

Malcolm Scott Walby – Commercial Mediator

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Areas of expertise

- Director/shareholder/partnership disputes
- Family businesses
- Farming families
- Employment disputes with senior executives
- Property disputes between commercial landlords and tenants or neighbours

About

Malcolm has been involved in mediation work over many years, as part of a successful career as an employment and company/commercial specialist lawyer. He has run family businesses and successfully headed up Scott Walby LLP for nearly 20 years, so he has real-life business experience.

Malcolm is a huge convert to the principle of alternative dispute resolution, where the outcome is in the hands of the parties, as opposed to handing over the outcome to the uncertainty of a Judge, with one party losing and generally picking up all the costs. If the parties can negotiate and agree a settlement, they can quickly all get on with life, as opposed to suffering the huge cost and stress of long, drawn-out formal litigation. With many successful cases to his credit and with only three failed mediations, all of which led to later resolutions, he is a successful and experienced mediator. Interestingly the failed mediations were all resolved later, as the mediation process kick-started a positive conversation between the parties, who discovered that dialogue and negotiation was more sensible than suffering complex and expensive High Court litigation.

With a thirty-year career in law, following years in the Royal Navy, farming, oil exploration and family businesses, Malcolm has a huge range of experience. He is not afraid to deal with highly emotive situations and confront the parties with the huge advantages of exploring alternatives, by way of a brokered deal agreed between litigants.

Case studies

Case study one:

Two shareholder/directors ran a business 50:50 providing property upgrades to commercial properties. One director had expensive tastes and spent much of his time in the big office with his Range Rover parked outside. The second director drove a van, worked very hard and had more modest needs. It turned out that they each had different customers.

After some negotiation, the assets (in the form of service vans) were divided between them and the staff remained with the assets they used and the director for whom they usually worked and were divided into two separate companies which were renamed. The cash in the bank accounts made up any differences. There was shortfall but this was eventually overlooked as it was more important that they go their separate ways. Funnily enough, one year later, the hard-working director, who had given way on finances, had been far more successful and had made up the difference.

Case study two:

A tenant of a commercial building was in dispute with the landlord over the factory he occupied. The landlord claimed that the tenant should repair and pay for changes and damage to the building over this twenty-year occupancy. The landlord was refusing to release the tenant from these costs at the end of the tenancy.

However, the landlord had no record of the state of the building at commencement of the tenancy and the tenant had inherited the tenancy when the company was bought, and there was no record of the state of the premises.

Both parties had allowed personal emotion to cloud their commercial decision making but neither was entirely free from blame and the outcome in the High Court would have been uncertain for both parties.

Fortunately they reached an amicable settlement at mediation to split the costs, as the landlord had found a new tenant.

Professional associations & qualifications

Malcolm qualified as a Commercial Mediator with the ADR Group in 2003.