



**Terry Wolfe on solving disputes**

# Anhydrites bubble, bubble, toil and trouble:

IN the world of dispute resolution, there are four principle paths: Litigation; arbitration; adjudication; and mediation.

I am sure you are fully aware of the first three.

■ **Litigation:** This is the hearing of the dispute, usually in the county court by a district judge in accordance with the civil procedure rules 1999.

■ **Arbitration:** This the hearing of the dispute in private by an arbitrator in accordance with the Arbitration Act 1996.

■ **Adjudication:** The hearing of the dispute by an adjudicator in accordance with the Housing Grants, Regeneration and Construction Act 1996.

I wonder how well you are aware of mediation, the discussion of the dispute with a mediator?

I knew of the procedure, but only witnessed it in operation last year on two occasions.

While I suppose anyone could be a mediator, there is a specific training for mediators, and the procedure is more successful with a properly trained and experienced mediator.

**The dispute:** In order to describe the procedure, I must tell you first about the dispute:

A floor in a hospital had been laid on an anhydrite screed. The screed had been primed and screeded with an approved smoothing compound, and the sheet vinyl laid in approved adhesive.

After about six weeks, bubbles began to appear in the sheet. When a bubble was cut through and the subfloor inspected, it was found that the sheet came up with the anhydrite screed firmly adhered to its underside.

In the underside of the smoothing screed, particles of the anhydrite screed were clearly visible.

**My diagnosis:** When I came on the scene, I diagnosed two causes:

Firstly, the laitance had not been properly ground off the anhydrite screed before the flooring installation commenced.

Secondly, a hygrometer test showed the subfloor moisture content to exceed 75% RH.

## A case for mediation

*'After six weeks, bubbles began to appear in the sheet. When a bubble was cut through and the subfloor inspected, it was found that the sheet came up with the anhydrite screed firmly adhered to its underside'*



My report stated that my client, the flooring contractor, was not at fault because under BS8203 it was the main contractor's responsibility to test the screed and ensure it was dry, sound etc, ready for his flooring sub-contractor.

The main contractor had an expert who said that:

(a) dampness was not the cause of failure because the Concrete Society report of 2004 said moisture content of the subfloor was not a major factor in flooring failure and that moisture levels well above 75% did not affect vinyl flooring; and

(b) the instructions for the application of the smoothing compound stated that any laitance on the subfloor screed should be removed before its use, so it was the flooring contractor's responsibility to have noted the laitance and either removed it, or asked for it to be done by others.

I will not go into the rights or wrongs of the case further, except to comment that Richard Wollerton was invited to participate in the Concrete Society's tests, but declined to be involved because he did not consider they simulated real situations.

The comment that moisture is not a major factor in flooring failure says a great deal about the results.

The case went to litigation and was scheduled for a five-day

hearing in the county court. The main contractor was the claimant, my client the defendant.

On the advice of counsel, my client made an out-of-court offer to settle the matter. The other side declined the offer, but offered to go to a one-day mediation.

**The mediation:** This took place at a hotel on the south coast. At 10am, we all met in a conference room. The claimant and his team – the solicitor, barrister and expert – on one side of the table and our similar team on the other.

The mediator sat at the head of the table. He first outlined his programme. He said we would have a joint session to set out the case. The defendant's team would then adjourn to a separate room to discuss their position.

The mediator would then move between the two rooms. He made it clear that we could say anything in front of him: Nothing would be conveyed to the other side, unless we specifically asked him to do so.

The barrister for the claimant then spoke for about 25 minutes, setting out the claimant's case. Our barrister spoke for a similar time, giving our defence.

The mediator then asked a few general questions of the barristers and my side adjourned to our own room.

At first, the mediator stayed with the claimant. After about a half-hour, he entered our room. He asked me various questions regarding the testing of anhydrite screeds for moisture content and the appearance of laitance on a subfloor.

By this time it was close to lunchtime. The mediator went to a third room, where he had lunch alone, we had coffee and

(With acknowledgement to the witches in Macbeth by William Shakespeare)  
**Editor's note: This is NOT the Witch Guide to Mediation**

sandwiches, and continued our discussion.

After lunch, we asked the mediator to take some specific questions to the other side regarding the responsibilities, as defined in BS8203. He later returned with some of the answers, and some questions for us, some of which we answered, but instructed the mediator that we did not wish him to pass this information to the claimant.

At about tea time, they sent the mediator to us with a suggested offer to settle. I have to be honest and say, at this time, I was discharged, as there was no point in keeping me there at additional cost if the discussion was now only going to be about money.

However, I telephoned my instructing solicitors next day, who told me that at 6.30 pm, an agreement was reached.

**Settlement:** Apparently, the saving in cost by reaching an out-of-court settlement was enormous and both sides were reasonably content with the result.

If you are old enough to remember the American detective series Dragnet in which the names and places were changed to protect the innocent, you will understand if I add that the above case is fictitious, in order to protect my professional standing, although based upon true events.

You might care to try mediation, if you find yourself in this unfortunate position. You can get a mediator from the Academy of Experts on 020 7430 0333

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