

Mediation in shipping disputes: an opportunity worth taking

Mediation can resolve a commercial dispute before legal costs and management time escalate. Yet in shipping, where arbitration remains the usual route for many disputes, mediation may still be an underused option.

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In brief

- Mediation gives parties control over whether, and on what terms, they settle.
- Around 87 per cent of UK civil and commercial mediations settled in 2025.
- The timing matters: parties need enough information to assess their case, but at the same time they should mediate before the most significant costs are incurred.

Mediation is a confidential process in which an independent mediator helps the parties negotiate a settlement. Although participation may be ordered by a court, the decision whether to settle remains with the parties. Mediation can take place in person, with the mediator moving between separate rooms to explore common ground and, where appropriate, facilitating joint meetings. It can also take place online, where virtual rooms can be used.

Courts are giving mediation greater weight

Mediation in English court proceedings gained momentum in 1996, when the Central London County Court introduced its first mediation scheme. The Civil Procedure Rules 1998, which overhauled litigation procedures in England, actively encouraged mediation. The benefits to the public court system are clear: early settlement reduces court backlogs, administrative work and costs. It is therefore unsurprising that the courts have promoted mediation and used costs sanctions against parties that unreasonably refuse to engage.

In recent years, the courts have taken a firmer approach. In *Churchill v Merthyr Tydfil Borough Council* [2023] EWCA Civ 1416, the Court of Appeal confirmed that courts can order parties to attempt alternative dispute resolution (ADR), including mediation. The Civil Procedure Rules were amended with effect from 1 October 2024 to reflect that ruling, with CPR 1.4 and 3.1 expressly addressing the court's role in ordering ADR. In *DKH Retail Ltd v City Football Group* [2024] EWHC 3231 (Ch) , the court ordered mediation despite the defendant's objections that it was too late and had no realistic prospect of success. Interestingly, the parties subsequently reached an out-of-court settlement rather than proceeding to trial.

What about arbitration?

The position is different in arbitration. Many shipping arbitrations are conducted under the London Maritime Arbitrators Association (LMAA) Terms. Unlike the Civil Procedure Rules, the LMAA Terms do not give arbitrators an equivalent express power to order mediation. This reflects the consensual nature of arbitration and the parties' control over the process. The LMAA questionnaire at the close of submissions, does however ask the parties whether they have considered if mediation might be worthwhile. In arbitration, as in litigation, an unreasonable failure to mediate may have adverse costs consequences.

Against that background, several practical questions are worth considering when deciding whether to mediate.

How likely is mediation to succeed?

An estimated 21,000 cases went to mediation in 2025, and overall settlement rates remain high. According to CEDR, a leading mediation institution, approximately 87 per cent of commercial cases referred to mediation in 2025 settled, with around 70 per cent settling on the day and the remainder shortly afterwards. Online mediation, which grew out of necessity during the COVID-19 lockdowns, also remains popular. In 2025, approximately 38% of all mediations took place online; in the commercial litigation and arbitration sector, the figure was around 30%.

Comparable statistics specifically for maritime disputes are harder to find. It seems likely that fewer shipping cases are mediated than in commercial litigation. Several factors may contribute to this. Many shipping disputes are subject to arbitration where there is less pressure to mediate than in court-based litigation. Disputes are a familiar feature of commercial life in some shipping sectors, making litigation or arbitration less daunting than in less litigious industries. In addition, where P&I or Defence Clubs fund legal costs, parties may also have less direct financial incentive to settle. Finally, the legal strategy adopted in a dispute may discourage settlement discussions. Together, these factors may mean that opportunities to resolve shipping disputes through mediation are being missed.

How much will it cost?

Mediation costs vary widely. The mediator's fee is often a substantial component and is usually shared between the parties. For a two-party mediation, each party's share of the fee for a one-day session is generally between £3,000 and £4,500. This usually covers a standard eight-hour day and often includes preparation. Additional time is normally charged at an hourly rate exceeding £400. As mediations often continue beyond the normal working day, the final fee may exceed the quoted daily rate.

Legal representation can also account for a significant proportion of the cost. Solicitors generally prepare the written outline of the dispute and the bundle for the mediator. Parties can attend without legal representation, although this would be unusual in a shipping dispute. Where P&I or Defence Clubs represent each side, they could agree to attend without solicitors.

Generally speaking, there is no need for a party's barrister to attend. Mediation is not a court hearing and does not call for formal oral advocacy. Counsel's attendance may be helpful in a high-value dispute involving complex legal issues, but even then, it would usually be sufficient for counsel to be available by telephone.

In a highly technical dispute, an expert's attendance may occasionally help clarify a particular issue, although this is rarely necessary.

Venue costs can be reduced by holding the mediation free of charge at the offices of one party's lawyers or P&I Club. However, a two-party mediation generally requires three rooms: two separate breakout rooms and a larger room for joint meetings with the mediator. The provision of that space may be a substantial commitment for a law firm. A specialist arbitration or mediation venue, such as the International Dispute Resolution Centre (IDRC) is likely to cost around £1,000 per party per day. Online mediation avoids the need for a physical venue.

The total cost of mediation will often be in the region of £15,000 to £25,000 per party. That can be a worthwhile investment if the case settles but it is of course a substantial expense in a smaller dispute, for example one valued at less than $300,000.

What are the benefits and disadvantages?

The benefits are clear. Early settlement saves legal costs and management time. It also avoids the stress of continuing proceedings and can help preserve commercial relationships that litigation might otherwise damage.

The disadvantages are less straightforward. The most obvious is the additional cost if the dispute does not settle. A subtler risk arises because productive mediation often requires both sides to recognise weaknesses in their positions. If one party engages constructively and the other does not, relations may deteriorate further. A party with no genuine intention of settling may also seek to use the process to gather information. The mediator's role is to encourage meaningful engagement, but a mediator cannot create a willingness to settle where none exists.

When is the best time to mediate?

The best time to mediate is when both parties understand the facts and each other's position, but before substantial costs have been incurred. Mediation often takes place after disclosure, although an earlier attempt may be worthwhile where the facts are largely undisputed. Earlier mediation offers greater potential cost savings, but it can still be valuable once the procedural steps are complete and the parties are awaiting a hearing. Hearing costs often represent the largest remaining expense and may justify a further effort to settle before they are incurred.

What does mediation add to settlement discussions?

Some disputes can be resolved through direct negotiation and a compromise on the figures. Where those discussions stall, an independent mediator can help each party examine the weaknesses in its own case and the benefits of settling it. For the party involved in the dispute, this may be the first opportunity to consider difficult points in detail with someone independent outside their legal team. Mediation also gives the commercial parties an opportunity to speak directly, without lawyers, if they wish. Their priorities may differ from the legal issues, allowing them to reach an agreement that resolves the dispute and potentially opens the way to further business. A negotiated settlement gives the parties control over the outcome taking away the element of risk that is always present if the case goes to a hearing.

Summary

Mediation is an important and often cost-effective means of resolving disputes, particularly when timed well and approached constructively by both sides. Our experience suggests that it may be underused in shipping disputes compared to general commercial litigation. This is unfortunate since it has great potential to save costs, reduce risk and preserve commercial relationships.

Further reading: Mediation: Is there an art to the deal? | Gard's Insights | Gard

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