



**Mediation & the F word:  
Why mediation works in  
fraud cases**

by Andrew Hildebrand  
**HILDEBRAND  
MEDIATION**



Ranked as a leading mediator in the Legal 500 and Chambers, Andrew has successfully mediated a wide variety of commercial disputes

He has spent his career working in industry, closing multi-party deals and resolving disputes for companies big & small. As a top ranked in-house counsel, he headed up legal & business divisions including at Channel 4 and FilmFour

Andrew mediates independently and through leading UK mediation provider 'In Place of Strife'

- Why it so successful for resolving commercial disputes
- When it is worth considering
- Why it makes sense for fraud cases
- How to get the most of it

- 75% of UK commercial mediations settle on the day. Binding settlement
- Of the 25% that don't settle, another 15 % settle shortly after
- The dispute stays private
- It is Risk Free

Litigate, arbitrate, mediate: What do you want to achieve & will the other side play ball?

The 9 things you need to consider

- Effectiveness
- Speed
- Cost
- Confidentiality/Publicity
- Stress
- Risk
- Suing/Enforcing abroad
- Danger of adverse judgment
- Relationship

- A client needs a solution, not a battle
- Suing is unlikely to be cost-effective. Or quick enough
- Publicity could be damaging
- Litigation could open a can of worms, or cause delays
- You have doubts about a case. Or a client
- It's a 'he said/she said' case
- You can come up with creative solutions. You are not bound by precedent
  
- With Year-ends approaching, use it to bump up a client's bottom line

Any dispute that could be expensive, embarrassing, or time-consuming. Or where:

- there's a relationship involved. With third parties, but also inside a client's business e.g. with business partners, shareholders & key employees
- personal dynamics are getting in the way
- disputes with overseas parties – much easier than suing/enforcing abroad
  
- 'When there's a problem, you need to separate the complainer from the complaint. They both need handling'. Professors Wyckoff & Maister, Harvard Business School
  
- & TO FIX PROBLEMS EARLY. SO THAT THEY DON'T ESCALATE



Preparation is key. Focus on:

- Endgame
- BATNA
- Strategy: How & who to sway them?
- What could prevent signature?
- Get the right decision-makers there

... and something I sometimes do

## How to make the most of it

- Focus on the future. Not the past
- Mediating is about the people, as well as the issues
- Opening Presentation: Stand back from your case. What you want to achieve?
- Don't just hear. Listen
- Manage the team
- There's enormous power in offers. In the message, as well as the number
- Make the first move and anchor the negotiations?
- Watch out for niggles near the finishing line

It is about settling. Not 'winning'

Don't be insulting

Don't make an offer that isn't in the ball-park

Don't go back on a previous offer. It rarely works

Right offer, wrong time = wrong offer

Don't raise problems at the last minute. It feels like cheating

Sign it!

Is someone lying? 5 tell-tale signs

9 'tried and tested' CIA methods

1. Be engaged, calm, empathetic & sincere
2. Help the person rationalise their actions
3. Minimize the seriousness of the situation
4. Socialise the situation
5. Reassure the individual
6. Don't allow them to voice a lie or a denial
7. Keep repeating things
8. Use implicit language
9. Don't judge

A Standard step in the English courts

Lawyers required to inform clients about ADR at an early stage

Judges encourage it - and can:

- stop proceedings and direct parties to mediate
- impose cost sanctions against parties who unreasonably refuse, or drag their feet

PGF 11 v OMFS Company 1 Ltd 2013] [2013] EWCA Civ 1288, per L.J Briggs

Thakkar -v- Patel [2017] EWCA Civ 117

Halsey v Milton Keynes NHS Trust [2004] EWCA Civ 576, Ward, Dyson and Laws L.JJ

- ‘It works. Go and do it’ Mr. Justice Arnold
- The Government is strongly promoting it

# WHAT DOES A MEDIATOR DO?

[hildebrandmediation.com](http://hildebrandmediation.com)



- What does your client want to achieve / Will the other side play ball?
- Mediation is highly effective, inexpensive and speedy

<http://hildebrandmediation.com/blog/>

### RECENT POSTS

- Getting the most out of a meeting: The 10 Do's & Don'ts
- Making mediation work: what we can learn from talking to terrorists
- The 6 things you need to settle a dispute

ANDREW HILDEBRAND

hildebrandmediation.com

ANDREW HILDEBRAND

[Andrew@hildebrandmediation.com](mailto:Andrew@hildebrandmediation.com)

D: 020 7286 0272



© Hildebrand Mediation Limited, 2017