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Mediation Insights:

Rebecca Clark summarises the judgment from the High Court in *DKH Retail Ltd and Others v City Football Group Limited* which gives some useful clarity around the circumstances in which a court will order parties to mediate.



High Court orders mediation in a pre-trial review

One of the big questions following the Court of Appeal's decision in *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416 was:

When will the court use its power to order unwilling parties to engage in non-court based dispute resolution?

Well, we have an answer.

In *DKH Retail Ltd and Others v City Football Group Limited* [2024] EWHC 3231 (Ch), the Claimants, owners of the Superdry brand, claimed that promotional branding on the Manchester City football kit denoting the defendant's sponsor, Asahi Super "Dry" 0.0% lager, was likely to be seen as branding denoting the Superdry brand. Superdry claimed it had already received abuse by reason of the association of the words "Super" and "Dry" with Manchester City.

Despite the parties heading towards trial under the Shorter Trials Scheme, Superdry asked Mr Justice Miles at the pre-trial review to exercise the court's power to order a mediation. Manchester City did not want to mediate, arguing that it wouldn't work, it was late in the day, availability was limited, that the parties had already spent hundreds of thousands of pounds and that the trial was imminent. When parties are commercial, with experienced solicitors, if a settlement was realistically possible, surely one would have expected it to have been reached already?

But Mr Justice Miles was not persuaded. Manchester City's argument "does not do full justice to experience, which shows that bringing the parties together through mediation can overcome an entrenched reluctance of parties to negotiate, even where sincere".

Referring to the purpose of mediation being to removing roadblocks to settlement and to increase the range of options beyond a binary yes, or no, the judge ordered a "short and sharp" mediation, noting that "everything would be up for grabs at a mediation" and there would be a "focus on possible solutions rather than raking over historical grievances".

This is a hugely helpful judgment from the High Court, giving some useful clarity around the circumstances in which a court will order parties to mediate. But my favourite bit? Paragraph 44 of the judgment:

Postscript: on 13 January 2025 the parties notified the court that they had settled their dispute.



Experience shows that mediation is capable of cracking even the hardest nuts."