

Book review

GOOD PRACTICE GUIDE: MEDIATION

Andy Grossman, RIBA Publishing, London, 2009,
ISBN 978-1-85946-312-3, £19.95, 82 pp.

This is the most recent in a series of good practice guides published by the RIBA. All are slim volumes, this one particularly so at 82 pages. The author, Andy Grossman, an architect by professional background, is well qualified in the field of mediation, being a practising civil and commercial mediator and a director of the Centre for Effective Dispute Resolution (CEDR).

Although the aim of the guide is stated to be to demystify the process of mediation and to explain the practical aspects of engaging in and using mediation, its scope is in fact considerably wider.

The guide commences with a 'litigation health warning' and recites the facts of the UK building case of *Burchell v. Bullard* [2005] EWCA Civ 358, in which an action by a builder against home owners for just over £18 000 in respect of outstanding amounts due under a contract to build two large extensions to a house was met with a counterclaim of £100 000 in respect of alleged defective works. The decision in the court was a net payment to the builder of about £5000, by which time the legal costs were already huge. Following an appeal concerning who should bear those costs, the appeal court decided that the home owners should bear all their own costs, pay 60% of the builder's costs and the costs of the appeal. The net result was that the home owners had to sell their house in order to pay the

£250 000 legal costs they had thereby incurred. This horror story sets the scene for the remainder of the guide.

The guide continues with short but informative sections on part 36 offers, assessments of costs and conditional fee agreements before very briefly describing the various alternative dispute resolution (ADR) choices.

The central sections of the guide cover in good depth the necessary steps to be taken in preparing for a mediation and describes the typical process adopted in a mediation meeting. This is followed by some case studies from a variety of disputes which each describe the various stages and techniques used by the mediator in guiding the parties towards their ultimate settlement.

A final section deals with dispute prevention and conflict management techniques such as dispute boards and project mediation. Included in the appendix is a slightly out-of-date list of cases where the courts have considered a party's refusal to mediate and a model settlement agreement and Tomlin order.

As with the other guides in the series this is not sufficiently detailed or comprehensive to satisfy anyone whose is primarily involved in dispute resolution, but nevertheless provides a useful basis for understanding why litigation should be avoided if possible and some form of ADR attempted.

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