Response of GEMME – UK to the CJC ADR Working Group Interim Report ("the Report")

Introduction

1. GEMME – UK is the UK section of a European association of judges and retired judges who support ADR. There is also a limited number of associate members with similar aims. This paper is written from that perspective.

2. The expression ADR is used to the exclusion of arbitration.

3. The nature of this response makes it inevitable that a material part of its content will have been traversed by the Report.

Overview

4. <u>Mediation and Conciliation</u>

5. The classic type of civil ADR is mediation. Broadly speaking this exercise is facilitative. It takes place outside any judicial proceedings and, whatever the involvement of the judiciary in bringing it about, it is the parties that have the responsibility for the carriage of the matter.

6. The other main method is conciliation. At present the main use of this type of ADR is on the family side in FDR appointments.

7. The proper approach to FDR appointments remains that set out in "Financial Dispute Resolution Appointments: Best Guidance" published in December 2012. The document is remarkable for the unequivocal emphasis that it places upon the person conducting the hearing in eliciting information and expressing views as to potential outcome. Although, usually that person is a member of the judiciary, the parties are free to use someone else, often a retired family judge.

8. As noted both in the Report and in the CCSR, conciliation has already been successfully adopted by some District Judges in civil proceedings ("DJ conciliation") and is likely to be central to Tier 2 of the new OSC.

9. It is a matter for remark that, as there has been no suggestion that DJ conciliation is contrary to existing procedural powers, such an effective approach (both as to cost and result) is not used more extensively.

10. Two general comments may be made in respect of mediation and conciliation.

11. Mediation is more flexible of outcome than ‘judicial’ conciliation.

12. In the latter the ‘conciliator’ is largely concerned to achieve an outcome within the parameters of the dispute. Each party has said what it wants and the task is to achieve a result within the given parameters.

13. With mediation, although a party may have stated a required result, the process is much more at large as to what may eventually occur.

14. However, it is the facilitative nature of mediation that can disadvantage a participant such as a litigant in person with limited or no ability objectively to assess merits.

15. While this problem exists on the civil side, on the family side greater care is taken to prevent inequality.

16. With conciliation and its accompanying comments on the merits the dangers of inequality are lessened.

17. A fundamental difference between respectively mediation and conciliation is that the first is essentially external to the judicial process and the second is essentially a part of that process.

18. For all that is said and done by the courts concerning mediation the approach is largely aspirational.

19. The great majority of the middle bracket cases referred to in the Report are not managed by a ‘docketed’ judge. The general exceptions are the Circuit Commercial and the TCC Judges but, in reality, even here the situation is much the same as elsewhere.

20. The reality is that case management is conducted under a tight time schedule that requires a variety of matters to be dealt with, not least costs estimates. Thus ADR is largely the subject of a mantra that, against the background of a listing questionnaire, reminds the lawyers involved of the desirability of mediation and of the stick of unreasonable failure to mediate when requested to do so. It will be observed that the potential for the stick to be applied only arises where at least one of the parties has requested mediation.

21. With litigants in person the explanation of the nature and benefits of mediation may be more extended but practical assistance with what might happen next is virtually non-existent.

22. By the time a judge is asked to apply the stick, it is too late for any beneficial result. Thus the stick operates *in terrorem* towards those who follow.

23. What the courts are doing is to tell parties in cases where money is tight or non-existent to make their own arrangements for conducting a process of which many will know nothing or next to nothing in concert with another party with whom they are on the worst possible terms.

24. A problem with treating mediators as universally acceptable good fairies is that it is not the province of the courts to identify acceptable mediators nor is there any general benchmark of such acceptability.

25. By contrast, conciliation of the kind referred to here is integral to a system in which (willingly or not) those involved are participants. Except by agreement, there is no question of legitimately opting out as opposed to failing to turn up at the appointment. Thus whatever the complaints, be they as to outcome or conduct, there is a resignation as to its part in the overall process. The conciliator is part of the package and comes (save for court fees) free of charge. There is no need either for carrot or stick.

26. That said, we note the increased use of privately instructed individuals to conduct FDR appointments. We think that this points to a useful employment of ADR. Thus the normal approach is as set out in the preceding paragraph and, rather than there being (as with civil mediation) a general pressure to engage in a process outside the judicial system, it is the parties who are free, should they so wish, to instruct their own conciliator within the process.

27. <u>Knowledge of what happens</u>

28. We find it surprising that there is no generally accessible video that shows a mediation actually happening.

29. There are numerous verbal and cartoon descriptions of mediation but nothing that shows the process in operation. Attempts to film actual civil mediations have been (insofar as we know) fruitless but there is no reason why a Mike Leigh approach should not be used in making a video of a mediation of a typical type of dispute. If successful, others could follow. Such videos have been made in respect of case management at very little cost.

30. <u>Money</u>

31. Universal in any consideration of ADR is the question of money.

32. Although judges are interested in events before the start of litigation, it is only after proceedings have been commenced that they become involved in the question of mediation or conciliation. Court fees are in many cases determinative of whether there will ever be such involvement.

33. The well documented effect of fees in respect of claims in Employment Tribunals not only concerned access in general but also inability to engage the sophisticated ADR system operating in respect of such claims.

34. There is anecdotal evidence that in Wales the court fees payable in respect of middle bracket claims are encouraging parties to mediate before the start of proceedings. While one can see the beneficial aspect of this state of affairs one is also left to consider the effect upon those ignorant of mediation or without the funds to have two bites at a cherry if the first yields nothing. Indeed a cynical adversary might go through a charade of mediation with the express purpose of draining an opponent's limited funds, it being borne in mind that, absent agreement, it is only by judgment that such costs can be recovered.

35. <u>Other forms of ADR</u>

36. We can add nothing to the conventional method of negotiation between the parties.

37. Despite court encouragement of formal JENE and its support in the CPR it is little used and there is no reason to suppose that its use will grow in any material way.

38. Settlement meetings are increasingly used in family disputes and have a long history of use in such matters as clinical negligence. It is perhaps worth noting that this type of ADR often involves the input of some form of independent expertise.

39. <u>A conclusion</u>

40. A difficulty which confronts consideration of ADR is the use of a single label (usually "mediation") which covers various needs and approaches to meeting those needs.

41. Our own consultation suggests that at the lower end of small claims mediation there is little reference to the merits as against consideration of the general inconvenience and cost of fighting out the claim. The involvement of the mediator on the telephone for a

limited time provides a cheap, robust and largely successful means of resolving this type of dispute. As the amount and complexity of claims increases so does the difficulty of finding an affordable and appropriate form of ADR.

42. It is striking that FDR appointments, without differentiation in essential form, process an asset pyramid of which the base involves the merest brush with the many parts of the Form E dealing with financial matters while its apex attracts almost every imaginable aspect and amount of assets.

43. It seems to us that insofar as civil justice in the courts are concerned one must employ a process that is robust and cost effective. No idea merits further consideration unless it is practicable.

44. Without funding (whether from those involved or from the courts) ADR has a finite ambit. The nature of the ADR must be tailored to the available resources. There is no point in decrying forms of ADR as 'debasing the process' if the alternative is to have no useful ADR at all.

45. The Report

46. We now address the questions in the report. The idiosyncratic layout of the questions arises from the need to cut and paste from the Report as published on the website.

SECTION 10: QUESTIONS FOR CONSULTATION

General

10.1.
The Working Group believes that the use of ADR in the Civil Justice system is still patchy and inadequate. Do consultees agree?

We do.

10.2.
The Working Group has suggested various avenues that may be explored by Judges, by lawyers and by ADR professionals in order to improve the
position. We will ask questions in relation to these proposals below. But do consultees think that the Working Group has ignored important questions or

precedents from other systems or
that there are other areas of inquiry with which we need to engage?

The Report is correctly premised upon the assumption that settlement of disputes by means of ADR is desirable. Much of what follows may be described (in no derogatory sense) as consideration of how the brand, ADR, can best be marketed. It might be that the exercise would benefit by input from someone with a specialist background in such matters.

We are struck by the absence in the Report of descriptions of mediation models in respect of different types of dispute and their relative cost. This is particularly relevant to the middle bracket. The assumption in the CEDR 2016 audit appears to be of a one day mediation with an average charge by the mediator of about £1,500, although we note that average time spent is 18.6 hours and wonder if £1,500 is the total figure. There will be a further cost if lawyers are involved and there is also the cost of accommodation.

We think that such a comprehensive report of which a major aspect is the persuasion of litigants to use mediation on pain of financial sanction should, as well as focussing on the benefits of mediation, have attention to its cost for litigants who will already be faced with considerable court fees. The sceptic might say that the cost of mediation is simply another fee to be paid along the path to obtaining justice.

We also wonder whether, in addition to FDR appointments, a greater investigation might be made of the benefits of court involvement in the process of ADR. This is a process of particular development in family disputes with pilot schemes derived from the British Columbia model of settlement conferences. The German system of referral of cases by trial judges to 'mediation judges' and referral back where there is no agreement merits further consideration.

Insofar as other jurisdictions are concerned we note that that the dates of some of the publications are a few years old. In France, in particular, there have been material recent developments in the law relating to the use of mediation.

Making ADR culturally normal

10.3.

Why do consultees think that a wider understanding of ADR has proved so difficult to achieve?

One starts with the fact that the great majority of litigants know nothing of civil litigation before becoming involved with what may be the only litigation in the whole of their lives. ADR in the sense of mediation and conciliation is an obscure sub-set of a largely unknown process.

In order to acquaint themselves with how the process of litigation works, most litigants will go to the internet for information. Absent a sociological study (which would be of assistance) the requests fed into Google and the like are a matter for conjecture. It is at this level that the maximum use should be made of media access. A pleasing feature of this is that, once a product such as a video has been created, its continuance in cyberspace is free. Bill Wood's video introduction to his practice is hilarious, instructive and on YouTube for the world to access at any time. We can see no reason why a similar approach is not used to instruct the public in the nature and use of ADR.

We think that insofar as solicitors are concerned, the answer to the question best comes from them. As we mentioned earlier it does appear that in middle bracket cases court fees have led to an increasing use of mediation before the start of proceedings.

An important half-way house to awareness of mediation is the use of MIAMs but, in a sense, this also illustrates the approach to the question of understanding.

MIAMs occur (if they do) after a dispute has already entered the formal process of dispute resolution. In other words they are an aspect of case handling at a late stage in the progress of a dispute.

Thus there are two main 'knowledge portals' in respect of any forensic process including ADR.

The first is a general awareness of the Judge Rinder and Judge Judy kind.

The second comes once a particular dispute has burgeoned when, as with any educational process, the knowledge has to be accessible and relevant. Filling boxes in questionnaires is essential but far from engagement with the basic problem.

10.4.

How can greater progress be achieved in the future?

Please see above

Encouraging ADR at source

10.5.

Is there a case for reviewing the operation of the consumer ADR Regulations?

There is

Why has their impact been so limited?

Because those who are the object of the Regulations do not actively encourage their use and those who have the benefit of them doubt that they will be of benefit in what are often (but by no means always) low value disputes. From a judicial perspective one notes that ADR does appear often to be used in financial disputes.

10.6.

Should the Courts treat a failure to use an appropriate conciliation scheme as capable of meriting a cost sanction?

This seems rather harsh not least because a question arises as to how the danger of such a sanction can adequately be brought to the notice of the claimant.

10.7.

Are there other steps that should be taken to promote the use of ADR when disputes (of all kinds) break out?

In this context ADR must mean the introduction of a third party. In reality third parties are frequently used to help resolve disputes without any thought of calling the process ADR. Respected individuals in the context of family, work and acquaintance are regularly involved. We therefore mean certain kinds of ADR. Two central problems are lack of knowledge (see above) and the basic fact that, apart from conciliation as part of the court process, engagement in ADR is largely consensual. One is left with variations of carrot, stick or nudge. There is a need to demonstrate to the parties (particularly the one approached to take part) that the ADR is in their interest.

Encouraging ADR when proceedings are in contemplation

10.8

Is there a case for making some engagement with ADR mandatory as a condition for issuing proceedings?

Some arguments are rather balanced. On the one hand experience shows that compulsory mediation can simply result in a tick box approach to the meeting of a necessary condition. On the other hand is the suggestion that, once the parties are there, settlement can follow. However, we note that the question is posed regardless of whether the parties in question are represented or litigants in person.

We do not regard it as acceptable that unrepresented persons should be forced to make 'engagement with ADR a condition of issuing proceedings' nor do we understand what this means. It must be almost invariably the case that the parties to a dispute make some move towards settlement (whatever the proposed terms) before issuing proceedings.

If the question equates ADR with mediation we view with concern that the suggestion that there should be a forced engagement in what the Report recognises as an ill-understood process that operates without regulation in the private sector.

That said, we appreciate the strength of the proposal in respect of clinical negligence cases where the parties will usually be represented and the arguments in favour of attempting settlement are great.

For different reasons we can also see the force of requiring at least some attempt at ADR in boundary disputes.

How in practical terms could such a system be made to work?

It cannot.

How would you avoid subjecting cases which are not in fact
going to be defended to the burden of an ADR process?

One cannot. What of the myriad unpaid utility bills?

10.9.

Can the prompts towards ADR in the pre-action protocols and the
HMCTS Guidance documents be strengthened or improved?

Yes. We note the variety of wording employed.

Should a declaration be
included in the claim document in the terms of R9 (see paragraph 9.19 above)?

We agree with the view expressed at paragraph 9.20.

10.10.

Are MIAMs on the family model a practical solution at the pre-action stage?

We find it difficult to see the benefit of MIAMs in respect of small claims. This is one of the few areas of ADR in which the process of ADR works to general satisfaction.

Insofar as all claims are concerned there does not seem much point in requiring a claimant to have a MIAM when there is every reason to suppose that the potential defendant will not.

Have the Working Group over-stated the practical difficulties of
introducing civil MIAMs?

No

Have they under-stated the potential advantages of doing so?

No

Encouraging ADR during the course of the proceedings

10.11.

Do consultees agree with the Working Group
that the stage between allocation and the CCMC is both the best opportunity
for the Court/the rules to apply pressure to use ADR and also often the best
opportunity for ADR to occur?

The sooner the better but the CCMC is itself a central opportunity.

10.12.

Do consultees agree with those members who favour Type 2 compulsion (see paragraph 8.3 above) in the sense that all claims (or all claims of a particular type) are required to engage in ADR at this stage as a condition of matters proceeding further?

One always returns to the question of what this means and who is to be involved. Case management should always carry a great degree of discretion in the judge. Instead of seeking to impose general requirements there should be a further express conferment of management power under CPR r.3.1(2)(m) which already refers to ENE and is arguably already implicitly wide enough to cover other forms of ADR. It is for the judge

to raise the necessary inquiries. Have you tried ADR? If not, why not? Are you going to try ADR? If so, when?

There is also the fact that active case management should include fixed trial dates that are to be held wherever possible. Too often the windows for ADR are of a length out of proportion to the need. The prospect of ADR should not become a means of delaying substantive decisions.

An advantage of Tier 2 conciliation is that the standing of the conciliator can be tailored to the nature of the dispute and forms a step integral to the proceedings as is the case with FDR appointments.

10.13.

If compulsion in particular sectors is the way forward, what should those sectors be?

We think that there is an argument for this in family disputes including TOLATA claims

Should they include clinical negligence?

See above.

Should they include boundary/neighbour disputes?

See above. We do not know how successful in general is mediation of such disputes. The point is that the outcomes of some of these disputes are so dire that no stone should be left unturned in seeking to avoid them.

10.14.

Alternatively, should the emphasis at this stage
be on an effective (but rebuttable) presumption that if a
case has not otherwise settled the parties will be required to use ADR?

We are not sure how this would work in practice. If in a PD, what happens when it is not read by a litigant in person? Would it be in a questionnaire?

10.15.

Would it be beneficial to introduce a Notice of Mediate procedure modelled on the British Columbia system?

This approach is attractive but cumbersome and potentially expensive.

10.16.

Do consultees agree that the emphasis needs to be on a critical
assessment of the parties' ADR efforts by the Courts in "mid-
stream" rather than a process which simply applies the Halsey guidelines at the end
of the day after the judgment?

Yes

Is it practical to expect the CCMC to be used in this way?

Yes

If directions were otherwise agreed between the parties can the court reasonably
be expected to require the parties to attend purely to address ADR?

This is part of the judge's duties in reading the file and the proposed order. The judge is free not to rubber stamp a proposed order. What may suit legal representatives may not be in the best interests of the parties. The judge can raise the matter by email either directly or through the court and, absent a satisfactory response, hold a telephone hearing.

10.17.

Are costs sanctions at this interim stage practicable? Or is
there no alternative to the court having the power to order ADR ad hoc in appropriate
cases (Type 3 compulsion)?

We do not see how costs sanctions can be applied at an interim stage without the danger of the court becoming involved in a consideration of privileged exchanges.

While we are not sure of the driving logic of a suggestion that "there is no alternative" we do agree with the existence of a discretionary power to order ADR when the nature of that ADR is clearly stated and is proportionate to the dispute.

Costs sanctions

10.18.
Do consultees agree that whatever approach is taken at an earlier stage in the proceedings
it should remain the case that the Court reserves the right to sanction in costs those w
ho unreasonably fail or refuse to use ADR issues?

Yes

10.19.

Do consultees agree with the Working Group that the Halsey guidelines should be reviewed?

Yes

ADR and the middle bracket

10.20.

Do consultees agree with the Working Group and with Lord Briggs that there is an ADR gap in the middle-value disputes where ADR is not being used sufficiently?

Yes

10.21.
Is part of the problem finding an ADR procedure which is proportional to cases at or below £100,000 or even £150,000 in value?

Yes

10.22.

Could the ADR community do more to meet this unmet demand?

The word "need" might be more apposite. There is no great demand and this has a number of causes. A major cause is ignorance of the process and ignorance of how to engage it. Where tight budgets are concerned, extra cost is a disincentive. A party may fear that seeking mediation is a sign of weakness. Whether with or without cause a party might so rate its chances as to dismiss the use of mediation. Advisers might consider that, as the vast majority of civil cases have always settled before trial without the use of ADR, so will theirs. It is noteworthy that none of these objections resonates in respect of FDR appointments or Tier 2 of the OSC which is really only online at Tier 1.

The community is doing its best to meet the need and it is largely not their fault that that the difficulties in question arise.

Should the costs of engaging in ADR be recognised under the fixed costs scheme?

Yes

10.24.

Anecdotal evidence suggests that the various fixed fee schemes are not receiving any very great take up. Is this the experience of providers?

We cannot comment.

What kind of volumes are being mediated under these schemes?

We cannot comment.

Why, if they are unsuccessful, are they not being used?

We cannot comment.

10.25.

What pricing
issues have arisen as between consumer mediation, the civil mediation website fixed price scheme and schemes such as those operated by CEDR and Clerksroom?

We cannot comment.

Are there inconsistencies and confusions?

We cannot comment.

Low value cases/litigants without means

10.26.

Assuming an increase in
manpower and the increase in flexibility over dates that have been indicated to Lord Briggs, do consultees think that a further
reform or development of the Small Claims Mediation scheme is required?

The scheme is excellent and requires an extension of resources.

10.27.

Is further effort needed outside and additionally to the SCM scheme to make sure ADR is available for lower value disputes?

A great strength of the scheme is the referral with consent to identified and experienced mediators in circumstances agreeable to the parties. The problem is the absence of these advantages outside the courts system.

What do Consultees see as being the challenges in dealing with this area?

Given that the methodology is well tried and practicable, the difficulty is employing it outside the system. The failure of the LawWorks scheme appears to have been attributable to lack of funding. Mediators had to meet the LawWorks requirements for listing and there was a ready take up of work. A practical difficulty was that the mediator had to cold call the other party to the dispute and persuade that party to take part.

10.28.

How can we provide a sustainable, good quality, mediation service for this bracket?

See above.

Is pro bono mediation viable?

Pro bono mediation is practicable if there is adequate funding for its administration. The LawWorks system was to notify mediators on the list of the availability of a mediation with the mediation to go to the first responder. The offers were taken up within minutes of appearing.

10.29.

What are the other funding options available?

There is no such thing as an unfunded mediation service as opposed to a free mediation service. There is an overwhelming supply of trained mediators willing to give their services free. The use of those services depends upon a small paid administrative staff and upon the money to provide it which, in principle, can come from a great variety of sources but which, in practice, requires a dependable supplier which usually means the State.

10.30. Do consultees agree that special ethical challenges arise when
in particular mediators are dealing with unrepresented parties?

Yes

The on-line opportunity

10.31. In the digital sector how is the Tier 1 prompting for mediation going to work?

Because it is digital, it will have to be part of the menu and will employ as user friendly means as possible of explaining the nature and benefits of mediation with a link to a video of the sort to which we have referred. However, we repeat the disparity between mediation and Tier 2 conciliation. There is no point in promoting mediation for such claims unless it is effectively pro bono with a clear and practicable explanation of how it can be accessed.

Can the same prompts be used
outside the Online Solutions Court when digital access becomes possible across other jurisdictions?

Yes

10.32.

What issues arise with the use of Tier 1 of the OSC and the other forms of digital access which are now intended?

One assumes that the question relates to ADR.

The issues would appear to be not so much obstacles but as carrying the need for clarity. Thus should mediation and ADR be equated? How would the Tier 2 prospect of ADR be flagged up alongside encouragement under Tier 1? Should the whole Tier 1 process of elucidation of issues be completed before embarking on ADR, in which case why not just 'go with the flow' into Tier 2 and its accompanying prospect of conciliation?

Is the use of ODR techniques going to lead to unfair
advantages for litigants with digital access?

Probably

10.33. How should ODR techniques be introduced?

We cannot comment.

Which techniques are going to be appropriate?

We cannot comment.

Could a system of online blind bidding be beneficial?

Yes

How are they being introduced within the wider digital provision?

We cannot comment.

A greater role for conciliation/ombudsmen during the currency of proceedings

10.34.

Is consumer conciliation still underused?

Probably

How could its use be expanded?

Encouragement and explanation.

Should it be used alongside civil proceedings to a greater extent?

Yes but one needs to bear in mind that the processes of conciliation and of ombudsmen are different from those used in the courts and users need to be aware of this.

Challenges for Judicial ENE

10.35.

Do consultees agree that JENE has certain distinct advantages (if the judicial resources are available to provide it) in terms of providing a free ADR service with no regulatory/quality risk?

There is a danger in this question. JENE in the strict sense is little used and given its history over a relatively lengthy period is likely to remain so. Despite the apparent benefits, parties appear to be disinclined to be involved in what is a mini – trial with no binding outcome. There is scope for parties to disagree as to the significance of the result and to use the reasons as a guide as to how best to prepare for trial.

Where JENE is of great benefit is when, in the ordinary course of proceedings, a judge expresses a view as to potential outcome and is active in the process of conciliation.

10.36.

Do consultees feel that a loss of party autonomy and the narrowness of the legal enquiry are disadvantages of the system and if so how can t his be mitigated?

This is potentially so but, as the process is one of conciliation leading to voluntary agreement, there is no reason why a more flexible approach should not be adopted.

Challenges for online dispute resolution

10.37.

Do consultees agree that ODR has enormous potential in terms of delivering ADR efficiently and at low cost?

It does and particularly is this so in the context of the OSC.

10.38.

Do consultees agree that specified standards for ODR would assist its development and help deal with any stakeholder reservations?

We agree

10.39.

What are the other challenges that the development of ODR faces?

ODR has to be user friendly and potential users have to be made aware of this. The consumer oriented websites offering the facility should not be permitted to provide access of a nature that is likely to discourage or diminish claims.

How else can ODR be rendered culturally normal?

Cultures develop, frequently spontaneously, through the *mores* and types of communication that those in a group engage with. If ODR is to be rendered culturally normal there needs to be a professional sociological analysis of how this can best be done with a proper regard to the characteristics of those being encouraged to use it.

Challenges for Mediation

10.40.

Do consultees agree that Judges and professionals still do not feel entirely comfortable with mediation in terms of standards and consistency of product?

We are not sure that judges give much thought to the matter. Their task is to encourage mediation. At almost every level they have no role in considering either the nature of the mediation or who is to be the mediator.

Because professionals usually choose mediators from a relatively small pool of which the members are known we think that this question would not largely affect them.

Is there

a danger that the flexibility and diversity which many regard as the strength of mediation is seen as inconsistency and unreliability by other stakeholders?

This question assumes a degree of knowledge in relevant stakeholders that is not there. Most lay stakeholders barely know what mediation is.

10.41.

How do consultees think that these concerns can be reassured and addressed?

We think that these concerns operate at a rather sophisticated level that transcends the position on the ground. Either the users of mediators will be able to address the position from their own knowledge or unschooled stakeholders will be looking for a competent guide in an area into which they have been eased by a system which has then left them to get on with it.

10.42.

Is there a case for more thorough regulation?

Yes. We speak only in the judicial context. Speaking in general we cannot see why people should not always be free to choose a third party of whatever nature or standing to help them resolve their difficulties. However where the courts are concerned, just as with many who are involved with the administration of justice, there should be a professional body of which membership is a requirement and that body, as with other such bodies, should be funded by the members.

How could such regulation be funded and managed?

See above.

10.43

What other challenges are faced by mediation?

We think that the challenges have been covered by the above.

HH Nicholas Chambers QC

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