



Multiple-party mediation - settling a city centre dispute

by Nicholas Gould, Partner

Brief Details of the Dispute

This involved a dispute arising out of the improvement of and hard landscaping to the busiest part of a town centre. The new surface finishes began to fail immediately, and after extensive investigations were replaced as a result of various technical problems with the use of the materials.

The local authority brought a claim for professional negligence against the landscaping, engineering and architectural consultants. The contractor brought a claim for delay and damages against the local authority, and in return the local authority brought a workmanship and defects claim against the contractor.

Particular Features

- This became a five-party dispute involving claims and cross-claims.
- The claims included delay, additional costs as well as counterclaims for defects and defective workmanship.
- Claims arose for professional negligence resulting from allegations of incorrect specification.
- The technical nature of the defects allegations meant that engineering and specialist material testing experts had been engaged.

The Mediation

A large number of documents were reduced to several lever arch files of core bundles, together with experts' reports, documents, photographs and video. Two days were set aside to deal with the five parties. The first morning was spent dealing with presentations from each of the five parties, together with a discussion of the technical aspects of the dispute.

Reality testing during the afternoon quickly led to some of the parties joining forces. During the morning of the second day various settlement possibilities were canvassed. By the afternoon it became clear that there would be two settlement agreements: a two-party and a three-party agreement which would in effect settle all issues between the five parties. The final details of the separate settlement agreements required some work into the evening, but written settlement agreements were signed by the parties. The final settled value was in excess of £1m.

Learning Points

- It is important to search for commonality between the parties to all multi-party disputes.
- Exploring a variety of settlement options can make the parties realise that the alternatives to settling are not always attractive. In this case difficulties

between the various parties were overcome by these two separate settlement agreements covering all issues.

About the Mediator

Nicholas is a dual-qualified solicitor and chartered surveyor, specialising in construction and engineering disputes not just in the UK but also internationally. He has been a lead mediator since 1998 and has conducted more than 60 mediations. He is chairman of the ICC's International Sub-Committee for Expertise.

Scope of the Case

- Nature of dispute – town centre redevelopment and hard landscaping.
- Sector – local authority, contracting, consultancy.
- Amount in dispute - £3m.

Mediator

Nicholas Gould

Timing

Some of the parties had a long-standing relationship. The dispute had been ongoing for many years, and involved significant technical issues.

Preparation Time

The mediator reviewed documents and discussed the parties' positions and also technical issues with the experts in advance of the mediation.

Mediation Time

Twenty-two hours over two days, at a residential conference centre.

Post-mediation Involvement

No further involvement was necessary.

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