



CEDR Accreditation: 2017
CEDR Panel Admission: 2019
Languages: English
Location: United Kingdom

“An incredible choice of mediator, who is extremely bright and able to challenge the parties, progressing matters without time wasting. One of the best I have dealt with having undertaken probably more than 100 mediations”

(Partner, Law Firm)

“I have been through a number of mediations in my career, but this was the first that I came out of with the clear impression that both parties had “won” and felt positive about the outcome. That is to a large extent down to the incisive and commercial approach that Abigail brought to bear as mediator”.

(Partner, Law Firm)

“Abigail was calm and unflappable during our mediation, despite being parachuted into it on one day’s notice, and despite the fact that there appeared to be a clear and unbridgeable gap between the parties at the start of the day. She successfully navigated them to a settlement that not only resolved the dispute but also allowed the parties to reset and resume their business relationship”.

(CEO, Online marketplace)

Client feedback

Abigail Day

Overview

Abigail Day is an experienced full-time commercial mediator, formerly a partner in an international corporate law firm. She has a wide-ranging civil/commercial mediation practice. Her success rate for settlement in 2024 is over 90%.

Professional Background

Abigail has been a full-time mediator and arbitrator since 2017. When in legal practice, she was a corporate lawyer specialising in tax. This involved having a deep understanding of highly technical rules and regulations, and at the same time understanding many different industries and business contexts. She had to find ways through uncertainty and complexity so as to address the commercial needs of her clients. This background has given Abigail a rare combination of the ability to handle the most complex legal issues and factual scenarios and an appreciation of commercial realities in all the areas normally dealt with by a commercial law firm, from real estate and banking, to company and



commercial, to employment. Her practice therefore covers a broad range of civil and commercial disputes.

She approaches mediation with a problem-solving, negotiator's perspective. Although her corporate legal practice was non-contentious, she has a good understanding of the litigation process and the importance of evidence from acting as an adjudicator and arbitrator (she is a Fellow of the Chartered Institute of Arbitrators and is regularly appointed as arbitrator by CEDR, the Law Society and clients on an ad hoc basis).

Personal style

This is how Abigail describes her approach to mediating:

"First, I have to identify what is most important to the parties about the dispute. I will ask them this directly. The answer can sometimes be surprising. I can look at the papers and speculate that it will be about a sum of money, but often, there is something else that needs to be addressed before they can get into a constructive, problem-solving frame of mind. The advisers supporting the parties play a vital role, and I must also fully understand their views. Once the key concerns are uncovered, we can start the hard work of brainstorming the shape, and then the detail, of possible routes to settlement. I will put each party to work with their advisers to develop ideas, but I will also be an active part of that.

The parties and their advisers need to know that I have taken on board how everyone involved sees the situation, and that I am doing everything I can to get them to a resolution. I won't let go until we have done everything possible towards settlement. The parties almost always settle or make substantial progress on the day. If there is some reason why settlement cannot be agreed on the day – for example, some key information has to be obtained – we will put together a roadmap to settlement".

Expertise

- Banking and Finance
- Construction/Engineering
- Employment and workplace
- Professional negligence
- Property
- Sales of Goods and Services
- Shareholder/partnership
- Tax and accounting
- Mergers & Acquisitions



Experience

The following are recent examples of mediations from Abigail's practice:

Banking and Finance

- **Cryptocurrency:** the claimant lent the defendant cryptocurrency worth a substantial amount on a short-term basis to help with a cash squeeze but it had not been repaid several years later. There were issues about the interpretation of their oral contract, recorded by a line or two on email and WhatsApp, specifically whether repayment should be in Ethereum tokens or pounds sterling, particularly as Ethereum had increased very significantly in value. Legal issues included whether the claimant could recover damages for loss of opportunity and pure financial loss.
- **Turnaround services and charges:** the claimant was a boutique financial adviser specialising in helping distressed corporates restructure their debt. The defendant was a company that signed up for their services. The defendant considered the claimant had not contributed to the eventual restructuring agreed between the company and its financiers, either by physical presence in negotiations or ideas. The claimant said the arrangement was that a success fee would be paid regardless of the extent of involvement of the claimant, and that the defendant had chosen to go it alone in the restructuring negotiations. The key issue was whether the claimant was entitled to the substantial fee claimed given the work done and the construction of the contract. There were also issues around the actual terms of the contract, and whether it was amended or not.
- **Loan arrangement fees:** the claimant was a financial intermediary which arranged development finance. The defendant had engaged its services and obtained senior debt from one of the lenders it sourced. However, it found mezzanine debt from another source, introduced by the senior debt provider. The claimant sought commission in relation to the mezzanine finance. The issues included the interpretation of the lending commission agreement, conflicts of interest and whether the time taken and standard of service amounted to a repudiatory breach of the agreement.

Employment & Workplace

- **Non-compete covenant:** the claimant was a financial advisory firm. The defendant was a client relationship manager who used to work for the firm, but left for a competitor. The claimant was claiming lost profits from former clients who are now advised by the defendant. The claimant's case was that the defendant solicited the clients either in breach of a non-compete clause (in an unsigned contract) or that he misrepresented his intentions from the outset and obtained information through deceit.

- Non-solicitation covenant: Specialist IT recruitment agency disagreement with one of its contractors. Issues included whether the contractor should be paid in full when a client terminated the relationship with the defendant, and whether he had inappropriately solicited work from the former client. Legal issues included remoteness of damage and causation from cascade of misfortune.
- Team dynamics: A PR agency workplace mediation to improve a strained relationship within a team. The approach of a new energetic team member led to an older established team member feeling intimidated. The older member's mental health was suffering as a result. Very emotional. The breakthrough came when the parties came face to face and the younger party watched the physical and mental impact of the dispute on the older member.
- Contested exit: A CEO had been removed by the board for unacceptable behaviour. The key issue was whether the removal procedure had been carried out properly and so whether it was valid.

Mergers and Acquisitions

- Relevant to a number of mediations: worked on over 500 high value company and business sales and purchases, including multinational groups over 20 years in City legal practice, including warranty and indemnity claims.

Professional Negligence

- Auction house responsibilities to a seller: a property investor claimed that an auction house had sold a property for too little given her understanding of the underwriting agreements. The auction house's insurers were present, and their views were an important factor in the route to settlement.
- Accounting and tax: see section below.
- Property and construction: see section below.

Property and Construction

- Rights of way: the claimant owned a shop in a retail parade and the yard behind the parade. The defendant also owned a shop in the parade, and had a right of way and right to load and unload in the claimant's yard. The defendant considered his rights were routinely obstructed, so he had erected a fence and gate to protect the space behind his shop. The claimant wanted the fence and gate removed and his costs paid. The defendant counterclaimed for an injunction against obstruction of his rights.
- Rights of way: The claimant owned an office block at the end of a cul de sac. The defendant owned an office block near the entrance which was undergoing extensive refurbishment. The

claimant felt the defendant's contractors had repeatedly blocked his right of way and had caused nuisance. The claimant wanted a declaration of his right of way, an injunction and damages including a licence fee.

- Neighbour nuisance: Friction between neighbours in an apartment block. Initially about noise, but escalated into an attempted assault. Emotionally highly charged. The mediation was conducted through interpreters as neither party spoke fluent English. This required a very careful approach, with clear and simple language that could easily be translated, and meticulous checking of understanding.
- Valuation: the parties had been directed by the court in matrimonial proceedings to agree on a valuer to value commercial property held overseas. They had not been able to reach agreement due to suspicions about undue influence. The impasse was causing delays in the court process.
- Inheritance (Provision for Family and Dependents) Act 1975: adult claimant seeking a share of stepmother's family home.
- Quality of design and damaged goods: the claimant was a manufacturer and installer of curtain walls (non-structural walls, usually of glass). The defendant was a main contractor. There were disputes over three projects. In the first, the dispute was about the quality of the product and installation; in the second, the goods arrived damaged, and in the third, there was a dispute about whether a contract had ever been made.
- Quality of timber windows: the claimant was a property developer who had engaged the defendant to supply windows and doors on three different sites. The claimant considered the windows and doors to be not to specification and generally poor quality, and had rejected some and sought compensation for rectifying others that he had used. He also wanted compensation for the cost of development financing during a period of delay on one site, which he said was entirely attributable to having to source different windows.
- Architect: whether due a substantial bonus contingent on planning permission being obtained and the developer obtaining finance. Issues included interpretation of agreement, together with a web of informal understandings outside of the written agreements.
- Loss assessor: property investor's liability to pay for renovation works not covered by insurance following a fire at an apartment block. Issues included the responsibilities and liability of the loss assessor and surveyor and whether agreements had been varied.
- Landlord and tenant: tenant's claim for a substantial refund of rent given problems with the air conditioning and elevator in a prestigious apartment block. Issues included the responsibilities of landlord under lease, and also the role and contribution of the local authority and developer.

Sale of Goods and Services

- Adequacy of logistics services: the claimant was a supplier of logistics services (delivery and processing). The defendant was an online marketplace provider. There had been undisputed serious delays in delivery and processing. The defendant therefore did not want to pay for the services in full, and withheld payment. The amount at stake was important for both businesses.
- Soundness of a show jumping horse: The purchaser bought a show jumping horse from the defendant for a substantial amount. The horse developed navicular disease which resulted in lameness a few months later, and was considered unsuitable for show jumping and sold for £1. The purchaser considered there had been misrepresentation and claimed a refund of the purchase price, veterinary fees, livery, other incidental costs, and legal costs.
- Funeral services: a family had been distressed by shortcomings in the embalming process for their late mother. A very sensitive and emotional case with reputational risk for the service provider.
- Fast food franchising: the claimant and defendant had signed various documents for the sale of a fast-food franchise and associated business assets. The defendant did not pass tests required in order to take the franchise, and so did not want to proceed. The claimant wanted compensation for the fall in value in the assets since the date of the agreement, the cost of a remodelling required by the franchisor, finance costs and rent. The defendant counterclaimed for a deposit paid. The dispute related to the effect of the documents signed, and whether the amounts claimed by the defendant were recoverable losses.
- Purchase of bespoke industrial equipment: The claimant had ordered high value printing and binding machinery to showcase their products but cancelled the contract thinking the quality of the finished product was inadequate. Issues included whether the cancellation of the contract was justified, particularly given the allocation of risk under the contract. The parties wanted to try again with another order and so needed to work out a detailed plan for working together.

Shareholder & Partnership

- Family members' entitlement to funds held by a family company: A claim by two family members for very substantial sums by way of repayment of loans made by them to a family company. The claimants considered they had left inherited money in the company as a loan for solvency support. The history of money flows and property transactions between the family members and the company were very complex and the legal effect of them disputed.
- Termination of a joint venture to provide healthcare services: the claimant was an agency supplying care workers to the defendant, who had a contract to provide care staff to a local authority. The local authority terminated the agreement on account of alleged shortcomings

in the quality and supervision of the staff supplied. The claimant considered it was nonetheless owed further fees.

- Family property portfolio disposal: The claimant was the former partner of the defendant. The defendant had purchased a number of houses in his partner's name and took on the mortgages. The claimant however provided some funds. The couple split up and it was agreed that the houses or their proceeds would be divided between them, but not who would get what. The claimant had commenced proceedings for a declaration that he had beneficial ownership of the properties. The extent of beneficial ownership was disputed by the defendant and she counterclaimed unpaid property costs.
- Dissolution of real estate investment partnership: Two real estate investment partners, with properties in the UK and British Virgin Islands, wanted to go separate ways, but could not decide on how to terminate their partnership and dispose of the properties (auction or otherwise), or the share of the proceeds that each was entitled to given their respective activity in relation to the projects.

Tax and accounting

- Terms of engagement: An accounting firm's appointment was cancelled before it had completed all the work commissioned. It considered it was nonetheless due a fixed fee, but the client considered it was not payable in the circumstances. The key to the dispute uncovered on the day (difference in interpretation of the contract) had not been pleaded in the court documents.
- Standard of audit and tax services: The claimant was an accounting firm that had provided a full range of accounting and tax services to its client, which ran refreshment outlets. They had agreed to part company but the claimant considered it was due unpaid fees. The defendant considered some work had not been provided, some had not been agreed, and some had not been provided to an appropriate standard. The defendant counterclaimed for the cost of corrective work that its new accountants had undertaken, and for other loss such as loss of opportunities to obtain finance.
- Standard of bookkeeping, audit and tax services: The claimant was an international accounting firm seeking payment of fees. The defendant had not paid and considered the work to be defective. He counterclaimed very significant legal fees in defending a HMRC civil and criminal investigation which came about on account of claiming relief suggested by the claimant.

Feedback on skills and style

- *“Tenacious and hard working. She finds a way to make things happen and then she makes things happen”*
- *“Thank you for your determination to bring this matter to a settlement, as I confess at the start of the day, we really didn’t think it would be achieved. Your energy, determination and focus on the key issues were instrumental in securing the settlement”.*
- *“Nothing is too much trouble and everything is seamless”*
- *“Thank you for your assistance and perseverance in the conduct of the mediation. I think the parties would have walked away without your polite steer and management”.*
- *“Her style is relaxed and conversational. I felt at ease throughout the process”*
- *“At short notice, Abigail stepped in and provided fair and excellent mediation. She guided us through the day and brought the parties together to engage and get the most out of the process. We reached a settlement on the day – a good outcome”.*
- *“Calm and professional”.*
- *“Abigail controlled the process impressively, both in terms of the online platform used and the input and engagement of the parties. She communicated well with the parties, and show both a creativity in looking for ways to advance the mediation, and a determination to exhaust all possible avenues to ensure the parties fully considered all routes to settle their differences.”*
- *“Your empathetic and emotion-centred approach significantly contributed to the process. You listened and ensured both parties felt heard and understood, and maintained a balanced and fair stance throughout”.*
- *“Abigail stepped in with less than 24 hours’ notice to mediate over a complex dispute. Despite the absence of time to prepare, Abigail understood the issues in hand fully and despite several previous impasses, calmly encouraged the parties towards a sensible approach throughout the lengthy 14-hour session. A positive outcome was delivered and signed on the day”.*
- *“Your ability to create a supportive environment allowed the parties to express their true concerns without fear or judgment. By addressing the emotional undercurrents of the dispute, you facilitated greater clarity and understanding, assisting the parties to move beyond their impasses. Your patience was evident, and your efforts in building emotional bridges greatly aided in reaching a resolution after a long day.”*
- *“It was obvious that you took on board the important parts of the diatribe and converted these into salient point to take back to the other party”.*
- *“Thank you for stepping in and mediating at the last moment over this matter. I must admit I was not hopeful going in as we’d seemingly continued to hit a wall. I am therefore*

unexpectedly happy that this will be put to bed in a positive manner. It was causing a great deal of stress, thanks once again for being supportive on the day.”

- *“Abigail uses pre-mediation sessions very effectively to ensure that mediation time is used as efficiently and effectively as possible. She works to ensure that all angles of each party’s position are appreciated and understood whilst maintaining forward momentum towards successful completion”.*
- *“All the parties were amazed at your tremendous and exceptionally generous engagement and have asked me to pass on their utmost appreciation to you”.*
- *“I have no doubt we would still be heading for court if Abigail Day had not worked her magic!”*

