

Party refusing to mediate ordered to pay indemnity costs

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The defendants in a case refused to mediate a dispute until judgment was due to be given after a 4 day trial. The

defendant was ordered to pay the claimant's costs on an indemnity basis (i.e. a more extensive basis than the standard basis) because the defendants had unreasonably failed to mediate.

The letter from the claimant setting out the case indicated that the claimant would be prepared to consider mediation. The defendant's conduct throughout the case made it clear that they did not want to mediate or settle. The case then went to a four day trial.

Before judgment on the case was given, the defendants accepted an offer and agreed to pay the claimant £10,000. Under the same offer, the defendants also agreed to pay all of the claimant's costs on the standard basis. A payment of costs on the 'standard basis' means that courts will only allow the payment of costs which have been reasonably incurred and are proportionate to the dispute. The alternative is that costs are paid on an 'indemnity basis'. This means there is a presumption in favour of the party claiming costs that the costs incurred are proportionate. In effect, it puts the onus on the paying party to establish that the costs claimed were unreasonable.

The High Court took the view that the defendants should pay costs on an indemnity basis as they had been unreasonable in refusing mediation. The judge held that the defendants' decision consistently to refuse mediation because they were confident in their position and the parties were too far apart to mediate was incorrect because, amongst other reasons: (i) the case being a dispute over facts, was a classic case for mediation; and (ii) the parties could not know this before they attempted mediation.

In earlier cases, Courts have refused to award a successful party to litigation costs because they have refused to mediate. Win or lose, litigants are likely to be punished if they refuse to mediate.

Garritt-Crithchley and others v Ronnan and another [2014] EWHC 1774 (Ch)

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