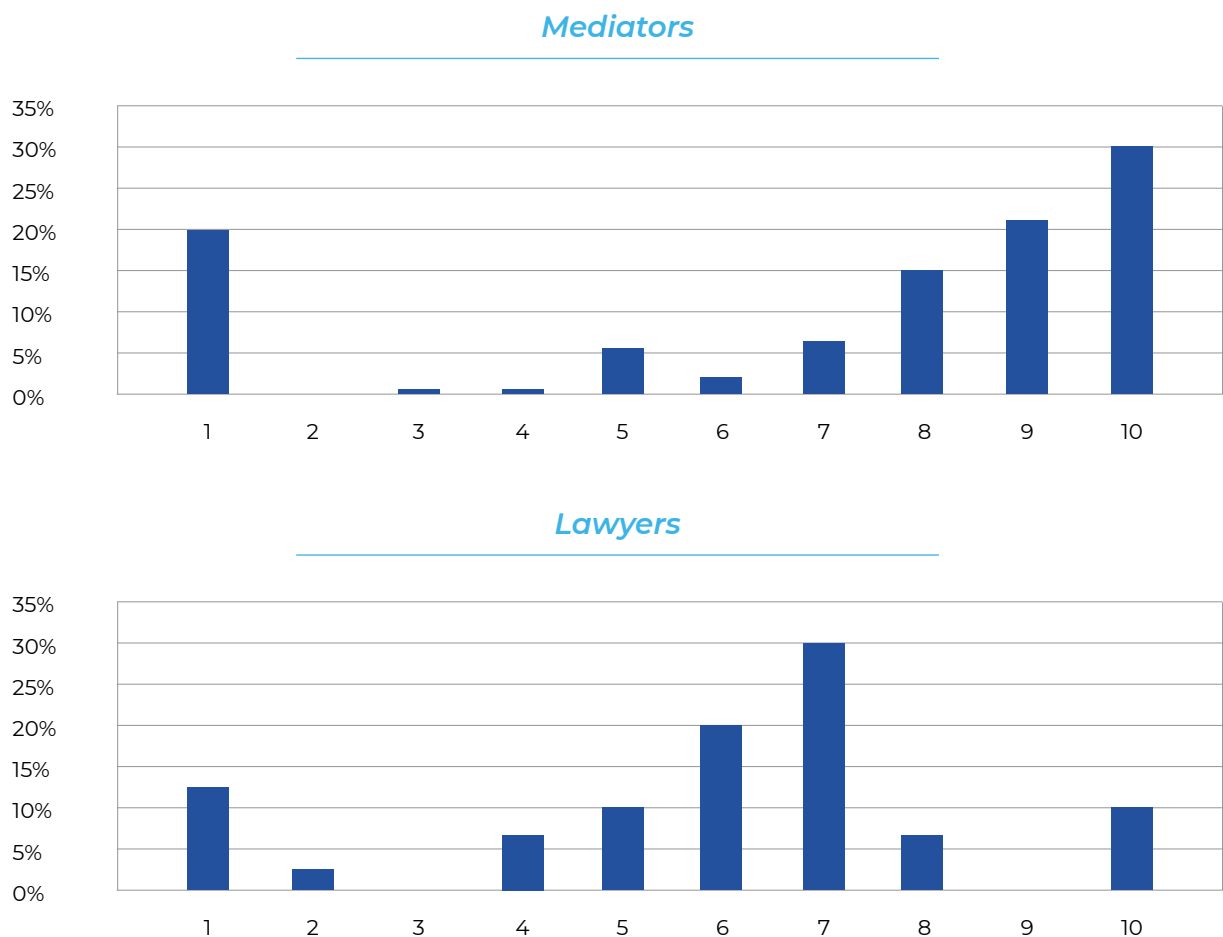
Consistent with these figures, the numbers of mediators reporting personal involvement in online mediation has increased considerably.

Whereas, prior to March 2020, only 26% of mediators reported any online work (within which the majority were handling less than 4 cases per annum), the first six months of the pandemic saw 71% of mediators switching their practice to online.

Our respondents reported a wide variation in their overall degree of comfort with mediating online. When invited to mark their comfort of out 10, some 19% of mediators and 13% of lawyers reported a comfort level of less than 1.

However, at the other end of the spectrum, there is more of a divergence, with 30% of mediators but only 10% of lawyers returning comfort levels above 9 out of 10. Overall, the average comfort level was 6.85 out of 10 for mediators and 6.1 for lawyers.

Out of 10, how comfortable do you feel mediating online?



We also asked our respondents what they liked about mediating online and what they disliked.

Interestingly, amongst the numerous comments provided by respondents as to what they enjoyed about mediating online, 91% of those comments came under the general heading of “ease of access” primarily arising from the avoidance of travel and the flexibility of parties having more choice about where they were located for the mediation. A few

respondents described participants feeling “safer” or “more relaxed” in their own space, but overall very few technical benefits were identified by mediators. In contrast, when mediators were asked what they disliked about mediating online, 14% mentioned technology issues but a very significant majority (84%) observed that the online medium was less effective for them in terms of building rapport, reading the room, and generally making connections with individuals.

MEDIATING ONLINE | LIKES



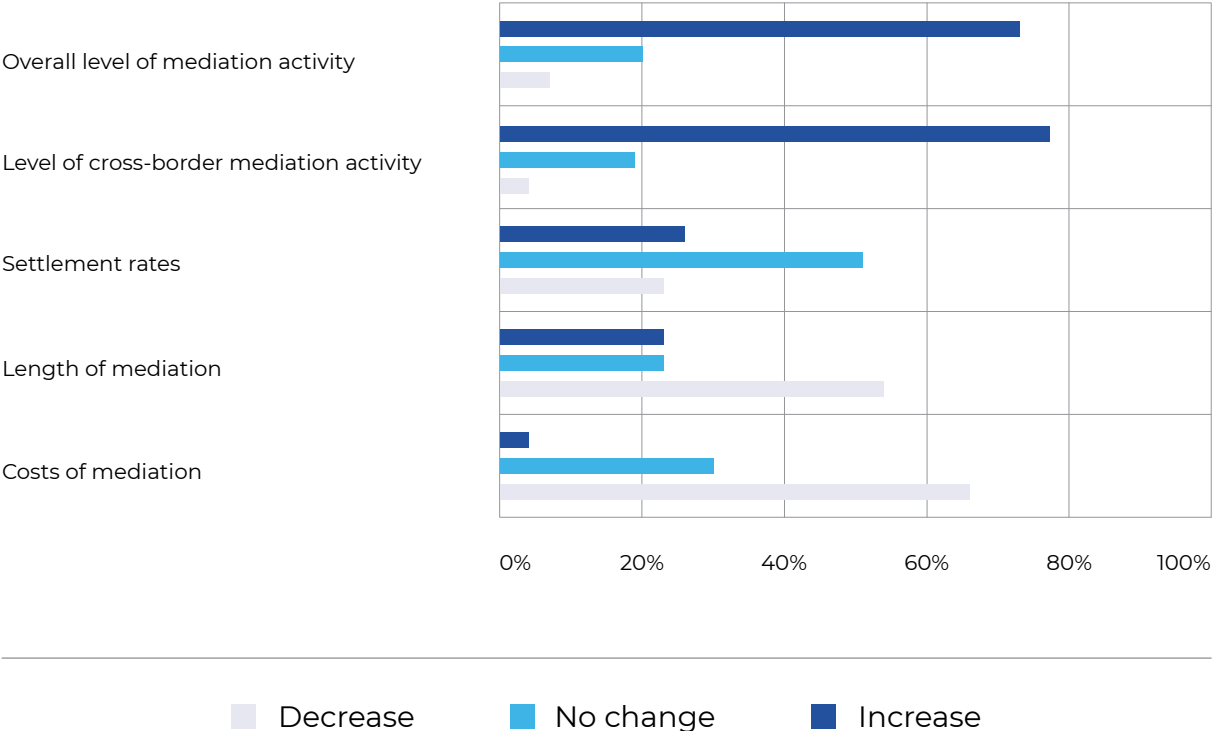
MEDIATING ONLINE | DISLIKES



These perspectives were also apparent from mediators' views about the impact that the emergence of online mediation will have in the future, with significant majorities anticipating that it will increase the overall level of mediation activity, and cross-border

mediation in particular. Over half of mediators also expect that online mediation will reduce the costs and time taken for mediation, but views are very divided about whether or not there will be any impact upon settlement rates.

Future impact of online mediation

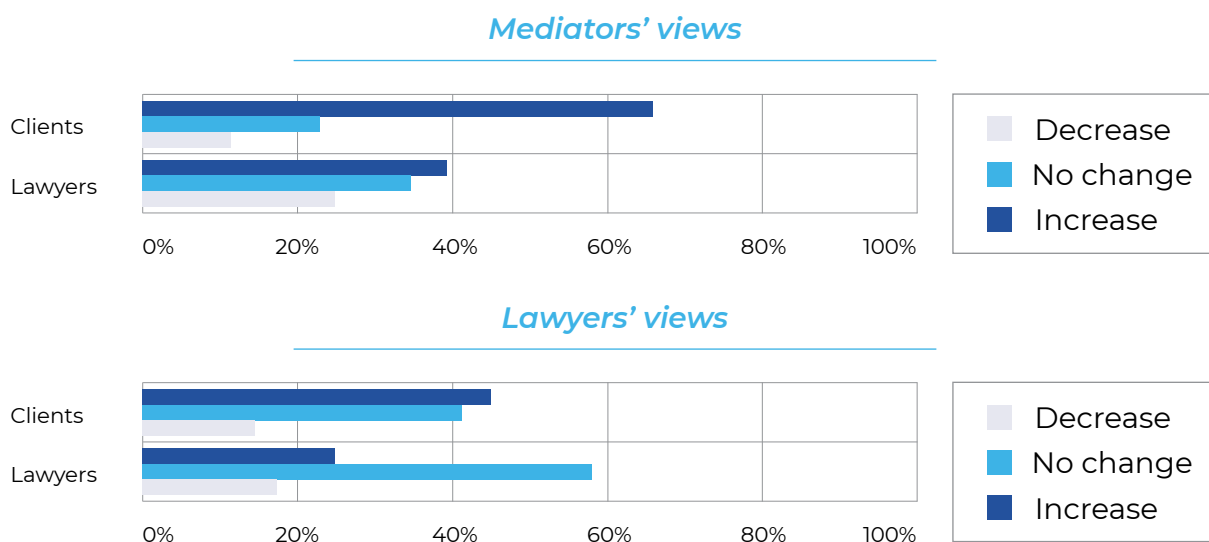


Lawyers' responses were broadly consistent with those of mediators with the exception of their assessment of the likely overall impact on mediation activity where only 45% of lawyers (as compared to 73% of mediators) anticipated an increase.

As to which sectors or dispute types might be particularly suitable for online mediation, workplace, "people-heavy" and cases involving younger people were all regularly mentioned as were those cases where parties were geographically remote. It was also noted that online processes would make mediation more accessible for lower-value cases where venue costs could be disproportionate.

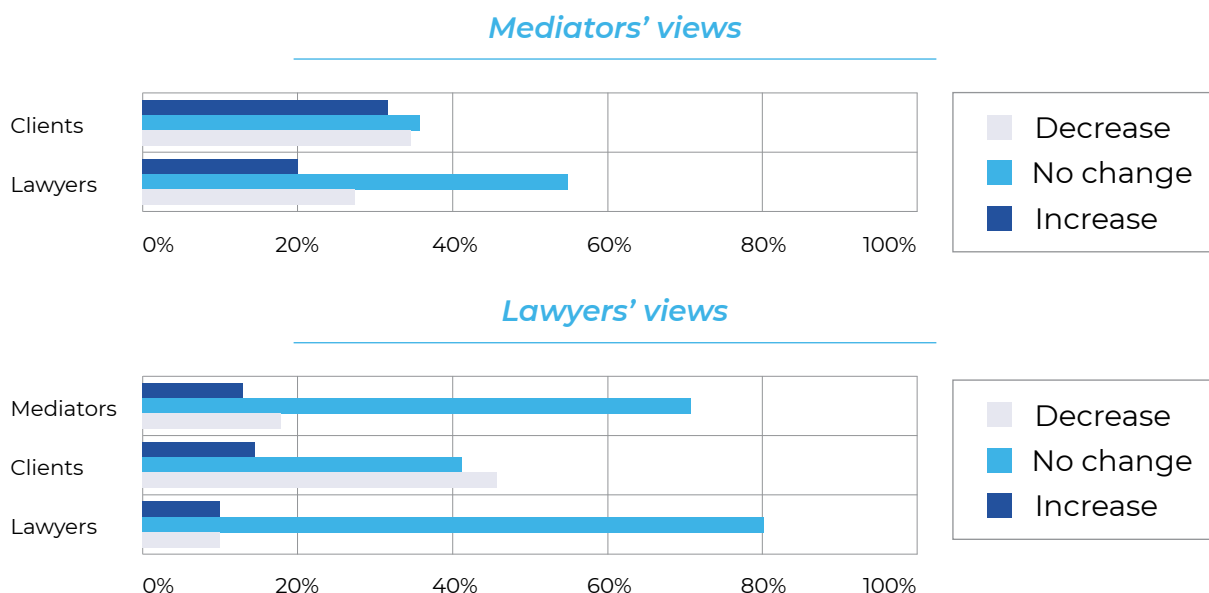
Respondents were, however, generally positive that both client - and lawyer - willingness to participate in mediation would increase and will improve as a result of the emergence of the online alternative, although as the charts below indicate, lawyers expect far less of an increase than do mediators.

Impact of online mediation on willingness to participate



However, views remain divided about the impact on whether all parties' performance in the process will improve with more online mediation; and again mediators appear to be more optimistic than lawyers.

Impact of online mediation on performance in mediation



Finally, when invited to predict what proportion of their mediation activity would be conducted online during 2021, over three-quarters of mediators are expecting to be undertaking more online rather than face-to-face mediations, and the average for the group as a whole was that 65% of their work would be conducted online, a significant reduction from the 89% online activity level that we saw in mid-2020 but still significantly ahead of the 10% pre-pandemic pattern. Our lawyer respondents also agreed that 65-70% of mediation work would be conducted online in the coming year.

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 was reported in our 2018 Audit, a high proportion of comments refer to an increasing resistance to joint meetings, particularly at the start of a mediation day. A number of respondents ascribe this to greater familiarity with the process amongst lawyers, albeit they may not always be on the same page as the mediators. The following two comments in particular exemplify this mismatch:

“Participantsexpecttogettheusualmediationprocess and are reluctant to depart from what they have done before. Bundles, position papers which repeat the pleadings, no expectation of a conversation in the opening session. I work hard to open up flexibility as much as possible, but it is increasingly difficult”.

“

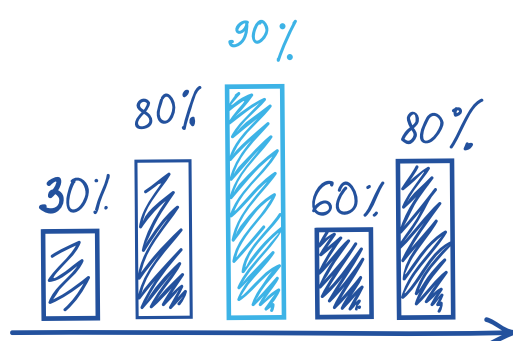
“There is a greater resistance to joint conferences which makes the whole process much less likely to be successful. This seems to be driven by lawyer representatives, who do not seem to grasp that there is a very real difference between mediation and negotiation. Too many lawyers and parties see it as a positional-bargaining or horse-trading exercise leading to a lose/lose rather than a win/win outcome”.

More positively, a number of mediators report a stronger willingness amongst parties to compromise to reach settlement in mediation, although those compromises still have to be hard-won by the mediator.

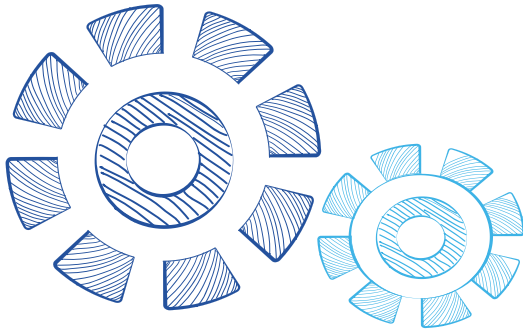
In addition, a number of mediators highlighted the benefits that they were seeing from the increased pre-mediation contact with lawyers and parties that has become necessary for online processes to work smoothly. The fact that these early contacts are recognised as now being common and adding value may well suggest that this development will continue even with face-to-face mediation.

Future 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 obvious new entrants were Brexit- and covid-related disputes including insolvency/restructuring issues arising from those causes (which would also include workplace cases).



Priorities for the Civil Mediation Council

Our request for mediators' views on what should be the main priorities of the Civil Mediation Council for the next two years has reinforced the message of the 2018 Audit, namely that the key focus should be on further promotion of the benefits of mediation, particularly with the courts and with the public generally.

That is not to say that former pressure for the CMC to become a standard-setting and regulatory body has entirely fallen away. One respondent commented that *"there are too many professional associations with their own agendas. The industry should be governed by one body"* whilst another was even more blunt, noting that the CMC should *"sort out its very confused messaging and begin a programme of proper regulation – and clamp down on hopeless mediation training providers who can tick boxes but do not deliver an experienced and adequate programme"*. These respondents were, however, in the minority and the majority of respondents appeared to be generally supportive of the CMC's agenda.

There is, however, an increasing group who are looking for the CMC to do more to assist them in developing their own practices: *"make it easier for people like me to get work"; "offering a discounted member fee to those who come from challenging, non-traditional backgrounds who would otherwise not get an opportunity to practice as a mediator as many providers/panel schemes now require CMC membership"; "Support newcomers to the industry, not only the "stars" and the established mediators"; "The CMC seems convinced that legally-trained and commercial mediations are the way to go... you should promote all areas of mediation - not just those that the "old boy network" have preference for"*.

There were also a number of less-experienced mediators who pointed to the impracticality of the CMC's requirements for face-to-face observations and requests for more guidance on covid-rated matters including online mediation.

Mediator Earnings



In order to maintain consistency with previous years' reports, the Audit first asked mediators about their earnings during the 12-month period from March 2019 to February 2020 (i.e. the immediate pre-pandemic period). This showed that:

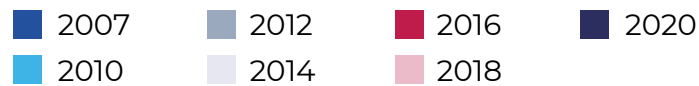
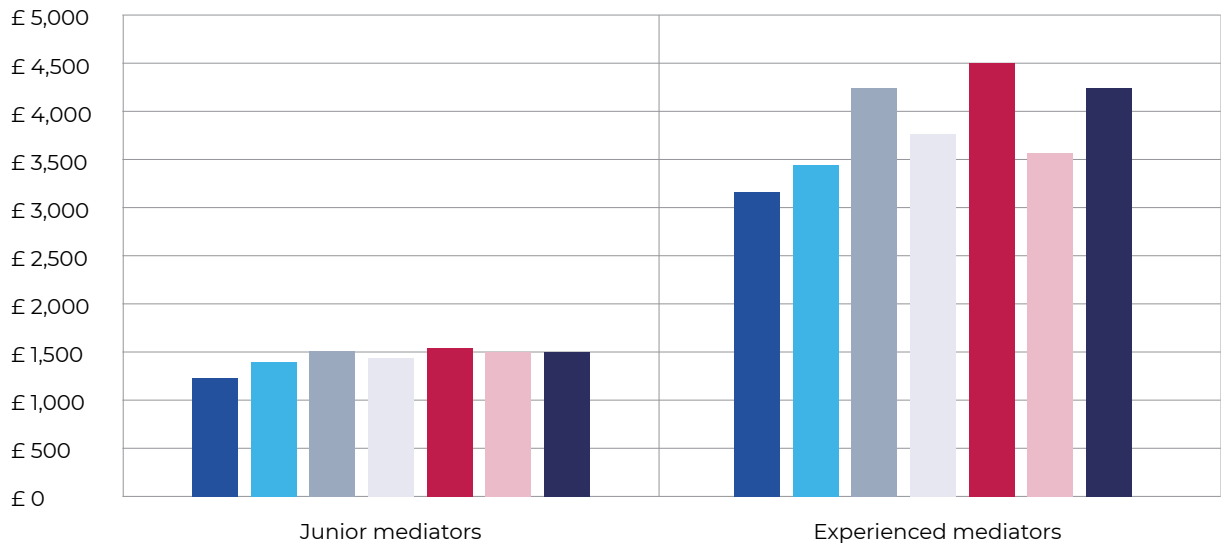
- average fees of the less experienced mediator group for a one-day mediation have dropped by 1.4% over the past two years to £1,481 (2018: £1,512; 2016: £1,545).
- average fees for more experienced mediators have increased by some 17% to £4,247 (2018: £3,627; 2016: £4,500). However, it may be that much of that increase is no more than a correction following the significant decline in reported rates in 2018.

As usual, the averages conceal a wide variation in individual rates as evidenced by the table on the next page.

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 £40,000 and £275,000 with an average of £110,000 – this figure is significantly increased from the 2018 average of £68,000 because of the impact of a small number of high-fee individuals who appear to have reduced their caseload this year.
- Those mediators undertaking between 30 and 50 mediations a year are earning between £130,000 and £440,000, with an average of £268,750 (2018: £175,000) - again, a few high-fee individuals seem to have affected the comparison with 2018.
- Those undertaking over 50 cases a year are earning are earning between £98,000 and £880,000, with an average of £307,000 (2018: £330,000) – this reduction is also caused by the above-mentioned individuals reducing their annual caseload.
- The most successful mediator we surveyed reported average earnings of over £10,000 per case on a workload of around 80 cases, giving an annual income of some £880,000.

In response to separate questions about mediator earnings during the pandemic period, our respondents reported very little change for the in-person work they were able to retain. However, average fees for online cases were only 60% of what they had been for in-person cases. It is important to note, however, that some of this decline is likely to be attributable to a shift in the balance of cases being mediated as there is some anecdotal evidence that, at least during the earlier stages of the pandemic, the early adopters for online mediation tended to be lower-value straightforward matters rather than higher-value more complex cases.



Average earnings for a one-day mediation:			
	2020	2018	2016
Pro bono only	2.9%	3.1%	10.4%
Under £ 500	7.2%	5.0%	6.3%
£ 501 - £ 1,250	20.3%	22.6%	17.4%
£ 1,251 - £ 2,000	24.6%	22.0%	17.4%
£ 2,001 - £ 2,500	10.1%	18.2%	8.3%
£ 2,501 - £ 3,000	5.1%	5.7%	9.7%
£ 3,001 - £ 3,500	7.2%	7.5%	8.3%
£ 3,501 - £ 4,000	4.3%	5.7%	4.9%
£ 4,001 - £ 4,500	1.4%	2.5%	3.5%
£ 4,501 - £ 5,000	5.1%	2.5%	2.1%
£ 5,001 - £ 6,000	4.3%	0.6%	4.2%
£ 6,001 - £ 6,500	-	-	1.4%
£ 6,501 - £ 7,000	1.4%	0.6%	-
£ 7,001 - £ 7,500	0.7%	0.6%	1.4%
£ 7,501 - £ 8,000	0.7%	0.6%	0.7%
£ 8,001 - £ 8,500	-	-	1.4%
£ 8,501 - £ 9,000	-	-	2.8%
£ 9,001 - £ 9,500	-	-	-
£ 9,501 - £ 10,000	-	0.6%	-
£ 10,000 +	2.9%	1.9%	-



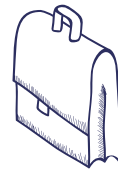
Contribution of the Field

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:



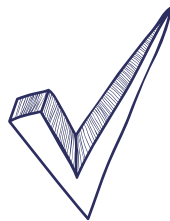
£ 17.5 billion

Value of cases mediated each year approximately.



£ 155 billion

Approximated total value of mediated cases since 1990 with England & Wales.



£ 4.6 billion

will be saved this year by commercial mediation.



£ 40 billion

saved by our profession since 1990.

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 £50 million.

Conclusions

The goal of any profession is to meet the needs of the society it serves, and the results of this Audit show that mediation is still increasing its impact; showing very significant growth whilst maintaining settlement rates and delivering genuine value to parties in terms of saving the billions of pounds of wasted management time, damaged relationships, lost productivity and legal fees that arise from adversarial litigation.

As we have gone past the 30th anniversary of the launch of commercial mediation within the UK, many of the original promoters of the field will be approaching the end of their careers, and hopefully they are able to look with some pride at how much their early endeavours have flourished, and a new and vibrant profession has emerged.

It is, of course, important that a profession adapts to challenges and priorities of society, and this past year has seen mediators and providers step up to address the impact of the covid-19 pandemic, with a very rapid and effective pivot to online working. It remains to be seen whether the extensive use of online mediation will continue once the health risks of in-person work have fallen away. Clearly, however, online mediation has proven its worth, and whilst there is still much for mediators to learn about how best to apply our skills in that environment, it seems likely that online activity will flourish and perhaps contribute to further growth in our field, including making mediation more accessible

to those facing financial or distance constraints.

There has, however, been a second challenge that society has presented to us this year, namely the expectation that issues about diversity and inclusion will finally be addressed. Unfortunately, the mediation profession still has a long way to go just to catch up with comparable fields, so there is much more work to be done. This Audit has surfaced support for individual initiatives to address some issues, but it is one thing to agree that a particular course of action is a good idea, it is another to actually make it happen. So perhaps we need a new generation of foresighted leaders in our field to pave the way?

Linking all of this together is the notion of collaboration. The launch of mediation in our jurisdiction was a joint effort amongst a group of committed individuals who saw the opportunity for mediation and worked together even though they were potential competitors, but perhaps we have lost much of that ethos as some have become more successful and the broad coalition has fragmented. That is why the role of the Civil Mediation Council is important, although it too is confronted by the challenges of prioritising the individual (i.e. make it easier for people like me to get work) versus the collective goal of simply growing and diversifying our field to meet the needs of the society we seek to serve. To adapt an old phrase, we need a rising tide that lifts all boats, not just the yachts.



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.



***'Better Conflicts, Better Outcomes,
Better World'***

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