ADR COMES OF AGE – WHY SOLICITORS NEED TO TAKE NOTICE

The legal profession consists of those that have vaguely heard of ADR but really have not got a clue what it is about, those who have considered it and concluded it is not for them and ADR converts who are deeply committed to utilizing ADR as an integral part of their professional services to clients. This article is dedicated to the first two categories, first to advise that ADR is an area of practice which cannot be ignored by the general legal practitioner and to invite the detractors to re-evaluate their views in the light of the changing and maturing nature of ADR practice in the UK today.

The provisions in respect of ADR within the Civil Procedure Rules 1998 are gradually starting to bite. The November Edition of ADR News featured a short summary of the principal cases on mediation practice in the UK. They demonstrate clearly that the courts are increasing prepared to recommend to the parties, where appropriate, during case management sessions that cases which are amenable to mediation the parties should attempt to settle the dispute outside the court. It takes a brave solicitor or barrister to disagree. Cost penalties can follow for a failure to actively engage in mediation. The judge has the power to order a stay of action to enable mediation to take place.

Whilst court mediation has previously been limited to London, this is no longer the case. Eight regional court service centres now provide for mediation and the Lord Chancellor's Department has set a target for the establishment of forty centres operating mediation schemes by the end of 2004. In November 2003 the South Wales Court Mediation Scheme came on line. It is averaging three appointments a week. As the capacity for the South Wales Circuit to provide mediation services expands so will the number of appointments.

What this means for the litigation solicitor in general practice is that there is a strong likelihood that during a case management session the issue of mediation will be raised by the judge, particularly if the cost of litigation is disproportionate to the value of a claim, or where judicial adjudication is unlikely to serve the best interests of either of the parties. Furthermore, since there is a duty to advise parties of the existence of mediation, more and more clients are likely to opt for it., particularly as the practice becomes more common and public awareness of its benefits starts to spread.

To date, it is not uncommon for solicitors confronted by the prospect of mediation to refer clients to a firm that already specialises in mediation., often on the grounds that mediation is not within their area of specialism, whereas in reality what they mean is that they do not represent clients at mediation even if their area of specialism is involved. Quite simply, the solicitor is limiting the scope of his or her services. In addition, once litigation has commenced, it is too late to refer the client to another firm if the judge pressures the parties to engage in mediation. The new court schemes make mediation an attractive alternative that clients may well wish to take up.

The South Wales mediation scheme is very attractive for clients. The court covers all the administrative costs and provides the venue and the mediation appointment process. The scheme establishes a fixed fee structure. The rates are set at £75 per party for 3 hours for claims up to £5, 000, £150 per party for 3 hours for claims of £5,000 - £10,000, £250 per party for 3 hours for claims of £10,000 - £15,000., *£350 per party for 3 hours for claims of £15,000 - £50,000. and* for mediations that exceed 3 hours and/or are for claims over £50,000, fees will have to be agreed with the mediator. An initial fee of £450 per *party is to be paid on account.* Parties who qualify for public funding (legal aid), can get help with the costs of mediation in the same way as they would for a solicitor.

It is clear from the above that all general litigation practitioners will need to be aware of what is involved in representing a client at mediation. The skills are not the same as those required for advocacy or even for ordinary pre-trail negotiation. Secondly, the professional rates for mediators for larger claims in particular is commensurate with standard billing rates within the profession. Mediation practice is therefore a viable additional source of revenue for any solicitor prepared to acquire mediation practice skills and get themselves listed as a mediator under the new court mediation schemes. Those interested in joining the Association of Welsh Mediators should contact Dr Mair Coombes Davies on m@coombesdavies.co.uk