

M.A.T.A.
MEDIATION AND TRAINING ALTERNATIVES

**Report on
Advanced Mediator Skills Project**

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Report commissioned by MATA

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Advanced Mediator Skills Project

INTRODUCTION

Commercial mediation is an emerging profession. While it has been taught and practised in the UK for the past twelve years, there is little by way of useful statistics and research. This project was commissioned by MATA (Mediation and Training Alternatives) to identify the effective techniques, skills and style of experienced and successful commercial mediators in the UK.

Undoubtedly the hardest evidence to obtain in commercial mediation worldwide is what actually happens in mediations. Apart from the fact that it is a confidential process, some of what works well in mediation is difficult to observe and identify, such as the mediator's intuition, instinct and unconscious management of the process. However, through personal interviews and direct observation of mediators, the project aimed to draw out some of the techniques that have been developed with experience and which go beyond foundation skills training. In addition, the report identifies the personal attributes, style - and even vision - that much of the effectiveness of a mediator rests upon.

PARTICIPANTS

Mediators

The criteria for selecting commercial mediators to participate in the project was recognised accreditation, significant experience, and availability of suitable mediations in the project period.

A total of ten senior UK commercial mediators (eight men, two women) participated in the project. The professional background of the majority of mediators was a legal one (6 solicitors and 2 barristers). In addition, a chartered surveyor and a commercial mediation trainer. At the time of their participation, nine of the mediators had completed more than 60 mediations (average: 148; range: 60-300). One mediator had completed just under sixty mediations (n=54). All the mediators that participated in the project had completed training in mediation with The Centre for Effective Dispute Resolution (CEDR). One mediator had also trained with The Academy of Experts.

Apart from being the training and accreditation body for the participating mediators (a clear indicator of its being the leading mediation body in Europe) CEDR provided invaluable assistance in allowing our researcher to attend several CEDR administered mediations.

Choice of researcher/observer

The researcher chosen for the project is an accredited commercial mediator, familiar with the commercial mediation process and the skills involved. The researcher also has a background in research, with a degree in research psychology and several years research experience at Stanford University.

Methodology

Overall Process

The process to achieve the aims of the project was for the researcher to carry out an initial interview with each mediator and to attend and observe a maximum of three mediation days conducted by each mediator. The project took place over a period of six months (December 2001 – May 2002).

Twenty six mediations were observed. Of the ten mediators who participated in the project, seven were observed three times, two mediators were observed twice and one mediator once. The parameters of the project were limited to personal interviews, up to three mediation observations, and follow-up interviews. The scope of the project did not allow for a comparison/control group.

Standard forms were designed to ensure that each observation was based on the same structure, and so that qualitative and quantitative data could be collated systematically.

Initial interview

The purpose of the interview was to record general background information and explore individual approaches to mediation. A standard form was used that was designed to build a picture of the mediator's personal style, approach and vision. This allowed the style and techniques that were later observed to be recorded systematically.

Mediation observation

Once a mediator participating in the project agreed a date for a mediation, the researcher was contacted to confirm her availability. The mediator (or mediation provider) then sent a letter to the parties with an explanation of the project and request to allow the researcher to be present at the mediation. The letter emphasised that all information regarding the dispute and the parties would remain confidential. It was only on rare occasions that a party did not agree to allow the researcher to attend.

The researcher was present throughout the mediation to observe and record the mediator's effective use of style, skills and techniques. Names of parties and details of disputes were not recorded, and skills and techniques were not attributed to named mediators. The researcher undertook to maintain the strictest confidentiality for the mediation, and signed the mediation agreement.

The researcher played an observation role during the mediation and did not participate actively as an assistant to the mediator. The researcher contacted the mediators following each mediation for a brief post-mediation interview so that their own observations and comments could be taken into account by the researcher.

Concluding interview

Soon after the end of each mediation the researcher carried out a follow-up interview to establish the mediator's perception of what s/he did and of its results.

Executive Summary

A study of the effective style, skills and techniques of experienced commercial mediators in the UK was conducted over a six-month period. The project was commissioned by MATA (Mediation and Training Alternatives) and involved the participation of ten senior commercial mediators. Each mediator was interviewed and then observed in up to three mediations. Data collected from the mediator interviews and observed mediations revealed a variety of techniques. Prominent among these were rapport building, use of humour, use of private meetings before the opening, risk assessment, moving parties from exploration to negotiation, closing the gap, and managing expectations.

Rapport, rapport, rapport. Mediators put a great deal of emphasis on rapport, approaching people on a human level. They were friendly and personal where possible. The impact was to make connections, draw people into the process, build trust, and relax the parties.

Use of humour. Humour was a feature in a great majority of the observed mediations, particularly in the pre-opening private meetings. It was a way of relating with the parties and relaxing them, and often lightening a tense atmosphere.

Use of private meetings before the opening. To get to know the players, build rapport, demystify the process, prepare parties for the opening joint session, steer decision-makers towards participation.

Managing expectations. About the process as a whole, about what can and cannot be achieved today, about the opening joint session, about the negotiation phase and low offers or large gaps.

Moving parties from exploration to negotiation. Discouraging parties from dwelling too long on facts and merits, moving them into a discussion of numbers as early as possible in the process.

Risk assessment. A constant feature throughout the exploration and negotiation phases. Testing arguments, questioning perceptions about trial prospects, helping parties to analyse their strengths and weaknesses, exploring the risks of litigation, urging parties to look at their own exposure.

Closing the gap. Observed in the negotiation phase of all mediations. Encouraging sensible and credible numbers early, challenging low offers and lack of movement, moving parties off rigid positions.

Results

The project findings, largely qualitative, were gathered and collated from the mediation observations, mediator feedback and personal interviews with mediators.

The following techniques¹ were observed:

1. Rapport building

Rapport building, unsurprisingly, was hugely important and visible throughout all the mediations. Mediators put a great deal of emphasis on rapport, and they later relied upon the credit it built by the rapport, especially during the more difficult phases of the mediation.

The mediators approached the parties on a human level, trying to establish a relationship with them through empathy, personal details, and human contact. They showed an interest in the people and looked for points of interest – where they live, hobbies, themes in the dispute – to talk about. In the pre-opening private sessions they included and addressed everyone in the room. They were personal wherever possible.

In their individual interviews, 6 out of 10 mediators indicated ‘ability to build rapport’ as a *technique* they use to mediate most effectively:

“Establishing rapport is hugely important. I look for one or two things that I like about an individual and build on that. Also if there’s a common interest I will build on that.”

“I make friends with the parties. Establishing rapport is absolutely critical.”

“Every ounce of warmth and humour in the pre-opening stage is repaid later. “

”Rapport, rapport, rapport.“

While building rapport is a technique used by mediators, it is also very dependent on a mediator’s individual skill and style.

Skill

In personal interviews, 6 out of 10 mediators indicated ‘ability to build rapport’ as a *skill* they use to mediate most effectively (not all were those same mediators who indicated it as a technique). More specifically, the ability to understand, read and bond with people. The ability to empathise: to make people feel you understand the dispute both intellectually and emotionally.

¹ For the purpose of this research ‘technique’ refers to a practical process or activity used; ‘skill’ refers to a personal capability or quality demonstrated.

Style

Generally the mediators' style was informal and relaxed. They had good people skills and were able to put people at ease. Their style was approachable, open, and friendly. People seemed to find it easy to sit down and talk to them. They got on with people and could make good strong connections early on. They were nice!

2. Use of humour

Humour, like rapport, was very important to the process, and used by mediators in most mediations (in all but three of observed mediation days, mediators used humour in the pre-opening private meetings with parties). It helped create and build relationships with the parties. It reached people, allowed the mediator to relate on a human level, it was intimate and provided a lot of warmth, it could lighten and relax a heavy and tense room, and while the case was very serious, it got things in proportion. In certain cases it was hugely healing to the whole process.

"The only binding decision I make is when to stop for lunch."

In personal interviews, 4 mediators indicated that they use humour to be effective mediators, in trying to make it as enjoyable and as human a process as possible.

"Once I've gained the confidence of the parties I relax more and feel able to express humour. I use this as a means of reaching the parties, to relax them, to lighten the mood. It's a way in, and I think it's useful to use once I've been accepted."

3. Use of private meetings before the opening

Private meetings with each party before the opening joint session occurred in 25 out of 26 mediations. The average time spent with each party in these private meetings was 15 minutes [range: 2-59 minutes, median:13 minutes].

Content

Mediators used these meetings as an opportunity:

- to size up the players, to assess who the key players are and what they are like. To get a feel for who is leading the negotiation, who really counts in the room.
- to build rapport, to relax and soften the parties.
- to explain the process and to take the mystique out of mediation. "This is simply a negotiation. I'm here to make it as profitable and easy as possible." "Today is about doing a deal. It's an ordinary set of business meetings except with independent chairman and confidentiality."
- to plant in their minds that the responsibility to settle this case is theirs, not the mediator's. "This is up to you: you're going to solve this, not me."
- to prepare the parties for the joint opening session, encouraging them to use the opportunity to:
 - listen attentively to opening statements, a lot can be picked up.
 - look for who the key players are and to start forming views about who you are likely to get on with.
 - try to achieve an environment in which a sensible commercial negotiation can take place, being aggressive may not be the best way to start things off.

- consider what you can say to encourage the other parties and to indicate your measure of flexibility.
- to discuss the purpose of the opening statements: to settle in, to clarify in your own minds what you're here to do; to hear key points and issues as each side sees them; to get into the process; a powerful opportunity to tell the other side about it. (5)
- to steer the clients/commercial people towards participation. To develop rapport specifically with the clients, so that the lawyers don't run the show. Encouraging commercial people to pitch in. Inviting clients to participate in the opening, "because after all you are the decision-maker". (3) "Lawyers are wonderful but mediation is for you."
- to highlight the astonishing track record of mediation (3).
- to emphasise that this is informal: "Let's use first names, jackets off." "This process is strictly informal." (3)
- to emphasise the flexibility of process: let's try to see if something fits. "The 'f' word in mediation: flexibility"(2).
- Other: to address concerns and questions (2); check previous experience of mediation (3); acknowledge that they are here in good faith. (2)

Style:

Relaxed but professional style. Friendly, warm, positive, optimistic.

Impact

Parties put at ease and reassured. They visibly relax. Rapport is built and relationships established, which can be important later in the day. The decision-makers/clients are drawn into the process. The process is demystified. Confidence is built in the mediator. Parties are now prepared for the process and have had planted in their minds that they get out of this what they put in. The atmosphere has moved from apprehensive and even tense to one that is positive, warm, and comfortable.

"Private meetings to relax the parties, allow them to get to know me. To try to take away the mystique of mediation, to bring it down to a comfortable anticipation; to explain the process."

4. Risk assessment / reality testing

"BATNA/WATNA: to bring a sense of reality. To get over deadlock."

All the mediators used this technique. Risk assessment was a constant feature during the mediation day, taking place mainly in the exploration (in 24 out of 26 mediations) and negotiation (in 22 out of 26 mediations) phases. It rarely took place in pre-opening sessions, only where those private meetings were particularly long.

Risk assessment typically included the following:

Playing devil's advocate. Testing arguments. Moving parties off points that are hard to defend. Questioning perceptions that prospects are good. Probing what lawyers are telling their clients. Helping parties analyse issues more closely than before so they understand strengths and weaknesses better, helping them move towards a sensible solution.

- Where do you see your major hurdles in this litigation?
- If you were to have a bad day in court, what would that look like?
- Are you exposed to a possibility that a judge might?

- What are the pressures on you to settle?
- What's your best case, what's your worst case?

Mediators constantly reminding the parties that litigation and its risks are the backdrop to the mediation. Keeping firmly in their minds what the alternatives are if mediation doesn't work - the cost, time and publicity implications, that losing litigation is seriously painful. Establishing the realities of the alternatives, what would happen in litigation, making sure they understand what they are getting into. Making sure that they understand that there is no quick route to the money. Exploring the net value of their claim. Separating what's easily recoverable and what's not, what's in the bag and what needs work. Asking what the price is to settle. Getting parties to value their claim in this way. Getting parties to consider a solution that recognises risk.

- If you were to factor in the risk for litigation how would you do it? How much is it worth to you in commercial terms to buy that risk off?
- What is the risk that you are running in trying to get your case home?
- What is it worth for you to settle today and not spend four days in court?
- What's the risk and cost for you to take it to trial and have someone decide it for you? What's it worth to pay to avoid it?
- What is your risk of losing? How much are you willing to pay to buy that risk off? Please value that risk.
- I understand where you are coming from but you have to balance up the risk of a judge saying differently.
- Winning a case and getting the money you want isn't a simple thing. Money today in your hands is worth a lot.
- What does it take, if you don't settle, to get the \$200,000 in your pocket? What is it going to cost you?
- What is your best position worth?
- There's no quick ticket to getting the money you want.
- If it goes his way... if it goes your way.
- Getting it now and buying certainty.
- Do you really understand what you're getting into?
- Think about what it's going to take you – cost you - to get the money you want.
- What is your best position worth? What are you likely to recover at trial?

Skill

Skills associated with this technique are good forensic and analytical abilities, the ability to analyse important aspects of a dispute. Six mediators indicated "ability to analyse" as a skill they use to mediate effectively.

Style

The mediators' style and approach is pragmatic.

5. Moving parties from exploration to negotiation

Mediators discouraging parties from dwelling too long on the legal aspects or facts of the dispute and trying to move them into a discussion of numbers as early in the day as possible. Exploring the willingness to move into a discussion of numbers, giving parties the choice: more about positions, rights, and issues – or into negotiation? Generally moving parties away from strictly legal issues to see where compromise might lie.

- Do you need to know any more about their position?

- Is there any mileage in getting you further entrenched in the facts? If there is let's do it, if not let's go to numbers.
- How much of the law do you want to get into? Would it be better to get numbers on the table?
- What do you have to discuss before you can look at numbers? Would discussion of legal/technical points be helpful?
- To what extent do you need to know their position better or are we in a position where you're prepared to say we understand the risks and are prepared to make a settlement based on that... or do we need to make more explorations?
- [In opening session:] The focus today is not on what's happened before but on where you can agree. What do you have to discuss before you can look at numbers, before you can get into a position to negotiate? Would discussions of legal and technical points be helpful? (Their answer: NO!)
- Do we have to argue the legal points? My experience is that it doesn't work.
- I am a great believer in seeing what the gap is early. Parties need to know how far apart they are.
- Ought we not look at what they are willing to offer to you and what you are prepared to accept early in the process rather than at 4pm?
- It doesn't matter why you agree; it matters where you agree.
- One way to move forward is to put a toe in the negotiation pool. Each of you doesn't know what the other is prepared to do to settle. At some point discussion has to get into figures.
- I don't want to get bogged down, and I imagine you don't, in a battle of the experts.

Other examples:

In the opening joint session the mediator goes through the numbers to focus the parties on numbers early in the day and make sure everyone is agreed on them.

Another technique is to give the parties the option to spend a lot of time in exploration or discussion of technical points. Typically the parties themselves admit that enough time has been spent on this already and that keeping it to the minimum would be the most profitable use of the day.

6. Closing the gap

A technique observed in the negotiation phase of all the mediations. Pushing parties closer together, towards a zone of possible agreement. Getting parties to move from rigid positions.

At the beginning of the negotiation phase:

Mediators encouraging sensible numbers early, suggesting that less than sensible numbers will only annoy and frustrate the process. They indicate what won't work i.e. what is an unhelpful offer, or suggest putting enough on the table so that it's attractive to the other party, to catch their attention.

- What is necessary is to catch their attention? Put enough on the table that makes it difficult for them to walk away.
- If we are going to start the bidding I would like to go back with something credible.
- A proposal that you think there's a fighting chance that he'll accept, anything else is a waste of time.

Challenging low offers/lack of movement:

- What's the reaction you think you'll get to that? Please ask yourselves what effect you expect.

- Do you think that offer is in the right ballpark? If you're going to settle, it will settle in a range, a zone of possible agreement. Do you think your figure is in that zone?
- If you offer that, will they stay?
- If you come back with a realistic offer then you have a chance to stay in the negotiation.
- If you want to settle there are going to have to be big moves from both sides.

If parties want more from the other side, encouraging them to put arguments forward to convince them:

- What arguments can you put forward to the other party to encourage them to put in more money?
- How do you want to get the number higher? Can you persuade them of that?
- If you are going to persuade the other guys to go home with very little money then you have to shake their confidence on the points they are putting forward.

That there is a message in an offer: the amount "speaks" something and it is important to consider what message is being conveyed. Encouraging party to send an offer that says "we recognise there is some risk for both of us, we'd like to sort this out today and seriously engage in a commercial negotiation, but we're not going to offer everything you want."

- If you are going to give them a counter offer I encourage you to think in terms of a number that speaks to them.

To think in terms of what it is worth for them to settle, rather than positional bargaining. Urging them to look at their own exposure:

- Think about an offer you can live with, the value of settling today.
- Consider your own position: what is it worth to you to get out of this?
- Think in hard commercial terms what is the least/most you're prepared to accept/pay to get rid of this. Go there now.

The mediator goes through a risk analysis exercise in detail: direct costs, irrecoverable costs, value of disruption to business, litigation risk (%), max win, min win, min lose. "What is a reasonable settlement figure based on this picture?"

Endphase:

- This is the moment to dig deep and make an impressive offer.
- If I can get £x will you take it? [To prevent the onion slicing that is typical at the end of the negotiation phase.]
- If you're going to give concessions to the other side it has to be concessions that mean something to them.

The mediator shows impatience or exasperation when it is late and parties are not moving as a means to get parties to move from rigid positions.

7. Encouraging parties to generate options and solutions

Mediators invite parties to raise thoughts and provide information about the best way to run the mediation and how to resolve the dispute. This technique provides a great deal of useful information about parties' ideas, concerns, priorities, and establishes what issues are important to the parties and need to be explored further.

- How do you think we can make best use of today?
- What's the best way to run the mediation most effectively?
- Do you have a feeling as to the quickest and most effective route to settlement?
- How can we advance this process profitably?

- Where do you think this might go, how might it pan out?
- What's the next move, where do we go from here?
- At the end of the day it's going to be a deal between you and him. I'll need your help in knowing what's going to work and what's not going to work.

Information about the other side:

- What do you think the other party's position is?
- Give me information about the personalities and styles in the other rooms.
- Any guidance on them as people? Where are they likely to be coming from? What's the best way through to them? Are they hard-nosed or reasonable negotiators?

Mediators also invite parties to provide what the other side(s) would need if they were to be persuaded to change their minds and shift their positions:

- If I am going to convince the other party I need ammunition from you.
- What can you give me to convince them that they are wrong?

8. Managing expectations

A technique observed in all the mediations.

About the opening joint session

- The opening is often posturing.
- Don't be dismayed about opening session, typical at this stage for parties to be sabre-rattling.
- Just because someone expresses their case strongly doesn't mean they'll be intransigent in the negotiation.

About the process

Preparing parties for what may lie ahead.

- Mediation is like a journey: obstacles along the way that will frustrate, depress, make you wonder why you are here.
- Quite often there's despair at 3pm. Hang in there, we can get through it.
- There are necessary rites of passage before we can get to a settlement.
- I've done a lot of these and we have to go through these phases so please don't talk about leaving now.
- We can only go as fast as the slowest person so there may be frustration.

About what can be achieved

Mediators are clear and realistic about what can and cannot be achieved today.

- Here to find a solution that both parties can live with. No one gets everything they'd like. An outcome that gives you enough.
- Think about a realistic fair compromise, not what you want.
- Both parties will leave the mediation thinking they are right and the other is wrong, but the deal will do. What will matter is the number agreed.
- This isn't to do with justice; it's simply about doing what's possible.
- If there is a commercial solution here today it will be more than you want to pay and less than he wants to receive. No settlement that has everyone going away skipping and dancing.
- The best mediation is when people walk away a little disappointed.

About the negotiation

Preparing parties for low offers and big gaps.

- It's not their last word; it's their first word.

- There's a big gap, but not one that is unbridgeable.
- I don't know what their first bid is but my experience is that when I bring it in it feels like a bucket of icy water. Please don't walk out.
- I don't want you to react adversely to the offer because it's an opportunity to get into negotiation.
- [Preparing one side for an extremely low first offer from the other side:] Don't be disheartened; all that counts is their best offer.
- All negotiations start like this. My job is to keep you in the building.

9. Use of flipchart

Five mediators used the flipchart (on a total of 19 occasions).

Examples of how it was used:

- In opening joint session the mediator writes up issues that need to be resolved today if parties can reach a settlement. Asks parties to contribute. Draws points from the discussions. Draws out what's common ground, factual agreement, what issues can be parked for the purpose of today. Draws out what needs to be discussed before getting into negotiation. Prioritises these. On fresh page summarises agreed issues to discuss. Points of agreement emerge as issues are put up on flipchart. Key issues are raised.
- Putting items up on the flipchart so that they can be taken off: e.g. discussion of technical issues. "Is this a profitable discussion?" The mediator gets parties to agree to a time-limited discussion, if at all.
- As a time management technique: in opening joint session the mediator puts up a possible schedule for the day where issues are explored till 3pm. The response from both parties is a loud "no". They have spent a lot of time looking at the merits and do not wish to spend as long as four hours doing so in mediation.
- To look at a breakdown of figures.
- Ranking issues according to where they are strongest to weakest.
- At a stalling point in the mediation, in joint session, puts up options for going forward: adjourn, carry on, change tack, something else?.
- As a risk analysis exercise: putting up direct costs, irrecoverable costs, value of disruption to business, litigation risk (%), max win, min win, min lose. Then asking: "What is reasonable settlement figure based on this picture?"

Impact

The additional force of figures or words being written up in large handwriting. A common point to focus on. Points of agreement emerge. As a bridge between openings and subsequent discussions. In private sessions as an effective way to leave parties with a thought. As a timetable: what's happening and where we are.

10. Use of language

All mediators were observed to speak in an articulate and often inspiring way. Some mediators (4 in total) specifically chose to use metaphors, vivid descriptions and dramatic expressions for an intended impact. They did so sparingly and people visibly responded to them.

Examples:

- When I bring in the first offer it can feel like a bucket of cold water.
- Think about the impact of that offer: like pouring petrol on the flames.

- This is a journey; there are hills to get over before we can see where we are going.
- There is an area of calm water between the parties. If they go there they will settle.
- A bird in the hand is worth two in the bush. [Settling now rather than running the risks of a trial in court.]

“Use of language is hugely important –use a dramatic phrase can make a difference or make people think, e.g. Pouring petrol on the flames.” [Personal interviews]

11. Time management

Half the mediators actively managed time throughout the mediation day. Often the commitment to managing time was explicitly raised at the start of the mediation day, in either the pre-opening private sessions or the opening joint session.

- Negotiation tends to take as long as we have, I will push you forward.
- We could spend a lot of time....
- We *can* do this in a day.
- My hope is for a normal workday, but it’s up to you, I will keep momentum going.
- Do you have a feeling for the quickest and most effective route to settlement? If we can get the route right we can save a lot of time.
- Come on guys, it’s 3:45pm and we haven’t had an offer on the table.
- We can all be here till midnight, it depends on how quickly parties move.

Pre-mediation telephone contact with representatives was used, in part, to get the mediation off to a quicker start, giving the mediator a clearer idea of what dispute is about and how best to run the mediation day. Keeping parties in joint session after opening statements was also a time management technique.

The other half of the mediators did not make time a conscious and explicit element in their management of the process.

“I take quite a lot of time. I give people enough time. I’m benign and lax in terms of time.” [Personal interviews]

12. Pre-mediation contact with parties’ representatives

In 23 out of 26 mediations, mediators had pre-mediation telephone contact with a representative from each party. Mediators spent an average of 23 minutes in telephone contact with each party’s representative prior to the mediation day.

When asked what their intention was for such contact, mediators responded:

- To build rapport with the lawyers. To get the lawyers on my side so they are not undermined or undervalued. To get a feel for the players, what sort of people I will be dealing with. To pick up on difficult lawyers and sticky issues. To develop a constructive problem-solving relationship with the lawyers.
- To explore the approach each side has to the other and the issues between the parties.
- To ask about hopes and aspirations and to see if they have a feeling for what their client wants out of it.
- To ask for their recommendations, how they think it can be settled.
- To get a sense of how to run the opening joint session and questions to ask.
- To raise questions that arise out of the documents.
- To check experience with mediation and describe the process.

- To check for any emotions.
- To check who is coming.

Impact

Mediators get useful comments and information, clues and insights. Given a better idea of what the dispute is about, parties' perceptions and how they think it's going to go, what might work and how best to run the mediation. Given a sense of the personalities of lawyers. The opportunity to build confidence in the mediator and the mediation process, and to give the lawyers a level of comfort. To get the mediation off to a quicker start. A good icebreaker.

13. Additional value

The mediator suggesting or creating additional options for settlement: hybrid solutions, enlarging the pie, other ways than money to settle a case.

- "Do these materials have a second hand value?" Mediator suggests a hybrid solution: materials plus money.
- Where a bank doesn't want to award client more than a certain amount, mediator suggests offering him the amount they are prepared to pay and offering an additional amount to a charity of the client's choice.
- Looking for other ways than money to see a proper closure to a clinical negligence case where woman died soon after childbirth. For example, something in writing, something her daughter could see at a later time. A remedy that could not be achieved in court.
- Rather than paying for the installation of new equipment that takes all the manual aspects out of a particular job [in a personal injury case], mediator suggests to the defendants that they agree to install the equipment themselves.

14. Additional Features

Opening joint sessions:

- The emotional tone of the opening sessions was typically hard to read. The meetings had the feel of a formal meeting: professional, practical, low emotion, neutral tone.
- In 21 out of 26 mediations, the mediator made the purpose of the opening statements explicit: A knowledge-gathering session. An opportunity to set out your views, exchange information, share knowledge, look at ways forward, bring up key issues, identify each other, hear from each other key arguments, understand where everyone is coming from.
- In 21 out of 25 of cases, parties stayed in opening joint session after the opening statements, and continued for an average of 23 minutes [range 5-77 minutes; median: 22 minutes]. Mediator invites reactions to what's been heard. Asks questions for clarification. Raises quantum and how numbers are achieved. "What is the best way forward?" "What issues do we need to discuss?" "What is the main obstacle to settlement?" Steers parties off legal and technical discussions where appropriate. Impact: Parties are now easily communicating with each other. The atmosphere in the room warms. Parties seem less tense and are more involved. Issues drawn out and clarified.

Drawing key players into the mediation:

- Inviting clients/principles to add to opening statements.
- Directing questions to the client.
- Sitting next to the client in private meetings.

- Putting principles/decision-makers on either side of the mediator in joint opening session.

Mediators speak about their own experiences of mediation and tell stories about previous mediations: to make a point, build confidence in the mediator, and also send the message that other people have been in this difficult place and have got through it. Subtly creating in their minds of the parties that this person has a lot of experience with mediation and may more readily accept what mediator says later on.

Final Comment

This report would not have been possible without the willing co-operation of the participating mediators and those who were held in reserve but not observed. Our researcher said many times what a nice bunch of people they are and how their commitment and belief in the process shone through in what they did.

When these mediators were asked in personal interviews why they are involved in mediation or what is important about what they do as a mediator, their responses included the following:

- Because I find it immensely satisfying (7 out of 10).
- Because I enjoy the interaction with people. People, not the law, interest me. I enjoy meeting the people and to continue meeting professionals (4 out of 10).
- Because it makes me a living, pays the bills (4 out of 10).
- Because I am good at it and that it matters to be able to be good at something and to do something well (3 out of 10).
- Because of my conviction that it makes a huge amount of sense. I believe in the process and that it's the right way to resolve disputes. My experience of litigation is that it is a waste of one's time and money and that it really doesn't give people what they want. I see myself as helping people avoid the nightmare of litigation (9 out of 10).

"My first experience of it was a huge emotional turning point in my life. I was so overwhelmed by how hugely sensible the whole process was and the huge value of bringing in a skilled mediator."

Thank you all.

M.A.T.A.
MEDIATION AND TRAINING ALTERNATIVES

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Our Mission

Our aim is to use and teach more effective ways to manage and resolve disputes and to transform conflict by practising and demonstrating what we teach so as to improve the ways in which individuals and organisations deal with each other.

Our Values

As a community made up of our members, we believe

- in approaching others from an assumption of trust
- in transparency in our dealings with others, and with one another
- in valuing others' beliefs, feelings and needs
- that cooperation is preferable to confrontation
- that using and facilitating dialogue leads to understanding
- that putting people before profit enhances both.

Our History

MATA was formed in January 2002. The purpose was to create a community-based business that is centred on commercial mediation, both in practice and in training, and that is also person-driven rather than profit-driven.

Central to MATA's aims is the practice and training of people in dispute avoidance and in positive approaches to conflict; and, if problems do escalate into disputes, to manage and resolve the disputes quickly and cost-effectively without going to court.

In addition to the **founder members**, MATA has alliances with other member trainers who form a teaching community that aims for the highest quality of service and training. Other details and a list of **members** can be found on the website

Our Business

MATA is run on shared profit principles, paying market rates for those who work for it, and a share of surplus according to contribution.

We aim to achieve the highest standards in our work and relationships, as individuals and as a business. We seek to support and develop our members, and to share our learning with one another.

January 2002