

Kevin Gerald Smyth

Mediation experience

Kevin Smyth, a Partner and Head of Litigation at Burt Brill & Cardens, was accredited by CEDR in 1997 and is a CEDR Solve Mediator. He has conducted over 50 mediations in a variety of matters including the following:

Clinical negligence

- Late diagnosis - negligence - death - Fatal Accidents Act dependency claim by young widow and children - causation - uninsured treating doctor - partnership liability;
- Alleged psychiatric illness - incorrect diagnosis - mis-management of symptoms - subsequent suicide - dependency claim by widow - causation - quantum - Claimant's desire that there be an explanation coupled with an apology.

Personal injury

- Court of Appeal mediation - Law Reform (Miscellaneous Provisions) Act bereavement/Fatal Accidents Act dependancy claims by widow of soldier killed in live fire training exercise - quantum only - permission given by Court of Appeal for Defendant to appeal first instance decision relating to the tax treatment of future loss of earnings claim - quantum £1,117,000.
- Tortfeasor minors - alleged negligence by them, their parents, tour operator and foreign hotel causing catastrophic injuries to Claimant rendering him tetraplegic - general and special damages combined pleaded to be £3m - Regulation 15 Package Travel, Holidays and Tour Regulations 1992 - contributions between Defendants;
- Claimant minor and his mother - minor en ventre sa mère at time injuries sustained - claims by both him and his mother arising out of an RTA - principle issues in dispute causation and costs of care, accommodation and other future consequential losses - general and special damages combined pleaded to be £3.1m;
- Court of Appeal mediation - allegation by Claimant of breach of statutory duty and common law negligence in the workplace on part of Defendant - cross-allegations of contributory negligence - Claimant lost in first instance but given permission to appeal by C of A - quantum £147,380.00 plus costs of £77,650.00.

Professional negligence

- Solicitors' professional negligence - solicitor trustees' breach of trust - allegations of fraud;
- Solicitors' negligence - alleged negligent advice giving rise to a claim of £164,300.00;
- Solicitors' negligence in regard to the conduct of personal injury claim - issues as to liability, causation and quantum which was circa £300,000.00;

- Solicitors' negligence - allegations of poor advice in conduct of wrongful dismissal claim in which damages of £102,330.00 were sought.

Landlord and tenant

- Enforceability of covenants - parties re-negotiating terms of lease following difficulty in interpreting the same;
- Disputed rent arrears and allegations by tenant of landlord's failure to keep premises in repair - side action against managing agents - total value of claims £265,000.00;
- County Court mediation involving 1 Claimant and 11 Defendants - breach of covenant claims, counter-claim alleging harassment. Total claim of £10,000.00, and counter-claim of £50,000.00
- Tenant's alleged failure to comply fully with lease 'break clause' provisions giving rise to a contested claim by Landlord for future rent and damages amounting to £750,000.

Contested probate

- Assertion by close relative of deceased that £100,000.00 paid to him was a gift and not a loan.

Matrimonial Finance

- Following conclusion of FPR Pre-application Protocol process but before FDA successfully concluded a "family mediation" involving net assets of £2.9.

Insurance

- Permanent Health Insurance - ill-health of insured - early retirement - issue as to whether or not insured had become permanently and totally disabled within the meaning of the policy document - asserted by insurer that insured was able to carry out gainful occupation and would remain so in the future.

Intellectual property rights

- Copyright - design rights - access to client databases and other commercially sensitive information.

Local authorities

- Recovery of residential care costs - allegations of negligence/unlawful medical and financial assessments - counterclaim for care costs paid previously.

Building dispute

- Breach of contract claim by customer against builder in regard to alterations carried out to a swimming pool - claim £10,715.00, counter-claim £22,562.00

Co-habitation

- Section 14 Trusts of Land and Appointment of Trustees Act 1996 - division of equity on sale of co-owned property.

Employment

- Mediated both wrongful and unfair dismissal claims. Likewise “in the workplace” as between senior managers, other employees and as between employer and employee

As a legal representative in mediation, Kevin has been involved in cases concerning, franchising, life insurance, race discrimination, and many different types of commercial disputes.

Kevin was appointed to the Panel of Mediators for the Court of Appeal Mediation Scheme in October 2003.

Personal style

Perceptions of Others

Kevin has received the following feedback given to CEDR from parties and their representatives in mediations arranged by it:-

“Kevin was excellent as usual who deals with these disputes extremely well. He is sympathetic to the client and understands that settling the dispute will result in a release of stress and pressure. He facilitated a settlement and closure for everyone. We thought he was very good”.

“He did really well in a really difficult case”.

“Kevin was very good. He was very clear and thorough throughout the day, facilitative and sympathetic”.

”He is uniquely qualified to be a mediator. He was dedicated, organized, experienced and proficient.”

“... he was sensible, thoughtful and finally managed to broker an agreement when initially the parties were poles apart. He did a very professional job under difficult circumstances.”

Kevin’s Perceptions

“I approach every mediation believing that a settlement is achievable: it always is! From the outset I seek to convince the parties of this and to that end use a combination of awareness, empathy, sensitivity and pragmatism. I believe it to be very important for me to instil energy

into the mediation process and, if needs be, to manage it with firmness. An ability to reality test in a focused and constructive way is also important and in order to enable me to do this I make sure that I come to every mediation well-seized of both the facts and issues.”

Professional Background

- Admitted Solicitor of the Supreme Court - July 1973.
- Partner of Burt Brill & Edwards 1975-1986.
- A founding Partner of Burt Brill & Cardens 1986 to date. Head of Litigation since 1986.
- Special areas of practice:
Currently - Family (financial provision), employment, professional negligence and commercial disputes.
Previously- Clinical negligence as well.

Other

Professional Appointments

- Former Chairman of Legal Services Commission's Funding Review Committee for the South Eastern No 2 Area 1999/2000 and Joint Chairman of the Southern No 3 Area 2001;
- Currently a Nominated Chairman of Committees hearing Review Applications and Appeals against decisions of the Legal Services Commission's Special Cases Unit.
- Independent Adjudicator appointed by Legal Services Commission to determine Appeal and Review Applications (both SCU and non-SCU cases).
- May 2010 appointed Vice Chairman of the LSC's Special Controls Review Panel to hear appeals and review applications in cases allocated to the Commission's Special Cases Unit.

Membership of Professional Organisations

- The Law Society
- Resolution (formerly Solicitors Family Law Association)
- AVMA
- APIL
- CEDR

Membership of Law Society Panels

- Family Law Panel (since June 1999)
- Civil/Commercial Mediation Panel (Practitioner Member since August 2002)
- Personal Injury Panel 1994 to 2009

ADR Training Provided/Publications in Professional Journals

- To the Sussex Law Society
- To the Brighton Area Office of the Legal Services Commission (Special Cases Unit)

- To the South Eastern Society of Chartered Accountants
- To Smith & Williamson's Insolvency and Corporate Recovery Department (Southampton)
- To Martlets Hospice Senior Management and Clinical Teams
- In-house training to the Litigation Fee-earners practising with Burt Brill & Cardens
- Article entitled "*Mediation - The Benefits for Litigants and their CPR Obligations*" published in The Legal Executive Journal November 2003
- Another entitled "Family Mediation-another way?" published in the Family Law Journal July 2010
- Other articles written for and seminars presented to local chambers of commerce and trade organisations

Non-professional/additional Skills

Due to Directorships and Governorships as well as being an Honorary Solicitor to some of the organisations listed below, Kevin has gained operational day to day experience in the workings of many differing types of organisation and the need that they have from time to time for ADR.

- Former Chairman of Governors, Worth School
- Board Advisor to Worth Abbey Ltd
- Director and Company Secretary of the Martlets Hospice Limited
- Former Director of Timberlane Properties Plc
- Honorary Solicitor to Crime Reduction Initiatives Ltd
- Honorary Solicitor to the Universities of Brighton and Sussex Catholic Chaplaincy Association
- Former Governor of Stoke Brunswick School Trust Ltd

FEBRUARY 2012