

Death of the Hired Gun?

DSN V Blackpool Football Club [2020] EWHC 670 (QB)

- Possibly the most important Court decision on Mediation for 20 years.
- Mr Justice Griffiths has certainly not held back the punches when it comes to litigants refusing to mediate.
- In the judgment handed down in March 2020, of DSN v Blackpool Football Club [2020] EWHC 670 (QB) the punches rained in thick and fast as follows (paraphrased):
 1. Lack of proportionality in indemnity costs for failing to mediate – not good enough to avoid having failed to engage in mediation.
 2. *I have an unbeatable defence* – not a good enough reason to refuse to mediate.

“No defence however strong, by itself justified a failure to engage in any type of alternative dispute resolution” (ie mediation) Griffiths J.

- Boom Boom! If you do not mediate now you really do risk paying up handsomely.
- It is extremely important that solicitors remember their duty to support the Court in managing their clients' cases. The Judgment in this case clearly highlights that that should include mediation, apart from in the most exceptional of circumstances (i.e. Brexit).
- In this most unfortunate case, there was a litany of offers and counter-offers, but despite the Court encouraging mediation by way of direction, the Defendant would not budge on the basis they could not lose – they lost.
- Mr Justice Griffiths, in his judgment available to read on the internet, made it clear they should have mediated, and a failure to do so led to indemnity costs which in laymans terms means a lot of cash.
- I would suggest that it is clear, following this judgment that all cases bar the most exceptional, should be mediated, and solicitors who do not ensure that happens leave themselves open to negligence actions.

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