Harper James Solicitors video transcript: Mediation

I am Ian Carson, a senior dispute resolution solicitor at Harper James.

Today, I am going to summarise the mediation process and explain its benefits. Court action is a long and expensive process so, if the parties can arrive at a mediaton settlement, it is going to save them a lot of time and expense. So what is mediation? It is an entirely voluntary and without prejudice process. This means that anything prepared for and said during mediation cannot be used in any subsequent or current court proceedings. The parties appoint and jointly share the cost of a professionally trained neutral mediator. They set aside a day for a meeting with the mediator and that generally starts with a joint session with both parties present with the mediator and then the parties retire to their own separate rooms with their legal advisors and the mediator shuttles backwards and forwards to convey messages, hopefully offers and counter offers, in an attempt to build a consensus and ultimately arrive at a settlement.

So what are the benefits of mediation? Firstly, it is a much more flexible informal process that allows the parties to convey their thoughts and case in a more informal wider environment than concentrating on the strict legal issues at trial. It allows the parties to reach a commercial compromise in that the resolution of a case may not lie in a strict award of financial damages. It may be that there is a more flexible commercial solution which would not be available to the Judge at trial. It also allows the parties to preserve commercial relationships which the bruising litigation process may well destroy and the value of the mediator is not to be underestimated. He or she can convey messages to the other side in a manner which is very different from when it comes from the solicitor or the barrister representing that party. The mediator can also play devil’s advocate and test the case in the sort of relative safety of the private room with the parties and bring home to each party the risks and issues with the case. They can do this in a non-partisan way, which I think has more force than if said by the other side. A major piece of litigation can cost say £100,000 per party in legal fees and generally the losing party pays the winning side’s costs so the value of mediation is that you keep control of the process and have the ability and opportunity to reach a compromise rather than the all-or-nothing winner take all approach at trial.

Mediation works. Studies have shown that around 65% of mediations result in a settlement on the day and somewhere around a further 20% settle shortly thereafter. I have been involved in many mediations through my 25 years as a litigation solicitor and I am fully behind the process. If you are involved in a court dispute or thinking of bringing court Proceedings, I would urge you to take the time to understand and embrace the mediation process and not see it as a potential sign of weakness. If a mediation can result in a commercial settlement, it allows you to put the dispute behind you, move on and focus on your business.