

## Mediation heads of terms found to be binding by the court



In the recent case of *Abberley v Abberley* [2019] EWHC 1564 the High Court found that the heads of terms of settlement drawn up during the mediation was considered binding.

### Background

The case involved a dispute between a family over farmland. Informal negotiations had failed and the parties agreed to mediate. Negotiations went on late into the evening. Eventually, terms were agreed in principle and the mediator typed up heads of terms around 8:30pm, which included provisions relating to the transfer of land. However, before the document could be printed, the draft disappeared from the laptop screen and could not be retrieved. The mediator proceeded to write them out by hand. He read them aloud and the heads of terms were signed by the parties' solicitors.

Following the mediation, additional points were raised and there was a delay in producing a formal agreement for the parties' signature. A dispute then arose over whether the mediation heads of terms amounted to a binding contract.

The claimant argued that the heads of terms were binding. However, the defendant argued that (1) they were not binding and simply set out matters agreed in principle or, in the alternative (2) that they did constitute a contract but it was unenforceable for non-compliance with s.2 of the Law of Property (Miscellaneous Provisions) Act 1989 (i.e. it did not set out all the terms that had been agreed in one document).



## The court's decision

The court found that just because a more formal document was envisioned, particularly where the first was written hurriedly by hand, this does not by default mean the heads of terms are not a binding agreement. The correspondence following the mediation appeared to be for the purpose of enforcing the provisions of the heads of terms and the agreement of the additional points were not a pre-condition to a binding agreement.

The court considered that:

1. the purpose of the mediation was to resolve a long-standing family dispute;
2. the parties' representatives signed the heads of terms;
3. the mediation agreement stated that the parties would be bound by a signed written agreement;
4. there was insufficient evidence that the additional points raised in correspondence following the mediation, which were not included in the heads of terms, had been agreed in the mediation; and
5. the heads of terms were sufficiently certain to create a legally binding agreement.

The court found the parties had intended to enter into a legal relationship and the document was binding. In addition, the document complied with the statutory provisions relating to land and was enforceable.

Caution should therefore be taken when hurriedly drafting agreements after a long day of negotiations. Most importantly, parties should be clear whether heads of terms are to bind the parties or if they are agreed subject to contract.