

Jon Lang Mediation

Public Sector including Regulatory and Public Procurement - mediation examples

Public Sector generally

a dispute between a public education body and a private supplier of educational resources raising a number of regulatory issues concerning oversight and maintenance of educational standards, specific requirements regarding foreign students, adherence to codes of practice etc;

a dispute between a local authority and a child care/nursery services provider concerning service level agreements, landlord & tenant and other issues;

a two-day mediation concerning a master software licence and services agreement in the financial services field involving a foreign public corporation;

A mediation over 4 days (with a number of pre-mediation meetings) arising out of the implementation of a CRM system within a public body and various associated entities;

a technology dispute between a foreign public corporation and a major IT supplier (with insurers being separately represented) mediated over two days, the mediation being preceded by one day of meetings with the parties (individually) and several conference calls during the preceding few months;

a dispute between a public body and a developer arising out of an agreement made pursuant to section 106 of the Town and Country Planning Act 1990;

a dispute between a public body and an insurer concerning a failed claims handling project;

a public sector dispute under Section 8 of the Human Rights Act 1998 and Article 1 of Protocol 1 (A1P1) of the European Convention on Human Rights (ECHR) concerning alleged unlawful interference with "possessions";

a landlord and tenant case between a public authority and a commercial entity concerning alleged breaches of covenants, applications for a new tenancy, etc;

a dispute between a major services company and public body arising out of a framework agreement and various call-off contracts concerning amounts due between the parties for measured works and variations, raising a variety of issues, including the proper basis of charging (NatFed Rates), the effect of volume shortfalls etc.

a claim for statutory compensation under the Water Industry Act 1991 in respect of flood alleviation works carried out by a public body;

a swaps dispute between a bank and its customer, an overseas public body, the essence of the claim being that the customer lacked authority to enter into the swap transactions in question, in that they were ultra vires;

a claim of overcharging between a utilities company (as statutory undertaker under the Water Industry Act 1991) and a major customer arising from change of use of buildings, uncertainty over whether sewers are in private ownership (or public) and the change in charging structure for surface water and highways drainage (from rateable value to bandings by chargeable area);

a dispute concerning a new storm drainage system installed as part of a major road re-design in which a local authority was both developer and planning authority and which had received technical approval under the Highways Act but which was alleged to be deficient, the case concerning the extent to which the system had been constructed to accommodate various technical requirements, e.g. a 1 in x years storm, allowance for climate change etc, and the cause of post-works flooding which caused damage to a number of properties and alleged long-term reduction in value;

Regulatory

claims arising from product recalls following a Food Standards Agency alert;

various regulatory mediations including in the fields of financial services, healthcare and education (see also Healthcare & Pharma page);

a post-completion dispute arising out of an M & A transaction concerning an allegation that the target business was running a regulated payment service within the financial services regulatory perimeter and should have been licensed pursuant to the Payment Services Regulation 2017;

Public Procurement

a dispute arising out of the claw-back of a percentage of a European Regional Development Fund grant on the basis of alleged non-compliance with certain EU procurement regulations, the case involving an analysis of responsibility for a number of procurement irregularities, auditing processes and proceedings before the ECJ;

a claim brought by a preferred bidder challenging a decision to abandon a procurement process under, inter alia, the Public Contracts Regulations 2015, the mediation involving a review, amongst other matters, of the jurisprudence on abandonment e.g. *Apcoa Parking (UK) Ltd v City of Westminster* [2010] EWHC 943 (QB) and *Croce Amica One Italia Srl v Azienda Regionale Emergenza Urgenza* (Case C-440/13) [2014] EUECJ), and also the 'sufficiently serious' criteria for an award of damages under the Regulations;

a two-day mediation between a public body and a major service provider in relation to an allegedly failing procurement outsourcing project, with the dispute focusing on level of savings achieved and calculation of the share of those savings between the parties;

a dispute concerning an alleged breach of Public Procurement Regulations, the issue having arisen retrospectively as a result of the decision in *Faraday Development Ltd v West Berkshire Council*, and in particular whether a breach of the procurement regulations when a master agreement is entered into renders a subsequent contact void;

a dispute between a public authority and a technology company concerning the development of smartcard technology for several public sites, the mediation taking place over two days;

a dispute arising out of an automatic suspension under s95 of the Public Contracts Regulations 2015, the case involving allegations of manifest error in the scoring of bids;

a public procurement dispute with the award to a rival bidder being challenged on numerous grounds including transparency, mistakes in evaluation and scoring of bids, breach of duty to ensure equal treatment and apparent bias;

an accounting dispute at the end of a major outsourcing contract involving a public body and concerning profit sharing mechanisms, pensions (Local Government Pension Scheme Rules), allocation of savings, application of central government grants and reasonable endeavours clauses;

a challenge to the award of a PFI contract by a bidding consortium who were unsuccessful bidders, the claim, under the Public Contracts Regulations 2015, being in the hundreds of millions and involving a detailed analysis of the scoring of competing bids and of loss;

a number of pandemic-related procurement disputes in the healthcare sector involving volume reduction/over-supply/missed milestone/delivery issues; product specification and regulatory/validation disputes; disputed variations/terminations; force majeure;

several public procurement disputes in a variety of sectors raising, for instance: issues under the Public Contracts Regulations 2006 and 2015, including allegations of manifest error in the scoring of bids, use of inappropriate and disproportionate selection and award criteria, unfairness and lack of transparency; more general issues of public law, such as capacity and vires; as well as allegations of breach of confidence in tendering processes;

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