

Richard Butler

Mediation Experience

Previously head of corporate and banking litigation at Norton Rose specialising in property litigation, Richard Butler conducts mediations relating to real property

Trained and accredited by CEDR in 1998 and for many years a member of the CEDR Direct Panel of Leading Mediators, Richard is a solicitor and formerly the Head of Corporate and Banking Litigation at Norton Rose LLP.

Currently, he is a visiting professor of Dispute Resolution at Nottingham Law School and a former member of the Law Society's ADR Committee. He has also been appointed Expert on ADR to the European Parliament.

Richard has conducted over 90 mediations

Mediation Style

Richard describes his style as "facilitative and definitely not arm twisting. I think that the mediation of property disputes call for a good understanding of the legal issues (and sometimes valuation issues) on the part of the mediator and a willingness (and ability) to help with the complex structuring and documenting which the settlement of land disputes sometimes involves".

Mediation Feedback

"Richard was persuasive, kept momentum going and knew the facts of the case well."

"Richard was measured, understood the issues well and did not push the parties when they did not want to be pushed."

"He was a good listener, with good credibility and was on top of the issues."

"I would not have any hesitation in using Richard Butler again."

"Richard was extremely good... obviously grasped all the material very quickly and with skill. He was experienced and knew exactly what he was doing,... understood the case and was clearly very intelligent. He was helpful throughout and particularly when the deal had been done, he helped resolve some of the problems our client had with drawing up the agreement."

"He really knew his stuff and got the parties thinking forward."

"He had read the papers and understood the law on the points raised. The client was very pleased. Richard was very good at holding the mediation together and dealing with frustrations."

"The mediator was very good, obviously a highly intelligent chap with a great deal of

expertise."

"Richard was very good, he built rapport well and reality tested my client thoroughly. If a similar case arose, I would not hesitate to select him as the mediator again. He obviously had tremendous knowledge and experience in the property field."

"Extremely impressed... Richard has a highly structured and very reasoned approach. He keeps you informed of what is happening. His manner is reassuring - when he puts something to you - i.e. a weakness in your case - he does it in a very constructive way. He encourages you to think and rethink. We would certainly use Richard again."

"Richard is well read in the areas of law the dispute touched on. I think given the difficult factual matrix of the dispute his style of mediating helped the parties reach a compromise. I would recommend Richard to other parties involved in similar disputes."

Detailed information on Richard's expertise

Landlord and tenant

- Lease and underlease of a warehouse ending on consecutive days. Property in disrepair. Dilapidations claim by freeholder settled with head tenant. Mediation between head tenant and under tenant concerning head tenant's claim to right to pass on the bill.
- Lease of office premises containing a break clause apparently entitling tenant to end the lease on certain date. Break date inserted in the lease in error. Tenant purported to exercise the break clause and took a lease of alternative premises. Proceedings claiming rectification and rent arrears.
- Lease of commercial premises with break clause entitling tenant to terminate the lease so long as it had complied with its covenants in the lease. Attempt to exercise the break clause met by allegation of disrepair. Draft proceedings claiming rent for period after break date prepared but not yet issued.
- Residential tenancy of a large farmhouse with extensive grounds. Disputes concerning the state of repair of the property and complaints about building work carried out by tenant resulted in non-payment of rent, possession proceedings and a counterclaim for breach of landlord's obligations and in fraudulent misrepresentation.
- Lease of offices occupied by quasi-governmental body. Term end dilapidations in excess of
- £1 million. Dispute mainly revolved around the extent to which the admitted disrepair reduced the value of the landlord's property (s 18(1) Landlord and Tenant Act 1927).
- Luxury flat. Landlord's claim for rent arrears and tenant's counterclaim for damages

for disrepair, damage caused by landlord's workmen and for distress and inconvenience.

- Application by tenant for renewal of lease of substantial office building under Part II, Landlord and Tenant Act 1954 resisted on grounds of landlord's intention to redevelop and offer of alternative accommodation. Tenant's ability to recover statutory compensation in excess of £0.5 million depended on whether landlord succeeded solely on the redevelopment ground or whether the landlord was also successful on the offer of alternative accommodation ground.
- Landlord of restaurant redeveloping the building around the tenant. Landlord obtained access to the restaurant effectively shutting the restaurant for a year. Damages for breach of covenant for quiet enjoyment and, in relation to an earlier settlement, allegations of duress.
- Lease of industrial premises. Term end dilapidations claim defended on ground that the landlord had misrepresented its intention to carry out major works of demolition and refurbishment and that the tenant would have continued in occupation under Part II of the Landlord and Tenant Act 1954 had it known the true position.
- Licence to grant an underlease of office premises. Landlord misled as to rent to be payable in the underlease because of hidden side letter between the tenant and the proposed under tenant. Claim for gain based damages. No proceedings had yet been issued.
- Lease and underlease of industrial premises. Underlease rent set by reference to headlease rent. Rent review date under headlease missed but as both the freehold and the headlease became vested in the same company, it contended that it could waive the problem.
- Head lease of units on retail park on the outskirts of a city centre. The city council was the freeholder. Tenant applied for consent to allow clothing retailers to occupy units at the park, but the city council resisted this because of its concern that clothing retailers would be drawn away from the city centre and that this would damage investor confidence in their regeneration scheme. The High Court had been asked to rule on the lawfulness of public law considerations as justifying the refusal.
- Lease of a night club. Dispute as to whether landlord entitled to resist renewal under Part II of the Landlord & Tenant Act 1954 on the ground that the company operating the night club was not the tenant.

Professional negligence (especially land related)

- Dispute between landowner and its solicitors and property advisors over whether a right of pre-emption granted by the landowner to a developer had been accidentally triggered by subsequent transactions. Cost of settlement between landowner and developer claimed as damages against solicitors and property advisors.

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- Claim for damages for negligence of solicitors for their failure to notice that a licence to assign which the client landlord granted to its tenant had to be, and was not, followed within three months by the assignment which it authorised - the effect being to release a guarantor.
- Solicitors advised client in connection with a right of way behind its premises. The effect of their advice was that their client refused to admit to the owner of adjoining premises that it was entitled to use the road. This delayed redevelopment of the adjoining premises exposing the client to heavy damages. The client claimed those damages from the solicitors in negligence.
- Clients alleged that their former solicitors had negligently allowed them to sell their former home separately from an adjoining property formerly used as a granny annex. In fact, the planning consent under which the granny annex had been converted did not allow it to be used other than in conjunction with the house, leaving them with a property which was less valuable than it had been when owned in common with the house. Claim for damages.
- Solicitors acting for developer in acquiring land for development, failed to advise it of the full implications of the lack of a full legal right of way over the access road. Claims in damages brought by the developer and its funders.

Easements

- Industrial premises. Right of way over the land obstructed by construction of a factory unit across the right of way without consent. Mediation after proceedings issued for an injunction to compel the demolition of the unit and damages.
- Property developer bought a development site from farmers, excluding a drain running through the middle of the site, on the basis that the farmers said they did not own the drain. In fact, they did own it. Mediation after issue of proceedings.
- Independent building within the grounds of a stately home. The trustees of the building's claim to prescriptive rights to right to park cars in front of the main house disputed by the Estate. Mediation shortly before trial in the Chancery Division.

Miscellaneous Property Disputes

- Failure to register a conveyance of land at the Land Registry. Land subsequently conveyed by original owner again to someone else. Multi-party mediation between competing landowners and solicitors, including claims for rectification of the land register and of various contracts and for damages for professional negligence.
- Residential property - cohabitees disputing extent of beneficial interests after their relationship broke up. Resulting trusts and construction of trusts instruments.
- Dispute over the correct devolution of residential leasehold property following

intestacy. Freehold held by crown and lease expired without statutory protection of occupiers, resulting in disputes as to who benefited from accruing titles by adverse possession.

- House built partly on land outside ownership. Adjoining owner sought an injunction to have it pulled down. Defence based on constructive trust and proprietary estoppel.
- Landowner agreed with developer that it would develop site for housing. One house accidentally built on land outside that in landowner's ownership. Landowner subsequently bought that extra land. Proceedings to compel landowner to grant developer a lease of the extra land. Mediation on eve of trial.
- Residential property - members of family in dispute over beneficial interests in 6 houses. Raised questions of fraud and the administration of estates in multiple jurisdictions.
- Residential property - Dispute between trustee in bankruptcy and the bankrupt and his wife over beneficial interest in home. Raised questions of resulting trusts and bankruptcy law.

Professional partnership disputes

- Dissolution dispute concerning medium sized solicitors' practice.
- Dispute over management of solicitors' practice resulting from differing attitudes of younger and older partners.

General commercial disputes

- Plant hire company owed unpaid hire invoices obtained a default judgment and then attempted to enforce the judgment by obtaining a charging order over customer's house. House sold before they had obtained an effective charge and most of the proceeds paid to a friend of the debtor. Mediation between the plant hire company and the friend.
- Project manager retained by major infrastructure provider to manage property development. No formal document executed to record the agreement. Substantial work carried out. Whether project manager entitled to payment.

Background and specialisation

Solicitor since October 1985.

By 1999 a partner in Norton Rose, where he was Head of Corporate and Banking Litigation, personally specialising in property disputes. Now has his own solicitor's practice concentrating on mediation and teaching legal and dispute resolution skills. Visiting Professor of Dispute Resolution at Nottingham Law School.

Involved in numerous reported cases conducted in the High Court, Court of Appeal and House of Lords in the property field. Advice and the handling of disputes relating to real property, including landlord and tenant disputes (contested rent reviews, dilapidations, forfeiture and possession actions, etc.); insolvency problems relating to real property (disclaimer of leases, proof and subrogation claims, etc.); secured lending problems relating to real property (mortgage repossessions, foreclosures, fraud and professional negligence relating to mortgage transactions, etc.); and litigation resulting from land transactions (disputes under development agreements, specific performance, rescission, boundary disputes, etc.)

Appointed as ADR Expert by European Parliament for the purposes of the ADR Directive - April 2006.

Relevant academic achievements

- Visiting Professor of Dispute Resolution - Nottingham Law School - January 1999 onwards.
- King's College, University of London. LLM 1988 with Merit.
- Solicitor since 1985.
- Fellow of the Chartered Institute of Arbitrators by examination.
- High Court Advocate (Civil).
- Harvard Law School - Mediation and Negotiation Workshops - June 2006.

Dispute resolution publications

- Droit et Affaires, June 1989, p.121
- The Arbitration, 1991, p.145
- Rent Review and Lease Renewal 1993, vol.13 No.3, p.191
- Estates Gazette. March 12th 1994 p.99
- Property Week. August 23rd 1996, p.12

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- In-House Lawyer. February 1997
- Internet. <http://www.businessmonitor.co.uk/docs/proc/hd14/job05.html>
- Estates Gazette. March 28th 1998 p 138
- Rent Review and Lease Renewal 1998, vol.18 No.4, p.354
- Rent Review and Lease Renewal 1999, No.1, p.16
- Rent Review and Lease Renewal 1999, No.2,
- SAAMCO in Practice in Commercial Remedies Ed Burrows A. and Peel E. Oxford University Press 2003