

# Is Mediation A Business?

## **Kluwer Mediation Blog**

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In the first of a series of blogs on the business of mediation, Stephen Walker, author of *Setting Up In Business As A Mediator* (Bloomsbury Dec 2015), discusses whether mediation is a business at all.

### **Is Mediation A Business?**

The short answer is yes, if you want it to be. But should it be?

Not everybody thinks so. Sir Peter Cresswell, a former High Court judge in the UK and now an arbitrator and mediator told the Chartered Institute of Arbitrators' Mediation Symposium in September 2016 that mediation should be a profession not a business. Participants in the ICC Mediation Roundtables at the Paris mediation competition describe mediation as a calling. What's the difference?

A calling is an activity in the nature of a vocation. You are drawn to it. You contribute to something other than your own welfare. You want to serve others and do good. Nothing wrong with this at all. Except that people who follow callings are often badly paid. But they do not mind. They are not doing it to make money. They are doing it to make a difference.

Within the mediation community they often do pro bono or community mediation, which in the UK at least is usually unpaid. As Stephen Ruttle, a renowned and successful commercial mediator who also runs a community mediation service says: "What we do changes the world. Just get on with it!"

Is Sir Peter Cresswell correct in drawing a distinction between a business and a

profession? Many think that he is. A profession suggests an activity carried out by practitioners who have undergone specialised training, where entry is restricted, practice regulated, and who have clients rather than customers and have higher standards and aims than just making profits for shareholders. Many professions are of course profitable. Traditionally at least in the UK those in “trade” were seen as socially inferior to those in the professions or public service.

Is mediation a profession? No it is not – at least not in the UK. It is unregulated. Anybody can call themselves a mediator. There is no restriction on the use of the title as there is with architects, doctors or solicitors. There is no requirement to undergo any training. There is no disciplinary code.

That is not to say that mediators do not act in a professional way. Many mediators are members of other professions such as law, accountancy, surveying, medicine, HR etc. They bring their own professional norms into their practices as mediators. But this does not make mediation itself a profession.

So mediation must be a business then? Anyone attending any gathering of mediators will certainly think so. One topic mediators always discuss is why there are not enough mediations. They are dissatisfied with the number of mediations they are doing and the pressure on fees. Many feel frustrated at not being full-time mediators. They have to mediate as a part-time activity, ancillary to their day job.

Why is this important? If you want to succeed in business you have to act like a business. This does not mean cutting corners and charging excessive prices. It means adopting a business mindset. Doing the things that all businesses have to do to succeed. Asking the 5 Key Questions that face every business whatever sector they are in:

1. What am I selling?
2. Who am I selling to?
3. What do they want to buy?
4. What is my route to market?
5. How much money, time and energy do I have available to invest in my business?

Unless you are clear about these you will not succeed. You need to have the one

thing that every successful business has and most unsuccessful businesses do not. That is a Business Plan. It must be written down. It need not be complicated. If you have any doubts about this look at Geoff Sharp's [website](#).

You shouldn't feel ashamed about wanting to be in business. It is not demeaning to refer to mediation as a business and to earn money. I disagree with Ian Macduff 's approach when he refers to "the tacky but necessary question of fees" (Ian's blog [Laying The Table](#) ). To succeed as a mediation business you need to stop seeing money as tacky. Cashflow is the lifeblood of any business. You also need to address the 5 Key Questions. How you do that will be the subject of my next blogs.