

# Mediation Case Study

A mediation in respect of civil costs dispute arising out of a fatal accident on a military base. The claim was substantial, including sizable ongoing payments resulting in a final damages settlement around three million pounds plus costs. Whilst the substantive matter concluded relatively quickly, contributory negligence remained a live and valuable issue throughout.

The parties had exchanged offers early on in the detailed assessment proceedings and exchanged Points of Dispute and Replies. Prior to requesting a detailed assessment hearing, the parties took the very sensible step to mediate. Insofar as costs of the mediation were concerned, it was agreed that the parties would each bear their own costs, and share of the mediation fee, if a deal was done on the day. The parties agreed to the instruction of a very respected junior costs counsel as mediator and arrangements were made to meet.

The issues in the case were particularly well suited to mediation. Some issues, such as the recoverability of the costs associated attending an inquest were likely be awarded at detailed assessment based on a ratio to be decided by the judge. That would have resulted in either significant a reduction to the bill if the Court found against the claimant, or to have made it almost impossible for the Defendant to succeed in beating their Part 36 offer if the Court found against the Defendant. Furthermore, issues involving substantial hourly rates, complicated by the use of multiple firms of solicitors, would have resulted in similarly dramatic swings in the outcome of any detailed assessment.

The parties, with the assistance of the mediator, were able to make offers to settle that would not have featured as realistic outcomes at a detailed assessment but permitted each side to buy off some portion of the risk. As the remaining time began to run out, it looked as though the parties might be too far apart but with the help of the mediator, the Defendant was able to assess realistically the likely outcomes if a deal was not to be done on the day. Given the agreement on the costs of the mediation, not only would the Defendant save 50% of the process if settlement was achieved there and then, but they would inevitably need to make an increased Part 36 after the mediation, exposing themselves to greater costs of assessment incurred in the acceptance period. Rather than simply, “what will this cost if you lose?” the question became, “what can you save by settling today?”.

With around 30 minutes left on the clock the parties agreed a settlement of costs on a fully inclusive basis and an order was drawn up. With lengthy delays experienced in the listing of detailed assessment hearings post Covid, the parties were able to draw a line under the matter months sooner and at considerably less cost.

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