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A MEDIATION STORY
THE MEDIATOR'S LOG

Part 10: "The End Game" concludes an account of a day in the life of a mediator, begun in the Journal and serialised online by Core Solutions

IN June 2014, the Journal published the first part of a minute-by-minute journey through a "day in the life of" a mediator. That story continued, as "The Mediator's Log", for many weeks on Core Solutions' website. It has been translated into a number of languages and profiled on the largest mediation website in the world, mediate.com. It serves as a valuable teaching tool for all those who really want to know what happens inside the mind of a mediator as a day of mediation unfolds. It is a principal online resource for Core's flagship training courses. Here is the final chapter.

1926: It is really down to the money now. Everything else is slotting, like a complex jigsaw puzzle, into place. That fact alone gives the process momentum and gives the parties the incentive to persevere and reach a conclusion. It was often forgotten that research – and experience – showed that most people, even in the most difficult of disputes, wish to resolve matters and move on. For everyone, risk aversion, sunk costs, intuition, confirmation bias and so on could operate to impede that desire. But, in the end, the mediator muses, the human instinct is more co-operative than combative and his job is to harness that instinct and help the players to override the contrary motivations.

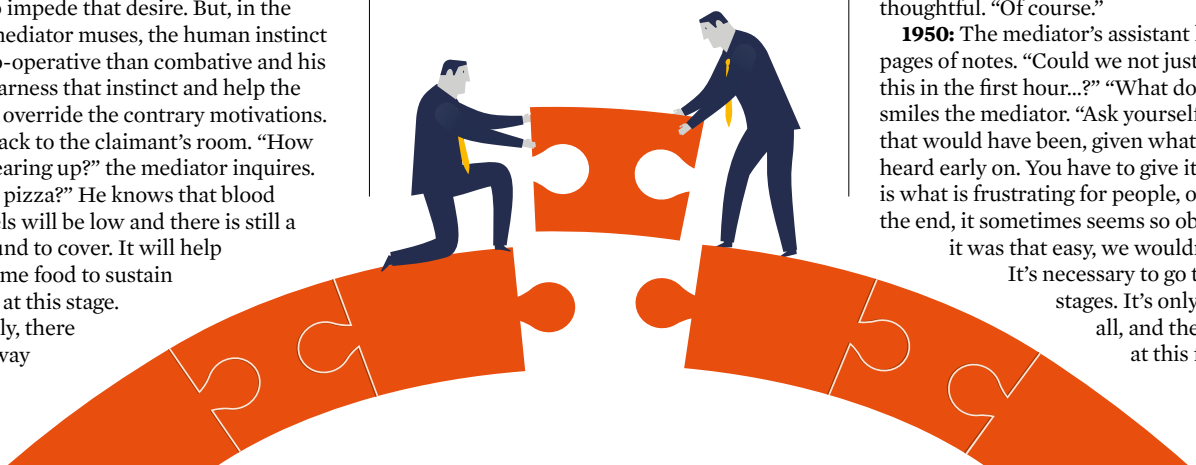
1928: Back to the claimant's room. "How are you bearing up?" the mediator inquires. "Time for pizza?" He knows that blood sugar levels will be low and there is still a bit of ground to cover. It will help to have some food to sustain the teams at this stage. Fortunately, there is a takeaway

pizzeria nearby. One of the legal team offers to check with both rooms and do what is required. Hawaiian is the mediator's preference...

"We are getting there," the mediator says. "Perseverance is now the key – and reality. Where have you got to on the figures?" He can see that the lawyer has been working on the flip chart. No attempt is made to conceal the figures from the mediator. He invites them to talk him through what is written up. The approach appears to be to focus on what the claimant really needs to be able to walk away and get started afresh, with costs paid. This realignment from entitlement and rights to needs and interests is refreshing and the mediator is quick to acknowledge that. It seems that what she needs is still higher than the defending party is able to offer, but the gap will be closer now. "I think they will struggle with that," the mediator offers as a view. "Of course, we don't know; it's in their interests to sort this too. But I think we need to get a move on. Can I take this analysis to them? I don't think you compromise yourselves by showing this. It may just help them to understand better what they need to do." He wonders about inviting the lawyer or even the claimant herself to present the figures to the other side but quickly concludes that he can probably do so more effectively. At least at this stage...

1947: "So, there we are," the mediator summarises to the defending team. "From her point of view, and that of her advisers, this makes sense and moves them away from that figure beginning with a '2'. It's time to bite bullets, I think. Maybe even time to formulate an offer." "Could you give us some time to think?" The lawyer is looking thoughtful. "Of course."

1950: The mediator's assistant looks at her pages of notes. "Could we not just have got to this in the first hour...?" "What do you think?" smiles the mediator. "Ask yourself how likely that would have been, given what we saw and heard early on. You have to give it time. That is what is frustrating for people, of course. At the end, it sometimes seems so obvious. But if it was that easy, we wouldn't be here. It's necessary to go through the stages. It's only a day, after all, and they have been at this for months.



And if they don't resolve it..." There was a knock on the door. "Can we have a chat?" It is the lawyer for the defending party. "Come in," replies the mediator. "Here is what we think we can do...": the lawyer begins to set out his and his clients' thinking.

2002: "Go back and see if that is possible," suggests the mediator. He has heard enough to know that the gap is closing significantly. There still has not been a formal proposal put on either side. That was how the mediator liked to work. Avoiding putting either party in a situation where they were fixed to a position, boxed in or needing to save face. Trying to minimise the offence which could be caused by over- or under-pitching. If he could help to manage the movement on numbers so that each party felt it was being listened to, was not compromised and was getting the best deal it could, that was the objective. A knock on the door again. "We can do that but there's not much more room," says the lawyer. "That's really helpful, thank you," responds the mediator. "May I take that and use that in my own way?" "Over to you," is the smiling reply.

2015: The mediator deliberately changes his approach. It is more businesslike, matter of fact. He looks at the claimant. "I think there is scope for some movement. I'd like to have a chat with your lawyer if I may?" The claimant indicates that she is comfortable with this. By this stage, the trust built up over the day is such that no one is in doubt that both lawyer and mediator are working for a solution in the best interests of all concerned. They leave the room and head for comfortable chairs in the foyer. The building is deserted now. "Here is where we are," says the mediator. "It's about the best they can do. I might get another £10k out of them. But only if your client can say she would accept that sum if offered. Can you help her with that?" The bluntness of the question seems quite in order at this stage. "Leave it with me." The lawyer is already on his feet, heading back to the room to speak to his client.

> "Thank you. That works for me. I can move on now. If only we'd had this conversation three months ago..."

2023: "She can do that," the lawyer comes back to the foyer. "OK, I'll be back soon. Wait here." The mediator leaves and returns shortly after with the other party's lawyer and addresses him in front of his counterpart. "Here's where we are... If you can offer that, perhaps on the basis that if the claimant says she will take it, you can make the offer, I think we are going to get there." He looks at the claimant's lawyer for confirmation. "Agreed," comes the affirmation.

2035: "Well, here we are," the mediator welcomes the two principals to his room. "Seems like a long time since we first met together this morning. Lots of water under the bridge... I prefer, if possible, for the principals to complete the deal if they can. I think you are both able to do so. You have broad agreement now on the contractual matters and the reference. The lawyers still need to get the wording right but, with goodwill and good sense, that can be done briskly this evening in the resolution agreement. And I think you are nearly there on the figures." He turns to the defender client, who immediately reacts. "I would like to thank you for all your time today. I know it has not been easy," he says directly to the claimant. "But we want this to end well. So we are prepared to offer you..." The claimant leans forward with a hand outstretched. "Thank you," she says quietly. "That works for me. I can move on now. If only we'd had this conversation three months ago..."

Read Parts 1 to 9 on the Resources page on Core's website: **www.core-solutions.com**, and call **Miriam at 0131 524 8188** if you are prompted to find out more about mediation or Core's flagship courses.

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For details of Core's mediation services and to register for our Summer School, contact Miriam Haboubi at 0131 524 8188 or Miriam.Haboubi@core-solutions.com
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