

## **CADR NHSR Case Study**

The claimant underwent physiotherapy at a hospital administered by the NHS Trust during which the physiotherapist had undertaken manipulations in the form of high velocity low amplitude thrust (HVLAT). The claimant alleged that the HVLAT had caused a unilateral right sided phrenic palsy, causing her to suffer breathlessness and the inability to walk any distance. The claim was fully contested and proceeded to the stage of exchange of experts' reports. At a subsequent round table meeting, damages were agreed without admission of liability. However, agreement could not be reached about the costs of the action which the Trust had agreed to pay, and a bill was served in which the claimant sought costs which were ten times the size of the damages.

As an alternative to detailed assessment and the expense involved therewith and in order to save the payment of a court fee, the parties agreed to a costs mediation. The principal point preventing settlement was the proportionality of the costs claimed when compared with the amount of the agreed damages. The parties' respective positions were polarised. The claimant's case was that as the case had been subject to costs budgeting, the costs had already been adjudicated upon by the court as having been in proportion. The Trust's position was that the sum which had been advanced by the claimant in her schedule of damage had borne no relation to the actual amount at which she had ultimately agreed to settle for.

With the assistance of the mediator, the parties were able to bridge the gap between them, each having borne in mind that mediation in costs is about reaching a solution which both sides can live with, rather than being about one side getting all that they want.



COSTS ALTERNATIVE DISPUTE RESOLUTION

The compromise meant that the claimant was paid the costs earlier than would otherwise have been the case had the dispute gone to detailed assessment, and the court fee which would have been payable had that not happened, was saved.

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