

Mediation for Construction

- the case for change
in dispute resolution -



Chris Reeves

Chris Reeves

- Carpenter
- Site Manager
- QS
- Solicitor
- Fellow of the Chartered Institute of Building
- Fellow of the Chartered Institute of Arbitrators
- CIArb Accredited in Adjudication
- RICS Accredited in Mediation
- M4C



The case for mediation

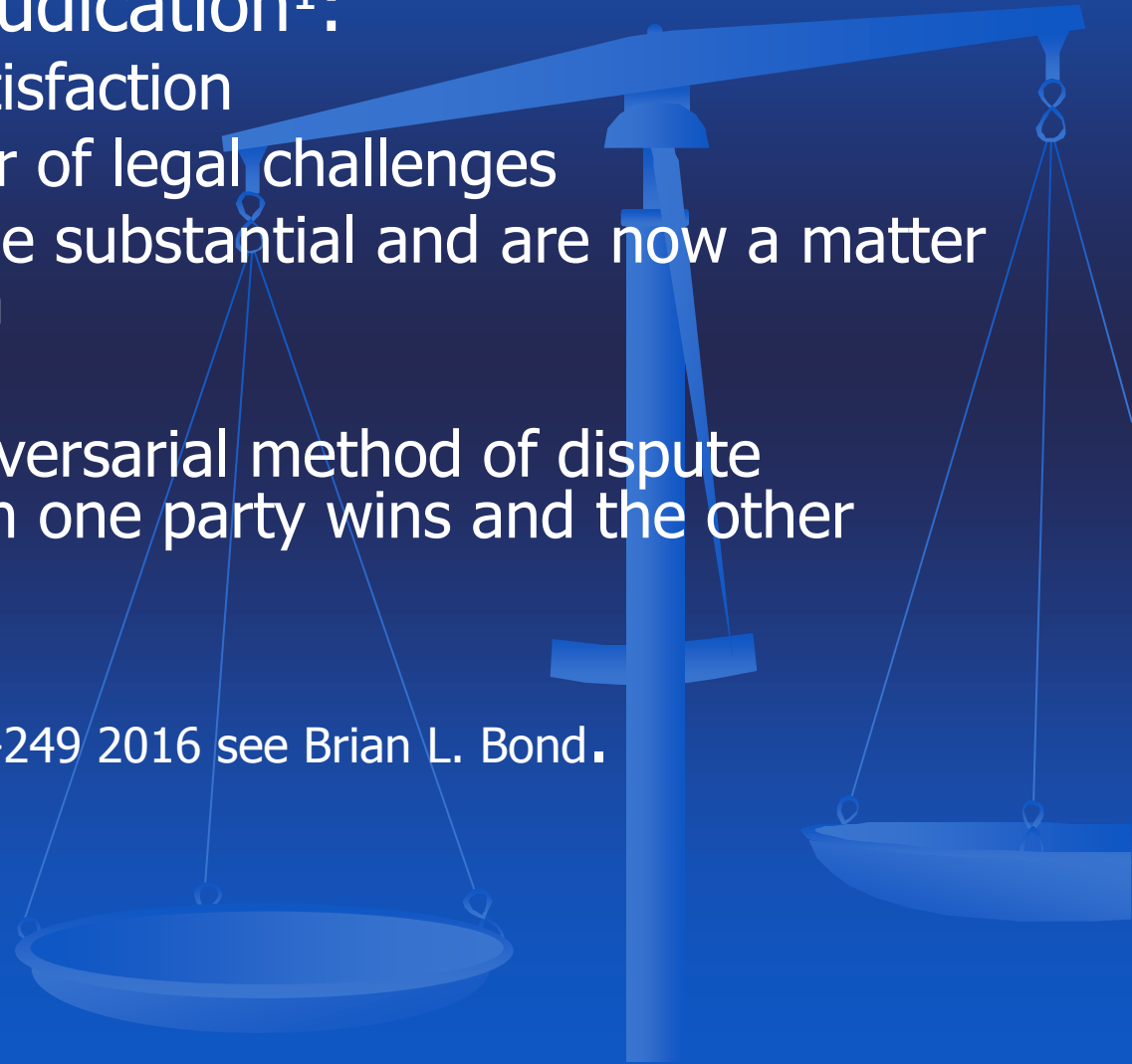
- Settlement by agreement
- Low cost
- Quick
- Flexible
- No legal challenges
- Free to talk
- Generally successful



The case for mediation

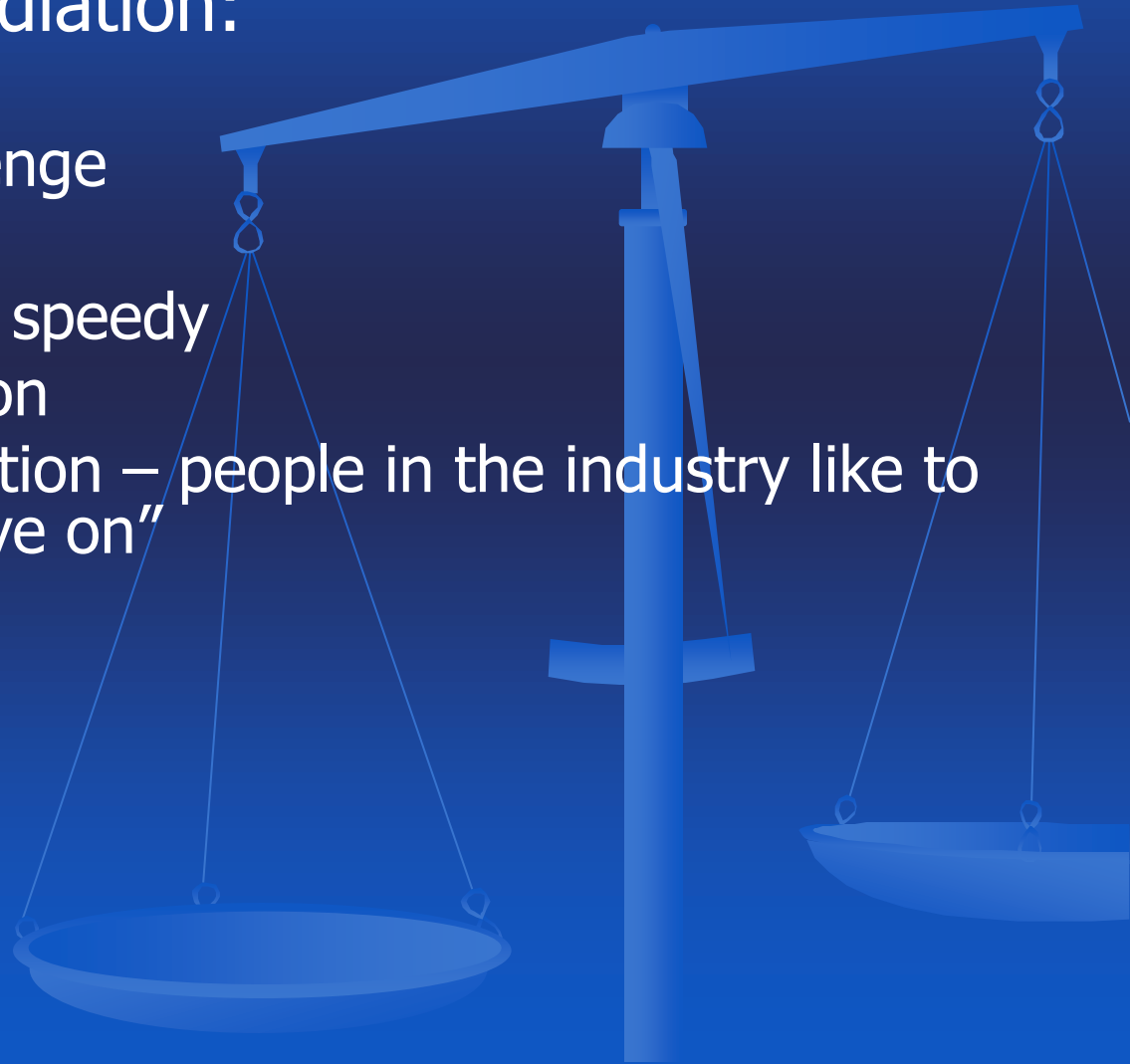
- Concerns with adjudication¹:
 - Widespread dissatisfaction
 - Significant number of legal challenges
 - Costs have become substantial and are now a matter of serious concern
 - Ambush
 - simply another adversarial method of dispute resolution in which one party wins and the other party loses

1: Arbitration 2016, 82(3), 239-249 2016 see Brian L. Bond.



The case for mediation

- Advantages of mediation:
 - Flexible
 - Not open to challenge
 - Final
 - Cost effective and speedy
 - Multi party common
 - Suited to construction – people in the industry like to “do deals and move on”



The case for mediation

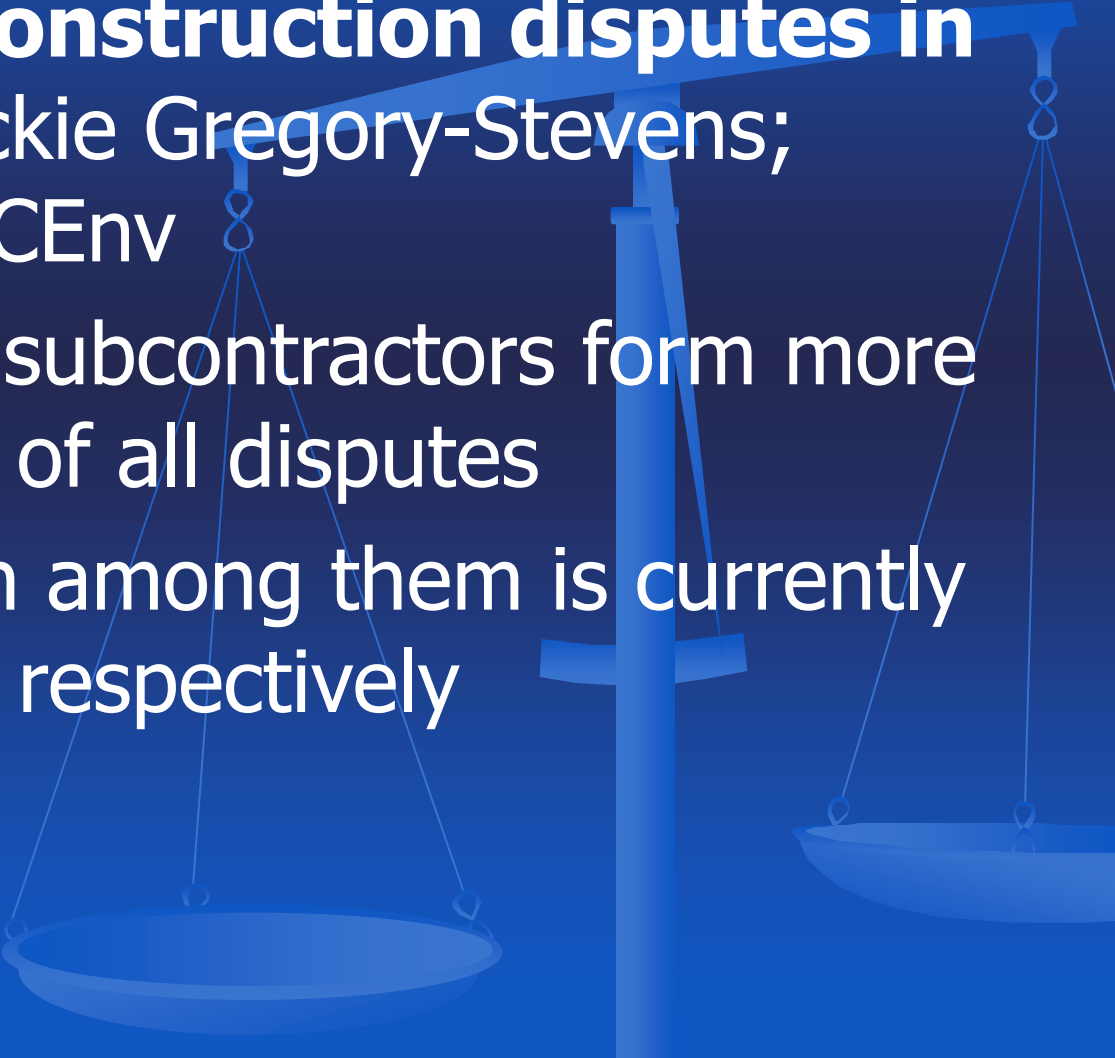


- construction disputes are taking longer to resolve worldwide²
- professional indemnity claims being resolved by mediation rather than adjudication³
- Court's encouragement likely to grow
- Irrecoverable costs will increase

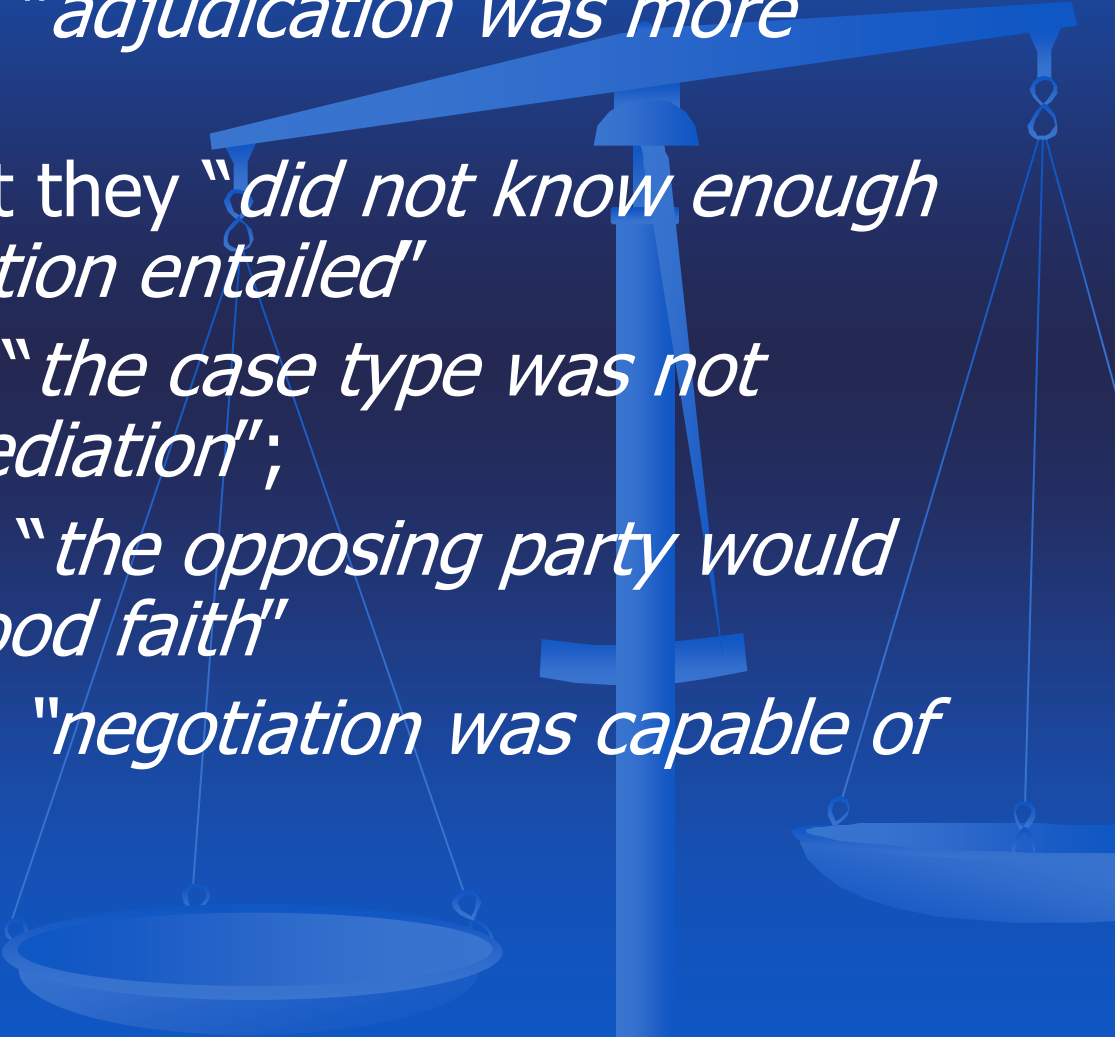
2: ARCADIS and EC Harris Contract Solutions

3: Construction Law Journal 2016: Graham Taylor

The case for mediation

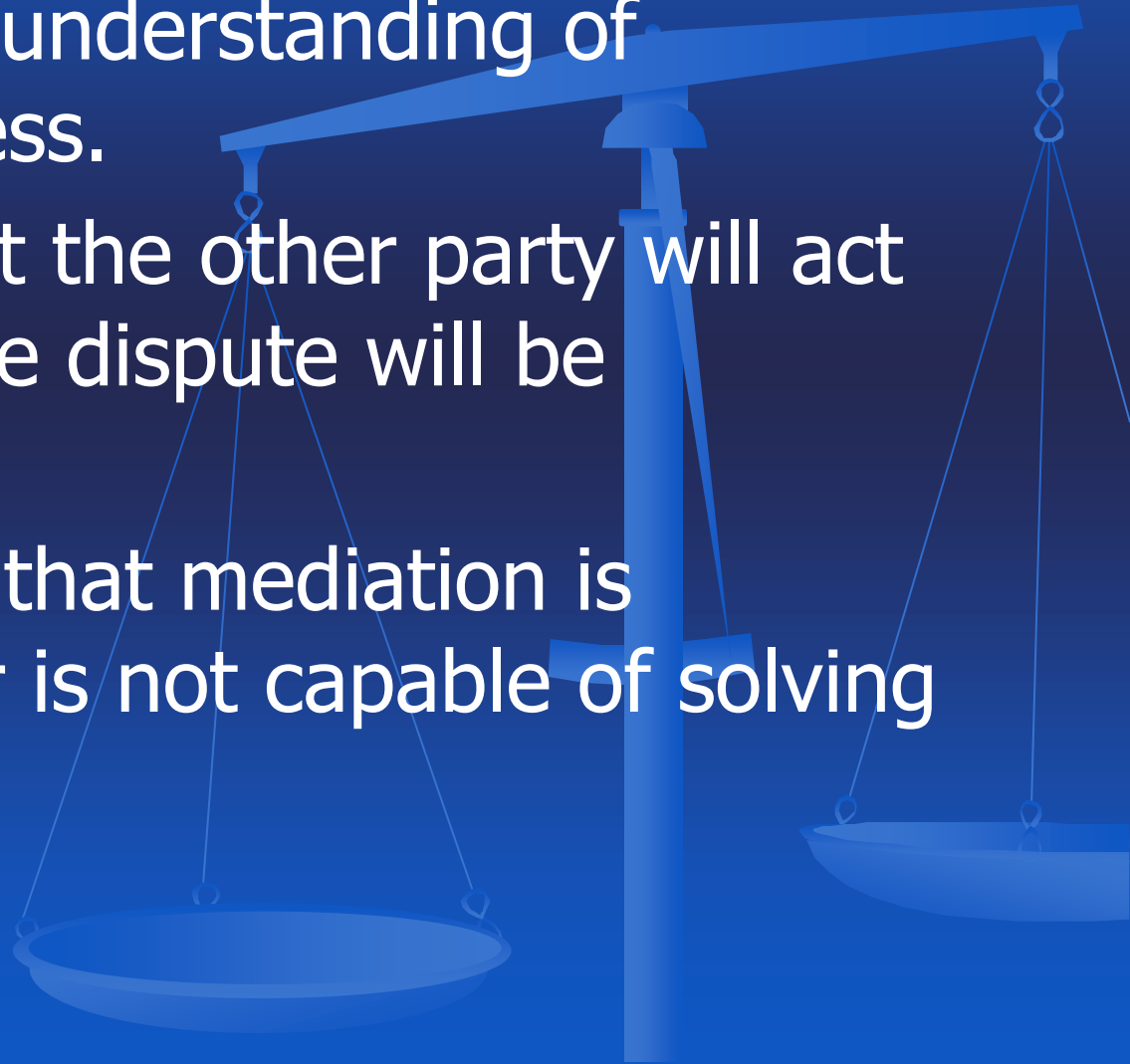
- **Mediation in construction disputes in England** by Jackie Gregory-Stevens; FRICS, ACI Arb, CEnv
 - contractors and subcontractors form more than 90 percent of all disputes
 - use of mediation among them is currently at 13% and 9% respectively
 - Reasons.....
- 

Reasons...

- 35% believed that *"adjudication was more appropriate"*
 - 15% admitted that they *"did not know enough about what mediation entailed"*
 - 15% thought that *"the case type was not appropriate for mediation"*;
 - 11% believed that *"the opposing party would not take part in good faith"*
 - 10% believed that *"negotiation was capable of settling the case"*.
- 

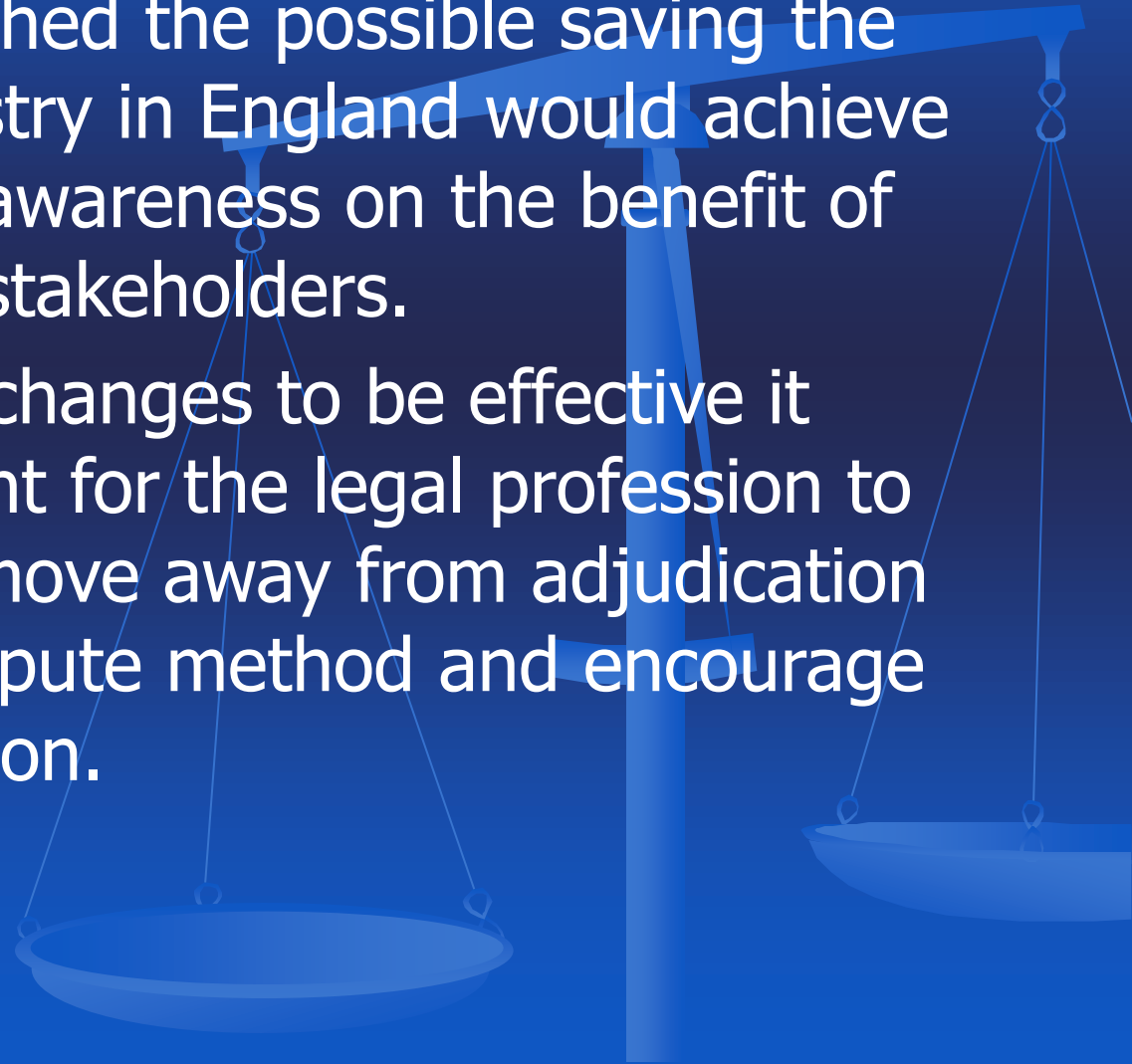
Reasons...

- lack of detailed understanding of mediation process.
- lack of trust that the other party will act faithfully and the dispute will be compromised.
- misconceptions that mediation is inappropriate or is not capable of solving the dispute.



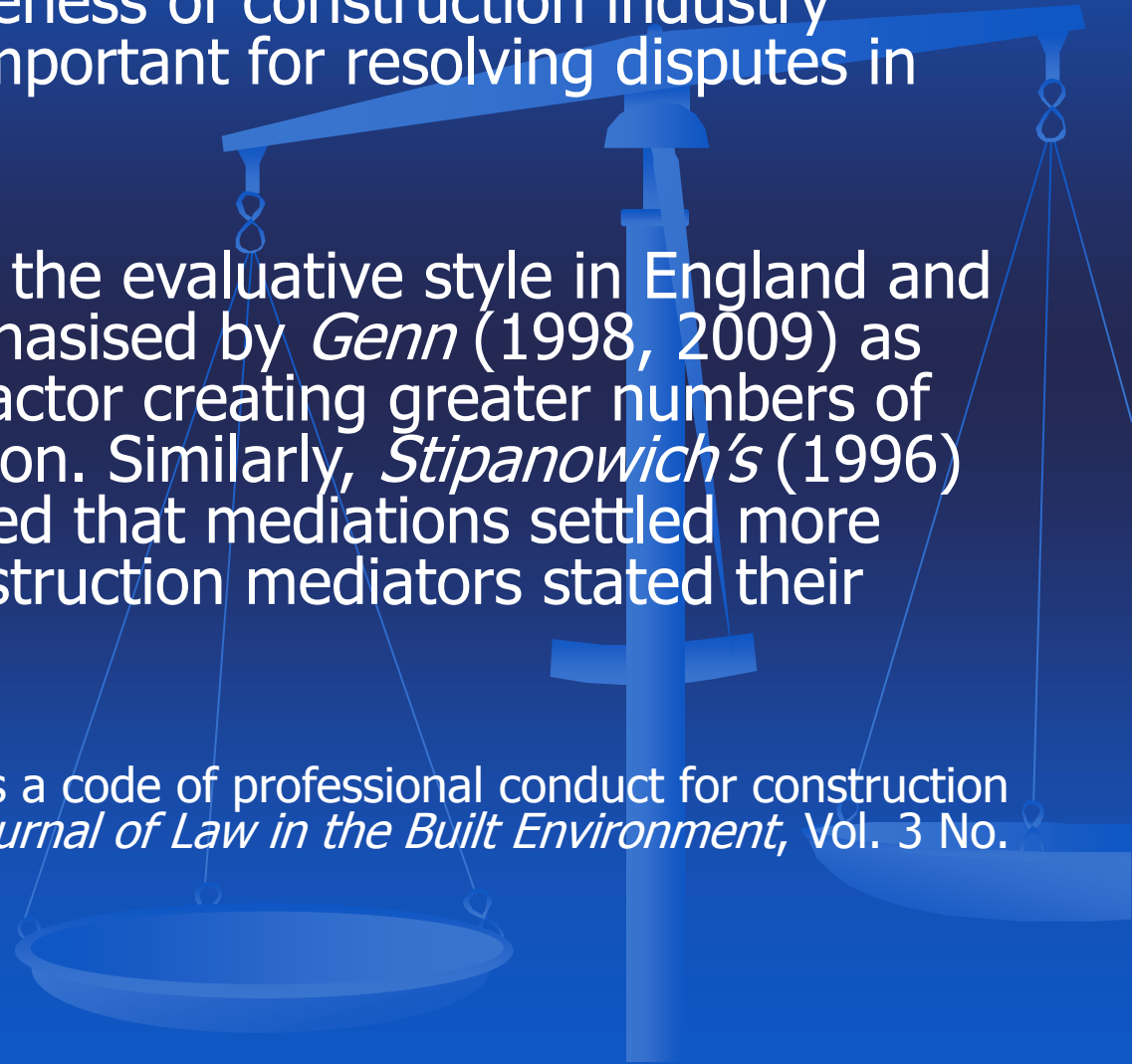
Reasons...

- The study established the possible saving the construction industry in England would achieve simply by raising awareness on the benefit of mediation to key stakeholders.
- However, for any changes to be effective it would be important for the legal profession to engage with the move away from adjudication as the primary dispute method and encourage the use of mediation.



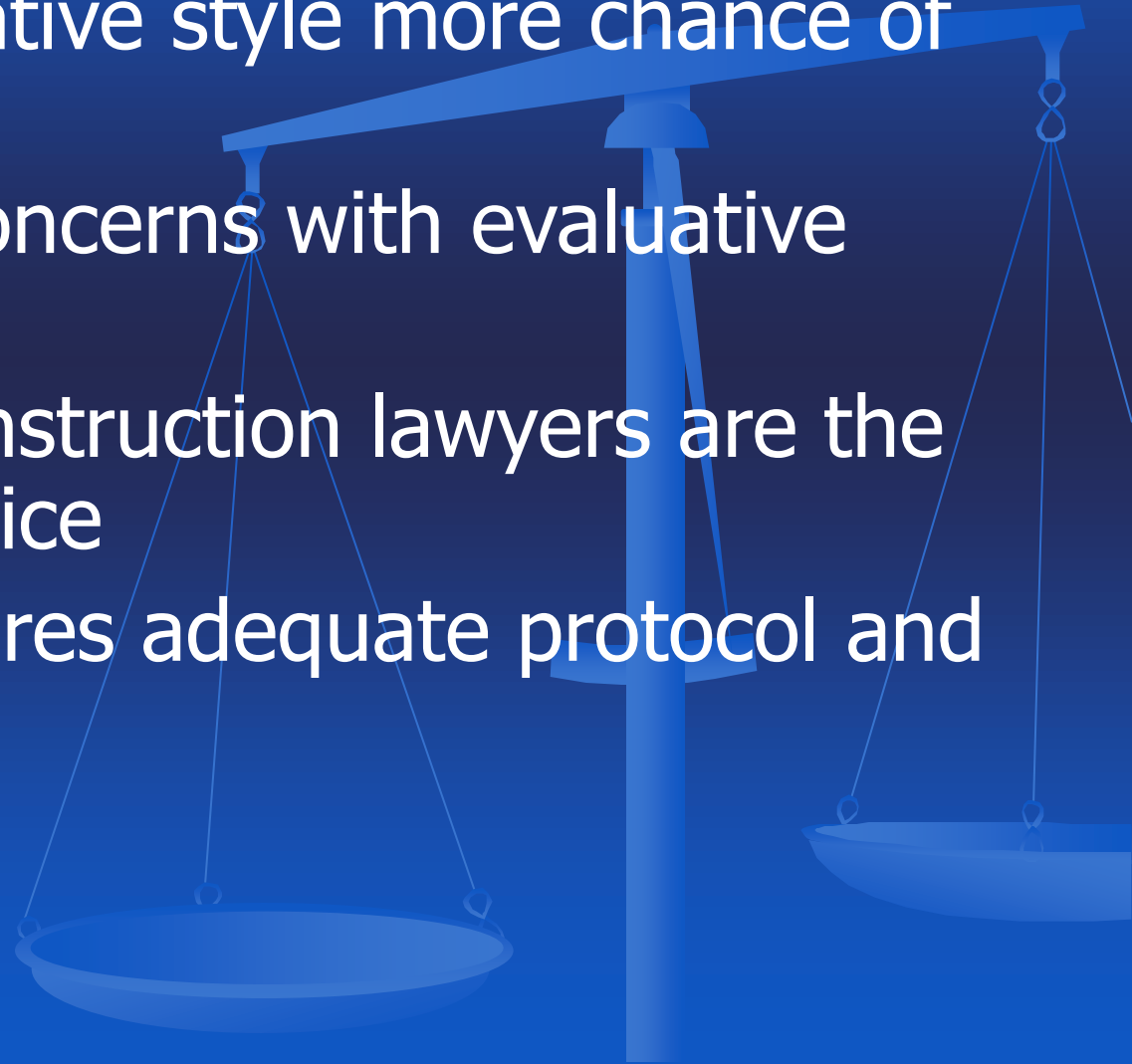
Mediators?

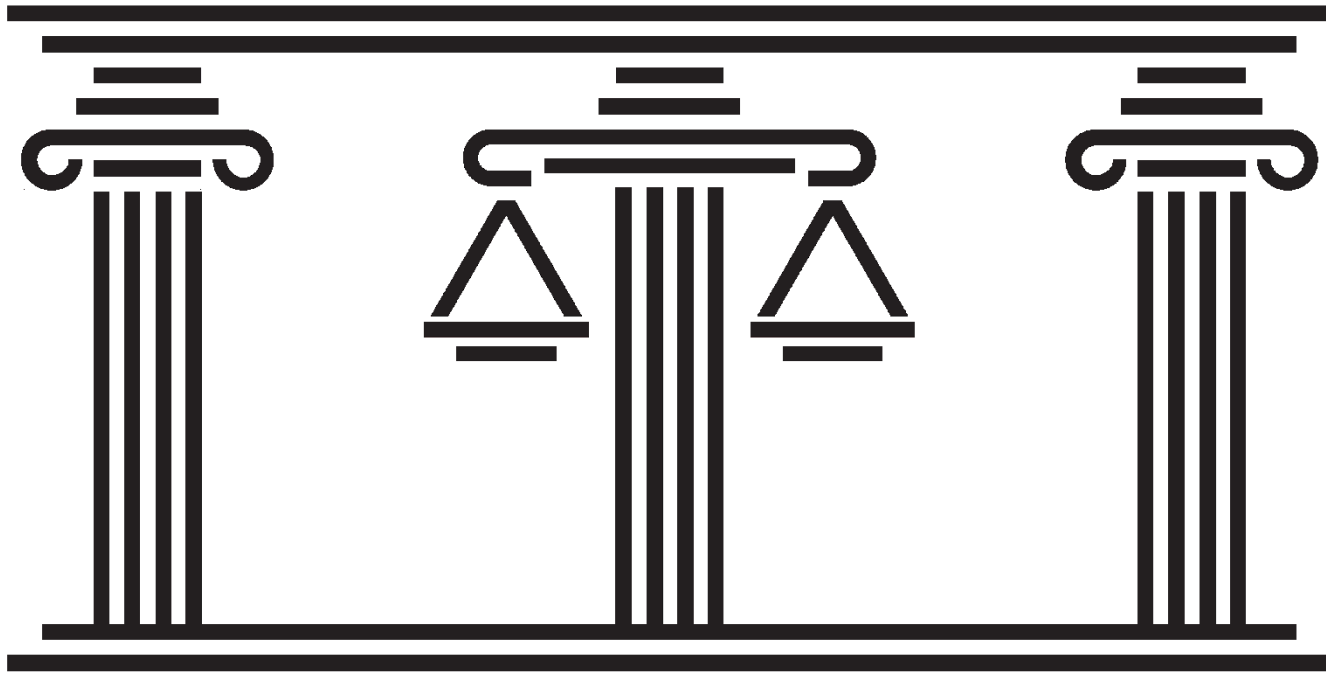
- knowledge and awareness of construction industry practice is critically important for resolving disputes in mediation.
- The increased use of the evaluative style in England and Wales has been emphasised by *Genn* (1998, 2009) as being an important factor creating greater numbers of settlement in mediation. Similarly, *Stipanowich's* (1996) research demonstrated that mediations settled more frequently when construction mediators stated their opinions.
- See: Brooker 2011 "Towards a code of professional conduct for construction mediators", *International Journal of Law in the Built Environment*, Vol. 3 No. 1, pp. 24-47.



Mediators?

- Lawyers: evaluative style more chance of settlement
- Non-lawyers: concerns with evaluative style
- Increasingly construction lawyers are the mediator of choice
- Evaluative requires adequate protocol and qualification



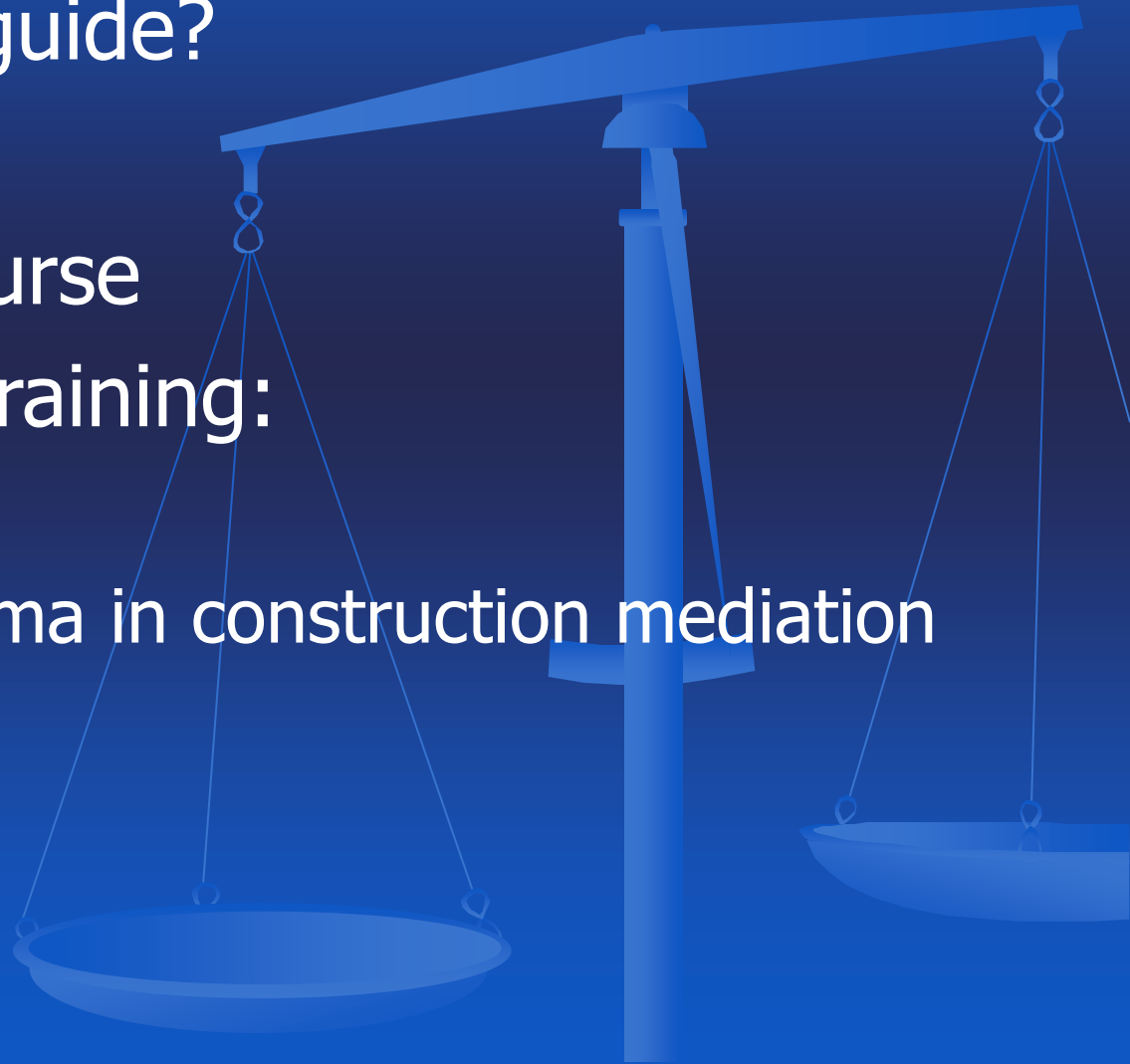


MEDIATIONTM

F O R C O N S T R U C T I O N

CE

- Best practice - guide?
- Collaboration
- Mediation of course
- Education and training:
 - Workshops
 - Advanced diploma in construction mediation
- Protocol



Mediation for Construction



07788723501

Chris Reeves