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## **Christopher Newmark, Partner**

### **Mediation experience**

Chris's mediations have covered a very broad range of commercial disputes and in addition to mediating in the UK, Chris has been retained to conduct mediations internationally, including in the US, Canada and Belgium. Chris is a member of CEDR Chambers, CEDR's lead UK practice group of mediators. He has been appointed as an international mediator by the ICC and by WIPO and is on the mediator panels of the Court of Arbitration for Sport (CAS) and CPR Institute for Dispute Resolution.

Chris is recommended as a leading mediator by both Chambers and The Legal 500. Chambers 2018 quotes: "*His ability to cut to key points and corral some explosive personalities is nothing short of exceptional*". Legal 500 describes Chris as "*dynamic and approachable*" and says that he is praised for his "*patience and determination*" and willingness to "*stay with parties to the very end*".

Chris's approach to mediating involves thorough preparation, including early briefings with the parties aimed at ensuring that all protagonists arrive at the mediation ready to engage. Whilst he places the focus on the parties and their commercial interests, he also uses his expertise as a commercial arbitrator and litigator to assist the parties in evaluating their strengths and weaknesses.

In addition to commercial contract disputes Chris has particular experience in mediating and arbitrating in the following sectors:

*IT and telecoms; Oil and gas; Banking and finance; Shareholder; M&A; Insurance; Construction; Public sector; Fine art; Sport; Insolvency; Professional negligence.*

Examples of Chris's mediations include:

### **Commercial Contracts**

- Two day mediation in the US concerning a dispute between a manufacturer of large scale machinery and its international customer
- Dispute arising out of damage sustained during international transit to large scale IT equipment
- Dispute between a supplier of health products and an internet marketing agency regarding alleged breaches of duty committed in the marketing of the products
- Multi-day mediation of major dispute involving several participants in the product recycling sector
- Dispute between investor and financial institution regarding the performance of foreign exchange contracts
- Dispute between head contractor and sub-contractors relating to the provision of waste management services at a waste disposal centre
- International dispute between supplier of power plants and its supplier of generators for incorporation into its generator sets. The dispute was mediated over several days under the ICC ADR Rules
- Dispute between drug development company and contract research organisation under a contract for the provision of drug trials
- Dispute between a multi-national consumer electronics manufacturer and a supplier of TV stands relating to alleged quality defects
- Dispute between manufacturing company and provider of global branding services
- Dispute between major broadcaster and a supplier regarding the development and provision of an on-line curriculum
- Dispute between major financial institution and a marketing agency regarding the termination of a contract for the provision of marketing services
- Dispute between two companies concerning a contract for provision of mail delivery services
- Multi-party dispute between a purchaser of sophisticated machinery and the overseas manufacturer, local agent and bank which provided finance for the purchase.

- Dispute valued in excess of Euro 450 million following the contested termination of an agreement providing for the payment of substantial royalties from one party to the other
- Dispute involving major electronics manufacturer arising under a contract for the provision of services related to the accreditation of certain products
- Dispute between software company and one of its overseas agents concerning commission payable in respect of a major new contract allegedly procured by the agent
- Dispute following termination of a commercial agent. The claims included compensation under the Commercial Agents Regulations and minority shareholder relief for unfair prejudice
- Dispute concerning contract between two companies in the agrochemicals sector for the supply of goods and services
- Dispute between a supplier of machinery and its commercial customer regarding the customer's loss of profits following an alleged repudiatory breach of contract by the supplier
- Dispute between two companies in the pharmaceutical industry arising out of a contract for the development of new compounds
- Dispute between two companies involved in the supply of food and services to a major supermarket chain

#### **IT / Telecommunications**

- Dispute between two businesses concerning a failed project involving smart card technologies
- Dispute between a software provider and customer in the insurance and reinsurance sector
- Dispute between major utility and an IT provider concerning the long term contract for supply of a customer management and billing system
- Dispute between lead contractor and sub-contractor in connection with the performance under a long term contract of a major IT project for the public sector. The mediation involved several meetings with the parties over a number of months, dealing with both historic issues and improvement of the future relationship.
- Dispute between software provider and customer in the leisure sector regarding royalties and other payments allegedly due
- Dispute between a government department and a provider of financial management and business information consultancy and software
- Dispute between a supplier of clinical diagnostic products and an IT supplier of a stock management system

- Dispute between financial institution and software services provider regarding the termination of a contract for the provision of services relating to internet security systems
- Dispute between human resources consultancy and IT provider concerning the provision of allegedly defective software
- £15 million dispute between customer and IT supplier / consultancy concerning the design and implementation of a geographic information system.
- Lead mediator in co-mediation of five party dispute between a public body and four IT services and hardware suppliers. The dispute, which was worth £3 million, involved third party claims between the defendants. This case was settled in a one day mediation, the preparation for which involved briefing sessions with each of the parties.
- £300 million dispute between a major telecom company and internet service provider
- Dispute between financial institution and software development company concerning the development and provision of a bespoke software system
- Dispute between construction company and IT supplier regarding problems regarding implementation of accounting software system.
- Dispute between major mobile operator and large financial institution regarding claims and counterclaims arising out of a long term contract for the provision of mobile phone services
- £11 million dispute concerning termination of an IRU agreement in respect of a fibre optic cable network
- Dispute between internet service provider and equipment manufacturer concerning on-line payment system
- Dispute concerning performance of a call monitoring and answering system supplied to a London Borough
- Dispute between two telecom companies relating to unpaid invoices for call usage on certain leased lines
- Dispute between IT services company and one of its major corporate clients regarding liability for invoices issued pursuant to an IT services contract
- Dispute between two telecom providers in respect of amounts due under a revenue share agreement
- Dispute between IT company and its customer, a telecoms provider, regarding the fitness for purpose of bespoke software

- Dispute between developer of internet security software and its customer regarding the effect of resignation of a key member of the developer's research and development team

### **Fine art**

- Dispute between two art collectors and a gallery/agent over the sale of a very high value painting
- Multi-party dispute between investors, fund managers, artists and art experts concerning a failed investment fund set up to invest in works of art

### **Shareholder disputes**

- Four party dispute between shareholders in a business in the entertainment sector. The dispute also concerned disputes over IP rights.
- Dispute between shareholders and family members regarding rights in a publishing business
- Dispute between shareholders to a joint venture company created to develop and market products in the energy conservation sector
- Dispute between a company and a former director regarding the appropriate price to be paid to him on the transfer of his shareholding in the company
- Dispute between former shareholder and continuing shareholder in company in the photographic industry relating to repayment of the shareholder's investment in the company
- Three party dispute between shareholders in a manufacturing company regarding the level of dividend payments due to one of the minority shareholders
- Dispute between shareholders in a furniture manufacturing company relating to board representation and various other shareholder rights

### **Public Sector**

- Dispute between a government department and a consortium of professional firms regarding the fees chargeable pursuant to a contract for services
- Dispute between a London borough and a provider of advertising hoardings in relation to alleged trespass
- Dispute between a consortium of local authorities and a provider of waste disposal services

- Dispute between a government owned business and an employment agency regarding fees due under a long term contract
- Dispute between an NHS Trust and a supplier of software for use in several hospitals
- Dispute between a sovereign state and a provider of restoration services regarding performance of a contract

### **Professional Negligence**

- Dispute between insolvency practitioner and solicitor in respect of the provision of allegedly negligent legal services
- Dispute between an international law firm and its former client concerning an allegedly unlawful conditional fee agreement and allegations of negligent advice
- Dispute between a client and its former law firm relating to fees claimed under a conditional fee agreement, including allegations of over-charging
- Dispute between a client and his former law firm concerning an alleged failure to provide adequate fee estimates

### **Insolvency**

- Multi-party dispute involving misfeasance and transaction at undervalue claims brought by liquidator against former directors and connected parties in connection with a sale of land prior to the liquidation
- Contractual dispute between tour operator (in liquidation) and company providing flight operation services

### **Finance**

- Dispute between bank and former customer for repayment of loan used for the acquisition of a new business. The dispute involved the enforcement of security over property and allegations of economic duress
- Dispute between a bank and customer regarding interest charges made under a mortgage deed and payments due under a related life insurance policy
- Dispute concerning terms of repayment of a loan made to support a family business

## **Insurance**

- Dispute between ship owner and insurer in respect of business interruption losses arising from a broken propeller on a large commercial vessel
- Dispute between insurer pursuing subrogated claim and insurers of defendants arising out of the damage caused by the supply of an allegedly faulty piece of equipment used in the space industry

## **Construction**

- Dispute in respect of amounts due under a contract for the drilling of an oil exploration well. This mediation took place in North America.
- Dispute between the manufacturer of power generation systems and its supplier of generators arising from catastrophic failure of certain products
- Dispute between construction company and one of its sub-contractors regarding consequences of sub-contractor leaving site due to late payment of invoices
- Three party dispute between employer, contractor and sub-contractor concerning responsibility for defects to a floor forming part of a newly erected commercial property
- Dispute arising out of contract for the provision of specialist labour services for installation of cabling in secure premises
- Dispute referred to mediation via the Court of Appeal Mediation Scheme concerning the damage caused by allegedly negligent building works which were part of large property renovation
- Dispute between contractor and employer relating to the cost of replacing faulty parts within the heating system for a commercial property

## **IP**

- Dispute between a government department and a provider of IT services regarding the alleged breach of intellectual property rights in the software
- Copyright dispute over use of a photographer's images in a media campaign

## **M&A**

- Dispute between the purchaser and vendor of a major business in the food sector, relating to accounting adjustments affecting the sale price of the business
- Dispute between corporate financier and client regarding the fee payable for services related to the acquisition of a new business
- Dispute between vendor and purchaser under a share purchase agreement regarding alleged breaches of the agreement and payment of the purchase price
- Dispute arising from the sale of a vineyard and related business

### **Landlord & Tenant**

- Dispute between landlord and managing agent for the landlord's properties
- Dispute between tenant and landlord concerning the impact on the tenant's business of building works at the premises

### **Sport**

- Dispute between event management company and its consultants regarding the promotion of an international golf tournament
- Dispute between an official and the governing body of a sport concerning certain disciplinary action taken by the governing body
- Dispute between football club and its former manager concerning the manager's departure from the club
- Dispute between the governing body of a sport and one of its member associations regarding governance of the governing body

### **Charitable trusts**

- Dispute between trustees of a trust responsible for the management of a place of worship
- Dispute between trustees of a charitable trust regarding the roles and responsibilities of individual trustees and the financial management of the trust



## **Professional background**

Chris Newmark, is a Partner at Spenser Underhill Newmark LLP, a practice specialising in commercial dispute resolution. Chris was previously a Partner at the London office of Baker & McKenzie, where he was the chair of the firm's European Dispute Resolution Group.

Chris is regularly appointed as chairman, panel arbitrator and sole arbitrator in arbitrations under the LCIA, ICC, Stockholm Chamber and UNICTRAL rules and in ad hoc arbitrations. Chris was the first emergency arbitrator to be appointed under the 2012 ICC Rules.

Chris has also represented clients before many international tribunals in arbitrations governed by the UNCITRAL, LCIA, ICC and LME rules and has represented clients in investment arbitrations administered by ICSID.

Chris has a good working knowledge of French, having studied French law at the University of Limoges.

## **Personal Style**

Comments from parties for whom Chris has recently mediated include the following:

“Chris facilitated a significant amount of pre mediation lawyer contact, and because of that we were able to get up and running quickly on the day. Chris was on top of the issues, very good at listening but also driving forward the discussion.”

“Chris was extremely commercial, handled the situation very sensitively, worked out the personalities very quickly, was very calm, found the way to resolve the mediation quickly and closed the deal. It was a superb performance. Short of wearing a Santa Claus outfit and distributing presents, it's difficult to know what Chris could have done better!”

“Chris was great...Both sides had their cases well thought out and Chris was ideal for this mediation. This was a complex case and Chris was very patient and persistent. I cannot think of any weaknesses. I would definitely use Chris again.”

“Chris was approachable, organised and methodical. He was sensitive to both parties, listened very well and helped find avenues towards resolving the issues / brokering an agreement which the parties had not considered. ....the mediator did need to probe the parties a bit and Chris did so perfectly.”

“[Chris] managed the process nicely, explaining everything so that the clients felt comfortable. In particular, I was impressed by his pre-mediation contact to the parties which helped prepare both parties for the mediation and no doubt saved time on the day. Chris was calm, clear and good at dealing with the clients. I felt comfortable with him as the mediator and would certainly use him again.”

“I would give Chris 9.5 out of 10 and thought he did an excellent job. Chris has very good people skills and was excellent at managing everybody on the day. He was very pragmatic which is what you need from a mediator. He was also non-judgemental with a non-interventionist style. Chris was prepared to stick it out on the day and the mediation went on past midnight. He made contact with us before the mediation, very informal and we appreciated that Chris had even phoned while on holiday.”

“He was very professional and had a good grasp of IT and contractual issues.”

### **Other dispute resolution experience**

Chris was the Chairman of the ICC Commission on Arbitration and ADR from 2014 to 2017. He acted as chair of the task force revising the ICC ADR, Expertise and Dispute Board Rules. He co-chaired the ICC task force which published the ICC Commission’s “Techniques for Controlling Time and Cost in Arbitration” and was a member of the drafting sub-committee which worked on the 2012 ICC Rules of Arbitration. Chris sits on the mediator panel for the Court of Arbitration for Sport (CAS) and the mediator and arbitrator panels for Sport Resolutions UK. He is a member of the LCIA.

Chris writes and speaks regularly on ADR and arbitration. He is a Senior Visiting Lecturer at the School of International Arbitration, Centre for Commercial Law Studies, Queen Mary University of London and conceived and co-edited the leading mediation book "*Butterworths Mediators on Mediation - Leading Mediator Perspectives on the Practice of Commercial Mediation*" which won the 2006 CEDR Excellence in ADR Award for best publication.

Chris studied Dispute Resolution at the University of de Paul in Chicago and has also trained as a mediator with CPR. Chris has also trained as a community mediator with the Lewisham Action for Mediation Project and mediated pro bono cases for LawWorks Mediation.