

# Mediation Matters. Trends in 2024.

For our first Mediation Matters newsletter of 2025, the team has taken a look back at 2024 and a look forward to what we might expect to see this year.

In short, we have seen a significant shift in the perception of mediation. We have moved away from mediation being an alternative method of dispute resolution (and all that can mean), to mediation being a credible and accepted “different way of doing it”. Mediation has become mainstream for commercial disputes and integrated into civil justice. It is not only being used more creatively to resolve disputes, but also to assist in avoiding disputes in the first place.

## We have seen these changes in developments through the courts and through government:

1. From 22 May 2024, parties in money claims up to the value of £10,000 must take part in a free one-hour mediation appointment, provided by HMCTS' Small Claims Mediation Service.
2. Changes to the CPR following the decision in Churchill. The overriding objective has been amended so that dealing with a case justly involves “using and promoting alternative dispute resolution”. Changes have also been made to the case management duties and powers in CPR 1.4 and 3.1, with confirmation that the court's case management duties and powers extend beyond encouraging parties to participate in ADR to ordering parties to participate where the court deems it appropriate to do so. Changes have also been made to CPR 28 and 29 regarding case management directions and CPR 44 on costs.
3. Sir Geoffrey Vos' vision for digital justice. The current Master of the Rolls has outlined his objectives for digital justice which are; (i) to increase access to justice by allowing disputes to be resolved quickly and at proportionate cost online and wherever possible without the need for legal proceedings; (ii) to allow disputes across Civil, Family and Tribunals to be resolved more efficiently, at lower cost and more quickly; (iii) to allow the dispute resolution process to achieve greater transparency and openness – in other words to demystify the existing complexities of dispute resolution.
4. In furtherance of this, the Online Procedure Rules Committee was established this year. Sir Geoffrey Vos has described the OPRC as “a watershed towards making

all kinds of dispute resolution accessible to the citizens of England and Wales. The integration of online advice services, mediation and arbitration portals, ombuds services and the digital court process will, in time feel like a one-stop-shop for those that need it most.”

## IM involvement in this shift:

5. Being asked by the government and the British Medical Association to facilitate four days of intense negotiations which resulted in an end to the long running junior doctors' strike.
6. Speaking at the Lord Mayor's Archbishops' dinner in March on mediation across society as a whole, from commercial to community and knife crime. We understand that the MoJ is now interested in how community mediation might be used to prevent disputes coming to the courts in the first place.
7. Updating government on mediator regulation by speaking at the Westminster Legal Forum.
8. Helping social media companies to play a role in better safeguarding of children online through the use of mediation techniques.
9. Being at the forefront of thought leadership in dispute avoidance through deal or project mediation.
10. Facilitating settlement discussions with survivors of the Grenfell Tower fire and bereaved family members and the organisations accused of responsibility as part of a civil litigation process.

## Trends observed more broadly in 2024:

1. **Increasing sophistication and expertise of lawyers and clients in the mediation process** means that (in addition to the commercial, professional negligence and insurance mainstays) it is increasingly used in **wider range of subject areas**, for example IP, complex tech disputes, private client, sports and competition law.
2. **Development of the mediation process itself** to include both the existing well tested and effective one day model for mainstream corporate disputes, but also an **alternative more bespoke process** (sometimes over weeks or months) for high value, multi-party or unusual disputes (including class or collective actions).
3. The mediation process has **adapted quickly to market needs**, whether handling disputes in the hospitality sector flowing from the Covid pandemic or the increasing number of disputes concerning AI, spread betting and cryptocurrencies. **Mediators need to have the flexibility to learn about new sectors quickly.**

4. **Approximately 45% of our mediations in the last four years have happened pre-issue.** This indicates a greater willingness to get to grips with a case in a proactive fashion early on, rather than waiting to see what happens. (Look out for an article on stages of litigation and settlement rates coming from IM later this year).

5. **People don't always want to call us mediators. We find more use of the term "facilitator".** This denotes more creative thinking about the nature of the intervention being sought, rather than simply submitting one's case to a pre-determined process.

## What we might expect in 2025:

1. **An increased use of mediation pre-issue**, whether that is to settle a dispute, narrow the issues, or prevent a dispute arising in the first place.
2. As more cases are referred to mediation, sometimes against the wishes of the parties, **we may see satellite litigation over various aspects of the process.** **Confidentiality and the use of NDA's is likely to be part of that scrutiny.**
3. **More technology disputes.** The UK is reportedly the third largest AI market in the world, worth many billions. With the legal and regulatory framework often new and untested, **the lack of legal precedent makes dispute resolution uncertain** and makes settlement out of court commercially attractive. Additionally, as the technology develops so quickly, firms need to be able to conclude disputes quickly and move ahead with their business.
4. **Increased use of AI by parties in mediation preparation.**
5. **Increased awareness of the skills mediators can use to facilitate difficult conversations** whether that is in a purely commercial arena (for example managing conflict between directors in a company), or wider societal issues.
6. **An increased interest in bespoke mediation or facilitation, or use of the skills of mediation in different settings.** The skills mediators have in managing difficult conversations, or conflict, can be adapted to many different situations. A one day fixed fee mediation, whilst very effective for many commercial cases, may not be suitable for more complicated instructions.

The beauty of mediation is that, within the confidential and without prejudice bubble, the possibilities in terms of process are endless. We see mediators working with parties, and more particularly their advisers, to devise a process which is completely bespoke and appropriate to the particular case (for example the Grenfell settlement discussions and the resident doctor dispute).

We predict a significant increase in instructions from forward thinking advisers wanting to offer their clients more creative problem solving techniques. There is a less "one size fits all" approach to mediation.

7. **Earlier engagement.** The more and earlier lawyers engage with the mediation process, the more they can get involved with devising the best way that their clients' disputes can be articulated and explored at mediation.

Agreed Scott schedules, greater involvement of experts and/or agreed conclusions shared beforehand are all things which can be agreed to customise the process. Similarly, mediation to de-escalate disputes at an early stage allows principal to principal discussions around risk assessment pre-dispute.

8. **Information about how integrated mediation is working for small claims.** A decision needs to be made whether this initiative will be rolled out to claims over £10,000, or whether the Churchill decision and consequent CPR amendments will be sufficient to effect a real shift.

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9. Given the power to order mediation, will the court make orders for disclosure of documents, reports and even draft expert reports to facilitate an upcoming mediation? Will there be a greater call on mediators to suggest ways in which a prospective party to a mediation could 'persuade' a reluctant party to disclose information under mediation privilege to facilitate the chances of a successful mediation.

10. The decision in Churchill means that ICP's and all the other complaint resolution processes which sensible commercial organisations have established are recognised by the Court of Appeal as proper dispute resolution mechanisms, and a failure or unreasonable refusal to use them could have the same consequence as a refusal to mediate before launching litigation. There may be more call for advice from commercial clients about effective complaints procedures to avoid unnecessary litigation.

The overarching themes show the increasing versatility and flexibility of mediation. With the increasing sophistication of users, growing awareness of the power of mediation from society, government and the courts, we can expect another exciting year for mediation.

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All our members are listed as top mediators in the latest editions of Chambers & Partners, Legal 500 and Lexology Index.



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