

News

In England the latest biennial audit performed by the Centre for Effective Dispute Resolution (CEDR) received 336 eligible responses from practicing mediators and showed a 20% growth in the number of mediations performed compared to 2016 (excluding small claims mediations). The audit was conducted alongside a survey of lawyers who use mediation, giving a client perspective. The Audit is made possible through collaboration with the Civil Mediation Council. This 2018 Audit was conducted in partnership with the International Institute for Conflict Prevention and Resolution (CPR) who added international mediators to the survey so a transatlantic mediation audit report will be published in September 2018. The biennial audit shows that in the last 12 months £11.5 billion worth of commercial claims were mediated and that through mediation this year businesses will save £3 billion in wasted management time, damaged relationships, lost productivity and legal fees. As a profession, Mediators and Service Providers in the last year earned £30 million giving a 100:1 return on investment for the UK economy.

Some of the key findings from the UK Audit are as follows:

- The survey reveals remarkable growth in scheme-related activity, meaning organised mediation systems such as those supported by NHS Resolution, by leading employers and by the County Court Mediation Pilots and the Court of Appeal. 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. In contrast, ad-hoc referrals of individual cases to mediators and service providers have shown more modest growth – up 9% since 2016.)
- The overall success rate of mediation remains high with an aggregate settlement rate of 89% (86% in 2016). The proportion of cases that achieve settlement on the day of mediation is 74% and the proportion of cases that settle shortly after mediation is at 15%. The settlement rates reported by mediators were validated by the findings of our separate survey of lawyers' views, which revealed a very similar pattern.
- Looking at trends in mediation, 25% of all comments referred to an increasing resistance to joint meetings at the start of a mediation day. This resist-

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

- Lawyers in mediations reported that 83% (2016: 81%) of mediators performed quite well or very well. Mediators said that the majority of lawyers and clients performed well in mediation but where there was an issue it was most likely to be a poor negotiation strategy (cited by 43%) or over-reliance of the client on their advisers (mentioned by 42%).
- Around 200 individuals are involved in around 85% of all non-scheme commercial cases (an average of nearly 40 cases each). The size of this group has grown from the 145 reported in 2016, suggesting that more competition is developing.
- The changing shape of the marketplace is having an impact on average fees for more experienced mediators where fees have seen a significant 19.34% drop to £3,627 from in £4,500. (This is explained by more entrants graduating into the experienced group and diluting the average).
- Those undertaking between 20 and 30 mediations a year are earning an average of £68,000. Those mediators undertaking between 30 and 50 mediations a year are earning an average of £175,000 and those with over 50 cases a year are earning an average of £330,000 pa. One mediator earned £780,000.
- The story on diversity amongst mediators was not great as we see just 35% of respondents being women (the same as in 2016) and women under-represented in the Advanced group, 24%, down from 29% in 2016. Another aspect of diversity that remains a concern is just 10% of respondents categorising themselves as being from Black, Asian and minority ethnic (BAME) groups.
- 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.

Graham Massie, Director of CEDR, author of the Audit Report said:

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 skillset, 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.

Source: CEDR, 2018: www.cedr.com