

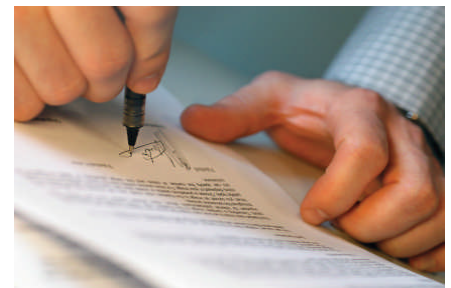
Mediation Case Study: Lessons Learned

A case involving a home building repair was **resolved through mediation** and reveals a **number of lessons** that can be learned by parties to any dispute.

“When dealing with people, remember you are not dealing with creatures of *logic*, but creatures of *emotion*.”
– Dale Carnegie

A couple in Brisbane bought a relatively new home which was still under the builder’s warranty period. Soon after purchasing their home, the roof started leaking on the middle level. They approached the builder who made a minor repair which subsequently did not fix the problem. Other leaks in different areas on this level appeared at various times. Due to the drought, there were often long periods of time that elapsed before heavy rain tested the ‘repair’ and the couple became aware over and over that the builder’s efforts to fix the issue were not permanent solutions. As the repairs were *costing* the builder money he was more interested in building new houses on which he could make a profit. It was also not in his interest to expedite a resolution if the builder’s warranty ran out before he had to affect potentially costly repairs.

Due to the frequency of contact, the couple **put all communications in writing** to the builder hoping he would take written complaints more seriously. Whilst the parties remained on good speaking terms, after nearly three years had elapsed, the builder did not appear to take the issue seriously and began fobbing the homeowners off. The pressure was then on. The warranty period was drawing to an end and the couple had endured years of ongoing water damage to internal fittings and furniture requiring insurance claims and no closure on the issue. They wanted to sell their home but the roof was still leaking (even during an inspection) which was extremely stressful. They realised they needed to **seek help elsewhere**.



The couple subsequently contacted the Building Services Authority in Queensland and submitted a formal complaint in writing with copies of all communications with the builder. Whilst the BSA issued a formal warning to the builder to resolve the issue (and was a protection for the couple under the warranty), the dispute was potentially going to take up to nine months to process before the BSA could force the builder to rectify the problem. This was not satisfactory for the couple who felt disempowered and wanted to sell, but felt morally obligated to have the major repair rectified first.

They **sought opinions** from other leak specialists and builders and in their **fact finding**, learned the source of the problem was the failure of the waterproof membrane on the floor above which was an external deck. Replacement of this membrane would be costly but a permanent solution. The couple got quotes for new waterproofing, approached the builder through mediation and were able to agree to a financial settlement split between the builder and his sub-contractor, which allowed the owners to take control and have the repair completed by their own contractor within 10 days of the mediation.

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This dispute was **'ripe' for mediation** because both parties were committed to resolving the issue. **There were different interests but common ground:**

The owners wanted to:

- be confident there would be no more leaks causing damage;
- take control of having the repairs completely promptly;
- not be reliant on the builder any longer;
- sell quickly and remove the stress;
- have no future relationship with the builder.



The builder wanted to:

- fix the defect at the lowest possible cost;
- resolve the dispute quickly as he was aware there had been previous complaints to the BSA by other customers, affecting his public record;
- avoid taking time off other income-earning jobs for a major repair;
- avoid future stressful contact with the owners.

The low cost of mediation and fast resolution (within an hour) allowed both parties to find a mutually beneficial solution and move forward with their lives without future contact with each other.

Lessons learned:

1. **Fact finding – research thoroughly.** Don't underestimate the incentive all parties have to find solutions and generate options when they have a lot at stake. Find out if the party you are dealing with is a member of, or is governed by, a regulatory body or has a company dispute resolution process. (In this case, formally contacting the BSA to lodge a written complaint that would stay on the builder's public record provided enough motivation for the builder to come to the table and reach agreement.)
2. **Get a second (or third) opinion.** Not only is this an empowering exercise, but third party opinion and credibility provides information, leverage and helps generate options on which to build your case. Qualified parties can provide valuable insights, experience and knowledge that can arm you with the confidence to negotiate an outcome in a particular direction. (In this case, leak specialists and other builders provided the owners with knowledge of the type of repair work that would permanently solve the problem and an accurate cost estimate that formed the basis for a negotiated settlement.)
3. **Keep good records of all communications.** Maintain a diary with brief dates, times and summarised notes of key points early on and a file with any correspondence. As a dispute worsens, emotional stress may make it hard to recall what happened even a short time ago. If the issue escalates and the matter can't be negotiated successfully on your own,

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documented communications will be essential in mediation or court. (In this case, communications were faxed between the parties.)

4. **Decide if you want an ongoing relationship with the other party/ies.** This may change your strategy. Most people are willing to make concessions if they want to maintain a future mutually beneficial relationship, but if this is *not* the case, then you may choose different alternatives which will affect the outcome. e.g. a negotiated financial settlement of the matter. (In this case, both parties no longer wanted to pursue a future business-consumer relationship and with the warranty period over, this would not be necessary.)
5. **Be reasonable and 'give' something to the other party.** It takes two to tango and even when multiple parties are involved, someone has to wear the 'hat of reason.' If one party wants everything *their* way, negotiations will be short-lived and the likelihood of a successful outcome reduced. Try to understand what the other party's interests are so you can work collaboratively to reach agreement. (In this case, the homeowners took the initiative and time to obtain quotes for repairs which saved the builder the hassle of having to organise the repair work through his sub-contractor, but gave the owners control over the quality of work and a new long-term warranty. It also gave the parties a figure to start negotiating on. The sub-contractor who had done the initial waterproofing work was prepared to contribute to the financial settlement due to the failure of their product.)
6. **Give the other party a way out.** If direct contact is too confrontational, offer the other party an alternative way to communicate their intentions e.g. via a third party. (In this case, when the relationship deteriorated, emotions became heated which made face-to-face communications difficult between the builder and owners. Intervention by a third party mediator diffused 'toxic statements,' facilitated meaningful conversations and generated options which resulted in a mutually beneficial agreement being negotiated.)



If you would like to learn more, visit our **Mediation** and **Communication Strategies** pages and sign up for our **free bi-monthly Newsletter "Getting to Agreement"** which is packed with tips, advice, and topics such as communication focus, collaboration, mediation, negotiation strategies, questions and answers from subscribers and clients, recommended reading, case studies and website updates. Full of practical "how to" tools and techniques for communicating more effectively and achieving satisfying outcomes.