

# MEDIATION CASE DATA BASE



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INDEX	ALPHABETICAL CASE INDEX <i>(Hyperlinked where available-on line : word only not pdf)</i> : CITATION <i>(on-line web source where available)</i>	Year/M/D	JUDGE
Privilege : Disclosure	<b>Cumbria Waste Management Ltd v Baines Wilson (A Firm) [2008] EWHC 786 (QB)</b> : Bailli Whether the defendant is entitled to disclosure of documents arising out of or in connection with two mediations between the claimants and the DEFRA and which are not subject to legal professional privilege. DEFRA are not a party to these proceedings but have been invited to make representations pursuant to CPR 31.19(6)(b). They resist the making of an order for disclosure. The claimants do not resist the application. They take a neutral stance.	2008/03/16	Kirkham HHJ Frances
Fees : recovery	<b>Reynolds v Stone Rowe Brewer (a firm) [2008] EWHC 497 (QB)</b> : Bailli Fees : Recovery : Costs spiralling up beyond estimate : £90K to recover £55K at trial. Casual advice to resort to ADR late in the day insufficient to protect lawyer's fees. Clear and timely warnings required. Fees capped at 15% above estimate.	2008/03/18	Tugendhat Mr Justice Simons & Master Mr Robert Carter.
Without prejudice : Privilege	<b>Galliford Try Construction Ltd v Mott MacDonald Ltd [2008] EWHC 603 (TCC)</b> Bailli Successful application to strike out portions of a witness statement on the grounds of negotiation privilege.	2008/03/14	Coulson Mr Justice
Costs of failed mediation : recovery at trial	<b>Lobster Group Ltd v Heidelberg Graphic Equipment Ltd [2008] EWHC 413 (TCC)</b> : Bailli Whether and or in what circumstances costs of a failed mediation might be subsequently be recovered along with other costs by successful party to a trial.	2008/03/06	Coulson Mr Justice
Time Bar	<b>AB v British Coal Corporation [2008] EWHC 69 (Comm)</b> : Bailli Time bar for submitting dispute to mediation upheld - even where there was no other mechanism for resolving the dispute.	2008/01/15	Mitting Mr Justice
Failure to mediate	<b>Nigel Witham Ltd v Smith (No. 2) [2008] EWHC 12 (TCC)</b> : Bailli Costs : No penalty for failure to mediate where it was clear that early mediation could not have produced a settlement.	2008/01/04	Coulson J

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<b>Failure to mediate an appeal</b>	<p><b>McGeough v Thomson Holidays Ltd. [2007] EWCA Civ 1509:</b> Bailli</p> <p><i>“Mediation is a valuable facility, which has a significant role to play in the administration of justice. It does not in my view assist the cause of mediation if parties are urged to mediate in a situation in which there is no real possibility that it will help. In this case both parties were advised by competent and experienced solicitors. The respondent had in his favour, following trial, a judgment wholly favourable to him, and one which in the event this court considers to be entirely sound. Of course, there may be room for negotiation in such a situation, the outcome of litigation, including litigation on appeal, never being free from hazard, but such negotiation could be conducted between legal advisers.</i></p> <p><i>With respect to Sir Henry Brooke, who has great experience in mediation, I see no advantage in the present circumstances in bringing in a third party, however efficient and well-intentioned. Indeed there is a danger that such intervention will be used to bring additional pressure to bear upon a party who has every prospect of upholding a judgment in his favour. I add that the danger has not materialised in this case, because the appellants’ solicitors, very properly in my view, did not succumb to the encouragement given to them “</i></p>	2007/12/20	Pill LJ; Keene LJ; Thomas LJ.
<b>Frustrated mediation - costs</b>	<p><b>UPS Supply Chain Solutions v. Glasgow Airport Ltd [2007] ScotCS CSOH_202 :</b> Bailli</p> <p>Trial preparation and mediation well progressed when the claimant introduced a new claim for lost profits : once both parties had eventually fulfilled accountancy procedures in order to evaluate the claim – the claim was dropped as being unrealistic. Held : Costs from the date of the amended claim recoverable by the other party. Outer House Court of Session.</p>	2007/12/19	Glennie Lord
<b>Failure to mediate</b>	<p><b>Egan v Motor Services (Bath) Ltd [2007] EWCA Civ 1002:</b> Bailli</p> <p>Failure by both parties to mediate deprecated. £1000 K plus legal expenses to recover £6K. Purpose of issuing draft judgments is to allow parties to proof read &amp; broker costs arrangements : The practice of asking the judge to revise a decision is to be discouraged except in the most exceptional of circumstances. CA on appeal from Bristol County Court (HHJ Rutherford DL).</p>	2007/10/18	Ward LJ; Arden LJ; Smith LJ.
<b>Costs of mediation : recovery</b>	<p><b>Vellacott v The Convergence Group Plc [2007] EWHC 1774 (Ch) :</b> Bailli</p> <p>Costs to include the wasted costs of a mediation. What was on offer at that time was far in excess of what the party had been entitled to recover. S51 SCA 1981 provides that the court has the power to award "the costs of and incidental to the proceedings." The sense of the words "and incidental to" is to extend rather than restrict what the receiving party is entitled to recover. Para 17.3 Chancery Guide, 2005, recognises that the court may make costs orders in respect of any recourse the parties may have to an ADR.</p>	2007/07/31	Rimer Mr Justice
<b>Costs of mediation : recovery</b>	<p><b>Simpson v Bowker [2007] EWCA Civ 772 :</b> Bailli</p> <p>Company in liquidation : CVA entered into - terms including legal costs of litigation of a claim against a debtor company to be reimbursed. Simpson a director funded litigation but settled through mediation. He received his legal costs but failed to recover the settlement / mediation costs : Held : recovery governed by the terms of the CVA. Settlement costs not covered, so not recoverable.</p>	2007/07/26	Mummery LJ; Laws LJ; Moses LJ
<b>ADR – a prerequisite to arbitration</b>	<p><b>Holloway v Chancery Mead Ltd [2007] EWHC 2495 (TCC) :</b> Bailli</p> <p>A building contract provided a range of options for dispute resolution ranging from an ADR settlement process through to arbitration. The home owner submitted the dispute to arbitration – the builder sought to stay the arbitration pending the outcome of an ADR settlement process. Held : The ADR was an option – not a prerequisite and in the circumstances there was an immediate right to pursue arbitration.</p>	2007/07/30	Ramsey Mr Justice

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<b>Contribution to mediated settlement</b>	<b>Phelps v Stewarts (a firm) [2007] EWHC 1561 (Ch)</b> ; Bailli Contribution under Civil Liability Contribution Act to a mediated settlement : Failed application.	2007/07/02	Livesey QC Bernard
<b>Failure to mediate : Costs</b>	<b>Allen v Colman Coyle Llp [2007] EWHC 90075 (Costs) (29 June 2007):</b> Bailli Costs of the costs dispute. Impact of potential costs claim on feasibility of mediation. A failure to engage in mediation or to attempt a settlement can amount to a special circumstance within the meaning of s70(10) Solicitors Act 1974. Costs Judge.	2007/06/29	Simons Master
<b>Failure to mediate : Costs</b>	<b>Zambia v Meer Care &amp; Desai (No2) [2007] EWHC 1540 (Ch):</b> Bailli Failure to mediate : 5% cost penalty.	2007/06/29	Smith Mr Justice Peter
<b>Without Prejudice</b>	<b>Framlington Group Ltd v Barnetson [2007] EWCA Civ 502 :</b> Bailli How proximate must unsuccessful negotiations in a dispute leading to litigation be to the start of litigation, to attract the without prejudice rule. The critical feature of proximity for this purpose is one of the subject matter of the dispute rather than how long before the threat, or start, of litigation it was aired in negotiations i.e. whether the parties contemplated or might reasonably have contemplated litigation if they could not agree..	2007/05/24	Auld LJ; Longmore LJ; Toulson LJ
<b>Without Prejudice : privilege : waiver</b>	<b>Brunel University v Webster [2007] EWCA Civ 482:</b> Bailli Material involved in settlement process introduced by and referred to by both parties before the EAT. Held : Effective bilateral waiver.	2007/05/22	Longmore LJ; Smith LJ; Sir Paul Kennedy.
<b>Privilege : Waiver : Costs</b>	<b>Malmesbury v Strutt &amp; Parker (a partnership) [2007] EWHC 999 (QB) :</b> Bailli Waiver of mediation privilege : costs of unreasonable behaviour of party submitting dispute to mediation of maintaining an unreasonable demand which led to failure of negotiations where sum offered by respondent ultimately not beaten in court.	2007/05/11	Jack Mr Justice
<b>Fraudulently procured mediation settlement</b>	<b>Crystal Decisions (UK) Ltd v Vedatech Corporation [2007] EWHC 1062 (Ch):</b> Lexis Butterworths Crystal negotiated a mediated settlement to a dispute. The defendant sought to set the settlement on the grounds of fraud - having learnt about bank statements which it claims if it had known about them it would not have settled. An anti-suit injunction was granted previously to prevent action being pursued in California. Here the court held no fraud - at best innocent misrepresentation. No grounds to set aside settlement which was enforceable. Anti-suit injunction remained in place. Chancery Division.	2007/05/09	Patten Mr Justice
<b>Costs : Failure to mediate</b>	<b>Equitas Ltd v Horace Holman &amp; Company Ltd. [2007] EWHC 903 (Comm) :</b> Bailli Protracted action by assignee of Lloyd's Syndicate arising out of a settlement agreement against a Broker for inaccurate record keeping. Ultimately it was established that a small sum due to Equitas due to faulty records. Bulk of claim had fallen away once certain records disclosed. Court considered that this could and should have been dealt with by mediation where the problem of records could have been solved. Mediation mooted by Equitas but not actively pursued and not taken into account in costs order.	2007/04/27	Smith Mr Justice Andrew

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<b>Costs : Interim judgement pending mediation</b>	<b>Charles Church Developments Ltd v Stent Foundations Ltd [2007] EWHC 855 (TCC) : Baillii</b> Mediation to be pursued late and out of sync with the pre-action protocol. Judgement here would clear the way and simplify matters for the mediation. <i>Daejan Investments v Park West Club Ltd</i> [2004] BLR 223, approach in which HHJ Wilcox came to the conclusion that it was appropriate to make it a condition of permission to amend in a case where the pre-action protocol had not been complied with, that the amending party should pay the other parties' costs up to that stage applied.	2007/03/23	Ramsey Mr Justice
<b>Without Prejudice : Mediation proceedings</b>	<b>Brown v Rice [2007] All ER (D) 252 (Mar)</b> Lexis Nexis Were mediations proceedings admissible to determine whether or not a settlement offer had been made and accepted? Held : Yes - an established exception to the privilege rules. In the event, no valid offer had been made. The claim remained alive and was set down for trial accordingly.	2007/03/14	Isaacs QC Stuart
<b>Settlement versus mediation offer : Costs.</b>	<b>Palfrey v Wilson [2007] EWCA Civ 94</b> Costs. Dispute about ownership of a wall. Defendant offered for wall to be designated a party wall. Rejected - counter offer of mediation not taken up. Claim ultimately failed and costs ordered on an indemnity basis upon rejection of the initial offer. Failed appeals both on ownership and on costs. Having made constructive offers there was no requirement to enter into mediation.	2007/02/15	Tuckey LJ; Arden LJ; Lawrence Collins LJ.
<b>Mediation rejected : Costs</b>	<b>Finster v Arriva [2007] Lawtel AC0112766</b> Quantum settlement : Costs. Personal injury claim established : Claimant rejected offer of mediation. Initially a payment in of £10K was rejected, but then accepted post trial of entitlement pending quantum hearing together with standard costs. Initial claim was for £1M+ for lost job opportunity. Job offer was verbal and no corroborating evidence provided to court. Claim exaggerated. 3 day trial excessive. Standard costs for 1 days trial only granted.	2007/02/07	Williams – Deputy Master
<b>Enforcement : Settlement agreement</b>	<b>Stocking v Montila [2007] EWHC 56 (Ch)</b> Rejected settlement offer : Costs. Partnership dispute. Settlement offer made without any terms of reference. At trial expert reports produced regarding respective shares in business and rent due for occupation of partnership property. Court held : the reports were needed not just for the trial but for dissolution of partnership. Rejection of a bare offer without explanation of how calculated was justifiable. No costs order made.	2007/01/26	Rimer J
<b>Enforcement : Settlement agreement</b>	<b>Trustees of Morden College v Mayrick [2007] EWCA Civ 4</b> Assertion of mistake as basis to set aside a settlement agreement. Held : Where facts known settlement agreement cannot be reopened on grounds of mistake - otherwise all compromise agreements including mediated settlements would be liable to further litigation.	2007/01/12	Chadwick, Hallett LJJ Lindsay J.
<b>Court advised mediation</b>	<b>Ali v Abdur [2006] EWHC 3420 (Ch)</b> Parties ordered to provide reports within 14 days stating what arrangements had been made for an urgent mediation of the dispute and, if no arrangements had been made, an explanation why. Chancery Division.	2006/12/21	Knowles QC Robin

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<b>Privilege : Joint experts statement</b>	<b>Aird v Prime Meridian Ltd [2006] EWCA Civ 1866</b> Successful appeal : the joint statement was a court document under Rule 35(12) CPR issued in the normal way, whatever the intention of the issuing judge. Parties had agreed to issue a joint statement before cross examination. They had undertaken the risk that they might resile from that view later and could not subsequently complain. Document admissible and not subject to mediation privilege.	2006/12/21	May LJ; Smith LJ; Sir Martin Nourse.
<b>Costs – agreed costs – Tomlin Orders</b>	<b>National Westminster Bank Plc v Feeney [2006] ADR.L.R. 11/30</b> Where the parties agree to bear their own costs of a mediation a Tomlin Order should with respect to costs respect that agreement, which would override that aspects of a Tomlin Order that failed to do so. Supreme Court Costs Office.	2006/11/30	Campbell Master
<b>Public Law – Appeal – point of law - mediation</b>	<b>Raglan Housing Association v Southampton City Council [2006] EWCA Civ 1567 : Bailii</b> Public Law : Mediation : Application to appeal a point of law - granted subject to an undertaking to mediate.	2006/11/21	Morritt Sir Andrew
<b>Duty to advise on ADR</b>	<b>Liaquat Ali v Robert Lane [2006] EWCA Civ 1532</b> Professional advisors should regard themselves as under a duty to ensure that their clients are aware of the potentially catastrophic consequences of litigation of this kind (petty boundary disputes) and of the possibilities of alternative dispute procedures - but provides no indication of the potential consequences of not fulfilling that duty.	2006/11/21	Waller LJ; Carnwath LJ; Maurice Kay LJ.
<b>Costs – failure to mediate : payment in : disclosure</b>	<b>P4 Ltd. v Unite Integrated Solutions Plc [2006] EWHC 2924 (TCC)</b> Costs - failure to mediate : Failure to beat payment in : failure by successful defendant to make disclosure during case management. Application of CPR Rule 36.20(2). TCC.	2006/11/17	Ramsey Mr Justice
<b>Privilege : Mediation</b>	<b>Balmoral Group Ltd. v Borealis (UK) Ltd [2006] EWHC 2531 (Comm)</b> Mediation : Privilege : Application for costs on indemnity for failure to take reasonable steps to settle.	2006/10/17	Clarke Mr Justice
<b>Privilege : Negotiation</b>	<b>Brunel University v Vaseghi [2006] UKEAT 0307_06_1610</b> Waiver by conduct in Appeal Proceedings. Failed appeal - no abuse of process. EAT.	2006/10/16	Ansel J
<b>Succession : Mediation settlement : 3<sup>rd</sup> party rights</b>	<b>Pentland-Clark v Wilson [2006] CSOH_151: bailii</b> Mediated settlement between beneficiaries and trustees. 20 years after event claimant sought to litigate claim : asserted mediation settlement dissipated funds frustrating her claim. Held : Claim dismissed. Outer House of Session.	2006/09/29	Clark Lady
<b>Privilege : Joint experts statement</b>	<b>Aird v Prime Meridian Ltd [2006] EWHC 2338 (TCC)</b> Joint statement by experts of agreed and disputed matters. Reduced to a court order for a statement and a mediation. Was the statement privileged? Held : Ordinarily NO - CPR statement not privileged. But here, done very quickly for mediation only. Privileged. Non-admissible. Claimant could broaden out the scope of claims. TCC.	2006/09/19	Coulson HHJ Peter

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<b>Public Law : Mediation : Limitation of time</b>	<b>Robinson v Hammersmith and Fulham [2006] EWCA Civ 1122</b> Mediation whilst useful should not detract from an authority's duty to house an under aged homeless person. Council initiated mediation re a child applicant for housing - whereby the child might come of age in the intervening period taking the applicant outside priority housing status. CA	2006/07/28	Waller LJ; Jonathan Parker LJ; Jacob LJ.
<b>Without prejudice exception</b>	<b>Bradford &amp; Bingley Plc v. Rashid [2006] UKHL 37</b> Case provides an in-depth analysis of the scope of the without prejudice privilege : the admission of fact exception : what amounts to an admission of fact : examination of what amounts to a negotiation to settle a dispute. Here an unequivocal admission of liability under a mortgage after time was exhausted under the limitation act defeated the time bar. House of Lords. 12 <sup>th</sup> July 2006	2006/07/12	Lords Hoffmann, Hope, Walker Brown Mance
<b>Stay of retrial listing pending ADR</b>	<b>Maggs (t/a BM Builders) v Marsh [2006] EWCA Civ 1058</b> Retrial : Listing : Successful appeal : Retrial ordered but not to be listed until parties had demonstrated that appropriate measures had been taken to resolve the dispute. CA.	2006/07/07	Smith LJ; Moses LJ; Hallett LJ.
<b>Failure to Mediate</b>	<b>Wright v HSBC Bank Plc No2 [2006] ADR.L.R. 06/23</b> Costs application. The applicant, who had pursued a hopeless claim, having concluded a settlement, had no grounds for a reduction of costs for a failure to mediate by the successful defendant. QBD.	2006/06/23	Jack Mr Justice
<b>Apology : Mediation</b>	<b>Merelie v Newcastle Primary Health Care Trust (No.3) [2006] EWHC 1433 (Admin)</b> Role of apology : whilst an apology can be a useful aspect of mediation it is not appropriate to demand an apology as a prerequisite to mediation. QBD. Admin div. Mr Justice Underhill. 20th June 2006.	2006/06/20	Underhill Mr Justice
<b>Payment In : Costs</b>	<b>Tonkin v UK Insurance (No 2) [2006] EWHC 1185 (TCC)</b> Whilst successful in the litigation, the claimants failed to beat a payment in. Costs - allegations of unreasonable behaviour rejected. Costs to follow the event.: TCC.	2006/05/18	Coulson HHJ Peter
<b>Settlement Agreement : Duress</b>	<b>Wright v HSBC Bank Plc No1 [2006] EWHC 930 (QB)</b> Settlement agreement of bank loans via sale of property : Unsuccessful attempt to rescind the settlement agreement on the grounds of misrepresentation, undue influence and duress together with claims for damages in respect of the original claims and in respect of what was said to her entitlement prior to the settlement. Held : Bank entitled to insist on settlement of debts - not economic duress.	2006/05/05	Jack Mr Justice
<b>Privilege : Mediation</b>	<b>Munt v Beasley [2006] EWCA Civ 370</b> Notes of mediation proceedings used as evidence to establish that a landlord had contrary to the express terms of a lease included the use of a loft as part of the tenancy. There is no discussion as to why the note was admissible – presumably accepted by both sides that admissibility related to establishment of a legal interest. CA.	2006/04/04	Mummery LJ; Scott Baker LJ; Sir Charles Mantell.

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<b>Settlement Agreement : Penalty Clause</b>	<b>CMC Group Plc v Zhang [2006] EWCA Civ 408</b> Settlement agreement : Penalty Clause - term to repay settlement sum and pay damages for any continued allegations against the claimant a penalty clause. CA.	2006/03/14	Mummery LJ, Dyson LJ, Mantell. Sir Charles
<b>Med/Arb</b>	<b>IDA Ltd v The University of Southampton [2006] EWCA Civ 145:</b> Bailii Patent Dispute. At the end of the judgment the court proposed that Med/Arb would be a suitable method of producing an early determination to such disputes. CA.	2006/03/02	Ward LJ; Jacob LJ; Wilson LJ.
<b>Capacity : Settlement agreement</b>	<b>Bailey v Matthew George Warren [2006] EWCA Civ 51:</b> Bailii Did a patient have the capacity to agree? In the circumstances the CA felt the agreement was not tainted by duress or wrong doing - and thus not set aside. However, court indicated that the legal representative might be liable for a negligently low settlement and hence an alternative remedy might be available by other means. CA.	2006/02/07	Ward LJ ; Arden LJ; Hallett LJ.
<b>Settlement agreement - insurance</b>	<b>Enterprise Oil Ltd v Strand Insurance Co Ltd [2006] EWHC 58 (Comm)</b> Enterprise settled a dispute and attempted unsuccessfully to recover under a policy. Held : Enterprise had to prove that they were legally liable and had failed to do so. R-emphasised the importance of involving underwriters in settlement agreements.	2006/01/26	Aikens Mr Justice
<b>Court advised mediation</b>	<b>Burne v A [2006] EWCA Civ 24:</b> Bailii Medical Negligence Claim. Successful appeal. Court recommended parties mediate whereby they are forced to take stock of their respective strengths and weaknesses - ie reality check (self evaluative) mediation. CA.	2006/01/25	Ward LJ; Sedley LJ; Wilson LJ.
<b>Refusal to mediate : Costs : Insurance : 2<sup>nd</sup> defendants</b>	<b>Hickman v Laphorn [2006] EWHC 12 (QB) :</b> Bailii 1st defendant was prepared to mediate : 2nd defendant refused. Court held 2 <sup>nd</sup> defendants stance optimistic but not unrealistic – so they were not liable for all the costs of claimant and 1st defendant. QBD. Standard rules – costs follow event applied.	2006/01/17	The Hon. Mr Justice Jack.
<b>Without prejudice : privilege : Costs</b>	<b>Jackson v Ministry of Defence [2006] EWCA Civ 46 :</b> Bailii Without prejudice privilege : Defendant only just beat a payment in and had costs reduced. The MOD sought to introduce evidence from a settlement conference to further reduce the claimant's costs award. Held : Settlement not subject to without prejudice to costs provision - so privileged and non-admissible. CA.	2006/01/12	Tuckey LJ; Keene LJ; Wilson LJ.
<b>Costs : Payment In : Indemnity costs</b>	<b>EQ Projects v Alavi [2006] EWHC 29 (TCC):</b> Bailii Construction dispute. Claimant, whilst successful did not beat payment in : Claim reduced by counterclaim : Indemnity costs awarded to defendant in respect of the trial. Conduct of trial severely criticised.	2006/01/06	Coulson HHJ Peter
<b>Settlement Advice : Duty of Care</b>	<b>Gosfield School Ltd v Birkett Long (a firm) [2005] ADR.L.R. 12/16</b> Settlement between school and parents for breach of contract to provide satisfactory standard of education failed to preclude further third party claims by the pupils themselves for loss of earnings and employment prospects. Privity issues. No duty to advise where it is not apparent that the client is mistaken as to the scope of the settlement. Q.B.D..	2005/12/16	Tugendhat HHJ



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<b>Privacy from press coverage</b>	<b>Percy v. Church of Scotland Board of National Mission (Scotland) [2005] UKHL 73:</b> Bailii House of Lords held that the applicant, a Church Minister had a contract of employment and was entitled to pursue a claim for Sexual Discrimination before an Employment Tribunal. In the interests of privacy Baroness Hale commended mediation in lieu of further litigation.	2005/12/15	Nichols, Hoffman, Hope, Scott, Baroness Hale
<b>Failed / abandoned mediation : Legal Costs</b>	<b>Nicholas Drukker &amp; Co v Pridie Brewster &amp; Co [2005] EWHC 2788 (QB):</b> LAWTEL Drukker sought via a detailed costs assessment to recover liquidation management fees, which was countered by allegations of professional negligence. Assessment stayed to mediation. Stay eventually lifted after mediation abandoned. Attempt to rely on allegations of negligence to challenge costs crossed out for abuse of process. QBD Costs Appeal. 12th December 2005.	2005/12/12	Openshaw J, Master Campbell, John Bucklow
<b>Payment In : Mandatory costs order</b>	<b>Walker Residential Ltd v Davis [2005] Lawtel AC9100839</b> A claimant is entitled to a costs order up to the date of acceptance of a Part 36 Payment In - the court cannot limit costs to the date of the original offer. . Chancery Division.	2005/12/09	Park J
<b>Settlement Offer : No payment in. Costs</b>	<b>Codent Ltd v Lyson Ltd (2005) Lawtel AC9400558</b> The claimant failed to beat a payment offer - not followed up with a payment in and made less than 21 days before trial. At 1st instance the court made no allowance for the payment in : the CA held costs should be split 70:30. CA .	2005/12/08	May LJ, Arden LJ, Gibson. Sir Peter
<b>Premature proceedings : Failure to negotiate : Costs</b>	<b>Sarah Binch v David Freeman (2005) Lawtel AC0110543</b> Costs : Proceedings commenced prematurely : No effort made to negotiated : However, this had not prevented the defendants pursuing negotiations even at that stage but they did nothing. Eventually the defendant made a payment in that was accepted. Court found defendant liable for costs to that date.	2005/12/06	Jack HHJ
<b>Insurance : Third party immunity.</b>	<b>Richards v Davis [2005] EWHC 90014 (Costs):</b> Bailii Legal Costs underwriters, not parties to a settlement agreement between the parties to a road accident, are not bound by the terms of the settlement. Accordingly, it is not an abuse of process for them to assert that the terms of a CFA had not been complied with. Master Hurst, Senior Costs Judge.	2005/11/25	Hurst, Master
<b>Amendment of pleadings in support of mediation</b>	<b>APC Ltd v. Amey Construction Ltd [2005] ScotCS CSOH_147:</b> Bailii Defendant requested claimant be ordered to amend pleadings to facilitate mediation. Request declined. Would not assist mediation and whether or not the underlying alleged facts were established was an issue that would be settled by proof.	2005/11/11	MacKay Lord Outer House Court of Session
<b>Refusal to mediate : settlement offer</b>	<b>Locksley Brown v MCASSO Music Productions [2005] EWCA Civ 1546 :</b> Bailii In the circumstances there were no winners. The claimant got less than he sought. The defendant incurred great costs. The appropriate order was no costs : Order for claimant to pay costs quashed. Judge placed too much reliance on the settlement offer. CA .	2005/11/10	Scott Baker LJ; Neuberger LJ



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<b>Family Mediation</b>	<b>Pengelly v Enright-Redding [2005] EWCA Civ 1639</b> : Bailii Family Mediation sessions reinstated with approval of the court for the purpose of restoring / improving communications between separated parents to enable them to cooperate together over access etc for the benefit of the child. CA on appeal from Exeter County Court (HHJ Mackintosh. Equal access granted.	2005/11/09	Thorpe LJ; Scott Baker LJ; Wall LJ.
<b>Payment In : Late Acceptance</b>	<b>Decoma UK Ltd v Haden Drysys International Ltd. [2005] EWHC 2429 (TCC)</b> : Bailii Payment In : <i>Can a claimant be said to be a successful party when he seeks to accept a payment into court after the expiry of the 21 days, which payment has been made in respect of some (but not all) of his claims, many of which have been subsequently dismissed by the court?</i>	2005/11/04	Coulson J Peter
<b>Privilege : Without prejudice negotiations</b>	<b>Hall v Pertemps Group Ltd [2005] EWHC 3110 (Ch) LAWTEL AC9900805</b> Privilege : Allegations of threats occurring during a mediation featured in another action. Did this amount to a waiver of the mediation? Held : No - only a waiver of the discrete issue as to whether or not threats were made in the mediation or occurred subsequently - to a third party and not relevant to the action. Chancery Division.	2005/11/01	Lewison J
<b>Privilege : Without prejudice negotiations</b>	<b>In the matter of a company (2005) Lawtel No. AC9100809</b> : Where the parties refer to the conduct of a mediation in satellite litigation they are deemed to have waived privilege.	2005/11/01	Lewison J
<b>Insurance : negotiated settlement.</b>	<b>Shinedean Ltd. v Alldown Demolition (London) Ltd [2005] EWHC 2319 (TCC)</b> : Bailii Negotiated Settlement : defendant in liquidation. Third party liability of insurance company. Alleged breach of claim's procedure. His Honour Judge Richard Havery Q.C. 28th October 2005	2005/10/28	Havery HHJ Richard TCC
<b>Failure to mediate - costs</b>	<b>Daniels v The Commissioner of Police for the Metropolis [2005] EWCA Civ 1312</b> : Bailii There will be no cost penalty where the refusal to mediate is reasonable. The defendants, who successfully defended a claim for a work based injury, refused to negotiate to stem the flow of similar claims. The court held that this was a legitimate reason to refuse to compromise a highly defensible claim.	2005/10/20	Ward LJ; Dyson LJ
<b>Libel – CFA’s - insurance - negotiability</b>	<b>Campbell v. MGN Ltd [2005] UKHL 61</b> : Bailii 100% costs agreements in CFA - legality of. Lord Hoffman contrasts the potential for negotiated settlement under the current regime between negligence claims and libel actions - in the light of legal insurance. Lords Nicholls of Birkenhead, Hoffmann, Hope of Craighead, Carswell, Baroness Hale of Richmond. HL.	2005/10/20	Hoffman Lord
<b>Insurance : Settlement Agreement</b>	<b>Lumbermens Mutual Casualty Company v Bovis Lend Lease Ltd [2004] EWHC 2197 (Comm)</b> : Bailii In order to establish a right to recover liabilities incurred under a settlement agreement, assured must establish a loss covered by the policy. Commercial Court.	2005/10/05	Colman HHJ
<b>Court ordered mediation</b>	<b>Nokia Corporation v Interdigital Technology Corporation [2005] EWHC 2134. Lawtel AC9900784</b> Court ordered mediation not available in the UK. Halsey applied. Chancery Division, Patents Court.	2005/08/25	Pumfrey J

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<b>Negotiation : Sist / resist - striking out : absolutur.</b>	<b>Tonner v Reiach &amp; Hall [2005] ScotCS CSOH_103</b> :Bailii Delay of prosecution : Extended period of time for negotiation (1988-2005)of an action sisted for negotiation: Sist recalled - case put out to trial. Outer House Court of Session.	2005/08/05	Smith Lady
<b>Privilege : Without prejudice negotiations</b>	<b>Bradford &amp; Bingley Plc v Mohammed Rashid [2005] EWCA 2005</b> : Bailii Defaulting Mortgagor : Mortgagees sold property : Outstanding balance statute barred : Mortgagees sought to rely on correspondence allegedly acknowledging the debt. Held : Privileged : Distinguish with other rights exceptions to privilege rule. Court of Appeal..	2005/07/22	Buxton LJ, Latham LJ, Nourse Sir Martin
<b>Privilege : Without prejudice.</b>	<b>Wilkinson v West Coast Capital [2005] EWHC 1606 (Ch)</b> Bailii Without prejudice negotiations - admissibility. In order to adduce evidence previously disclosed in without prejudice negotiations independent evidence not arising out of the negotiations required. Chancery Division.	2005/07/22	Mann Mr Justice
<b>Agreement to agree.</b>	<b>Petromec Inc v Petroleo Brasileiro SA Petrobras [2005] EWCA Civ 891</b> : Bailii Good Faith agreement. Distinguishing <b>Walford v Miles</b> , CA expressed the obiter view that the court may be able to render some legal assistance to the parties to such an agreement, where incorporated as an express term of the contract. Bad faith equated with fraud. Damages quantifiable on basis of reasonable costs. Scope of application however very narrow.	2005/07/15	Pill LJ, Mance LJ, Longmore LJ
<b>Costs :Delay in mediation :</b>	<b>Wethered Estate Ltd v M&amp;A Davis : Foundations for Living [2005] EWHC 1903 (Ch)</b> :Lawtel Whether earlier refusal pending clarification of the case of each party reasonable : Whether claimant beat a settlement offer - impact of non-pecuniary orders.	2005/07/15	Freedman QC Deputy Judge Clive.
<b>Settlement offer : Costs</b>	<b>Trustees of Stokes Pension Fund v Western Power Distribution plc [2005] EWCA Civ 854 : Lawtel AC0109158</b> Settlement offer rejected : Lower payment in made : Award delivered in between the offer and payment in. Court treated offer as equivalent to a payment in for cost purposes.	2005/07/11	Auld LJ; Dyson LJ.
<b>Interpretation – mediated settlement agreement.</b>	<b>British Telecommunications Plc v D.C.Martin &amp; J.A.Stokes [2005] EWHC 1334 (QB)</b> : Lawtel Claim based on BT's interpretation failed - settlement enforced on defendant's interpretation. Accounting applied to the month - a subsequent bill not counted. Account based on the number of clients - not the number of telephone lines.	2005/07/05	McKinnon J QBD
<b>Failure to mediate : Costs</b>	<b>Willis Management (Isle Of Man) Ltd v Cable and Wireless Plc [2005] EWCA Civ 806</b> : Bailii No binding agreement concluded between parties. An agreement to subsequently agree an essential term cannot create a binding contract. It is not for the courts to determine the terms in the absence of agreement between negotiators. Appeal from C&W v Valentine allowed. .	2005/06/30	Rix LJ Tuckey LJ, Wilson. J
<b>Failure to mediate : Costs</b>	<b>Wills (Alexandra) v Mills Solicitors [2005] EWCA Civ 591</b> : NADR Defendant did not engage in negotiations or mediation because claimant failed to provide basis of claim. Held : <b>Halsey</b> cost discount not-applicable.	2005/06/30	Behrens LJ Mance LJ

## NADR MEDIATION CASE DATA BASE

<b>Failure to mediate : Appeal Costs – Care Homes Regulations (CHR) 2001.</b>	<b>Gibson v Commission for Social Care Inspection [2004] EWCST 266(EA_Costs) :</b> Bailii Regulation 24 - Care Homes Regulations 2001 - at the discretion of the tribunal appellant can be ordered to pay costs of appeal where conduct of appeal is unreasonable. Held : No duty to mediate. Plus Mrs L.Elliot, Mr J.Cohen.	2005/06/21	Hunter Mr S. (Chairman),
<b>Court advised mediation and or case management facilitated settlement</b>	<b>Nakhjavani v Theophilou Pelagias [2005] EWCA Civ 908:</b> Bailii CA advised (ADR) mediation before remitting the case to court for further consideration. Failing that the judge at case management should facilitate settlement negotiations.	2005/06/17	Arden LJ, Keene LJ, Mr Justice Wilson
<b>Mediation v litigation</b>	<b>Vahidi v Fairstead House School Trust Ltd [2005] EWCA Civ 765 :</b> Bailii Mediation versus litigation. Claim and appeal for damages for stress at work failed. Court observed that this area is so well worked out legally that there is no reason for expensive litigation and that such disputes should be mediated 9th June 2005.	2005/06/09	Longmore LJ, Scott Baker LJ; Ward LJ.
<b>Stay pending mediation.</b>	<b>OEM Plc v Schneider [2005] EWHC 1072 (Ch) :</b> Bailii Stay of action pending mediation, recommendation to third party defendants accepted. Other parties indicated they would also engage in mediation.	2005/05/26	Smith. Honourable Mr Justice Peter.
<b>Privilege – mediation proceedings</b>	<b>Venture Investment Placement Ltd v Hall (2005) ChD.</b> Lawtel Successful application for injunction to prevent a party to a failed mediation disclosing privileged information about the conduct of the mediation and assertions of things said during the process	2005/05/16	Reid QC. HHJ
<b>Litigation versus mediation</b>	<b>Fusion Interactive Communication Solutions Ltd v Venture Investment Placement Ltd [2005] EWHC 736 (Ch) :</b> Bailii Inter-director dispute - application for winding up dismissed. Court twice advised mediation - appeared to fail : Refused application and again advised mediation.	2005/05/10	Smith Peter HHJ
<b>Anti-suit injunction pending mediation – against pursuing overseas trial</b>	<b>C v RHL [2005] EWHC 873:</b> Bailii Alleged sham sale of shares - ICC arbitration and satellite litigation in Moscow pending - application for an anti-suit injunction - ADR order issued by Colman J restraining further litigation prejudicial to either party pending the outcome of mediation.	2005/04/28	Colman. HHJ
<b>Settlement offer : Costs</b>	<b>Rio Properties v Gibson Dunn &amp; Crutcher [2005] EWCA Civ 534</b> An offer to pay costs related to third party claims was held to be too vague to be evaluated and determined. Therefore it would not be taken into account as a payment in for cost purposes.	2005/04/22	Parker LJ, Jonathon : Arden LJ
<b>Failure to mediate : Costs</b>	<b>Askey v Wood [2005] EWCA Civ 574:</b> Bailii Failure to mediate : Costs : Per Chadwick LJ "An ADR which sought to agree whether liability should be 50/50, 75/25 or 74/26, as suggested in a Part 36 letter -- is likely to be a sterile exercise if the parties do not know, at least in broad terms, what quantum figure is to be apportioned in accordance with what they agree." Therefore no cost implications for a failure to mediate as recommended when application to appeal granted. Appeal failed.	2005/04/21	Chadwick LJ

## NADR MEDIATION CASE DATA BASE

<b>Point of Law disputed</b>	<b>Davies v Stockwell Building Contractors [2005] EWCA Civ 444</b> : Bailii Mediation versus appeal on point of law. Should an appellant seek a pragmatic settlement balancing financial versus litigation risk or litigate to establish a point of law? CA.	2005/04/15	Waller LJ; Wall Mr Justice
<b>Refusal to mediate and costs</b>	<b>R (A&amp;B) v East Sussex County Council [2005] EWHC 585 (Admin)</b> Bailii The Court was entitled to ignore the applicants' refusals to mediate when considering costs. It was not unreasonable for the applicants to take the view that the terms of reference proposed by the local authority were inappropriate and that mediation was likely to be futile.	2005/04/11	Mumby HHJ
<b>Failure to mediate : Costs and ADR</b>	<b>Burchell v Bullard [2005] EWCA Civ 358</b> : Bailii Construction litigation : offer of mediation declined : Claim and counterclaim partly successful : Disproportionate costs : Costs in light of <i>Halsey</i> .	2005/04/08	Rix LJ. Ward LJ;
<b>Failed Mediation : Costs</b>	<b>Devon County Council v Clarke [2005] EWCA Civ 266</b> : Bailii Failed Mediation : Damages claim for school's failure to identify dyslexia in a pupil and provide appropriate education partially succeeded. Appeal failed except as to costs. Claimant's costs reduced to 70%. Court noted there were no winners in a £150K litigation	2005/03/17	Dyson LJ.. Mummery LJ; Keene LJ;
<b>Agreement to agree – entitlement admitted : quantum to be determined</b>	<b>Cable &amp; Wireless v CR Valentine [2005] EWHC 409</b> - Lawtel A letter agreeing to accept responsibility was not negated by an email limiting acceptance to losses attributable to the acceptor. That sum could be subsequently determined by mediation or negotiation or failing agreement by arbitration/litigation.	2005/03/16	Cooke Mr Justice
<b>Settlement offer : Costs</b>	<b>Hertsmere Primary Care Trust v Estate of B &amp; K Rabindra-Anandh [2005] EWHC 320 (Ch)</b> Lawtel AC0108513 The mere fact that an offer did not include an expiry date will not necessarily prevent it being treated as a payment in for costs purposes.	2005/03/07	Lightman J.
<b>Mediation/Arbitration</b>	<b>Byrne v. Byrne [2005] IEHC 55</b> : Bailii Med/Arb : Interpretation and enforceability. Case stated from arbitrator.	2005/03/03	Macken,J Irish High Court
<b>Court Advised mediation.</b>	<b>Williams v Lindley [2005] EWCA Civ 103.</b> : Bailii Court advised Mediation : Following a successful appeal, a retrial ordered. Court urged mediation as an alternative.	2005/02/10	Buxton LJ; Smith LJ; Thorpe LJ.
<b>Mediation costs - legal insurance - recoverability</b>	<b>Wooldridge v Hayes [2005] EWHC 90007 (Costs)</b> : Bailii Mediation Costs : Recoverability and litigation insurance premium assessment. Costs Judge Supreme Court. 10th February 2005	2005/02/10	Master O'Hare,
<b>Costs : Payment in – Part 36</b>	<b>Painting v University of Oxford [2005] EWCA Civ 161</b> : Bailii Absence of counter proposal or willingness to negotiate resulted in costs penalty. CA. 3rd February 2005.	2005/02/03	Longmore LJ; Kay LJ Maurince

## NADR MEDIATION CASE DATA BASE

<b>Failure to mediate : costs</b>	<b>Longstaff International Ltd v Evans [2005] EWHC 4 (Ch)</b> Unreasonable conditions imposed for the conduct of a mediation attracted adverse cost consequences. 50/50. Fault on both sides.	2005/01/21	Warren QC Nicholas
<b>Agreement to agree or binding compromise.</b>	<b>Agricultural Profiles Ltd v Performance &amp; Deck Roofing Ltd [2005] EWHC 65</b> : Bailii Binding compromise and agreement to agree : Existence of a continuing dispute : jurisdiction of court.	2005/01/17	Coulson. HHJ Peter
<b>Entitlement and quantum</b>	<b>Thor Navigation Inc. v Ingosstrakh Insurance Co Ltd. [2005] EWHC 19</b> : Bailii Parties litigated matters of entitlement leaving matters concerning quantum to negotiated settlement / mediation.	2005/01/14	Gloster DBE. Mrs Justice
<b>Court mandated mediation</b>	<b>Secretary of State for Defence v Farrow System Ltd [ 2005] BL O/008/05</b> Patent Office Application for revocation of a patent. Request for a mediation order denied. <b>Halsey</b> makes it clear that extra-ordinary circumstances are required to make such an order and this was not such a case.	2005/01/05	Back Mr P.M. Divisional Director for Comptroller
<b>Part settlement : part trial</b>	<b>Riverside Property Investments Ltd. v Blackhawk Automotive [2004] EWHC 3052</b> : Bailii This case is highlighted merely as an example of the value of mediation, even if the dispute was not entirely settled. Here mediation successfully resolved most of the issues, leaving a mere two issues for the court to deal with	2004/12/08	Coulson. HHJ Peter
<b>Family mediation : Cultural benefits</b>	<b>S (a child), Re [2004] EWCA Civ 1790</b> : Bailii Cultural Impact : Family mediation : CAF/CASS officer and mediator drawn from the Muslim community recommended to try and build bridges between a husband and wife to facilitate access to offspring.	2004/12/01	Arden LJ; Neuberger LJ; Thorpe LJ.
<b>Failure to negotiate : Costs.</b>	<b>Michael Humphreyes v Nedcon UK Ltd [2004] EWHC 2558 (QB) Lawtel AC0102793</b> Co-defendants : One prepared to settle - other not - Part 36 offer to settle by claimant rejected but subsequently beaten. Liability apportioned 66.6/33.3. 2 <sup>nd</sup> defendant went into liquidation. 1 <sup>st</sup> defendant liable for entire sum. Enhanced interest on costs and costs on an indemnity basis.	2004/11/10	Evans HHJ Roderick
<b>Privilege - Without prejudice</b>	<b>Schering Corp v CIPLA Ltd [2004] EWHC 2587 (Ch)</b> Lawtel The label "without prejudice" without more was insufficient to ensure protection. In the circumstances there was a clear intention to negotiate that would be appreciated by the objective receiver, so document protected.	2004/11/10	Laddie. Mr Justice
<b>Failure to mediate : Costs</b>	<b>Chaudry v Yap : Re Midland Linen Services Ltd (2004)</b> : Lawtel AC9100146 Impact of costs on Payment In versus refusal to mediate - where party proposing mediation's attitude to mediation was inconsistent. Claimant accepted an uplifted payment in. Defendant sought a reduction in costs for alleged failure to mediate. Held : there had been no serious engagement in mediation by the defendant. The claimant was the clear winner and thus entitled to recover litigation costs	2004/10/28	Kosmin QC Deputy Judge Mr Leslie

## NADR MEDIATION CASE DATA BASE

<b>Settlement offer : Costs</b>	<b>Peter Crouch v King's Healthcare NHS Trust [2004] EWCA Civ 1332 : Lawtel AC0107044</b> Provided an offer to settle was in clear terms equivalent to a payment in it would be treated as such for the purpose of assessment of costs.	2004/10/15	Waller LJ, Mance LJ, Staughton. Sir C.
<b>Failed Mediation : Costs</b>	<b>Holland v PKF [2004] HC02CO3821</b> : HM Court Service Costs : Failed mediation.	2004/10/11	Wright. Costs Judge, Master
<b>Litigation versus mediation</b>	<b>Perlman (George) v Rayden [2004] EWHC 2192 (Ch)</b> : Bailii Neighbour dispute - access: Following two failed mediations, the court acknowledged that the time for negotiation had passed and the only way to end the dispute was through litigation.	2004/10/07	Patten J : The Honourable Mr.
<b>Family mediation – role of specialist</b>	<b>Al-Khatib v Masri [2004] EWCA 1353</b> : Bailii Family mediation - case demonstrates the importance of specialist mediators - where commercial mediators failed, experienced family mediators guided parties to a settlement	2004/10/05	Thorpe LJ; Wall. Mr Justice
<b>Insurance : Settlement agreement</b>	<b>Lumbermens Mutual Casualty Company v Bovis Lend: Lease Ltd [2004] EWHC 2197 (Comm)</b> Bailii In order to establish a right to recover liabilities incurred under a settlement agreement, assured must establish a loss covered by the policy. Commercial Court.	2004/10/05	Colman HHJ
<b>Court advised ADR : conciliation or mediation</b>	<b>Commissioner of Police of The Metropolis v. Nagy [2004] UKEAT 0399_04_2209</b> : Bailii EAT sex discrimination action : Tribunal advised preferably ACAS conciliation or mediation. Sums involved small, event occurred a long time ago and had serious implications for the Legal Aid Board.	2004/09/22	McMullen HHJ
<b>Set off mediation payout against litigation win.</b>	<b>Marie Suzy -Cafane v London Borough of Lambeth [2004] CL107096</b> : HM Court Service Recovery of costs : applicant sought to recover costs of a failed attempt to claim damages for alleged breach of right to buy : the claimant had recovered sums in a mediation for failure to repair and applicant sought to tap into this sum of money	2004/09/09	Saker. Master Gordon
<b>Mediator Misconduct : Bias : Privilege</b>	<b>B v O [2004] EWHC 2064 (Fam)</b> : Bailii Mediator acted in a clearly uneven handed manner. Party disclosed settlement proposal documents.	2004/08/26	Baron DBE. Honourable Mrs Justice
<b>Failure to mediate : Costs – CPR 44 deduction</b>	<b>Gil v Baygreen Properties Ltd.&amp; Ors [2004] EWHC 2029</b> : Bailii Application for costs : Mediation discussed and implication of <b>Halsey</b> . CPR 44 applied. Deviation from costs follow event - £20k deducted	2004/08/19	Davidson QC Deputy Judge Mr Nicholas
<b>Costs : Payment in and IP disputes.</b>	<b>Newmans (I N) Ltd v Richard T Adlem [2004] EWHC 1563 (Ch) Lawtel AC0106810</b> Cost penalty imposed for unreasonable rejection of payment in. IP dispute - both parties entitled to use a disputed name. Ch D (Patents Court).	2004/08/12	Young QC David

## NADR MEDIATION CASE DATA BASE

<b>Refusal to mediate a criteria for setting priority under court listing</b>	<b>Moore v Moore [2004] EWCA Civ 1243</b> : Bailii The court has no power to impose mediation on the parties but the trial judge might well consider whether pending applications should be given time in the court calendar, and particularly whether they should be given priority in the court calendar unless the parties have first availed themselves of the invitation to mediate	2004/07/29	Arden. Lady Justice Thorpe LJ; Waller LJ;
<b>Stay to ADR : prerequisite to litigation</b>	<b>Asghar v Legal Services Commission [2004] EWHC 1803</b> : Bailii Graduated Dispute Resolution Procedure from internal review, via mediation to arbitration in contract of employment. Court stayed action pending exhaustion of ADR procedures.	2004/07/24	Lightman J
<b>Failure to mediate : Costs</b>	<b>Reed Executive Plc v Reed Business Information Ltd [2004] EWCA CIV 887</b> : Lawtel Defendant twice rejected overtures to mediate. Following Halsey, the court declined order costs against defendant. Large distance between the parties positions; novel issues needed a judicial decision so prospects poor.	2004/07/14	JacobsLJ; Rix LJ;
<b>Failed Mediation Costs</b>	<b>Montlake, Yarrinton &amp; Wills v Lambert Smith Hampton Group Ltd (2004) [2004] EWHC 1503 (Comm)</b> Bailii Claim prevailed, exceeding a Part 36 offer, which followed a failed mediation : Held : Claimant had done all required in terms of settlement to be entitled to costs and interest.	2004/07/08	Langley. Mr Justice
<b>Confidentiality - breach</b>	<b>MacCaba v Lichtenstein [2004] ADR.L.R. 07/02</b> Mediator disclosed confidential information received during mediation to third parties. Whether public interest policy overrode duty of confidentiality. Scope of negotiation privilege examined. QBD.	2004/07/02	Gray HHJ
<b>Failure to mediate : Costs</b>	<b>Yorkshire Bank v RDM [2004] QBD</b> : CEDR Claimant successful on 1 of 4 points of claim. Court ordered costs on global basis as opposed to on a claim by claim basis. Defendant had refused to mediate. Court considered there was a reasonable chance of success and upped costs awarded from 50:50 to 65:35.	2004/06/30	Langan QC HHJ
<b>Stay pending mediation.</b>	<b>Al-Khatib v Masri [2004] EWCA 1045 5</b> : Bailii Family proceedings stayed for mediation.	2004/06/26	Thorpe LJ.
<b>Class Action Administrative Process</b>	<b>AB v British Coal Corporation [2004] EWHC 1372</b> : Bailii The fairness of a private administrative process in lieu of mediation/adjudication set up to determine compensation to ex-minors examined by the court. Found to produce results comparative to a court.	2004/06/18	Turner. Sir Michael
<b>Court advised mediation – costs warning</b>	<b>Lewis v Barnett (t/a Windmill Racing Stables) [2004] EWCA Civ 807</b> : Baili Application for disclosure granted. Court commended the mediation scheme and gave strong warnings on costs for a failure to avail themselves of the service.	2004/06/15	Sedley LJ; Neuberger LJ.
<b>Stay pending mediation and interim costs order</b>	<b>Tripp Ltd v Landor &amp; Hawa Int. Ltd [2004] Ch.D.</b> Lawtel Interim decision : Costs reserved pending the outcome of mediation when immediately prior to trial claimant eventually acceded to mediation – since there was still a possibility that the claimant was entitled to his asserted right to a transfer of title in to a trade name.	2004/06/15	Pumfrey. HHJ



## NADR MEDIATION CASE DATA BASE

<b>Resignation of mediator.</b>	<b>Gammon v Stoke Mandeville Hospital NHS Trust [2004] UKEAT 0563_03_1106</b> : Bailii Work place mediator resigned from his role asserting lack of expertise. This caused such distrust that the claimant resigned claiming unfair dismissal. Claim failed. Demonstrates the importance of appointing the right person first time around since resignation may be interpreted as meaning mediator has been "got to" by the other side	2004/06/11	Reid QC HHJ JR
<b>Payment in beaten : Interest rate</b>	<b>Alison Dugmore v Swansea NHS Trust [2004] Lawtel AC0106818</b> Interest : Claimant exceeded Part 36 Payment in : Court awarded enhanced interest at 10% above bank rate to send out a message that Payment In Offers should be taken seriously.	2004/06/06	Masterman HHJ
<b>Failure to mediate : Costs</b>	<b>Marchands Associates LLP v Thompson Partnership LLP [2004] EWCA Civ 878</b> : Bailii Successful appellants awarded costs up to the date they refused to take part in court advised mediation and because the central issue had been conceded by the respondents prior to the appeal	2004/05/28	Gibson LJ; Peter Waller LJ; May LJ.
<b>Fraud allegations not a basis to refuse to mediate</b>	<b>Couwenberg v Valkova [2004] EWCA Civ 676</b> : Bailii Clarifying the incorrect interpretations of Halsey by commentators, CA made it clear that even cases involving allegations of fraud are suitable for mediation.	2004/05/27	Hale LJ Ward LJ; Waller LJ;
<b>Discovery &amp; mediation</b>	<b>Arrow Trading &amp; Veladail Hotels V Edwardian Group Ltd [2004] EWHC 1319 (Ch)</b> : Lawtel Court can order ordinary disclosure of non-privileged documents to facilitate Part 36 CPR Offer or Mediation	2004/05/25	Blackburne Mr Justice
<b>Refusal to mediate.</b>	<b>David Prentice (t/a Duns Slaters) v. Portland Manufacturing [2004] ScotCS 117</b> : Bailii A failure or refusal to mediate can have no implication in respect of legal liability under the law – a fortiori there were complicated issues that required a trial. First Div. Inner House Court of Session	2004/05/21	Clarke L President; Penrose;
<b>Refusal to mediate, proportionality and costs</b>	<b>Prentice v Portland [2004] Scots SC 117 First Div. Inner House Court of Session.</b> Bailii Construction Dispute : Claimant confronted with a massive counterclaim declined to mediate. Claim succeeded, counterclaim failed. Held : Principle of proportionality applied to costs issue - no cost implications for refusal. Lord President etc;	2004/05/21	Clarke. L Penrose; L
<b>Failure to mediate : Costs</b>	<b>Allen v Jones [2004] EWHC 1189</b> Dispute about right of way. Held : An all or nothing dispute. Mediation not suitable. Costs followed the event.	2004/05/20	Livesey QC Bernard
<b>Family mediation : Costs of mediation.</b>	<b>H v H [2004] EWHC 1066 (Fam)</b> : Bailii Family mediation costs : Court told parents they needed mediation for the benefit of the child and held that this was a cost that could be funded out of the child's trust fund, as something for his benefit.	2004/05/14	Baron, The Honourable Mrs Justice.
<b>Stay to mediation refused</b>	<b>Slough Borough Council v Prashar &amp; Ors [2004] EWCA Civ 671</b> : Bailii During application for appeal mediation had been agreed but had not been possible within the time frame. One party requested an adjournment of the appeal hearing to carry out the mediation : Court declined, heard the case and dismissed the appeal.	2004/05/14	Gibson LJ; Peter; Rix LJ; Longmore LJ.

## NADR MEDIATION CASE DATA BASE

<b>Refusal to mediate and costs</b>	<b>McPherson v BNP Paribas [2004] EWCA Civ 569</b> : Bailii Claimant withdrew a wrongful dismissal claim because of a medical condition "exacerbated by stress induced by the other parties refusal to mediate." The EAT awarded costs of action against the claimant. He appealed. Held, the withdrawal was unreasonable and costs post withdrawal awarded, but no costs for the initial action which was a potentially viable suit.	2004/05/13	Bennett. Mr Justice Thorpe LJ; Mummery LJ;
<b>Agreement to agree</b>	<b>Altstom v Jarvis [2004] EWHC 1232</b> : Bailii <i>May v Butcher</i> and <i>Walford v Miles</i> revisited - enforceability of and nature of an agreement to agree.	2004/05/11	Reese H.H..D. J Colin
<b>Agreement to agree : Good faith negotiations</b>	<b>Bernhard Schulte GmbH v Nile Holdings Ltd [2004] EWHC 977 (Comm)</b> : Bailii <i>Walford v Miles</i> restated : there is no duty under English Law to negotiate in good faith to conclude a contract	2004/05/11	Cooke. HHJ
<b>Court advised mediation : costs</b>	<b>Halsey v Milton Keynes General NHS Trust : Steel v Joy &amp; Halliday [2004] EWCA (Civ) 576</b> : HM Court Service CA sets out role of court in advising mediation : and the grounds upon which costs may be ordered by a party who fails to mediate.	2004/05/11	Dyson LJ. Ward LJ; Laws LJ;
<b>Court mandated mediation refused.</b>	<b>Punjab National Bank v Parash [2004] EWCA 589</b> Bailii Court declined to order mediation because mediation can be expensive and one party was of limited financial means.	2004/04/30	Jacob LJ. Mance LJ;
<b>Insurance : Settlement : Third party liability</b>	<b>Assicurazioni Generali SPA v CGU International Insurance Plc [2004] EWCA Civ 429</b> : Bailii Insurance : Liability of underwriter under settlement agreement - "follow the settlements clause" : Held : Liability not automatic - underwriter entitled to challenge the scope of the "follow on" clause : But assured does not have to prove he would have been legally liable for the full amount agreed in the settlement.. CA.	2004/04/06	Gibson LJ Peter, Tuckey LJ, Nourse LJ.
<b>Shariah Family Court mediation</b>	<b>J (A Child), Re (Jomah v Attar) [2004] EWCA Civ 417</b> : Bailii Conciliation / mediation role of Shariah Court outlined.. 2nd April 2004.	2004/04/02	Gage, Mr Justice ; Thorpe LJ; Wall LJ
<b>Contact Mediation : Family</b>	<b>F v M [2004] EWHC 727 (Fam)</b> : Bailii Mr Justice Munby outlines the latest developments in the settlement of offspring contact issues between separated parents.	2004/04/01	Munby Mr Justice
<b>DEFRA mediation – application for stay</b>	<b>Mid-Devon District Council v First Secretary of State [2004] EWHC 814 (Admin)</b> Bailii Stay refused – mediation applied for late in the day : Court went ahead and heard the matter.	2004/03/23	Keith. Mr Justice
<b>Court advised mediation</b>	<b>Michael v Miller [2004] EWCA Civ 282 (22 March 2004)</b> : Bailii Mediation Advised : Valuation dispute regarding mortgagees disposal of property, and particularly the value of a lavender crop. One party ordered to pay costs of hearing, to be discounted from any damages subsequently recovered - but with strong advice to mediate- costs already being disproportionate.	2004/03/22	Auld LJ; Baker LJ Scott; Parker LJ Jonathon.

## NADR MEDIATION CASE DATA BASE

<b>Failure to mediate : Costs</b>	<b>McMillan Williams v Range [2004] EWCA (Civ) 294</b> : Lawtel CA held first that an advance on wages is not a credit agreement that has to be in statutory form. Therefore a junior solicitor who received advance wages in excess of earnings had to repay the excess to the law firm on her departure. Appeal allowed. At 1st instance mediation was advised. Both parties contributed equally to the failure so court ordered each party to bear their own costs	2004/03/17	Mantell LJ; Ward LJ; Parker LJ. Jonathan
<b>Court advised mediation in lieu of appeal</b>	<b>Reed Executive Plc v Reed Business Information Ltd [2004] EWCA Civ 159</b> : Bailii Application for Appeal approved - but court considered there was scope for the parties to enter negotiations / mediation at the same time.	2004/03/03	Auld LJ; Rix LJ; Jacobs LJ.
<b>Privilege and legal inquiries versus presentational advice</b>	<b>Three Rivers D.C. v Governor Bank of England [2004] EWCA Civ 218</b> : Bailii Legal Privilege : Advice by lawyers on presentation at a Legal Inquiry is not protected by legal privilege. Problem - how to separate legal advice from presentational advice?	2004/03/01	Longmore LJ Lord Phillips; Thomas LJ.
<b>Without prejudice : not admission of liability</b>	<b>Belt (Julie) v Basildon &amp; Thurrocks NHS Trust [2004] EWHC 783</b> : Lawtel Offers to settle by an insurance carrier, even if not stated to be without prejudice, do not amount to an admission of liability and are not admissible as evidence at trial.	2004/02/27	Cox Mrs Justice
<b>Without prejudice : Impact of Disclosure</b>	<b>Specialist Ceiling Contractors v. ZVI Construction [2004] EWHC 4T-0006 1 (TCC)</b> : Adj.Soc. Claimant disclosed existence of but not details of a rejected without prejudice offer : Held – knowledge alone of offers does not result in bias. . Leeds.	2004/02/27	Grenfell J
<b>Privilege : Admissibility : Confidentiality</b>	<b>Contac (800) Ltd &amp; Phonenames Ltd v Iris Online Ltd [2004] DRS 1404</b> : Bailii Nominet expert determination/arbitration : Correspondence related to a failed informal mediation submitted to the expert determinator/arbitrator must be ignored and is non-admissible.	2004/02/19	Elliot Mr Bob
<b>Enforcement of settlement non-compliance : costs</b>	<b>Meikle v Brown [2004] EWHC 987 (Ch)</b> Obstruction of full and prompt compliance with a settlement agreement resulted in costs being shared 50/50 between the parties	2004/02/16	Blackburne J.
<b>Stay to ADR : prerequisite to litigation</b>	<b>Bottin Investments Ltd v Venson Group Plc [2004] EWHC 135</b> : Bailii Share contract contained a mediation clause, allowing 90 day procedure, failure giving rise to a right to litigate. Held, no right to litigate until mediation attempted.	2004/02/03	Smith HHJ Peter
<b>Negotiations inter hearings – Duty to court.</b>	<b>Yell Ltd v Garton [2004] EWCA Civ 87</b> : Bailii Negotiations : Appeal : Duty to Court. Where an appeal is pending the parties have a duty to notify the court if settlement negotiations are taking place. The hearing can be postponed pending the outcome since it can lead to savings in judicial time and .	2004/02/02	Gibson LJ; Peter : Laws LJ; Longmore LJ.
<b>Insurance – recovery of mediated settlement</b>	<b>Pilkington v CGU Insurance [2004] EWCA Civ 23</b> : HM Court Service Attempt to recover sums paid out in a mediation settlement from underwriters. Also Jonathan Parker LJ : Mr Justice Charles etc	2004/01/28	Potter LJ,

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<b>Mediation, Arbitration or Litigation</b>	<b>Flight Training International v International Fire Training Equipment Ltd [2004] EWHC 721 (Comm)</b> Agreement to refer commercial dispute to ACAS – attempt failed. Attempt to arbitrate – failed. Not an arbitration agreement.	2004/01/13	Cresswell J.
<b>Time Bar : Waiver</b>	<b>Placito v Slater [2003] EWCA Civ 1863</b> Time bar : Contractual : Voluntary waiver of right to trial. CA.	2003/12/19	Potter LJ, Laws LJ Arden LJ
<b>Costs : Settlement offer</b>	<b>Nedlloyd Lines UK Ltd v CEL Group Ltd [2003] EWCA Civ 1871 : Lawtel AC0106293</b> Costs : Indemnity : Part 36 Offer beaten at 1st instance & on appeal : All costs of litigation. Failure to put up a new offer between hearings.CA :	2003/12/18	Waller LJ, Hale LJ, Carnwath LJ.
<b>Insurance : ADR settlement and contribution.</b>	<b>Drake Insurance Plc v Provident Insurance Plc [2003] EWCA Civ 1834</b> Bailii Insurance : ADR settlement and contribution : Impact of arbitration and mediation on right of contribution in insurance dispute. A party that pays under an arbitration award, which the potential contributor is not a party to, is not a volunteer. Contributor declined to mediate.	2003/12/17	Clarke LJ; Pill LJ; Rix LJ
<b>Failure to mediate : Costs – late offer to mediate</b>	<b>Joyce Boyd v MOD [2003] HQ02X00875</b> Lawtel Late offer of mediation too late to impact upon right to recover costs, since case was clearly heading for a full trial.	2003/12/16	James Deputy Master
<b>Agreement to agree : Best endeavours not an enforceable contract</b>	<b>Beta Investment SA v Transmedia Europe [2003] Ch.D. HC-02-C01840</b> : Lawtel B advanced funds on a promissory note to T secured by shares in a business. On default B tried to run the business but T owned key resources so it was not possible. The parties agreed to "best endeavours" to resolve the problem. Ultimately negotiations failed and B sought repayment of the promissory note. Did the agreement to best endeavours impose an obligation to resolve the dispute? Held : no - only to try - failing which the legal rights became enforceable.	2003/12/15	Fenwick QC Deputy Judge H.Ct Mr Justin
<b>Court mandated mediation CPR 1(4)</b>	<b>Shirayama Shokusan Co Ltd v Danovo Ltd [2003] EWHC 3006 (Ch)</b> : Lawtel Dispute over lease and trespass for advertising – allegations of dishonesty : Respondent applied for court ordered mediation – application granted.	2003/12/05	Blackburne. Mr Justice
<b>Mediation/adjudication</b>	<b>Galliford Try Construction Ltd v Michael Heal Associates Ltd [2003] EWHC 2886 TCC</b> : Bailii Agreement to adjudicate any matters not settled by mediation disposed of any potential reservation of right to contest adjudicator's jurisdiction.	2003/12/01	Seymour HHJ Richard
<b>Privilege and unambiguous impropriety</b>	<b>Savings &amp; Investment Bank v Fincken [2003] EWCA Civ 1630</b> : Bailii Without prejudice : Scope of the "unambiguous impropriety" exception considered : Held it is not a flexible concept. An abuse of the privilege must be demonstrated to amount to a cloak for serious wrongdoing	2003/11/14	Carnath LJ. Rix LJ;
<b>Failure to mediate : Costs – delay – fault</b>	<b>Asiansky Television Plc v Bayer-Rosin [2003] EWCA Civ 1405</b> : Bailii Appeal. Also , Lady Justice Arden..	2003/11/11	Brown LJ, Laws LJ

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<b>Settlement Agreement : Authority : Minors.</b>	<b>Drinkall (a minor) v Whitwood [2003] EWCA Civ 1547</b> : Bailii Settlement Agreement : Minor : Not binding until approved by the court..	2003/11/06	Brown LJ; Simon ; Parker LJ Jonathan; Thomas LJ
<b>Privilege</b>	<b>Sinclair Roche &amp; Temperley (a firm) v Somatra Ltd [2003] EWCA Civ 1474</b> Bailii Application for disclosure of documents refused. CA.	2003/10/23	Schiemann LJ, Tuckey LJ, Longmore LJ
<b>Judicial Review of mediation procedures declined.</b>	<b>Fanning v. University College Cork [2003] IEHC 70</b> : Bailii Claim that mediation appointment contrary to terms of contract and the mediation procedure flawed. Court held point 1 a valid issue to be considered by the court. Claimant had to prove his case. But regarding point 2, the court would not scrutinize the mediation process.	2003/10/22	Master of the High Court
<b>Public Law &amp; ADR Human Rights Art VII :</b>	<b>Anufrijeva v L.B. Southwark; R v SS for H.D. ex parte N &amp; M [2003] EWCA Civ 1406</b> : Bailii Applications for JR, following Cowl will only be approved if either alternative processes have been exhausted or a valid reason given for not using them.	2003/10/16	Auld LJ. LCJ : MR
<b>Privilege : Disclosure</b>	<b>Bailey (N.G.) &amp; Co Ltd. v Amec Design &amp; Management Ltd. [2003] EWHC 9012 (Costs)</b> Decision of District Judge Harrison in a Donald McCreery v Massey Plastic Fabrications Ltd 23 January 2003 disapproved.	2003/10/06	Rogers Master : Costs judge
<b>Court advised mediation : cost implications</b>	<b>K (a child), Re [2003] EWCA Civ 1410</b> : Bailii <i>... if either party requests "that this matter be referred to mediation using this court's Alternative Dispute Resolution Service, then I direct that it shall be referred to mediation; and, if the other party fails to participate without a good reason, that may be a reason why this court will exact a penalty of costs against the recalcitrant party for failing to co-operate and by wasting this court's time."</i>	2003/09/16	Ward LJ.
<b>Without prejudice offers : Privilege</b>	<b>Optical Express (Southern) Ltd v Birmingham City Council [2003] EWLands ACQ_109_2002</b> : Bailii Without prejudice offers : Piercing the privilege veil. Lands Tribunal England & Wales.	2003/08/27	Clarke PH FRICS
<b>Refusal to mediate : suitability of mediation : costs</b>	<b>Rodriguez-Bannister v Somerset Partnership NHS Trust [2003] EWHC 2184</b> : Bailii <i>"Mention has been made of the desirability of ADR in this kind of case. From what I have seen about the history of this case, and from what I have observed during the course of this hearing, in my judgment ADR could not have resolved the fundamental difficulties between the parties."</i>	2003/08/22	Hooper. Mr Justice
<b>Without prejudice requires negotiation of a claim</b>	<b>Prudential Insurance Co America v Prudential Assurance Co Ltd [2002] EWCA 1154</b> : Lawtel Prudential America and Prudential Co Ltd, competing businesses entered negotiations over the use of the word Prudential in China. In the present litigation the applicant sought to establish that the correspondence was privileged. Held : Not part of a settlement of a foreign claim and hence not privileged. None of the correspondence was labelled " <i>without prejudice</i> ."	2003/07/31	Chadwick LJ; Schiemann LJ; Parker LJ Jonathan

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<b>Privilege : Global</b>	<b>Prudential Assurance Co Ltd v Prudential Insurance Co of America [2003] EWCA 1154 (CA) : Lawtel AC0104302</b> In order to assert privilege it must be implied by operation of law or expressly mutually agreed between the parties both domestically and to achieve global application outside the jurisdiction.. CA.	2003/07/31	Schiemann LJ, Chadwick LJ, Parker LJ Jonathan
<b>Family mediation. Permission of court. Confidentiality</b>	<b>G (a child) [2003] EWCA Civ 1055 : Bailii</b> Confidentiality : Where an unrepresented party wishes to consult with a McKenzie Man for the purposes of mediation/negotiation, the permission of the court must be sought, since otherwise there will be a breach of Rule 4.23(1) of the Family Proceedings Rules 1991 of publishing protected information where papers concerning the other party are disclosed to the advisor.	2003/07/28	The President Thorpe LJ : Rix LJ.
<b>Speculative litigation and suitability of mediation</b>	<b>Parks v Clout [2003] EWCA Civ 893 : Bailii</b> Speculative litigation challenging probate. Appeal against probate failed. Court regretted that mediation had been refused by beneficiary but in the event the beneficiary became the outright winner - so for him it was a good tactical choice.	2003/07/10	Jacob. Mr Justice Thorpe LJ;
<b>Settlement : 3<sup>rd</sup> Party rights</b>	<b>Lesser Landau v Barclays Bank [2003] EWHC 1645 (Ch): Lawtel.</b> Contract interpretation. The Bank sued surveyor for overvaluation of property: Two reports addressed to the bank and one addressed to the mortgagee. The action was compromised in mediation. This action concerned how much, if any, of the settlement was, by agreement, payable to the mortgagee?	2003/07/08	Neuberger J Ch.D.
<b>Failure to mediate : Costs :</b>	<b>Partridge v Lawrence [2003] EWCA Civ 1122 : Bailii</b> A 15% reduction in costs awarded to take account of the conduct of the parties. The fact that the offer was late in the day and the offeror wanted to involve his solicitors did not change matters. 85% costs went to the defendants who had made an offer which mirrored the court's decision on width of access to a field.	2003/07/08	Clarke LJ; Dyson LJ Gibson LJ; Peter
<b>Bad Faith : Fraudulent Settlement</b>	<b>Vedatech Corp v Crystal Decision UK Ltd &amp; Crystal Decisions (Japan) KK [2003] EWCA Civ 1066 : Bailii</b> Mediation settlement allegedly induced by fraud. Carnwath LJ; Mr Justice Maurice Kay. etc	2003/07/03	Pill LJ;
<b>Failed Mediation : Costs</b>	<b>Corsenso (UK) Ltd v Burden Group Plc [2003] EWHC 1805 (QB) : Lawtel</b> ADR includes negotiation and mediation : B engaged in mediation but C made strenuous efforts to settle : B who won a minor counterclaim liable for costs.	2003/07/01	Reid Judge
<b>Legal interpretation and unsuitability of mediation.</b>	<b>Dart Harbour Authority v S.S.Transport [2003] EWHC 1494 : Bailii</b> No one involved understood the Harbour Regulations until the High Court explained them. Even the Secretary of State for Transport got them wrong. Little wonder then that mediation was refused. Judgement solved nothing but showed the way forward for the third party not involved in the judicial review.	2003/06/26	Lightman. HHJ
<b>Costs : No winner in settlement agreement</b>	<b>Dearling v Foregate Developments [2003] EWCA Civ 913 : Bailii</b> Settlement figure picked out of the air: It did not reflect potential outcome of trial : Since no clear winner, no order of costs should be made.	2003/06/09	Buxton LJ; Dyson LJ. Schiemann LJ;

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<b>Without prejudice : Perjury</b>	<b>Berry Trade Ltd v. Moussavi [2003] EWCA Civ 715</b> : Bailii Could recollections of things said at without prejudice meetings be used to establish subsequent perjury? Held : The exceptions to the privilege are limited to proof of previous perjury and do not extend to a risk of perjury in the future. Also Mr Justice Nelson.	2003/05/22	Gibson LJ Peter ; Tuckey LJ;
<b>Disclosure : Privilege : CFAs</b>	<b>Hollins v Russell [2003] EWCA Civ 718</b> Leading case on disclosure : Privilege and CFAs.	2003/05/22	Brooke LJ; Hale LJ; Arden LJ;
<b>Failure to mediate : Costs</b>	<b>Royal Bank of Canada Trust Corporation Ltd v Secretary of State for Defence [2003] EWHC 1479 (Ch)</b> : Lawtel Lawful termination of a lease turned on a question of law and interpretation of the terms of the lease : MOD refused costs due to a failure to mediate	2003/05/14	Lewison. Mr Justice
<b>Court advised mediation</b>	<b>Baddeley v Barker [2003] EWCA Civ 742</b> : Bailii Nuisance Action between neighbours : Court strongly recommended mediation to limit costs and aggravation. Also Mance LJ.	2003/05/07	Buxton LJ; Ward LJ;
<b>Court advised mediation</b>	<b>Stuart Baddely &amp; Margaret Allman v I.E.Barker [2003] EWCA Civ 742</b> : Bailii Court Mediation Scheme Nuisance to neighbours caused by drainage and sewage problems : Court commended the Court Mediation service to the parties.	2003/05/07	Buxton LJ; Mance LJ. Ward LJ;
<b>Insurance : Settlement : Third party liability</b>	<b>Assicurazioni Generali SpA v CGU International Insurance Plc &amp; Ors [2003] EWHC 1073 (Comm)</b> : Bailii Insurance : Follow settlement clause : examination of scope of follow on clause : can the court re-examine the settlement to determine whether or not it was an exgratia payment or a genuine settlement : yes - but only with a full trial and discovery - cannot be done on the hoof as a mini-trial : Deputy High Court Judge .	2003/05/02	Gavin Kealey QC
<b>Public law : Court advised ADR</b>	<b>Dudley, R (on the application of) v East Sussex County Council [2003] EWHC 1093</b> : Bailii Affirmation of Cowl principles for public disputes and ADR : Commends low cost and no cost mediation	2003/04/16	Kay. HHJ Maurice
<b>Costs : Settlement offer in employment disputes</b>	<b>Kopel C H v Safeways Stores Plc (2003) IRLR 753 : Lawtel AC0302272</b> Calderbank offers under CPR 36.3 do not apply to employment tribunals : but whilst there is no automatic cost penalty, the tribunal can under r.14 (Coleman v Seceurop (UK) Ltd (EAT/483/98) and Monaghan v Close Thornton Solicitors (EAT/3/01) consider whether rejection was unreasonable and award costs accordingly. EAT.	2003/04/11	Mitting J, Bilgan K, Hodgkins. DJ
<b>Refusal to mediate and costs</b>	<b>Moy v Pettman Smith (a Firm) &amp; Anor [2003] EWCA Civ 467</b> : Bailii Refusal to mediate indicative of losing defendant's intransigence - implications on costs considered.	2003/03/25	Brooke LJ; Hart. J Latham LJ;
<b>Costs : Indeterminate settlement offer.</b>	<b>Perry Press v Chipperfield &amp; Stern [2003] EWCA 484 : Lawtel AC9900500</b> Settlement offer - £4K plus reasonable costs - insufficiently precise to be taken into account for a costs order.	2003/03/25	Buxton LJ, Dyson LJ.



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<b>Property dispute : Water rights : Mediation :</b>	<b>Konstantinidis v Townsend [2003] EWCA Civ 537</b> : Bailii An order of the court in respect of quasi-contract set aside because it would establish on-going rights attached to land unrelated to changing circumstances. Parties agreed a 70:30 settlement, accepted by the court and agreed that any future dispute be referred to mediation.	2003/03/20	Kay LJ. Sedley LJ VC
<b>Failure to mediate : Costs</b>	<b>Hurst v Leeming [2003] EWCH 499 (Ch)</b> : Bailii Leeming, a barrister, refused to mediate a professional negligence claim : Held : entitled to costs. Reputation issue justified a trial : claimant too stubborn for ADR.	2003/03/14	Collins. Mr Justice Lawrence
<b>Failure to mediate : Costs</b>	<b>Leicester Circuits Ltd v Coates Brothers PLC [2003] EWCA Civ 290</b> : Bailii Claimant failed to establish causation and breach of contract : respondent pulled out of mediation : Held : costs related to failure denied.	2003/03/05	Judge LJ; Longmore LJ; Thomas. Sir Swinton
<b>Court advised mediation on quantum post ruling on entitlement</b>	<b>Darke v Strout [2003] EWCA Civ 176</b> : Bailii Having confirmed that a maintenance agreement was a legally enforceable contract, the court advised mediation to determine future maintenance rates and damages for prior breach - as a preferable option to further litigation.	2003/01/28	Chadwick LJ; Morland. Mr Justice Thorpe LJ;
<b>Costs : CFA : Privilege</b>	<b>Donald McCreery v Massey Plastic Fabrications Ltd [2003] LAWTEL AC0104769</b> Once the substantive issues are settled there is no longer a justification for asserting privilege in respect of risk assessment documents and allied documents upon which a costs claim are based.. Disapproved in <i>Bailey v Amec [2003] EWHC 9012 (Costs)</i>	2003/01/23	Harrison District Judge Manchester
<b>Reasons for mediation failing to be supplied to court.</b>	<b>Osborn (B) &amp; Co Ltd v Dior [2003] EWCA Civ 281</b> : Bailii Parties ordered to mediate outstanding issues in an otherwise failed appeal against a possession order on flats. In the event of ADR failing, court to be supplied with an account of the process and why it failed. 22nd January 2003..	2003/01/22	Brown LJ Simon; Sedley LJ; Arden LJ.
<b>Privilege and evidence</b>	<b>Malcolm Electropainting Group v West Midlands Passenger Transport Executive [2003] ACQ 59</b> : Lawtel Witness statements as to fact relied upon by an expert witness are not privileged. The statements of fact are a matter that should be disclosed in advance to enable the other party to prepare to challenge the statement.	2002/12/16	Clarke P.H. FRICS.
<b>Court advised mediation</b>	<b>Morris v Jones [2002] EWCA Civ 1790</b> : Bailii Appeal successful in parts : insufficient evidence being available to assess quantum a further hearing was required. In the meantime the court advised mediation, providing considerable guidance as to the factors that both parties should take into account.	2002/12/06	Evans, Sir Anthony, Clarke LJ; Ward LJ
<b>Reasonableness and compromise.</b>	<b>Day v Day [2002] EWCA Civ 1842</b> : Bailii Thorpe LJ explains the distinction between reasonableness and compromise and the frame of mind needed in order to successfully mediate.	2002/12/03	Thorpe LJ

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<b>Stay pending mediation</b>	<b>Mark v Mark [2002] EWCA Civ 1837</b> : Bailii Appeal against divorce petition on jurisdictional grounds stayed pending mediation. Already £2M had been spent on litigation - enough, the court noted to sustain the ex-wife for the rest of her life.	2002/11/27	Munby J; Thorpe LJ; Potter LJ;
<b>Family : Reunite Contact Mediation</b>	<b>S (a child) [2002] EWCA Civ 1941</b> : Bailii Reunite Contact Mediation : Brief mention of and welcome for the contact mediation process being piloted by Reunite for European jurisdictions - outlining the multi-national litigation that such a service may have prevented Also Munby Mr Justice; Thorpe LJ.	2002/11/27	Baker Mr Justice Scott;
<b>Pro-se parties assisted by mediation process</b>	<b>Youssif v Jordan [2002] EWCA Civ 1827</b> : Bailii Court acknowledges the benefit of mediation to the pro-se claimant who has difficulties making out a legal case due to lack of advocacy skills.	2002/11/22	Pill LJ.
<b>Failure to mediate : Costs</b>	<b>McCook v Lobo [2002] EWCA 1760</b> : Bailii Claimant's claim dismissed at 1st instance and on appeal. A letter suggesting mediation was ignored by the defendant. Held : There was no likelihood of mediation being successful, so no cost implications for refusal to mediate.	2002/11/19	Hale LJ. Pill LJ; Judge LJ;
<b>Failure to mediate : Costs</b>	<b>SITA v Watson and Wyatt: Maxwell Batley [2002] EWHC 2401 / 2025 (Ch) : Lawtel</b> The court held that on the facts a refusal to mediate was reasonable and justified. A mediation would have achieved nothing, so there was no impact on costs.	2002/11/14	Park : Mr Justice
<b>Failure to mediate : Costs</b>	<b>Neal v Jones Motors [2002] EWCA Civ 1730/1731/1759</b> : Lawtel CA deducted £5,000 from the winning appellant's costs because of a failure to mediate which resulted in an unnecessary two day hearing.	2002/10/31	Brooke LJ; Keene LJ. Rix LJ;
<b>Costs : Pre-trial costs post settlement agreement</b>	<b>Brawley v Marczyński [2002] EWCA Civ 756</b> : Bailii If the parties settle out of court who pays the legal costs of court action? Held : where a party substantially wins he is entitled to costs of the litigation.	2002/10/21	Aldous LJ; Tuckey LJ; Longmore LJ.
<b>Costs of mediation : CFA success costs and settlement agreement.</b>	<b>Hardcastle (B.D. &amp; C) v Leeds &amp; Holbeck Building Society [2002]</b> : Lawtel Costs : pro-se mediation regarding negligent valuation of property failed followed by a CFA supported action and settlement agreement : CFA entitled to success costs - statute barred personal injury (stress) aspect of claim discounted in reckoning of success costs since it would probably have been dropped pre-trial.	2002/10/21	Bellamy J
<b>Stay of action pending ADR</b>	<b>Cable &amp; Wireless v IBM [2002] EWHC 2059</b> : Bailii Where the parties make an unequivocal agreement to mediate the court will issue either a stay of action or adjournment pending outcome of mediation.	2002/10/11	Colman HHJ

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<b>Failure to mediate : Costs</b>	<b>Valentine v Allen, Nash and Nash [2002] EWCA Civ 1819</b> : Bailii Multi-party action about land rights related to a housing development : Failure to mediate attributed to all parties : Costs followed the event 70:30 on the facts.	2002/10/09	Arden LJ Laws LJ;
<b>Mediation agreement – interpretation - scope</b>	<b>Haines v Carter [2002] UKPC 49</b> : Bailii Interpretation of a badly drafted mediation agreement which included a provision to mediate any breach of the mediation settlement Also Rodger LJ. Tipping,J.	2002/10/07	Bingham LJ; Slynn LJ; Nicholls LJ.
<b>Enforcement of Settlement Re-mediation</b>	<b>Rodney David Haines v Lynne Valerie Carter [2002] UKPC 49</b> : Bailii Terms of mediated settlement included re-opening up the settlement by mediator if allegation of breach of good faith provision established Note that the mediators had power to devise and impose the terms of the settlement i.e. a form of binding conciliation. (P.C. from New Zealand) Lords Bingham; Slynn; Nicholls; Rodger; etc	2002/10/07	Tipping, Rt. Hon. Justice
<b>Settlement : Liquidation</b>	<b>Thakrar v Ciro Citterio Menswear Plc [2002] EWHC 1975 (Ch)</b> : Bailii The Court of Appeal refused to endorse or otherwise criticise the terms of a mediated compromise leaving it to the Insolvency Court to deal with.	2002/10/01	Vice Chancellor.
<b>Stay pending mediation.</b>	<b>Keshwara v Keshwara [2002] EWCA Civ 1416</b> : Bailii Property dispute between brothers. Appeal granted, but scheduling stayed pending mediation or at least the parties having been given an opportunity to consider resorting to the process.	2002/09/12	Wall LJ
<b>Without Prejudice : Nominet</b>	<b>Hanna-Barbera Productions Inc -v- Hay [2002] DRS 389_Appeal</b> : Bailii Without Prejudice : If domain name registrants could avoid the implications of their registration application details simply by sending complainants letters marked 'Without Prejudice' and stating that, <i>“with a view to settling the dispute, they are willing to transfer the domain name for a sum of money”</i> this would drive a coach and horses through the Policy.	2002/08/21	Carne Simon Elliott Bob Willoughby Tony
<b>Settlement : Liquidation</b>	<b>Thakrar v Thakrar [2002] EWCA Civ 1304</b> : Bailii Mediated settlement agreement and Tomlin Order enforced, keeping funds out of the reach of liquidators.	2002/08/13	Chadwick LJ; Robert Walker LJ.
<b>Without prejudice offers : Waiver of repudiation</b>	<b>FAL Oil Trading Co Ltd v Petronas Trading Co [2002] EWHC 1825 (QB)</b> : Lawtel Admissibility and impact of without prejudice offers on validity of repudiation on grounds of breach of condition. QBD (Comm).	2002/08/01	Hallgarten J
<b>Court advised mediation in lieu of retrial</b>	<b>Veitch v Avery Barry &amp; Co [2002] EWCA Civ 1342</b> : Bailii Case sent back for reconsideration because original decision made without reference to an amended statement of claim. Court anticipated applicants likely to fail and be left with extensive costs and urged mediation - but in no real hope of the applicants so doing because of the level of bad feeling	2002/07/26	Tuckey LJ. Ward LJ;

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<b>Failure to mediate : value of mediation in low value dispute questioned.</b>	<b>Gould v Armstrong [2002] EWCA Civ 1159</b> : Bailii Difference between claim and counter-claim resulted in a £700 payout. Protracted satellite litigation then took place over costs. Final result taxed costs of £14,000. Court expressed regret that initial pre-trial offers to negotiate were rejected, though doubts expressed about the value of formal mediation for such a small amount	2002/07/23	Keene LJ. Phillips MR; Lord
<b>Legal representation – not needed and may impede process.</b>	<b>Jiad v Byford [2002] EWCA Civ 1224</b> : Bailii Commendation of mediation because one of the parties appeared pro-se in a case that called for layering skills. Court considered that since mediation does not require legal representation it would be ideal. View expressed that lawyers can impede mediation process.	2002/07/16	Sedley LJ.
<b>Settlement offer : Costs</b>	<b>Mitchell v Ron James [2002] EWCA Civ 997 : Lawtel AC0101633</b> A settlement offer did not specify its expiry date. That alone would not prevent it being treated as a payment in for cost purposes. However, cost offers would not be factored in by the court. In the event costs order not disturbed.	2002/07/12	Gibson LJ P, Potter LJ, Stuart-Smith Sir Murray.
<b>Mediation and Substantive Law – International dispute</b>	<b>Otobo v Otobo [2002] EWCA Civ 949</b> : Bailii Appellant, asserting rights to matrimonial property in a dispute as to the status of their marriage in Nigeria, was prepared to mediate under the London Scheme. The respondent was only prepared to mediate in Lagos. The court countered that mediation "is independent of legal systems and imports skills and techniques which are not legal skills."	2002/07/02	Butler-Sloss; Dame E. Thorpe LJ; Buxton LJ.
<b>Costs thrown away</b>	<b>B v Richard Pendelbury &amp; Associated Newspapers Ltd [2002] EWHC 1404 (QB)</b> : Lawtel Application for wasted costs : Claimant had legal aid withdrawn and his solicitors had obstructed mediation. Court refused order pending investigation by Law Society because of difficulty of assessing potential outcome in the absence of a trial of the issues.	2002/06/28	Turner. HHJ
<b>Written Form : Settlement</b>	<b>Oil &amp; Mineral Development Corp v Mahdi Sajjad [2002] EWHC Com 1258</b> :Bailii Mediation settlement was not reduced to writing : enforcement refused : mediation terms prevent mediator giving evidence – so settlement must be written.	2002/06/25	Steel.J David
<b>Without prejudice : Privilege</b>	<b>Chirstos v S.S. for Environment [2002] EWLands ACQ_69_2001</b> : Bailii Without prejudice offer : Privilege and waiver : Costs. Lands Tribunal.	2002/06/24	Rose NJ FRICS
<b>Settlement offer : Costs</b>	<b>Excelsior Commercial &amp; Industrial Holdings v Salisbury Hammer Aspden &amp; Johnson [2002] EWCA Civ 979</b> : Lawtel Discusses the special circumstances in which a court may award Indemnity Costs where a Part 36 CPR Offer / Payment in was rejected by the losing party.	2002/06/12	Laws LJ. Woolf LCJ; Waller LJ;
<b>Failure to mediate : Costs</b>	<b>Malkins Nominees v Societe Finance [2002] EWHC 1221 Ch</b> : Lawtel Winning claimants failed to engage in a mediation. Court would have deducted 25% costs but because offer made late in the day only deducted 15%.	2002/05/29	Etherton. Mr Justice

## NADR MEDIATION CASE DATA BASE

<b>Failed Mediation : Costs</b>	<b>RBG Resources Plc (In Liquidation) v Rastogi [2005] EWHC 994 (Ch)</b> : Bailii Mediation and subsequent settlement negotiations failed because of an insistence on an apology, which in the circumstances the liquidators could not professionally provide. This conduct deprived him of any costs allowance that might otherwise have been available to him for good conduct in the litigation.	2002/05/24	Lightman The Honourable Mr Justice
<b>Failure to mediate : Costs</b>	<b>Hurst v Leeming [2002] EWHC 1051</b> : Bailii Leeming, a barrister, refused to mediate a professional negligence claim : Held : entitled to costs. Reputation issue justified a trial : claimant too stubborn for ADR.	2002/05/09	Lightman. HHJ
<b>Court advised mediation – basis of compromise spelt out</b>	<b>Mutuma v London Borough Of Barnet [2002] EWCA Civ 674</b> : Bailii Leave to appeal granted : but findings of fact against applicant : Local Authority had lost papers. Mediation highly advised with a severe warning of cost implications for a trial, with or without mediation.	2002/04/26	Sedley LJ. Ward LJ;
<b>Without prejudice : piercing veil</b>	<b>United Building &amp; Plumbing Contractors v Malkit Singh Kajla [2002] EWCA 628</b> Admissibility of information disclosed in settlement negotiation non-admissible unless both parties consent or as in this case the other party puts details of the negotiation to the court. Costs of a non-qualified legal adviser not recoverable. Oral offer to compromise claim - which exceeded the final award to be taken into account in assessing costs. Balancing out conduct of both parties, court held that costs cancelled each other out - so no costs awarded.	2002/04/26	Tuckey LJ, Rix LJ.
<b>Settlement : 3<sup>rd</sup> party rights</b>	<b>Cape &amp; Dalglish v Fitzgerald [2002] UKHL 16</b> : Bailii Discusses whether a settlement was full and final and thus precluded liability to contribute under the Civil Liability (Contribution) Act 1978 to third parties. Also Steyn, Hope, Rodger LJs.	2002/04/25	Bingham LJ Mackay LJ
<b>Settlement : 3<sup>rd</sup> party rights</b>	<b>Heaton v AXA Equity and Law Assurance Society PLC [2002] UKHL 15</b> : Parliament – The Stationery Office Actions for breach of contract by A against B & C respectively. B settled – did that preclude an action against C ? Held – no – not in the present circumstances. Also Rodger LJ.	2002/04/25	Bingham LJ; Mackay LJ; Steyn LJ;
<b>Mediation v adjudication</b>	<b>R G Carter Ltd v Edmund Nuttall Ltd (2002) BLR 359</b> : Adjudication.co.uk Mandatory mediation provisions cannot override the statutory right to refer a construction dispute to adjudication under Part II HGCRA 1996.	2002/04/18	Bowsher. HHJ
<b>Court advised mediation non-listing : adjournment : stay</b>	<b>Hayes v Stewart [2002] EWCA Civ 513</b> : Lawtel Construction Case remitted for determination of quantum. Costs outweighed the value : ADR advised : case not listed pending outcome of ADR.	2002/03/22	Brown LJ; Simon Hale J.. Lady
<b>Privilege : Without prejudice</b>	<b>Smith Group Plc v Weiss (2002) Ch.D</b> : Lawtel Accidental reference to negotiation documents in a list provided to the court insufficient reason to justify waiver of privilege and compromise W/P negotiations	2002/03/22	Kaye Q.C. Mr Roger

## NADR MEDIATION CASE DATA BASE

<b>Settlement Offer Part 36: Costs</b>	<b>Huck v Robson [2002] EWCA Civ 398</b> : Bailii Settlement offer : Costs : RTA - claim for damages. Held : a claimant who has bettered his Part 36 offer has a prima facie entitlement to indemnity costs. The general presumption that a successful claimant only receives costs on the standard basis is displaced by Part 36.21(4).	2002/03/21	Schiemann LJ Tuckey LJ, Parker LJ Jonathan
<b>Mediation v Litigation Family</b>	<b>Egbaiyelo v Egbaiyelo [2002] EWCA Civ 454</b> : Bailii Family dispute. The attitude of the parties renders this case unsuitable for mediation.	2002/03/18	Keene LJ Ward LJ.
<b>Costs – post settlement.</b>	<b>Munkenbeck &amp; Marshall v Harold [2005] EWHC 356</b> : Bailii Claim for claimant's pre-trial costs where the claim was settled just before the trial date	2002/03/17	Havery HHJ Richard
<b>Court advised mediation</b>	<b>Hughes v Jones (t/a Plas-Y-Bryn Nursing Home) [2002] EWCA Civ 346</b> : Bailii Court advised mediation : Application to appeal granted, with an indication of a real prospect of success. With that in mind, and the need of the Nursing Home to preserve funds, the court advised mediation	2002/03/11	Ward LJ; Keen LJ.
<b>Family Mediation – stay to Germany.</b>	<b>Konig v Konig [2002] EWCA Civ 467</b> : Bailii Family Mediation in UK & Germany. Whilst UK Family Mediation is concerned with the settling of ancillary matters, the principal aim in Germany is the Divorce Process.	2002/03/06	Thorpe LJ.
<b>Without prejudice - legal rights</b>	<b>Bath &amp; N.E.Somerset DC v Nicholson (2002) 10 EG 156 (CS)</b> : Lawtel Without prejudice letter - negotiations on a lease - acknowledged title.	2002/02/22	Lewison HHJ
<b>Refusal to mediate : Costs : Wrong pleadings</b>	<b>Dunnett v Railtrack Plc [2002] EWCA Civ 302</b> : Bailii Appeal failed : Wrong points of law argued at first instance – arguable case if correct grounds had been pleaded at first instance.	2002/02/22	Brooke LJ; Sedley LJ. Walker LJ Robert
<b>Failure to mediate : Costs : CPR : ADR</b>	<b>Dunnett v Railtrack Plc [2002] EWHC 9020 (Costs)</b> : Bailii Appeal for damages for a potentially arguable action for loss of livestock failed : Solicitors negligent : Railtrack refused mediation & failed to recover costs. Also Robert Walker LJ	2002/02/22	Brooke LJ, Sedley LJ.
<b>FDR Hearing.</b>	<b>Rose v Rose [2002] EWCA Civ 208</b> : Bailii Application to vacate court order confirming agreed settlement terms. CA analysed the nature of an FDR negotiation.	2002/02/20	Buxton LJ. Phillips MR,L Thorpe LJ;
<b>Court Advised Mediation.</b>	<b>John &amp; Anne Martin v Peter Francis &amp; Jean Childs [2002] EWCA Civ 283</b> : Lawtel Court of Appeal held that a conveyance did not include right to lay a fresh water pipe over neighbouring land. In consequence the court could not provide a solution and expressed the hope that the parties might solve the problem by mediation. Since the parties had been involved in litigation it is hard to see how this hope might be realised.	2002/02/19	Hale. LJ Pill LJ; Mummery LJ;

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<b>Costs : Sealed offer - standard or indemnity</b>	<b>Victor Kermit Kiam II v MGN Ltd [2002] EWCA Civ 66 : Lawtel AC0102648</b> Settlement offer under CPR36.3 can lead to a standard costs penalty : but not on an indemnity basis under CPR 44.	2002/02/06	Brown LJ, Simon
<b>Agreement to agree</b>	<b>B J Aviation Ltd v Pool Aviation Ltd [2002] EWCA Civ 163:</b> Bailii Option to renew a lease on an airport subject to agreement on rent. NO agreement reached. Court at first instance interpreted the terms and concluded that an rent could be determined. CA overturned this – the contract provided for negotiations between the parties and in the absence of agreement the lease came to an end.	2002/01/18	Schiemann LJ Chadwick LJ; Sir Murray Stuart-Smith
<b>Privilege : Wasted costs order</b>	<b>Brown Graham v Bennett Maurice (no3) [2001] EWCA Civ 1352</b> Non-disclosure of requested non-privileged documents, where no inquiry is made as to client instructions does not breach legal privilege rule. Chancery Division.	2001/12/18	Neuberger
<b>Public law : ADR</b>	<b>Cowl (Frank) v Plymouth C.C [2001] EWCA Civ 1935, [2002] 1 WLR 803: 14.12.2002 :</b> Bailii Local Authority closed old peoples' home : Council failed to pursue settlement process advised by court at first instance : Criticised by LCJ in CA.	2001/12/14	Buxton LJ. Woolf LCJ, Mummery LJ,
<b>Without prejudice demand not a claim no privilege</b>	<b>Kooltrade Ltd v XTS LTD [2001] ChD..</b> Lawtel AC9900018 X asserted in without prejudice correspondence sent to K and to Tesco that K had infringed a copyright and Tesco has sold the product. K sued for false allegations of breach of copyright. X asserted privilege. Court held the correspondence amounted to demands not negotiations and were not privileged.	2001/12/10	Pumphrey J.
<b>Costs : Amended claim : Settlement offer.</b>	<b>Professional Information Technology Consultants Ltd v Jones [2001] EWCA Civ 2103 : Lawtel AC9600428</b> One third cost penalty awarded against successful claimant. Claim amended in court. Whilst the payment in was beaten, the defendant may have increased the sum if the final version of pleadings had been on the table.	2001/12/07	Gibson LJ, Peter Arden LJ.
<b>Stay of action pending case management</b>	<b>Tarajan Overseas Limited v. Donald Lee Kaye [2001] EWCA Civ 1859:</b> Lawtel Case management : Order for overseas directors to attend CM session overturned – they knew nothing – better for involved locals to attend.	2001/11/27	Pitchford LJ Tuckey LJ;
<b>Failure to mediate : Costs – delay – fault</b>	<b>Asiansky Television Plc v Bayer-Rosin [2001] EWCA Civ 1792 :</b> Bailii Claimant & defendant toyed with mediation – no one at fault for failing to pursue – payment-in too low to bridge gap based on different premises. Trial needed.	2001/11/19	Clarke LJ, Dyson LJ, Mance LJ,
<b>Oral settlement offer : admissibility : Costs</b>	<b>United Building &amp; Plumbing Contractors v Kajla [2001] EWCA Civ 1740</b> Oral offer of compromise a building dispute: Permission to appeal granted to introduce evidence.	2001/11/15	Henry LJ
<b>Court advised mediation Disproportionate costs</b>	<b>Cave v Borax Europe Ltd &amp; Ors [2001] EWCA Civ 1729 :</b> Bailii Judge advised mediation over a minor matter of misuse of a tape and warned that further litigation costs were disproportionate to the matter.	2001/11/14	Evans. Sir Anthony



## NADR MEDIATION CASE DATA BASE

<b>Without prejudice offers</b>	<b>Cadle Company v Hearley [2002] 1 Lloyds Rep 141</b> : Lawtel Without prejudice defined : Attempt to broaden exceptions to include admissions of fact, as under Scottish Law rejected. Also reported by CEDR.	2001/10/26	Havelock Allan Q.C. HHJ
<b>Public law : ADR and JR</b>	<b>Cowl (Frank) v. Plymouth City Council [2001] EWHC Admin 734</b> : Bailii JR - exhausting other avenues. Application for Judicial Review failed. Council had acted reasonably and a complaints procedure not explored.	2001/09/14	Baker Mr Justice Scott
<b>Family Mediation Local Authority / Parent Mediation.</b>	<b>E (A Child), Re [2001] EWCA Civ 1230</b> : Bailii Local authority / parent mediation : Mediation advised by the court to enable a Local Authority, tasked with caring for a child, to rebuild its relationship with a parent, so that eventually the parent could have access to the child. Role of CAFFCAS outlined.	2001/07/12	Hale LJ
<b>Payment in : Exaggerated claim : Costs</b>	<b>Molloy v Shell UK Ltd [2001] EWCA Civ 1272</b> : Bailii CA increased costs order against winning claimant from 75% to 100%. CA.	2001/07/06	Mummery LJ Laws LJ.
<b>Privilege : Human Rights : Interpreters</b>	<b>Imam Bozkurt v Thames Magistrates Court [2001] LAWTEL AC8001922</b> An interpreter present at an interview is subject to the same privilege rules as a solicitor. Art 6(3)(c) ECHR. Administrative Court.	2001/07/02	Woolf LJ Bell J
<b>Privilege - Without prejudice offers : Disclosure</b>	<b>Instance v Denny Bros Printing [2001] EWCA Civ 913 : 939</b> : Bailii Without prejudice material is confidential and may not be disclosed or used in subsequent litigation whether or not related, by the same or other parties.	2001/06/20	Aldous LJ. Rix LJ and Lloyd LJ.
<b>Time bar and negotiation</b>	<b>Sutcliff (A.M.) v Thirkell (A) [2001] ChD</b> Lawtel AC9200255 S&T, mortgagees of a property separated and agreed that T would expend best efforts to buy out S's share of the property valued at £85K for £10K within a reasonable time. Without prejudice negotiations ensued off and on for 3 years. Did this stop time running? Held: No. Agreement enforceable at agreed value.	2001/06/08	Hedley. HHJ
<b>Failure to mediate : costs – pre CPR dispute.</b>	<b>Contractreal Ltd v Davies [2001] EWCA Civ 928</b> : Bailii Trail Judge applied CPR cost regime to a case where costs were incurred pre-CPR. Held : in the circumstances full costs recoverable despite refusal to mediate. Post CPR such disproportionate costs would not be recoverable	2001/05/17	Arden LJ, Wright Mr Justice
<b>Court advised mediation to preserve funds</b>	<b>Maskell v Maskell [2001] EWCA Civ 85858</b> : Bailii Refusal of right to appeal order dividing up family funds overturned. Court advised mediation since further litigation would merely dissipate the fund, to the detriment of both parties, whatever the ultimate outcome of the appeal.	2001/05/08	Bell.. Mr Justice Thorpe LJ;
<b>Mediation v Litigation. Legal rights &amp; wider interests</b>	<b>Lloyd, R v [2001] EWCA Civ 533</b> : Bailii Disabled applicant wanted communal dining. Accommodation operated by Housing Association. Council resisted communal dining because the premises might be designated under the Registered Homes Act, vitiating the lease to the Association. Mediation failed to get to the root of the problem.	2001/04/11	Arden Lady Justice Schiemann LJ, Sedley LJ,

## NADR MEDIATION CASE DATA BASE

<b>Stay for mediation – trial date not set in advance</b>	<b>Cheltenham &amp; Gloucester v Ashford [2001] EWCA 396</b> : Bailii The court will not order the fixing of a date for trial where a mediation is pending since this would simply place more pressure on a party to settle	2001/03/22	Pill LJ.
<b>Without prejudice – impact on liquidation and assets</b>	<b>Optimum Solution Ltd v Yorkshire Electricity Group Plc [2001] ChD</b> Lawtel AC0101855 The applicants learnt though without prejudice disclosures that the sole assets of a business in liquidation were to be disposed of and sought to bring that information to the notice of the court. Held : In the circumstances the privilege would be overridden.	2001/02/26	Hart. Mr Justice
<b>Costs : Post payment-in</b>	<b>Kinetics Technology v Cross Seas Shipping [1998] F1530</b> : Lawtel Claimants recovered marginally more than the defendant had paid in under CPR 36 : Claimant lost on 4 out of 5 points : Held : claimant 66% liable for costs.	2001/02/16	Steel. Mr Justice David
<b>Mediation/Arbitration : Bias Prejudice</b>	<b>Glencot Dev. &amp; Design Co Ltd v Ben Barrett &amp; Son (Contractors) Ltd [2001] BLR 207</b> : HT 00/401 : Adjudication.co.uk Clear advice on potential prejudice arising out of disclosure during mediation needed before a mediator can act as an adjudicator in the same dispute.	2001/02/13	Lloyd QC H.H.J. Humphrey
<b>Costs of mediation.</b>	<b>Eagleson v Liddell [2001] EWCA Civ 155</b> : Bailii Mediation costs : Following a failed appeal against a judgement of liability for personal injury, the court ordered the unsuccessful appellant to pay both the costs of the appeal and of an intervening mediation.	2001/02/02	Aldous LJ; Walker L.J. Robert : Hale LJ.
<b>Limitation Act : Impact of ADR</b>	<b>Alan Clive Gold v Mincoff Science &amp; Gold (A Firm) [2000] HC199G 1658</b> : Lawtel s14A Limitation Act action – impact of ADR on right to limitation – solicitor negligently failed to advise on impact of partnership agreement on joint liability for previously incurred debts of another partner.	2000/12/01	Neuberger. HHJ
<b>Non-legal outcomes and mediation.</b>	<b>Mensah v Islington Council [2000] EWCA Civ 405</b> : Bailii Whilst the court, in rejecting an application to appeal noted that this case was not suitable for mediation, the primary remedy, viz an apology was not one open to the court, whereas that is something frequently used as a key to a settlement.	2000/12/01	Arden LJ; Gibson LJ. Peter.
<b>Costs : Sealed offer excluding cost.</b>	<b>Lindner Ceilings Floors Partitions Plc v How Engineering Services Ltd [2000] EWHC : Lawtel AC0100353</b> A sealed offer to be effective as to a costs award does not have to include costs : merely a clear indication as to whether or not costs are included	2000/11/28	Seymour HHJ Richard
<b>Costs – written offer versus CPR 36.3.</b>	<b>Amber v Stacey [2001] 2 All ER 88 : Lawtel AC0100193</b> Defendant penalised for making a written offer as opposed to a CPR 36.3 payment in : A subsequent payment in was beaten in court (but not the written offer). Court stated 36.3 offer is more secure. Defendant ordered to pay half the costs - claimant had been precipitate and unreasonable. CA.	2000/11/15	Brown LJ, Simon Evans Sir Anthony

## NADR MEDIATION CASE DATA BASE

<b>Privilege and mediation</b>	<b>MT v DT [2000] Scots CS 283 Inner House Court of Session.</b> Bailii Admissibility of disclosures during mediation of family dispute denied. Lord President. Lords Bonyon, Allanbridge etc	2000/11/10	Milligan, Smith, Nimmo
<b>Privilege - Without prejudice</b>	<b>Re Anglo American Insurance Co Ltd [2000] ChD.</b> Lawtel AC0100565 Court held that the content of "Without prejudice" correspondence should not be disclosed in court. NB : Nonetheless the correspondence facilitates the formulations of questions for cross examination.	2000/11/08	Neuberger. HHJ
<b>Bad faith : Duress – undue influence</b>	<b>Carillion Construction Ltd v Felix UK Ltd [2000] HT/00/223 &amp; 232 :</b> Lawtel Coercion : Compromise agreement induced by threat of non supply of material in relation to work in progress. Compromise set aside.	2000/11/06	Dyson HHJ
<b>Stay of proceedings pending ADR.</b>	<b>Rickards v Jones [2002] EWCA Civ 260 :</b> Bailii The house purchaser claimant's defendant solicitor failed to ensure NHBC cover for a property. The court ordered three party ADR involving HHBC & Solicitor.	2000/10/13	Mance LJ; Smith. Mrs Justice
<b>Court advised mediation.</b>	<b>Cooper v Kaur [2001] 1 FCR 12</b> Despite earlier failures to negotiate, now the court had settled certain legal questions, and the property in dispute had risen in value, there was scope now for the parties to mediate outstanding issues.	2000/10/10	Thorpe LJ : Judge LJ.
<b>Failed Mediation - liability</b>	<b>Foster v Somerset Council [2003] UKEAT 0355_03_3107 :</b> Bailii Employment mediation and re-mediation failed primarily because the claimant was unwilling to accept any responsibility for poor relations between her and her boss. In the event the EAT found unfair dismissal but found 90% contributory responsibility.	2000/07/31	Elias. HHJ
<b>Privilege : Without prejudice</b>	<b>Somatra Ltd v Sinclair Roche &amp; Temperley [2002] EWHC Com 1627 (2000) 1 WLR 2453 :</b> Bailii Justice requires that where one party discloses without prejudice material to the court, the other party can also rely on that material in that and other trials.	2000/07/22	Clarke LJ. Waller LJ;
<b>Stay of trial pending ADR.</b>	<b>Bates v Microstar Ltd [2000] 2000/0069/A3 :</b> Lawtel Successful appeal against a summary judgment. Trial ordered but stayed pending ADR – aggressive correspondence by solicitor criticised by the court.	2000/07/04	Aldous LJ Scott Sir Richard, Thorpe LJ.
<b>Privilege - Without prejudice – disclosure to 3<sup>rd</sup> party</b>	<b>Gnitrow Ltd v Cape Plc [2000] 3 All.E.R. 763 CA :</b> Lawtel Action for contribution to a settlement agreement by a co-contractor. Without prejudice negotiations led to settlement terms by insurance carriers of asbestosis claims. The applicant sought disclosure of the terms to establish the extent of his contributory liability. Disclosure ordered.	2000/06/30	Pill LJ, Stuart-Smith. Sir Murray
<b>Settlement offers : Costs</b>	<b>Firle Investments Ltd v. Datapoint International Ltd [2000] EWHC TCC 105:</b> Bailii Costs : Settlement offer : Claimant rejected offers and went on to achieve a victory by a slim margin. Costs awarded at 33% overall and at 15% after the final offer..	2000/05/08	Reese Colin QC

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<b>Privilege - Without prejudice offers : Disclosure</b>	<b>Instance v Denny Bros Printing [2000] EWCH Patents 112</b> : Bailii Without prejudice material is confidential and may not be disclosed or used in subsequent litigation whether or not related, by the same or other parties.	2000/04/14	Laddie. Mr. Justice
<b>Agreement to agree : Good Faith Agreement</b>	<b>Abballe (T/A G.F.A) v. Alstom Uk Ltd [2000] EWHC Technology 122</b> : Bailii Good faith agreements and agreements to agree Mediation settlement was not reduced to writing. Enforcement refused : Mediation terms prevent mediator giving evidence – so settlement must be written.	2000/03/24	Lloyd J Humphrey
<b>Privilege : Without prejudice.</b>	<b>W H Smith Ltd v Peter Colman (2000) FSR 9</b> : Lawtel Burden of proof - to pierce the veil - unambiguous impropriety - not satisfied by an implausible case. CA.	2000/03/20	Beldam LJ, Walker LJ. Robert
<b>Indemnity costs less ADR cost</b>	<b>Paul Thomas Construction Ltd v Hyland [2000] CILL 6/0 /1743</b> : Lawtel Cost hearing on failed s24/25 CPR applications by a domestic house builders who provided no final account and refused to wait for D's valuation reported.	2000/03/08	Wilcox. HHJ
<b>Medical claims suitable for ADR</b>	<b>Walsh v Misseldine [2000] EWCA Civ 61</b> : Bailii Court considered the grounds for striking out under both the old regime and under the CPR. Makes a brief reference to mediation and overriding objectives.	2000/02/29	Brooke LJ. Stuart-Smith LJ;
<b>Interpretation of settlement agreement</b>	<b>Barclays Plc v Villers [2000] EWHC 197 (Comm)</b> : Bailii Settlement agreement contained a Med/Arb Clause. The scope of the agreement referred to court for interpretation : Whilst this concerned an application for a stay to arbitration the real issue between the parties was whether or not one party had been bound to make certain payments and thus was entitled to recover on the settlement indemnity. The answer to both was YES.	2000/01/25	Langley, The Honourable Mr Justice.
<b>Without Prejudice Settlement : Privilege</b>	<b>Noga D'Importation v Australia &amp; New Zealand Banking Group Ltd [1999] LAWTEL AC9500508</b> Judge validly struck out points of defence based on correspondence covered by a confidentiality & non-admissibility agreement.	1999/12/10	Evans LJ Judge LJ
<b>Without prejudice – privilege.</b>	<b>Noga v Australia &amp; N.Z. Banking Group Ltd [1999] CA.</b> Lawtel Terms of without prejudice settlement agreement not available to defence lawyers in subsequent litigation	1999/12/10	Evans LJ; Judge LJ.
<b>Failure to mediate : Costs: warning</b>	<b>Dyson v Leeds City Council [1999] CCRTF 1998/1490/B2</b> : Lawtel PI –asbestosis claim : Retrial ordered : Deceased trial judge failed to provide reasons : Case finely balanced. ADR recommended with costs warning.	1999/11/22	Laws LJ. Ward LJ; Woolf LJ;
<b>Stay of action : Mediation</b>	<b>Torith Ltd v Stewart Duncan Robertson [1999] LTL C8200316</b> Lawtel A stay of action to an Employment Tribunal ordered pending the deliberations of an employment conciliation process.	1999/11/02	Johnston. Lord

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<b>Negotiations – want of prosecution</b>	<b>Target Holding v Oxborough [1999] CA</b> Lawtel AC9500470 Possession order sought for default on a mortgage . Over the next 8 years there were protracted negotiations which ultimately failed. Application to enforce possession order granted : application to strike out for want of prosecution denied.	1999/10/28	Kennedy LJ; Mummery LJ; Mantell LJ.
<b>Costs : Indemnity basis.</b>	<b>Federal Bank of the Middle East Ltd v Charles Hadkinson (No2) [1999] Ch.D</b> Lawtel Costs on indemnity basis ordered on 21 <sup>st</sup> May (No1) confirmed.	1999/10/20	Arden HHJ
<b>Court advised mediation</b>	<b>Kinstreet Ltd v Balmargo Corporation Ltd [1994] Ch 1994 G2999</b> : Lawtel In a case where neither party could really afford the appeal trial costs the CA strongly urged the parties to mediate, despite the high levels of distrust.	1999/07/23	Arden. Mrs Justice
<b>Stay of mediation refused.</b>	<b>Fanning v University College Cork [1999] IEHC 236</b> : Bailii Court refused to injunct mediation proceedings at behest of a co-defendant since by simply refusing to attend he could frustrate the entire process in any case.	1999/07/07	Carroll J
<b>Court advised ADR after law determined by Court</b>	<b>Dixons Group Plc v Murray-Obodynski [1999] EWCA Civ 1775</b> : Bailii Appeal settled matter of construction of a contract, leaving the dispute alive. ADR recommended to settle that matter.	1999/07/06	Clarke LJ, Woolf LJ, Mance LJ.
<b>Costs – lapsed offer</b>	<b>Hepworth Building Products Ltd v The Coal Authority (1999) 3 EGLR 99</b> : Lawtel AC0000834 A lapsed offer at the time of trial can still be taken into account for a costs order. CA	1999/07/02	Gibson LJ P, Judge LJ, Waller LJ.
<b>Court mandated mediation</b>	<b>Muman v Nagasena [1999] EWCA 1742</b> : Bailii Who had the right to occupation of a Buddhist Temple owned by a charitable trust? Court mandated mediation as a pre-requisite to further hearings. Plus Swinton Thomas LJ; Mummery LJ.etc	1999/07/01	Nourse LJ;
<b>Mediation actually arbitration</b>	<b>N v N [1999] Fam.Div LTL AC7800507</b> : Lawtel. Arbitration misnamed as mediation. Jurisdiction over a pre-nuptial agreement - stated as mediation but in effect a Beth Din Arbitration under Jewish Law. Court refused to order a party to attend before the court of the Chief Rabbi and to commence writ of divorce.	1999/07/01	Wall J Fam.Div
<b>Court advised mediation plus CAB &amp; Pro-bono scheme.</b>	<b>Chauhan v Sandhu [1999] EWCA Civ 1610</b> : Bailii Inter-family business dispute. Appeal as to whether a collateral promise legally enforceable.	1999/06/17	Otton LJ; Walker LJ
<b>Costs : Calderbank Offers</b>	<b>Bajwa v British Airways Plc [1999] EWCA Civ 1519</b> : Bailii The value of an offer for the purpose of costs under CPR 44 is the balance between the sum offered less the value of deducted benefits. The CA will only interfere with a judge's discretion to order costs if he is plainly wrong or has erred in principle.	1999/05/28	Stuart-Smith LJ Laws LJ Parker Mr J

## NADR MEDIATION CASE DATA BASE

<b>Mediator Misconduct Incompetence</b>	<b>John Amorifer Usoamaka v Conflict &amp; Change Ltd [1999] CCRTF 98/0709/2</b> : Bailii Professional conduct in mediation : Community mediator, in disregard of rules of community mediation service provider engaged in family mediation in an unprofessional manner	1999/05/28	Henry LJ; Holman. Mr Justice
<b>Stay to mediate</b>	<b>Federal Bank of the Middle East Ltd v Charles Hadkinson (No1) [1999] Ch.D</b> Lawtel Challenge to a freezing order dismissed. Application for a stay pending ADR. Court ruled that given the bad feeling between the parties and lack of mutual trust there were no prospects of ADR being successful. Costs on indemnity basis. Stay refused.	1999/05/21	Arden HHJ
<b>Stay of Action pending attempt to identify a mutual mediator</b>	<b>Agodzo v Amegashitsie [1999] EWCA Civ 1453</b> : Bailii Dispute between members of an association. Court stayed action and ordered both parties to provide lists of 6 people who might act as mediator in the dispute. Claimant sought to set order aside asserting a denial of justice. Held : merely a reasonable way of finding out if anyone acceptable to both parties. Still required an order by court to mediate, not an order to mediate. Set-aside denied.	1999/05/20	Ward LJ; Chadwick LJ
<b>Family dispute. Emotional discharge.</b>	<b>B C (A Minor) [1999] EWCA Civ 1197</b> : Bailii Mediation requested by the father and recommended by the court, to enable the father to discharge emotions on an independent third party and to open the way to a resolution beneficial to the son caught in the middle of the parent's dispute.	1999/04/19	Henry LJ; Ward LJ
<b>Court advised mediation in lieu of appeal.</b>	<b>Michaelides v Wilkinson [1999] EWCA Civ 1168</b> : Bailii Mediation recommended in lieu of appeal. On appeal evidence was ruled admissible which was not accepted at first instance. Application to appeal granted. In light of the admissibility, mediation commended.	1999/04/14	Gibson LJ.Peter . Blofeld Mr Justice
<b>Court Advised ADR</b>	<b>Alan Vernon Barker v Peter Seymour &amp; Virginia Helen Margaret Johnson [1999] ADR.L.R. 03/25</b> This concerned a bitter neighbour dispute - with very little grounds for appeal. Much expense involved in appeal - neighbourly relations would be best served by a negotiated settlement. Application to appeal from Epsom County Court (His Honour Judge Hill). Application adjourned - 1st instance judge did not have the benefit of seeing a skeleton argument. Inter partes appeal to follow. Two LJs, one with Chancery experience. Costs in the appeal.	1999/03/25	Ward LJ,
<b>Settlement offers : Privilege</b>	<b>Dora v Simper [1999] EWCA Civ 982</b> : Bailii Settlement offers : Admissibility : Piercing the veil : CA..	1999/03/15	Otton LJ, Aldous LJ
<b>Court advised mediation</b>	<b>Jones v Harrison [1999] EWCA Civ 772</b> : Bailii Acrimonious dispute between car owner and garage. Despite background, given value of claim and high legal costs, C.A. proposed mediation.	1999/02/12	Evans LJ Hidden Mr Justice
<b>Court mandated mediation</b>	<b>Muman v Nagasena [1999] EWCA Civ 764</b> : Bailii Who had the right to occupation of a Buddhist Temple owned by a charitable trust? Court mandated mediation as a pre-requisite to further hearings.	1999/02/10	Evans LJ; Hidden. Mr Justice

## NADR MEDIATION CASE DATA BASE

<b>Privilege - Without Prejudice - experts</b>	<b>Robin Ellis Ltd v. Malwright Ltd [1999] EWHC TCC 256</b> : Bailii Without prejudice - expert witness meetings : Held : Communications between experts seeking to reach an agreed view are privileged, but the terms of the agreement are not	1999/02/01	Bowsher. HHJ
<b>Stay to mediation : Court advised mediation</b>	<b>Rose v Cox [1999] EWCA Civ 608</b> : Bailii Adjournment granted : Court urged parties to mediate using court mediation scheme..	1999/01/19	Evans LJ; Thorpe LJ.
<b>Privilege</b>	<b>Alizadeh v Nikbin [1993] LAWTEL AC 1605019</b> A tape recording was made of settlement negotiations : Court refused to admit the recording as evidence : <i>Rush v GLC</i> applied. There was no unambiguous admission of impropriety. <i>Forster v Friedland</i> applied. . CA.	1998/12/21	Balcombe LJ; Brown LJ Simon Gibson Mr Justice Peter
<b>Agreement to agree Jurisdiction : good faith agreement</b>	<b>Halifax Financial Services v Intuitive Systems [1999] 1 All ER 664</b> : Lawtel Pre-CPR 1998 case on jurisdiction of the courts in respect of agreements to negotiate in good faith and the power to award a stay of action.	1998/12/21	McKinnon Mr. Justice
<b>Family : Calderbank offers : Privilege</b>	<b>Xydhias v Xydhias [1998] ADR.L.R. 12/21</b> : NADR Impact of Calderbank offers and privilege in relation to without prejudice negotiations. CA.	1998/12/21	Stuart Smith LJ, Thorpe LJ, Mummery LJ
<b>Settlement : 3<sup>rd</sup> party rights</b>	<b>Jameson v Central Electricity Generating Board [2000] 1 AC 455 HL</b> : Bailii Claimant died of asbestosis : Sued employer and brokered a settlement. Widow then sued a sub-contract employer. Held : Double recovery – final settlement. Lords Hoffmann, Hope & Clyde etc	1998/12/16	Browne- Wilkinson, Lloyd,
<b>Privilege - Without prejudice - copyright</b>	<b>Unilever plc v Proctor &amp; Gamble [2000] FSR 344</b> Court Service A threat to take legal proceedings to protect a copyright made during negotiations is privileged and cannot be used as a ground for legal action .	1998/12/15	Laddie. Mr Justice
<b>Costs : Settlement offer – on quantum post trial on entitlement..</b>	<b>Hobin v Douglas [1998] EWCA Civ 1903</b> :Bailii Calderbank offer - post finding on entitlement as attempt to avoid decision on quantum. Offer not taken up. At first instance refusal taken into account regarding costs. CA overturned the decision - a hearing would be needed in any event - if only to confirm settlement.	1998/12/03	Roch LJ; Swinton Thomas LJ : Schiemann LJ.
<b>Court advised mediation to preserve funds</b>	<b>Laird v Laird &amp; Anor [1998] EWCA Civ 1841</b> : Bailii Case remitted to a district judge to determine the wife's application for ancillary relief, which has never been properly or fully determined. ADR urged to stem further dissipation of funds	1998/11/25	Mummery LJ. Stuart-Smith LJ; Thorpe LJ;



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<b>Mediation or arbitration</b>	<b>O'Callaghan v Coral Racing Ltd [1998] EWCA Civ 1801</b> : Bailii Arbitration or non-binding mediation : Dispute settlement clause in a betting agreement held not to be arbitration : not enforceable due to Statute of Frauds gambling exception would make it illegal for arbiter to enforce : since it did not lead to the enforcement of a legal right - not arbitration : Conclusion - non-binding mediation agreement or expert determination.	1998/11/19	Hirst LJ; May LJ; Slade, Sir Christopher.
<b>Settlement offers : Costs</b>	<b>Jill Louise Butcher v Timothy Edward &amp; John Robert Wolfe [1998] CA30.10.98</b> : Lawtel Calderbank Offers : Cost implications of rejection of a reasonable offer. Also Simon Brown LJ;	1998/10/30	Mantell LJ. Mummery LJ;
<b>Anti-suit injunction in support of mediated settlement.</b>	<b>Commercial Union Assurance Co plc v Helliesen &amp; Eichner : Reed Elsevier Inc [1998]</b> : Lawtel AC86000584 Anti-suit order : Injunctive relief against continuing action in the US ( <i>double jeopardy rule</i> ) in relation to an insurance action in the High Court which was compromised by a mediated settlement.	1998/10/28	Creswell J
<b>Family Mediation : Domestic Violence.</b>	<b>Chalmers v Johns [1998] EWCA Civ 1452</b> Bailii Mediation : Domestic violence. Despite a family history which included allegations of violence, the court urged mediation between a husband and wife, in the light of the strong attachment exhibited and in the interests of the children.	1998/09/23	Otton LJ Thorpe LJ
<b>Court advised mediation.</b>	<b>Crowther v Brownsword [1998] EWCA Civ 1040</b> : Bailii Court advised mediation : Court recommended the services of an organisation such as CEDR.	1998/06/19	Evans LJ; Mrs Justice Hale.
<b>Without prejudice : Privilege</b>	<b>Kristjansson v R Verney &amp; Co Ltd [1998] EWCA Civ 1029</b> : Bailii Without prejudice : Failed attempt to pierce the veil : Communications to be used to establish admission of liability : but no evidence of unambiguous impropriety viz blackmail or intimidation. CA.	1998/06/18	Beldam LJ; Mummery LJ; Knox. Sir John
<b>Mediation v Litigation</b>	<b>Steed v Secretary Of State For Home Office [1998] EWCA Civ 762</b> : Bailii ADR versus litigation : Court expressed the opinion that the case would be best determined either by mediation or expert determination by a surveyor.	1998/05/01	Beldam LJ; Ward LJ
<b>Calderbank offers : Costs</b>	<b>George Fisher Holding Ltd v Multi Design Consultants Ltd [1998] EWHC TCC 329</b> : Bailii Calderbank settlement offers and payment in under Order 62, rule 9(1)(d) & Order 22, rule 14 compared. Official Referees Business.	1998/04/06	Hicks HHJ. TCC
<b>Family Mediation. Reality Check</b>	<b>H (Minors) [1998] EWCA Civ 481 (18 March 1998)</b> : Bailii The disputing parents need an independent mediator to bring about a setting in which they are able to grasp what their children are trying to tell them.	1998/03/18	Gibson LJ Peter : Ward LJ
<b>Court mandated versus advised mediation.</b>	<b>H (A Minor) [1998] EWCA Civ 98 (29 January 1998)</b> : Bailii Mandated versus recommended mediation : Court expressed the view that compulsory mediation is a contradiction.	1998/01/29	Roche LJ; Wall LJ

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<b>Stay for mediation refused</b>	<b>Kumar v Osbournes [1997] EWCA Civ 2877</b> : Bailii Application for adjournment of hearing to enable mediation to take place refused, because a point of law was at issue and the other party was not prepared to mediate.	1997/12/02	Morritt LJ.
<b>Public Law : Mediation</b>	<b>Rye v Sheffield City Council [1997] EWCA Civ 2257</b> : Bailii Public Law : Mediation or single expert report to court most appropriate way of dealing with question as to whether or not a grant is available for renovation work. Judicial review inappropriate since it is a question of fact not of reasonableness and JR would not provide a remedy for the applicant. Unsuccessful appeal from HHJ Mance.	1997/07/31	Morritt LJ, Pill LJ Woolf LJ MR,
<b>Privilege : Legal Immunity</b>	<b>Lindsey Ann Kelly v Jean Corston [1997] EWCA Civ 2081</b> : Bailii Immunity : Privilege. Is counsel immune from suit for alleged negligence during settlement negotiations?.	1997/07/10	Butler-Sloss LJ, Pill LJ, Judge LJ. CA
<b>Statutory time bar</b>	<b>George Edward Bytheway v British Steel Plc [1997] CCRT1 97/0433/G</b> : Lawtel ADR and Statutory Limitation : Held : despite participation in an ADR Scheme, a party is entitled to rely on Statutory time bar, where the threshold time is passed during the course of ADR proceedings.	1997/06/26	Judge LJ. Thorpe LJ;
<b>Family mediation : Court Welfare Officer as mediator.</b>	<b>RE H (A minor) [1997] EWCA Civ 1436 (17th April, 1997)</b> : Bailii Court Welfare Officer as mediator : Court speculated as to whether the Court Welfare Officer could serve as a mediator - or identify what services available locally.	1997/04/17	Millett LJ; Ward LJ.
<b>Settlement : 3<sup>rd</sup> party rights</b>	<b>Jameson v Central Electricity Generating Board [1997] Civ 1008</b> : Bailii Claimant died of asbestosis : Sued employer and brokered a settlement. Widow then sued a sub-contract employer. Held : Double recovery – final settlement.	1997/02/13	Auld LJ; Nourse LJ; Russell. Sir Patrick
<b>Without Prejudice Negotiations : admissibility</b>	<b>TBV Power Ltd v ELM Energy &amp; Recycling (UK) Ltd [1997] EWCA Civ 854</b> : Bailli Without prejudice negotiations : admissibility to determine whether or not they resulted in an agreement and if so, as to the terms of that agreement.	1997/01/27	Evans LJ; Hobhouse LJ; Mummery LJ.
<b>New expert report at trial post mediation.</b>	<b>Crowder v Kitson [1997] EWCA Civ 790</b> : Bailii Failed application to introduce a new expert report at trial post mediation. New report prejudiced the other side. Failed appeal from decision of HHJ Gibbs.	1997/01/16	Mummery LJ, Phillips LJ,
<b>Payment In : Calderbank Offer : Costs</b>	<b>McCaffery L.M.M. v Datta B &amp; J : St Anne's Nursing Home Ltd [1996] EWCA Civ 1179</b> :Bailii A payment in cancels out the impact of a Calderbank offer in respect of an award of costs.	1996/12/11	Stuart-Smith LJ; Aldous LJ; Ward LJ;

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<b>Court mandated mediation</b>	<b>Automotive Patterns (Precision Equipment) Ltd v. A.W. Plume Ltd [1996] EWCA Civ 825</b> : Bailii This case would have been an appropriate case for court ordered mediation if such a facility existed in the UK. The court expressed concern that small claims may be priced out of court, depriving a deserving party of access to justice.	1996/10/30	Hobhouse LJ; Hutchison LJ; Staughton LJ;
<b>Without prejudice communications.</b>	<b>Michael Maillis v Harold Supplies Plc (1996)</b> : Lawtel Without prejudice communication : Application to pierce the veil - grounds 1) Buckinghamshire County Council v Moran (1990) 1 Ch.623 [FN 1] assertion of rights 2) unambiguous impropriety : <b>Waldridge v Kennison</b> (1794) 1 ESP 142 and <b>Rush &amp; Tompkins v GLC</b> , <b>Independent Research Services v Catterall</b> (1993) ICR 1, <b>Fazl-Alizadeh v Nikbin</b> (1993). considered	1996/03/20	Garland J
<b>Without prejudice disclosure : Costs</b>	<b>Sampson v John Boddy Timber Ltd [1995] CA. Lawtel AC0002441</b> A party will not be penalised by a wasted costs order for seeking to rely on privileged information (an offer, not stated to be without prejudice) where the question of privilege was arguable.	1995/05/11	Bingham MR, Sir Thomas Evans LJ, Aldous LJ
<b>Privilege : Bad faith : settlement achieved through duress</b>	<b>Muller v Linsley &amp; Mortimer (a firm) [1994] AC0001780</b> Where duress and impropriety in relation to a settlement agreement are at issue, the privilege attaching to settlement communications may be pierced. CA.	1994/11/30	Leggatt LJ, Hoffmann LJ, Swinton Thomas LJ
<b>Calderbank offer : Costs</b>	<b>Padmanor Investments Ltd v Soundcraft Electronics Ltd [1994] ADR.L.R. 06/30</b> : NADR. Calderbank offer : impact upon costs.	1994/06/30	Lloyd HHJ Humphrey
<b>Family mediation : Privilege</b>	<b>Re D</b> [1993] 2 All ER 695 : CEDR Established privilege and without prejudice in Family negotiations under a separate category : Public Policy.	1993/01/01	Unknown
<b>Privilege</b>	<b>Dixons Stores Groupd Ltd v Thames Television plc [1992] LAWTEL AC0010428</b> Correspondence post privileged communications not in response to without prejudice letters admissible. QBD.	1992/07/15	Drake HHJ
<b>Without prejudice privilege : Employment Tribunals</b>	<b>Independent Research Services Ltd v Catterall [1992] UKEAT 279_92_2606 (26 June 1992)</b> Appeal from refusal by chairman of tribunal to admit without prejudice correspondence related to unfair dismissal : Wished to demonstrate a break down in trust & confidence that established that dismissal was not a repudiatory breach of contract of employment. Chairman had wrongly failed to explain the without prejudice privilege rule – but even so it applied to Employment tribunals. EAT.	1992/06/26	Knox Mr Justice
<b>Without prejudice : Facts</b>	<b>McDowall v Hirschfield Lipson &amp; Rumney [1992] LAWTEL 1603200</b> Where without prejudice correspondence provides evidence of independent facts the privilege may be broken. Family.	1992/02/13	Stockdale HHJ
<b>Agreement to agree Negotiation Agreements</b>	<b>Walford v Miles [1992] 2 AC 128</b> : Lawtel Agreement to negotiate in good faith unenforceable. See also <b>May v Butcher</b> . Also Browne-Wilkinson, L Jauncey L; Keith L; Goff L	1992/01/23	Ackner L

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<b>Privilege : Insurance claim documents</b>	<b>Standrin Phillip &amp; Patricia v Yenton Minster Homes Ltd &amp; NHBC [1991] LAWTEL AC1602201</b> Correspondence related to insurance claim settlement negotiations privileged but the claim form and response documents are not. CA	1991/06/28	Lloyd LJ Gibson LJ Ralph Staughton LJ
<b>Privilege : Records.</b>	<b>Parry Deborah Jayne &amp; Whelan Michael Timothy v News Group Newspapers Ltd [1990] LAWTEL AC1912031</b> A solicitor's note recording that a telephone conversation took place is not privileged though the content of the conversation may well be privileged. Thus it could be used as the basis of further discoveries of related relevant material. Not professional privilege. CA	1990/11/22	Stocker LJ; Dillon LJ; Bingham LJ
<b>Privilege - Without prejudice - Confidentiality</b>	<b>Rush &amp; Tomkins v Greater London Council [1988] 3 All ER 737</b> Application for discovery by Sub-contractors of terms of a settlement between the employer and main contractor rejected by House of Lords.	1988/11/03	Bridge, LJ Brandon, LJ Griffiths, LJ Oliver LJ Goff LJ
<b>Privilege : Costs : Taxation</b>	<b>Goldman v Hesper [1988] LAWTEL AC1266056</b> Documents relied upon by the other party for cost purposes are not privileged. CA.	1988/07/26	Donaldson L MR Woolf LJ Taylor LJ
<b>Without prejudice negotiations : Disclosure admissibility</b>	<b>Rush &amp; Tompkins Ltd v Greater London Council [1987] ADR.L.R. 12/21 : NADR</b> Disclosure and admissibility : content of without prejudice negotiations : piercing the veil. CA	1987/12/21	Slade LJ, Balcombe LJ, Stocker LJ.
<b>Privilege - Without prejudice</b>	<b>South Shropshire District Council v Amos [1985] S3275 CA : Lawtel</b> Amos sent two without prejudice offers with terms for compensation. The council wanted to use them in evidence at a Land Tribunal : Held Privileged.	1986/07/25	Balcombe LJ. Parker LJ;
<b>Agreement to agree Negotiation agreement</b>	<b>Donwins Production Ltd v EMI Films Ltd [1984] Times 9th March 1984 : Lawtel</b> Agreement to negotiation : Differentiate agreement to negotiation and agreement to negotiate better / clearer more detailed terms. See also <i>Courtney &amp; Fairbairn v Tolaini Bros.(Hotels) Ltd</i> (1975) 1 WLR 397 Contrast <i>May v Butcher</i> [1934] 2 KB 17 - 21	1984/03/09	Pain J Peter
<b>Privilege : General correspondence</b>	<b>Norwich Union Life Insurance Society v Tony Waller Ltd [1984] LAWTEL AC2747471</b> The words "Without Prejudice" have no impact in relation to general correspondence that occurred at a time when the parties were not in dispute. Chancery.	1984/02/16	Harman HHJ
<b>Settlement offers : Costs</b>	<b>Cutts v Head [1984] 1 All ER 597 : Lawtel</b> A court can look at the contents of a "without prejudice except as to costs" offer in relation to an award on costs. The traditional and accepted impact of a <i>Calderbank v Calderbank</i> (1979) FAM 93) on costs reviewed and confirmed	1983/12/07	Fox LJ. Oliver.LJ.

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<b>Without Prejudice : Waiver</b>	<b>Turner v Fenton [1982] 1 All.E.R. LAWTEL AC0122267</b> A reference to without prejudice correspondence in an affidavit resulted in a waiver of the without prejudice privilege. Rendering the letter admissible. A stay to arbitration refused because professional reputation at state and the action involved interpretation of partnership deeds. Stay denied. <i>Charles Osenton &amp; Co v. Johnston</i> (1942) AC.130 applied.	1982/01/01	Warner HHJ
<b>Settlement Offer : Costs</b>	<b>Calderbank (Jacqueline Anne) v Calderbank (John Thomas) [1975] ADR.L.R. 06/05</b> Offer to settle beaten in court : Impact on costs. Origin of the so called "Calderbank Offer" : Family case – but general principle rolled out to cover all aspects of civil law.	1975/06/05	Cairns LJ, Scarman LJ Sir Gordon Willmer
<b>Agreement to agree : Negotiation agreements</b>	<b>Courtney &amp; Fairbairn v Tolaini Bros.(Hotels) Ltd (1975) 1 WLR 397</b> Lawtel An agreement to agree is unenforceable. C.A.	1975/01/01	Dennine LJ. Diplock LJ: Lawton LJ.
<b>Without prejudice offers : Disclosure</b>	<b>Tomlin v Standard Telephones &amp; Cables [1969] 3 All ER 201</b> Without prejudice correspondence is admissible as evidence of the terms of any agreement arising out of the correspondence, but is otherwise privileged. CA.	1969/01/01	Danckwerts LJ
<b>Agreement to agree Negotiation agreements</b>	<b>May v Butcher [1934] 2 KB 17</b> An agreement to agree is unenforceable due to a lack of certainty.	1929/02/022	Buckmaster, Dunedin V, Warrington