

KEVIN SMYTH OF MEDIATION RESOLUTION CIVIL/COMMERCIAL & WORKPLACE MEDIATOR

Mediator's CV



CEDR accreditation: 1997
CEDR Civil/Commercial Panel Mediator: since 1999
Court of Appeal Panel Mediator: since 2003
CEDR accredited Employment & Workplace Mediator: 2020
Fellow of the Civil Mediation Council: since 2021

Client Feedback

“...sensible, thoughtful, and finally managed to broker an agreement when initially the parties were poles apart... He is uniquely qualified to be a mediator. He is dedicated, organised, experienced and proficient... It was a privilege to witness your calm, measured, authoritative yet warm approach and your making of strategically correct decisions at every stage”.

Overview

Kevin Smyth is a retired solicitor having formerly been a Director, Senior Partner, and Head of Litigation of his firm. Since 1st May 2016, he has been a full-time mediator with over 20 years' experience. He has conducted over 150 mediations in cases relating to wide variety of disputes and industries, more than 80% of which have resulted in a settlement being reached on or soon after the mediation day. Kevin was first appointed to the Court of Appeal's Panel of Mediators in October 2003, and he continues to be a member of it. In April 2021, he was made a Fellow of the Civil Mediation Council.

Both as a mediator and/or legal representative in mediations, Kevin has been involved in cases concerning personal injury, clinical and other professional negligence, shareholder and partnership disputes, franchising, life and other insurance indemnities, race discrimination, employment (including workplace

mediations for which he is CEDR trained and accredited to conduct), disputed wills and other contentious probate disputes including Inheritance (Provision for Family & Dependents) Act claims, Court of Protection, financial provision following separation/divorce and many different types of other commercial and personal disputes.

Professional Background

Throughout his post admission career as a Solicitor, Kevin practiced solely as a civil litigation lawyer. For much of that time, he did so in the professional and clinical negligence/personal injury arenas. In the case of the latter, he successfully prosecuted three claims that resulted in awards of damages exceeding £3 - £4 million. Kevin is also a highly experienced practitioner of independent chairing in the public and private sectors. He has chaired numerous appeal hearings of the Legal Aid Agency's National Special Review Controls Panel as well as its Funding Review Committees. He has also chaired meetings related to employment and workplace issues and was the Chairman of the Board of Governors of a well-known large independent secondary school for six years.

Expertise

- Accountants' negligence
- Architects' negligence
- Construction & engineering
- Costs & professional fees disputes
- Education
- Employment & Workplace
- Financial services & Insurance
- Matrimonial Finance
- NHS, healthcare and clinical negligence
- Partnership & shareholder disputes
- Personal injury
- Property and landlord & tenant
- Public sector
- Sales of goods and services
- Solicitors' negligence
- Trust, wills and post death disputes

Dispute Experience

(Non-Neutral work in italics)

Construction and Engineering

- Breach of contract claim by customer against builder regarding alterations carried out to a swimming pool - claim £10,715.00, counterclaim £22,562.00.
- Breach of contract claim in respect of defective building works causing significant consequential loss for a hotel chain – claim £750,000.

- Breach of contract claim the subject matter being alleged poor workmanship and defective materials – quantum £0.75 million.
- Dispute regarding retention monies and their release following the issuing of the Architect's Works Completion Certificate – quantum £125,000.
- Claims and counterclaims as between contractor and sub-contractor for breach of contract, such being underpinned by allegations of fraud, deceit, and the procurement by third parties of the alleged breaches of contract by the sub-contractor - combined value including costs to an imminent Court of Appeal hearing, £724,000.
- Building dispute involving both a claim and counterclaim the principal issues being the identity Of the contracting parties, allegations of sub-standard workmanship and poor-quality materials, failure to carry out works in accordance with the agreed 'build' specification, whether the Claimant was entitled to repudiate the contract and finally, whether the Claimant had sufficiently mitigated his losses.
- Alleged breach of natural justice on the part of a Construction Adjudicator giving rise to an assertion by one of the parties to it that this legally entitled it to refuse to pay the Adjudicator's fee.

Costs Disputes

Kevin has gained considerable experience in the issues that arise in claims related to the costs incurred during litigation which he now uses to assist in the mediation of disputes over costs or where costs are a significant factor.

- Disputed Solicitor's costs claim totalling £150K when inter alia it was alleged that they had been dishonesty on the part of a senior partner.
- Solicitors' fees dispute both as to contractual entitlement and quantum (claimed £580,150 + interest of £130,335) following the solicitors having treated the Parties' CFA as terminated due to the client's alleged repudiatory conduct and sundry breaches of its terms.
- Solicitors' claim for unpaid professional fees defended on the grounds that such were disproportionate to the value of the subject matter upon which advice was sought, further that interim budgets agreed when the solicitor/client retainer had been entered into had been ignored by them and finally it was alleged that Rule 8.7 of the SRA's Code of Conduct for Solicitors had been breached. Additionally, the Defendant client counterclaimed in negligence for a monetary amount which exceeded the amount of the claim.

- Personal injury appeal to the Court of Appeal concerning QOCS and the application of CPR 44.14 in conjunction with Section 51 of The Senior Courts Act 1981 relative to a Claimant's failed application in the court below to obtain an order that come what may, if the then (November 2022) anticipated changes to the QOCS Regulations allowed enforcement of an adverse costs order against the Claimant, there would be none made against him. This was in circumstances when the Defendant's costs were very significant as the Claimant had accepted the earlier Part 36 Offer eight months after the expiry time for doing so and only four weeks before trial of the action.
- *As a former Independent Adjudicator and Panel Member of both the then Legal Services Commission's Funding Review Committee and Special Controls Review Panel, Kevin acquired a significant body of knowledge regarding disputed Solicitors' and Counsels' costs claims.*
- *Adjudicating solicitors' claims for costs against the Legal Aid Fund.*
- *Three of his own clinical negligence claims involving costs of £200,000 in each case.*
- *Several contested probate actions where the costs exceeded £150,000.*
- *Over a dozen or so personal injury cases where costs exceeding £75,000 had to be assessed by the Court.*
- *Negotiating costs settlements in over 100 cases related to a whole variety of different claims.*

Education

- An employment law dispute between a university and its soon to be ex- Director of HR.
- A potential wrongful and constructive dismissal claim brought by the Finance director of another university.
- Claim for outstanding school fees against parents of a former pupil who alleged that she had been sexually assaulted by a male teacher.
- *Kevin has a very considerable experience of the educational world, partly through his firm having acted for several independent schools and a local university. He has also gained much "hands-on" experience within the school environment having been a School Governor for upwards of twenty-five years and in the case of one leading school of 600 children, having been its Chairman of Governors for six years. The educational establishments in question all operated in the private sector and are co-ed.*

Employment & Workplace

- Compensation claim by an NHS Consultant arising because of there being in existence a potential constructive dismissal claim, or one for wrongful dismissal.
- Mediated both wrongful and unfair dismissal claims.
- Likewise, “in the workplace” as between senior managers, other employees and as between employer and employee.
- Claim for damages in respect of psychological injury allegedly suffered because of the Defendant’s wrongful/unlawful imposition and/or execution of workplace competency and disciplinary procedures which in turn resulted in the Claimant’s alleged constructive dismissal and thereafter her suffering a Smith -v- Manchester loss.
- Alleged breach of contract giving rise to disputed issues concerning the right to termination notice, the duration and financial quantum thereof and finally, losses associated with the alleged breach suffered by the claimant project manager.
- *As a lawyer, Kevin represented clients in both Court and Employment Tribunal hearings as well as in mediations in respect of many different types of dispute: Some were wrongful and unfair dismissals cases and others involved both sexual and disability discrimination. Some of the employee clients concerned worked at a very senior level – CEO’s, senior medical consultants working for health trusts, etc. He has also represented employers at mediations.*

Insurance

- Permanent Health Insurance - ill-health of insured - early retirement - issue as to whether 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.
- Life insurers seeking to avoid a policy of life assurance upon the joint lives of the Claimant and her deceased former common law husband who died due to his suicide – claim £1 million.

Intellectual Property

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

Matrimonial Finance

- Following conclusion of FPR Pre-application Protocol process but before FDA, successfully concluding a one day “family mediation” (using the ‘commercial’ as opposed to family mediation model) involving net assets of £2.9m.
- *For most of his professional career practising as a lawyer, Kevin had the conduct of many claims brought by divorcing husbands and wives seeking post-divorce financial provision. Many of these were ‘high net worth cases’ involving large pension funds and occasionally complex trust as well as private shareholding issues.*

NHS & Healthcare / Clinical Negligence

- Claim for damages consequent upon Defendant’s admitted failure to convey adverse test results to the Claimant’s GP with the result that allegedly, surgery delayed for upwards of 2½ months and when performed was so as an emergency rather than on an elective basis. Causation and quantum both in issue.
- Failure to warn female Claimant of the enhanced risk of VTE during or following spinal surgery when beforehand she was taking oestrogen-containing oral contraceptives. Consequently, alleged lack of informed consent to surgery (relying on ‘Montgomery’) and additionally further negligence alleged due to clinical omissions immediately following the index surgery which were said to have resulted in the Claimant suffering pulmonary emboli three weeks later. Damages claimed circa £100K.
- Four party action in which negligent surgery carried out during seven different procedures was alleged against two different Cardio Thoracic Surgeons one of which operated three times privately (inter- costal neurectomies) prior to performing three further surgical procedures (explorations, neurectomies and rib excisions) upon the Claimant as an NHS patient. Second private treating surgeon denied both breach of duty and causation whereas very largely the first surgeon only denied causation. Claim value £216,600 plus interest.
- Claim on behalf of a deceased who died of a duodenal ulcer at which time he was suffering from long term schizophrenia and detained under section 3 MHA. Alleged that such could have been prevented, or in the alternative successfully treated, had the Defendant not failed to discharge its duty of care to the deceased.
- Mother’s claim for damages in respect of a 4th degree perineal tear sustained during a forceps delivery of her first child which resulted in her suffering both faecal and urinary incontinence as well as psychiatric injury. Liability, causation, and quantum all in issue.

- Widower's /PR's claim for damages in respect of a GP's admitted failure to diagnose the onset of a likely pulmonary embolism and thereafter adequately advise upon as well as refer his patient for it. Causation and quantum both in issue.
- Four party action in which negligent surgery carried out during seven different procedures was alleged against two different Cardio Thoracic Surgeons one of which operated three times privately (inter- costal neurectomies) prior to performing three further surgical procedures (explorations, neurectomies and rib excisions) upon the Claimant as an NHS patient. Second private treating surgeon who operated subsequently denied both breach of duty and causation whereas very largely the first surgeon only denied causation. Claim valued at £216,600 plus interest.
- Failure to warn female Claimant of the enhanced risk of VTE during or following spinal surgery when beforehand she was taking oestrogen-containing oral contraceptives. Consequently, alleged lack of informed consent to surgery (relying on 'Montgomery') and additionally further negligence alleged due to clinical omissions immediately following the index surgery which were said to have resulted in the Claimant suffering pulmonary emboli three weeks later. Damages claimed circa £100K.
- Claim for damages consequent upon Defendant's admitted failure to convey adverse test results to the Claimant's GP with the result that allegedly, surgery delayed for upwards of 2½ months and when performed, was so as an emergency rather than on an elective basis. Causation and quantum both in issue.
- Law Reform (Miscellaneous Provisions) Act 1934 and dependency claims arising out of the death of a wife/mother due to admitted instances of clinical negligence but where the expert's opinions as to post death life expectancy varied between 2 weeks on the Defendant's side and on the Claimants', a near normal one.
- Parents of a deceased son aged 10 months at DOD who claimed FAA 76 and LR(MP)A 34 damages consequent upon alleged clinical negligence in the last hour or so before his birth giving rise to severe hypoxic-ischaemic encephalopathy with evolving cerebral palsy.
- Claim in which it was alleged that prior to discharging the Claimant from his care, the treating consultant orthopaedic surgeon failed to have a radiological examination performed in circumstances when he should have known that the Claimant's earlier fracture of a bone in her foot may well not have united.
- Claims made by the Claimant against (1.) her GP Practice regarding certain alleged administrative failures on its part that had an adverse effect upon her health and (2.) her treating gynaecologist arising out of an alleged negligent failure by him to order/use an ultrasound scan to detect the presence of a 6 cm tubo-ovarian abscess which very shortly

afterwards required emergency surgery to excise it. All the Defendants denied liability and causation. An additional a major issue was the level of costs incurred prior to the Mediation (circa £650K combined).

- Surgery carried out negligently (liability and causation both admitted) resulting in the Claimant suffering sundry neuropathic pain conditions, including CRPS (Complex Regional Pain Syndrome) affecting her left forearm and hand (non-dominant) which was caused due to the interruption of the sensory nerve branches of the radial nerve. Quantum claimed (Generals & Specials) exceeded £825K.
- Parents of a deceased son aged 10 months at DOD who claimed FAA 76 and LR(MP)A 34 damages consequent upon alleged clinical negligence in the last hour or so before his birth giving rise to severe hypoxic-ischaemic encephalopathy with evolving cerebral palsy.
- Recovery of residential care costs - allegations of negligence/unlawful medical and financial assessments - counterclaim for care costs paid previously.
- 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 - mismanagement of symptoms - subsequent suicide - dependency claim by widow - causation - quantum - Claimant's desire that there be an explanation coupled with an apology.
- Father murdered by son while latter on temporary release from a psychiatric unit – alleged by Claimant family that decision to release and failure to administer as well as monitor adequately medication was negligent – principal issues were liability, causation, quantum and crucially the provision of an explanation to the Claimant family by the Defendant NHS Trust coupled with an apology.
- Law Reform (Miscellaneous Provisions) Act post-death claim for bereavement, general damages, and the cost of care – quantum £134,000.
- Clinical negligence claims for LR(MP) Act and Fatal Accident Act damages as well as three individual claims by close family members who were proximate as secondary victims (hence need to apply 'Alcock' control mechanisms test) to the deceased family member's death each of whom claimed damages for resultant psychiatric injuries suffered.
- Alleged breaches of Section 3 Mental Health Act 1983 on the parts of both a Local Authority and an NHS Health Care Trust (admitted by the latter) giving rise to a claim against both in damages for unlawful detention.
- Personal injury and wrongful birth claims resulting from alleged clinical negligence. Quantum range at time of mediation £90,800 to £2,172,400.

- Combined Article 2 and 3 Human Rights Act and clinical negligence claims prosecuted by the mother (in her own right and as the deceased's Personal Representative) of her prisoner son who committed suicide while in prison. At the time, he was suffering from a psychiatric illness and was segregated from other prisoners in a non-medical facility/environment.
- Bereavement and personal injury claims (psychiatric) made by a mother and father arising out of admitted negligence which resulted in their first child being delivered still born. Father's 'secondary victim claim' rejected because it did not meet the 'Alcock' control mechanisms test. Such was withdrawn by the father during the Mediation in consideration of a settlement being reached in respect of the quantum of the mother's claim.
- Personal injury claim founded on allegations of clinical negligence (mistaken or misjudged non-administration of 'high cost PCT pre-authorised' medication resulting in emergency surgery) where each of liability, causation and quantum (£237,000 claimed) were substantially in issue. Settlement achieved which included an undertaking on the Defendant's part to provide a written apology and explanation.
- Alleged breach of duty and Article 3 HRA Rights on the part of some of the Defendant's nurses and clinicians in the way in which they cared for the Claimant's father while hospitalised in one of the Defendant's hospitals where he contracted sepsis and died six weeks after admission. Liability, causation, and quantum (circa £117,500) all in issue.
- Damages claim for admitted negligence when performing a laparoscopic cholecystectomy which resulted in the Claimant suffering both physical and psychological injuries and the risk of future adverse sequelae including recurring bile duct stricture, biliary cirrhosis, liver failure, incisional hernias and small bowel obstructions. Causation, quantum, and the Claimant's wish that the claim be settled on a Provisional Award basis all in issue.
- Claim arising out of the admitted negligent intravenous administration of the wrong drug (Metaraminol instead of Ondansetron) immediately following surgery resulting in acute pain and suffering as well as an ongoing substantive psychological injury (PTSD). The principal issues in dispute were the Claimant's insistence that the Defendant provided a full explanation and apology, prognosis, causation, and quantum (£1,891,000 claimed): additionally, at the Claimant's insistence, the Defendant to provide a full explanation and apology.
- Claim arising out of firstly, an alleged failure to obtain an informed consent prior to laparoscopic surgery for the repair of an inguinal hernia and secondly, alleged negligence

when such was performed giving rise to the need for a further repair carried out by way of open surgery. Breach of duty, causation, and quantum all in dispute.

- Alleged lack of informed consent and negligently performed plastic/ophthalmic surgery (blepharoplasty). Liability, causation, and quantum all in issue: additionally, fundamental dishonesty alleged by the Defendant which, if proved at trial, may disentitle the Claimant to QOCS protection.
- A trainee GP's failure to make 'an urgent 2-week referral' of the Claimant pursuant to the applicable NICE Guidelines for patients presenting with obvious symptoms of bowel cancer. 3 years later the Claimant was diagnosed with a malignant neoplasm/lesion at 40cm in the sigmoid colon and a significantly reduced life expectancy. Liability and quantum both in issue.
- Failure to diagnose a displaced intra-scapula fractured neck of the left femur in a 13-year-old Child until 3½ months after he was first examined by which time it had united both irregularly and defectively. Two Defendants: one denied breach of duty and the other solely causation and quantum which was initially assessed at £3.29M.
- Negligent (admitted) catheterization of a male claimant resulting in stenosis of his urethra the resultant damage to which was so extensive that two years later he had to undergo a complex diversionary surgical procedure which entailed the removal of his bladder and the reconstruction of part of his urethra for connection to a substitute urinal stoma. Principal issues were quantum of damage for PSLA and loss of earnings (the claimant was self-employed) and in part, causation pertaining to the latter.
- GP's failure to diagnose an acute bowel obstruction (his condition was mis-diagnosed as 'gastroenteritis') resulting in the failure to hospitalize the Claimant urgently who, 14 hours later, suffered a fall at home which occasioned an injury to the skull and resultant permanent brain damage. Breach of duty, causation, and quantum all in issue.
- Alleged misdiagnosis and mistreatment of a scaphoid fracture which resulted in long term PSLA and reduced lifetime function of the Claimant's non-dominant wrist/hand. Breach of duty, causation and quantum all in issue.
- Negligent hip surgery (admitted in part) carried out upon an 87-year-old female claimant giving rise to alleged PLSA, a dropped foot, the onset of premature dementia and increased care costs. Breach of duty in part, causation and quantum all in issue.

- Intra-operative damage to the spinal cord giving rise to a T7 AIS D incomplete paraparesis. Claimant's case was that firstly, there was no clinical indication for surgery at the thoracic level and that the treating surgeon should have advised and exhausted conservative treatment options beforehand and secondly, that he failed to warn the Claimant of the risk of such surgery causing spinal cord injury up to the level of complete motor and sensory paralysis.
- Alleged failure to diagnose a benign intramedullary tumour at level C2, it being further asserted that had the correct diagnosis been made 12 months sooner and excision surgery carried out at that time, the Claimant would have avoided the subsequent deterioration in his physical condition and would have maintained his pre-operative function.
- Alleged breach of duty on the part of a Consultant Obstetrician & Gynaecologist causing a stillbirth and a prolonged labour (70 + hours) which allegedly in turn caused the mother psychiatric injury and associated financial, lifestyle and other losses.
- Within the scope of what was a formal mediation, chairing a meeting between the father of a deceased adult daughter who committed suicide while in a Health Trust's care as a voluntary patient in circumstances when subsequently shortcomings were identified by a SIRI Panel which declared itself satisfied that such had contributed towards her having decided to commit suicide while still being a voluntary patient of the Trust.
- *As a lawyer, Kevin has successfully prosecuted many high value clinical negligence claims including three different ones for children who tragically suffered injuries at birth resulting in cerebral palsy.*

Partnership & Shareholder

- Breach of contract claim arising out of the sale of a trading business where the principal issues related to limitation, quantum and lack of evidence to support the claim.
- A section 994 (Companies Act 2006) Petitioner's claim of unfair prejudice alleged against a Director and 50% shareholder by the other current 50% shareholder who was a former Director. The allegations of prejudice included the admitted cessation of dividends paid out and payment of salary as well as the diversion of business to a new company set up by the Respondent. .
- *Over the years, Kevin has frequently provided professional advice as a solicitor in this sector and represented clients in mediations set up to resolve both partnership and complex shareholder disputes.*

Personal Injury

- Claim for damages in respect of psychological injury allegedly suffered because of the Defendant's wrongful/unlawful imposition and/or execution of workplace competency and disciplinary procedures which in turn resulted in the Claimant's alleged constructive dismissal and thereafter her suffering a Smith -v- Manchester loss.
- Court of Appeal Scheme Mediation in which damages of between £200K and £250K were claimed arising out of an RTA for which liability was admitted but following covert video surveillance by the negligent driver's insurers, the nature and extent of the Claimant's whiplash injuries were alleged to have been 'grossly and fraudulently exaggerated'.
- Court of Appeal Mediation – Law Reform (Miscellaneous Provisions) Act bereavement/Fatal Accidents Act dependency 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 - principal issues in dispute causation and costs of care, as well as 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.
- Court of Appeal Mediation – a personal injury claim for damages estimated between £500,000 to £1,000,000 – at the first instance the Claimant failed at trial – the Judge's findings of fact then appealed – permission given to Claimant to appeal – Mediation conducted successfully very shortly before Appeal Hearing.
- Claim for damages in respect of psychological injury allegedly suffered because of the Defendant's wrongful/unlawful imposition and/or execution of workplace competency and disciplinary procedures which in turn resulted in the Claimant's alleged constructive dismissal and thereafter her suffering a Smith -v- Manchester loss.
- Claimant suffered at fall at work which resulted in a soft tissue injury and the onset, he claimed, of an alleged adverse psychiatric condition (Adjustment and Somatic Symptoms

Disorders). Liability admitted whereas both causation (the Defendant alleging feigning/malingering and dishonesty on the Claimant's part) and quantum (£2.9 million claimed) very substantially in issue.

- A breach of Section 41 Highways Act 1980 personal injury claim being appealed to the Court of Appeal by the injured party on the grounds that the High Court Judge below failed to apply the correct test before deciding that the findings of fact at first instance by the trial judge were '*perverse*' and should be overturned.
- HRA, Articles 2, 3, 8 & 14 as well as LRMPA & FAA claims against the Police and an Mental Health Trust arising out of the murder of a young wife, and injury to their child, by her husband who had a long history of mental ill health coupled with one of assaulting her, the last instance of which was only 72 hours or so beforehand and within 30 hours of him released from custody on unconditional bail.
- Personal injury appeal to the Court of Appeal concerning QOCS and the application of CPR 44.14 in conjunction with Section 51 of The Senior Courts Act 1981 relative to a Claimant's failed application in the court below to obtain an order that come what may, if the then (November 2022) anticipated changes to the QOCS Regulations allowed enforcement of an adverse costs order against the Claimant, there would be none made against him. This was in circumstances when the Defendant's costs were very significant as the Claimant had accepted the earlier Part 36 Offer eight months after the expiry time for doing so and only four weeks before trial of the action.

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 regarding the conduct of a personal injury claim - issues as to liability, causation and quantum which was pleaded at circa £300,000.00.
- Solicitors' negligence - allegations of poor advice in conduct of a wrongful dismissal claim in which damages of £102,330.00 were sought.
- Court of Appeal mediation in which the solicitors and counsel who had previously acted for the claimant were alleged to have negligently failed to advise him adequately, or at all, in respect of what should have been a claim for provisional damages before and at the time when his personal injury claim was settled 10 years before he issued proceedings against them. The subject of the appeal to the Court of Appeal was that of limitation and the way in which the Judge below had applied section 14A of the Limitation Act 1980.

- *During Kevin's 45 years of practice as a solicitor, he has prosecuted claims against not only solicitors but also accountants, surveyors and architects. Some have been successfully mediated.*

Property & Landlord and Tenant

- Claim for arrears of rent and possession of residential property. Defence thereof and counterclaim for damages arising out of Landlord's alleged failure to keep property in repair over many years.
- 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, counterclaim alleging harassment. Total claim of £10,000.00, and counterclaim 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.
- Disputed maintenance charges and the enforcement of rights of action regarding them – quantum £500,000.
- Disputed right to extend the long lease of a residential property worth £2.5 million.
- Dispute between Freeholders and Leaseholders regarding the nature and extent of their respective rights and obligations regarding the Lessor's rights of inspection and repairing obligations as well as the Lessees' in that same respect.

Public Sector

- Reduction in care costs for Claimant suffering from what were the advanced stages of Alzheimer's - Judicial Review - issues pertaining to liability and how best to construct as well as fund an appropriate care package/regime in the Claimant's home as opposed to a care home which she and her family were fundamentally opposed to the notion of her having to move into one.
- Claim by disabled person for additional care costs and the payment of arrears.
- Three party (including relatives) disputed monetary claim for the recovery of care homes fees which a Local Authority had assessed as being due from a person who no longer had mental capacity and was thus represented by the Official Solicitor.

- An Attempt to compromise Judicial Review proceedings, the subject matter of which was a County Council's decision to reduce by 57.78% funding from it to the claimant for the cost of a specialist dementia carer in her home.
- A Local Authority's disputed claim for the recovery of social care contributions from a deceased's Estate and an associated claim prosecuted in the alternative for the recovery of the same from one or both of it, her deceased surviving spouse's estate and/or their only child personally pursuant to the provisions of sections 423 & 425 of the Insolvency Act 1986.

Sale of Goods & Services, Hotel & Leisure

- Holiday makers not afforded ATOL protection consequent upon it being asserted that the intermediary travel agent was not acting as an agent for the travel operator – 58 passengers initially unable to recover cost of their holiday consequent upon failure of travel company prior to their holiday.
- Failure of travel operator causing holidaymakers financial loss in respect of their pre-holiday bookings.
- Breach of contract claim arising out of the sale of a trading business where the principal issues related to limitation, quantum, and lack of evidence to support the claim.
- Breach of contract/Sale of Goods Act claim relating to an 'on-grid' solar energy system supplied to a houseowner resident in an African country who alleged that it was not fit for the purpose and further that relying upon the vendor's expertise as he said he had, he should have been sold an 'off-grid' as opposed to 'on-grid' system.

Trusts, Wills & Probate (including Contested Wills/Probate Claims)

- Assertion by close relative of deceased that £100,000.00 paid to him was a gift and not a loan.
- Will disputed consequent upon allegations of lack of testamentary capacity – Estate value £3.5 million.
- Application by one sibling for further financial provision from her late mother's Estate (value £2 million +) which was contested by another sibling.
- Claim for unpaid wages and monetary employment law statutory entitlements against a deceased's estate and associated issues relating to both the validity and enforceability of a Legal Charge allegedly signed and intended to provide security for the same.
- Court of Appeal mediation involving one relative's (in his capacity as a PR of his late father) wish to overturn the decision in the court below that another (a sibling of the deceased father in her

own right and, also, as PR of her late husband) should not have to pay an occupational rent in respect of accommodation in which she and her family had been resident for upwards of 15 years.

- Proprietary estoppel and constructive trust claims by a dispossessed co-owner (following the severance some years before of a joint tenancy) in respect of the beneficial interests in a family home: claims for occupational rent on the part of that co-owner and as to not only the admitted 1/3 of the equity, but the remaining 2/3 as well.
- Claim made by a former wife of a deceased ex-husband for financial and other provision pursuant to the provisions of sections 1 (1) b, 2 and 14 of The Inheritance (Provision for Family and Dependents) Act 1975 on the grounds that the disposition of the deceased's estate affected by his Will was not such as to make reasonable financial provision for her. Under the terms of that Will executed shortly before he died, the deceased made no provision at all for his former wife and instead left 45% of the residue of his estate to their only child aged 18 at the time of the Mediation and the rest to other family members, including his mother and siblings.
- Dispute between siblings following the death of their parents relating to the dissolution proceeds of a farming partnership and the ownership of farmland (and related proprietary estoppel as well as Agricultural Holdings Act 1986 tenant's statutory protection issues) which were to be the subject of a Court of Appeal determination.
- *Kevin has regularly prosecuted and defended claims that have been made by clients of his when Wills have been contested or, alternatively, when applications were made for further financial provision pursuant to the Inheritance (Provision for Family and Dependents) Act 1975.*
- *He has represented clients in mediations when such claims, as well as proprietary estoppel claims, have been prosecuted or defended.*

Personal Style

Kevin's approaches every mediation believing that a settlement is achievable. From the outset he uses a combination of awareness, empathy, sensitivity as well as pragmatism to help the parties reach an agreement. He feels it is important for the mediator 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 an important element of Kevin's style and general approach to the mediation process. To achieve this, he ensures that he has a full understanding of both the facts and issues before each mediation takes place. Moreover, he always strives to make sure that the parties and their advisor representatives come to the mediation well prepared and to that end, invariably Kevin drafts

for agreement by the parties a pre-mediation timetable for all necessary tasks to be undertaken in good time before the mediation day.

Like most mediators and representing lawyers, Kevin believes that face-to-face mediations are preferable. In his experience though, online virtual ones have proved to be equally successful and in his view are likely to be so provided the parties, their lawyers, and the mediator too, plan well for them and in good time: and, of course, in a timely fashion prepare fully for the mediation day itself. In short, he believes that more 'front loading' is required from everyone when the mediation is to be conducted online.

Feedback

- *"Thank you for your perseverance, patience and for keeping everyone focused on the desirability of achieving a settlement. We all started poles apart, and this case [a pending appeal to the Court of Appeal] had the added difficulties of a judgement following the trial which left much to be desired and no final order, which therefore left us all guessing about what the ultimate outcome would have been. That a resolution was reached at all is not only a testament to the mediation process itself, but to your own skill".*
- *"I was really impressed with him. He was nice and helpful and as an impartial observer, the reality touch he gave was very useful. His style was fair, realistic, and sensible. He was chosen based on his experience and as a solicitor."*
- *"Kevin was excellent, as usual. 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."*
- *"Kevin was 'brilliant'. He made me feel so comfortable and I hadn't expected to. I felt very comfortable going into the mediation. He had spent a lot of time the week before working with me and talking about the issues ... he brought gravitas and stopped the whole process from breaking down."*
- *"Very much at ease and very informative."*
- *"Very personable and engaged, well prepared and helpful."*
- *"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."*
- *"I thought Kevin adopted a very good approach and style. I would be happy to use him again."*
- *"The mediator was very personable and took sufficient time to listen to relevant parties' comments/concerns."*
- *"Thank you, Kevin, for your patience and incredible endurance in leading this matter to a positive outcome for all parties."*
- *"Thank you very much indeed for your hard work yesterday in assisting us in achieving settlement. The matter had become far more legally and procedurally complex than it perhaps needed to be, and it was very helpful indeed that you had mastered the issues in such a short space of time."*
- *"His pre-mediation preparation, dialogue and attention to detail in this complex case was an essential element to the mediation bringing about a settlement".*
- *"It was a privilege to witness your calm, measured, authoritative yet warm approach and your making of strategically correct decisions at every stage".*
- *"You were a most proactive and hands-on mediator and brought your many years of obvious skill, dexterity and legal prowess to the process, which was appreciated, as it certainly helped the parties to move matters further forward, however much at loggerheads and daggers drawn we were during the process!"*
- *"Your skillful assistance and oftentimes persistence also contributed to securing a successful outcome, for which (my clients) and I are truly grateful. Equally impressive were your manual dexterity skills in faultlessly handling the mediations virtually online. Very well done!"*
- *"We were also very impressed by the energy displayed by Kevin throughout the very long day and I am confident that this contributed to the successful outcome."*

Professional Skills

- Admitted Solicitor of the Supreme Court - July 1973.
- Partner of Burt Brill & Edwards 1975-1986.
- A founding Partner of Burt Brill & Cardens in 1986 and Head of Litigation from 1986 to 2016.
- Special areas of practice during his career as a litigation solicitor: Commercial disputes, clinical negligence, personal injury, professional negligence, contested wills/probate cases, employment law and family (financial provision).

- Accredited by CEDR as a Civil/Commercial Mediator in 1997.
- Appointed to CEDR's Panel of Civil/Commercial Mediators 1999.
- Member of the Court of Appeal's Mediation Panel as from October 2003.
- 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.
- Formerly an Independent Adjudicator appointed by Legal Services Commission to determine Appeal and Review Applications (both Special Cases High Costs Unit and non-SCU cases).
- February 2013 appointed to be a Member of the Legal Aid Agency's Special Controls Review Panel and to be an Independent Adjudicator (effective 01.04.2013, retired March 2016).
- A founding Director of Burt Brill & Cardens Limited in 2015.
- CEDR accredited Workplace Mediator in 2020.
- Made a Fellow of the Civil Mediation Council in April 2021.

Membership of Professional Organizations

- The Law Society
- The Civil Mediation Council
- CEDR
- Sussex Law Society (President 2015/2016)
- And formerly both AVMA and APIL

Membership of Law Society Panels

- Civil / Commercial Mediation Panel (Practitioner Member since August 2002)
- Personal Injury Panel (May 1994 until April 2011)
- Family Law Panel (since June 1999 until May 2014)

ADR Training Provided / Publications in Professional Journals

- To the Sussex Law Society (repeatedly)
- To the Brighton Area Office of the then Legal Services Commission (its Special Cases Unit for high- cost cases)

- 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
- To Clifford Dann LLP, Surveyors, Valuers and Auctioneers (Lewes)
- To the Centre de Justice Amiable de Dieppe & the Bar of Dieppe & Normandy (a half day course entitled 'UK Mediation in Practice')
- In-house training to the Litigation Fee-earners practising with sundry law firms.
- 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
- Seminar entitled "Mediation in Practice 2021 & into the Future" delivered to the Sussex Law Society
- Seminar upon the "*UK Mediation Practise & Framework*" delivered on behalf of CEDR (June 2022) to a delegation of Georgian Judges Lawyers, Insurers Arbitrators and Bankers.
- 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 organization and the need that they have from time to time for ADR.

- Current Under Sheriff for West and East Sussex (Bailiwick of Sussex)
- Former Chairman of Governors, Worth School
- Current Board Advisor to Worth Abbey Ltd
- Director of Worth Abbey Projects Ltd
- Former Director & Trustee of the Martlets Hospice Limited
- Former Director and Trustee of the Hastings Contemporary Gallery

- Former Director of the Jerwood Gallery
- Former Chairman and Director of the Friends of the Jerwood Gallery
- Former Director and Trustee of the Ditchling Museum of Art and Craft
- Former Director of Timberlane Properties PLC
- Former Honorary Solicitor to Crime Reduction Initiatives Ltd
- Former Honorary Solicitor to the Universities of Brighton and Sussex Catholic Chaplaincy Association
- Former Governor of Stoke Brunswick School Trust Ltd.

MAY 2023