

Commercial Mediation Group

Mediation: Who needs it? Who wants it?

CMC Sixth National Conference

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Objectives

- > to promote the interests of users of commercial mediation
- > companies, financial institutions and public bodies
- > in all aspects of current and future development of law, standards and practice of mediation

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Objectives

- > improving service standards
- > assisting development of practices to suit needs of commercial mediation users
- > providing a voice
 - > consultations
 - > issues of importance egs mediation privilege, compulsion

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Membership

- > commercial litigation solicitors' firms
 - > 60+
- > in house litigation counsel
 - > regulatory bodies
 - > corporates
 - > financial institutions

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- > commercial disputes
 - > includes “commercial claims” – transactions of trade and commerce

- > business contracts
- > insurance/reinsurance
- > banking and financial services
- > markets/exchanges/commodities
- > shipping
- > commercial chancery cases

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Initial Focus

- > quality of mediation services
- > compulsory mediation
- > privilege and confidentiality in mediation

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Survey

- > of membership
- > commercial litigators who advise on mediation of commercial disputes
- > 23 questions on commercial mediation practice

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Survey

- > how do you select a mediator?
 - > use of directories (40%)
 - > specialist appointment bodies (56%)

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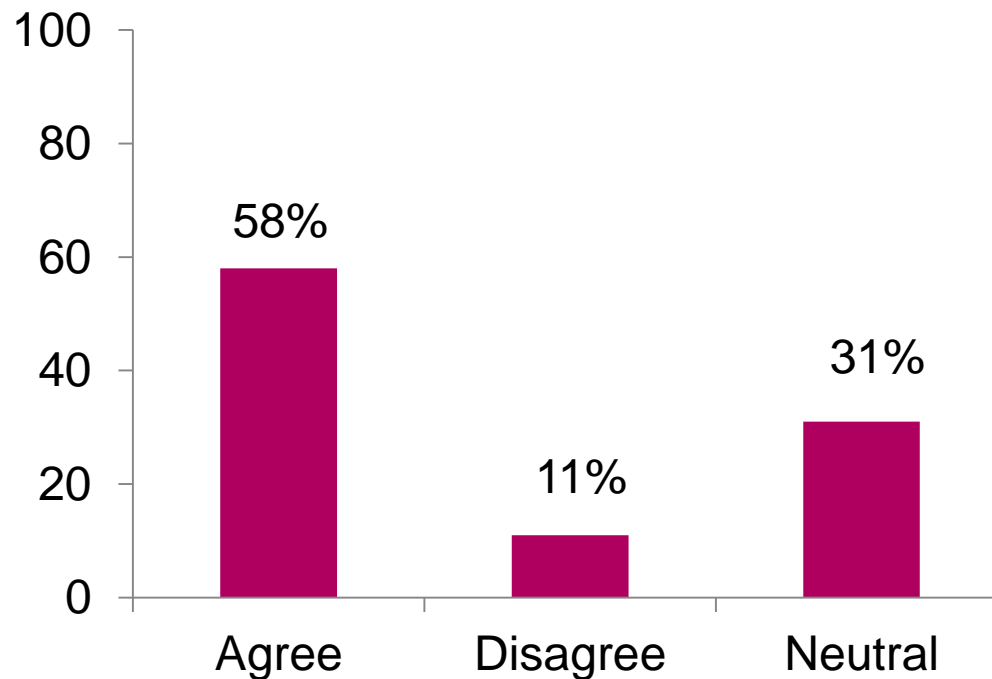
Survey

- > desirable characteristics
 - > legal expertise (76%)
 - > bedside manner (84%)
 - > sector expertise (86%)
 - > personal recommendations (95%)
 - > personal experience (93%)

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Survey

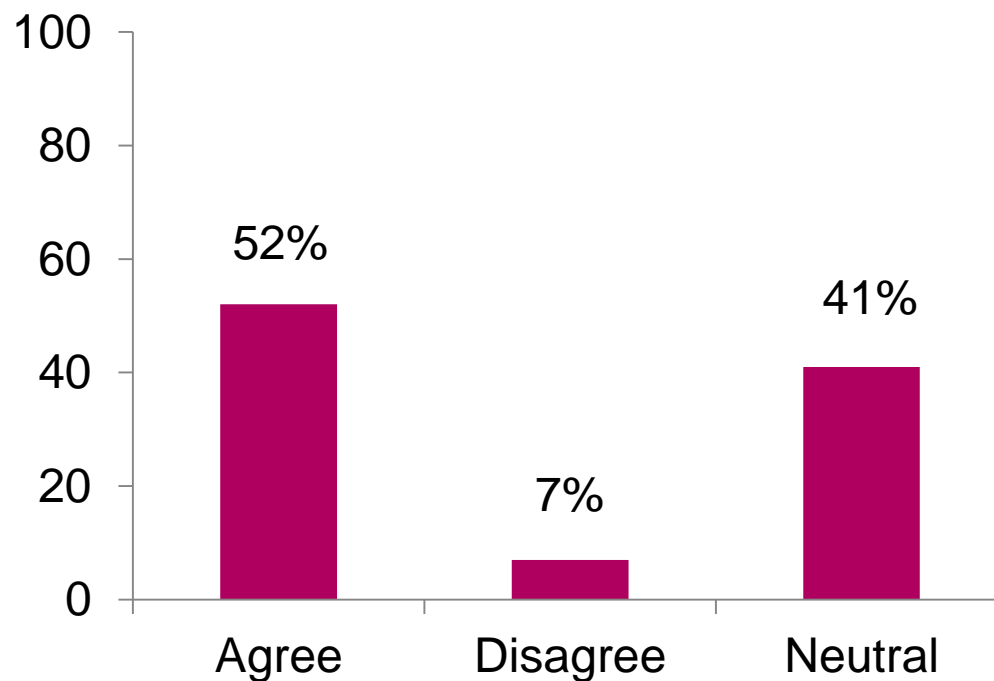
> mediators should attend a preliminary interview:



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Survey

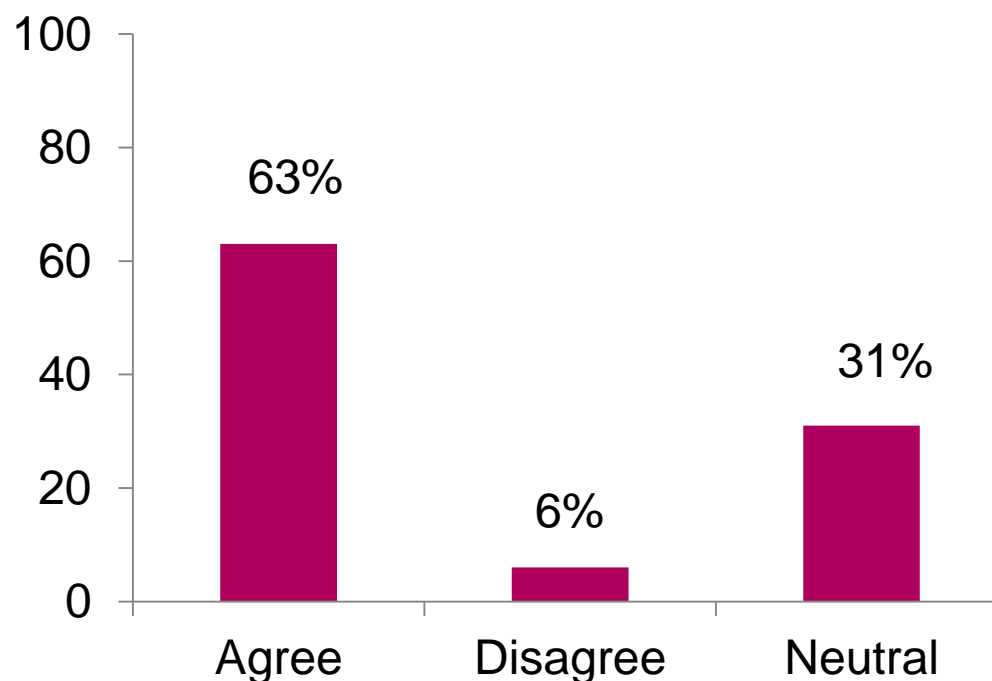
- > mediators should undertake 16 or more CPD hours each year:



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Survey

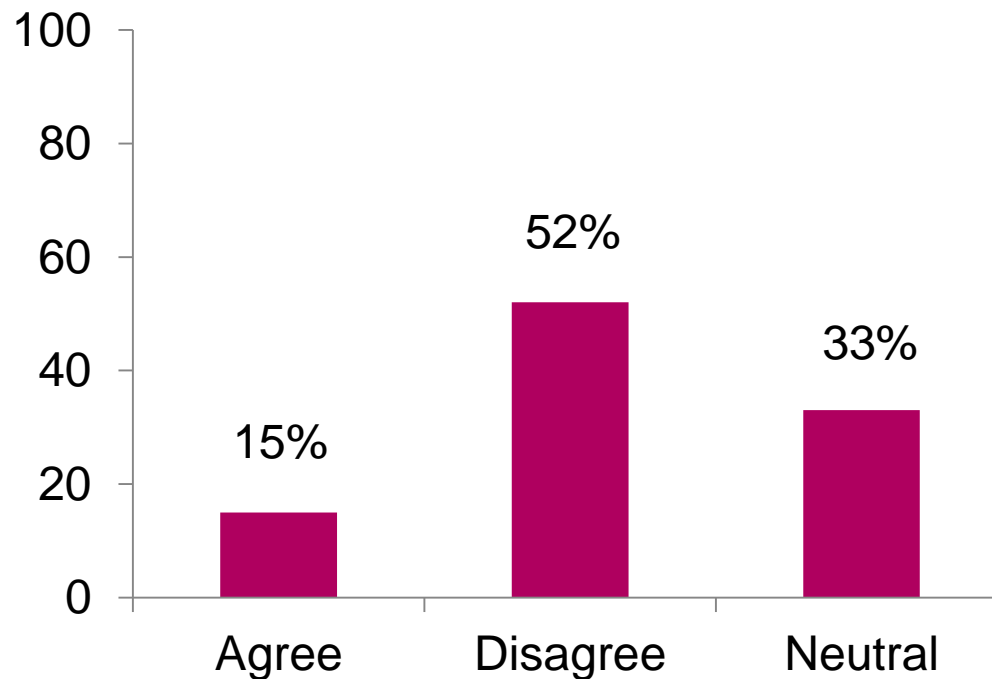
- > mediators should provide potential mediation parties with access to feedback reports:



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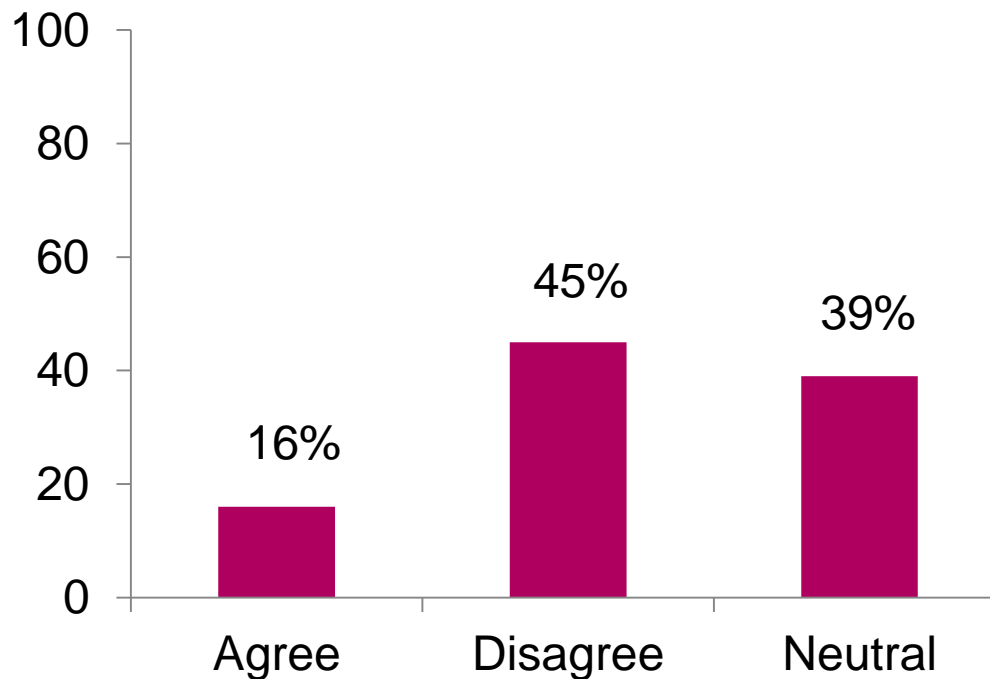
- > mediators are generally underprepared in conducting mediations



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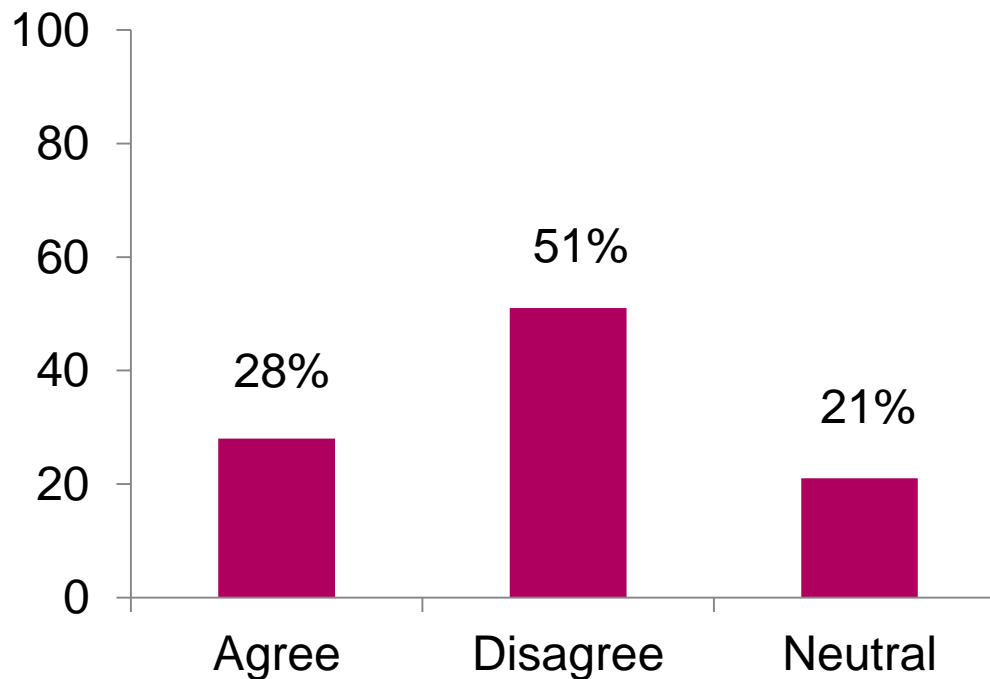
- > mediators do not give sufficient consideration to the nature of the mediation



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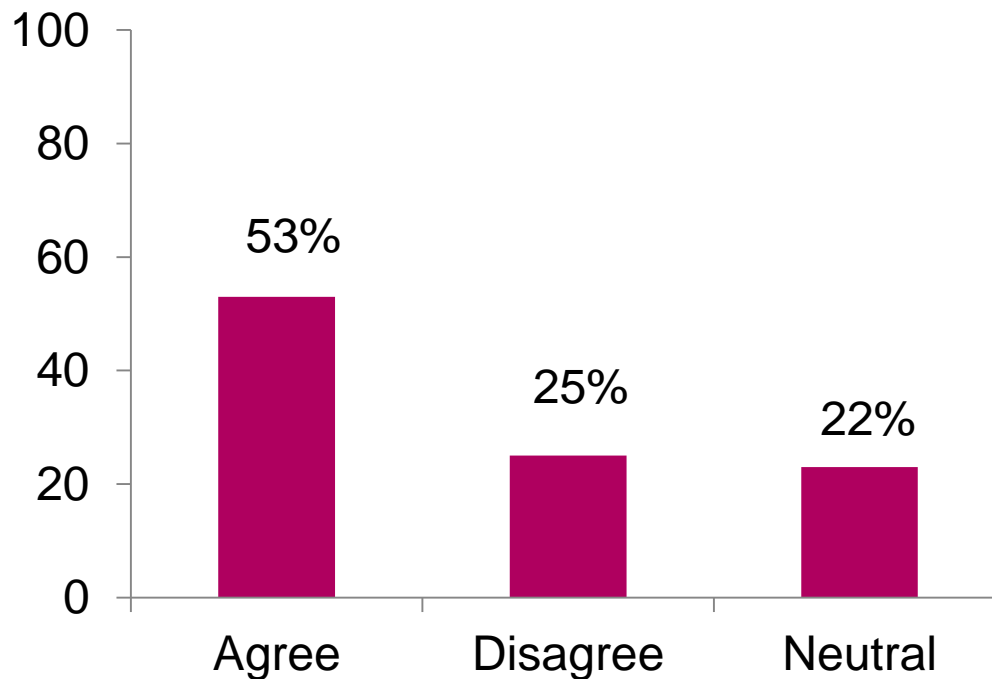
- > mediators should impose time limits



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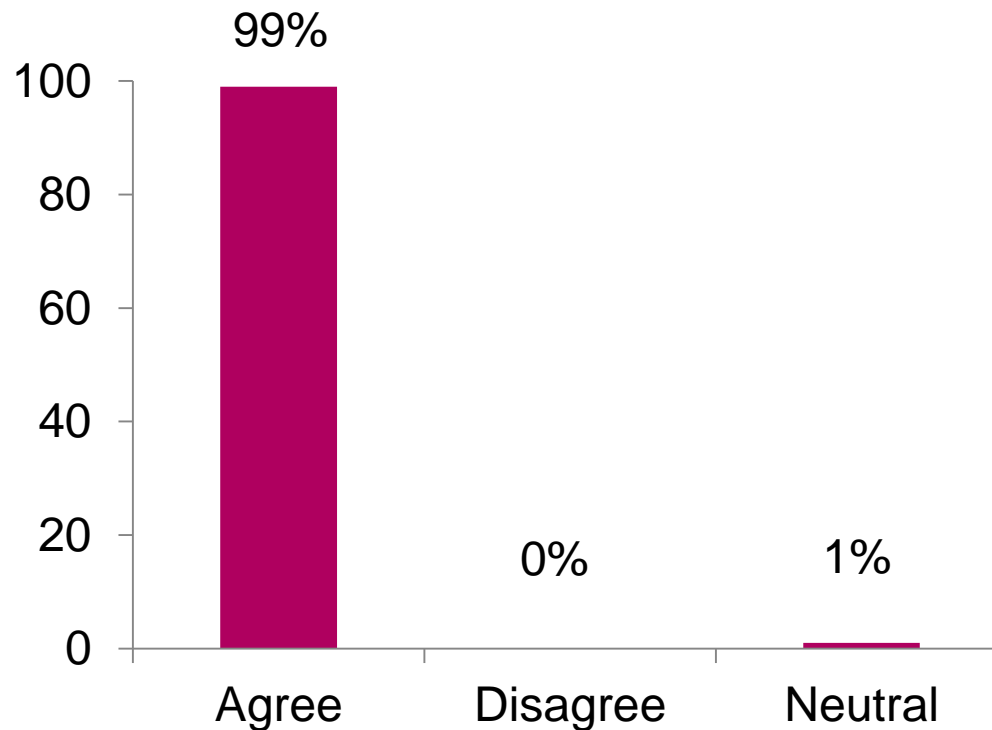
- > mediators should impose a format



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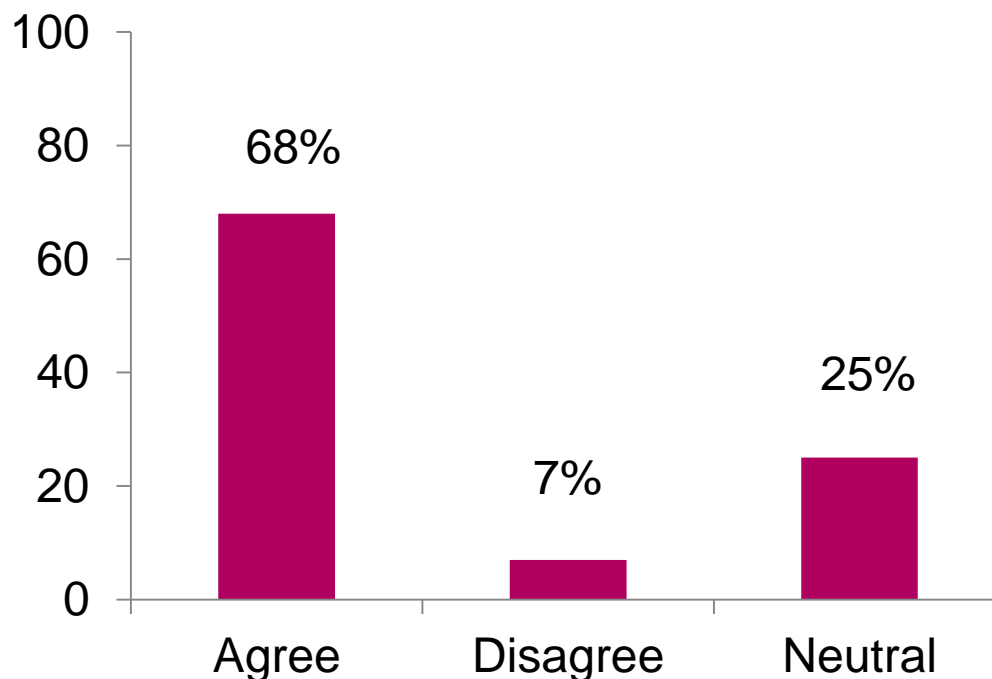
- > mediators should adopt a flexible approach



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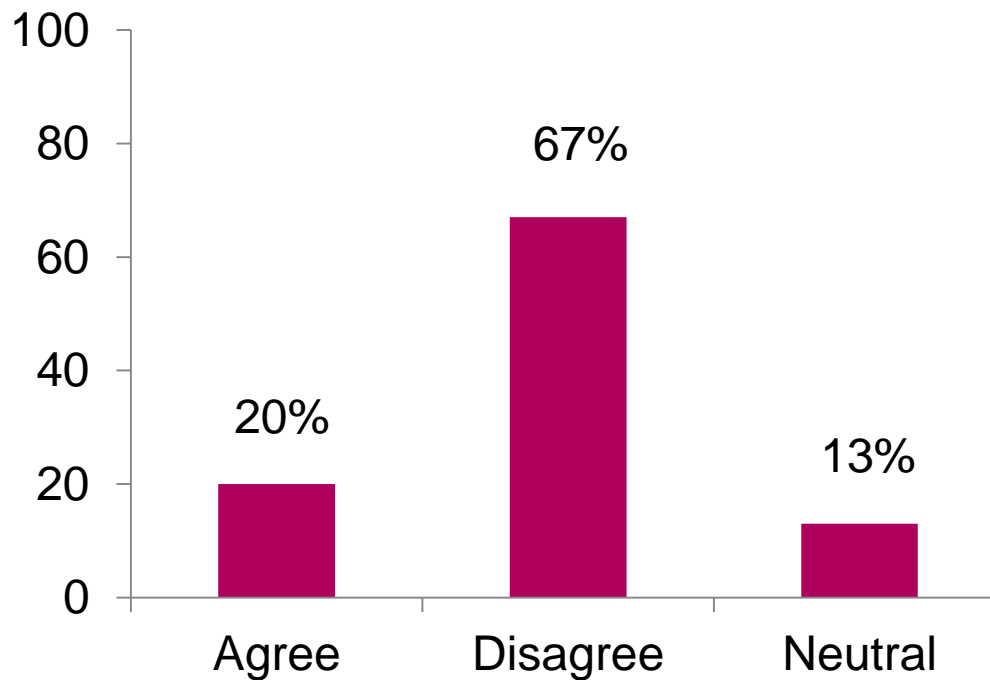
- > mediators should take an interventionist role in mediations, including by proposing solutions and settlement options to the parties



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Survey

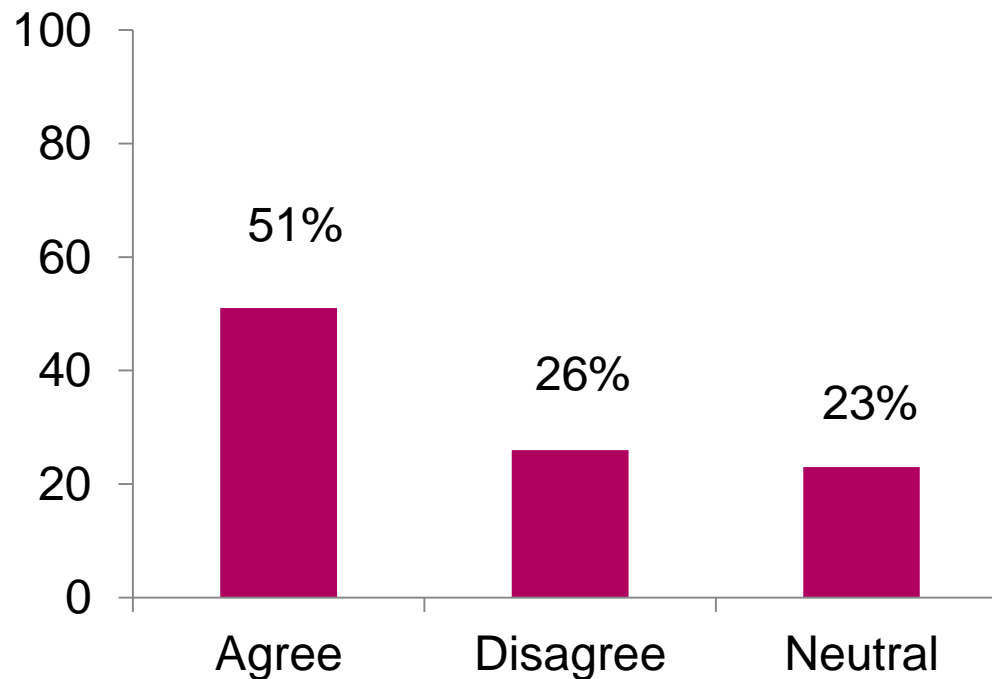
- > mediation should be compulsory



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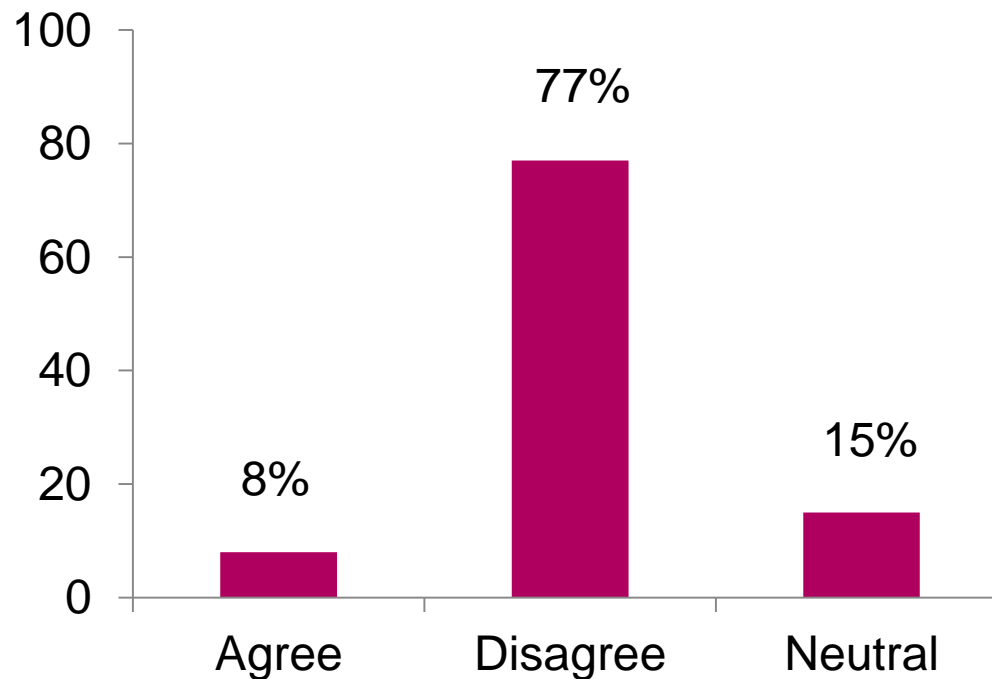
- > courts should recognise an independent “mediation privilege”



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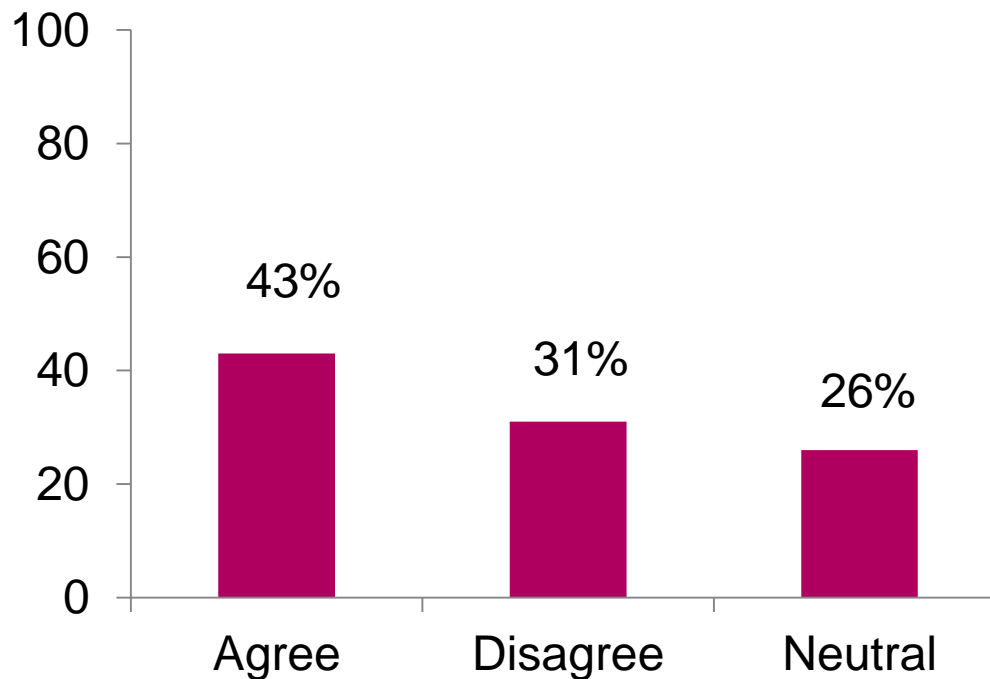
- > mediators' fees should be linked to the outcome



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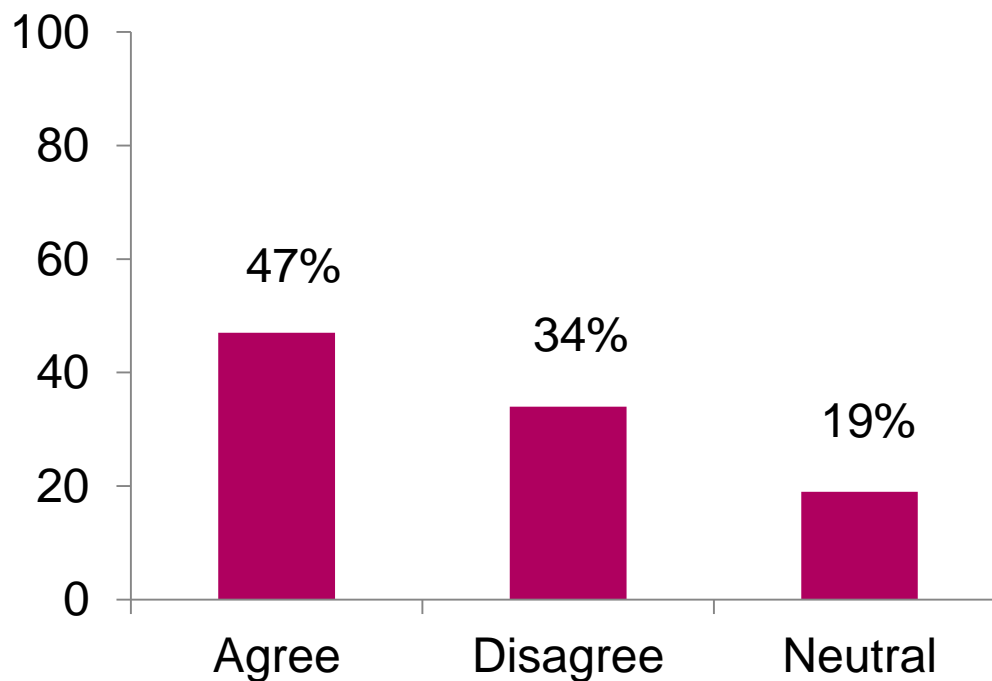
- > mediators should be paid on an hourly basis



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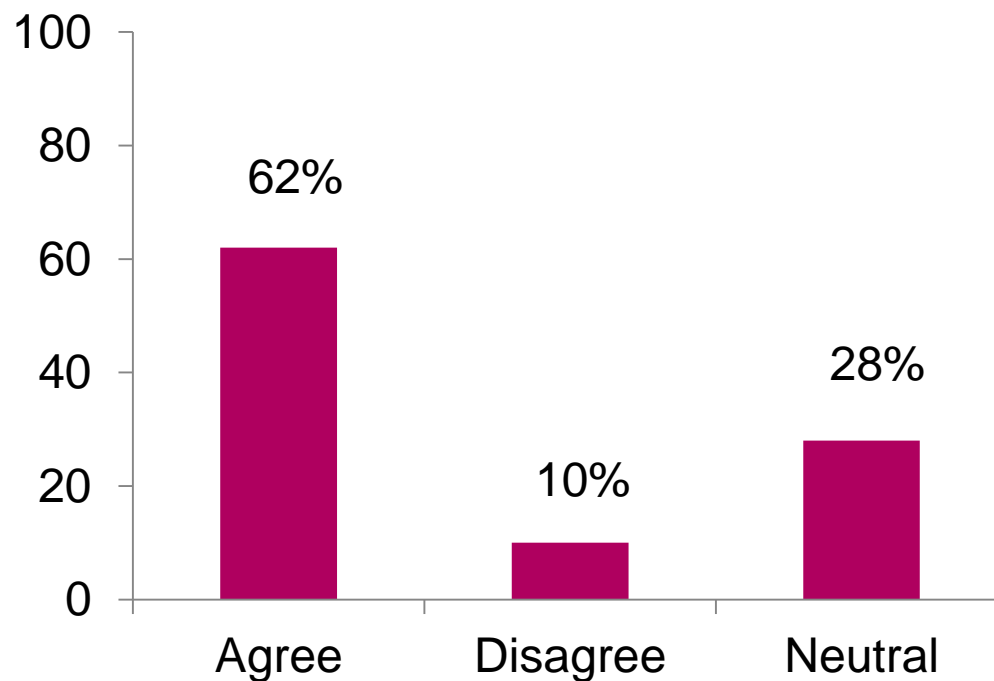
- > courts should impose costs penalties on parties who don't participate in good faith



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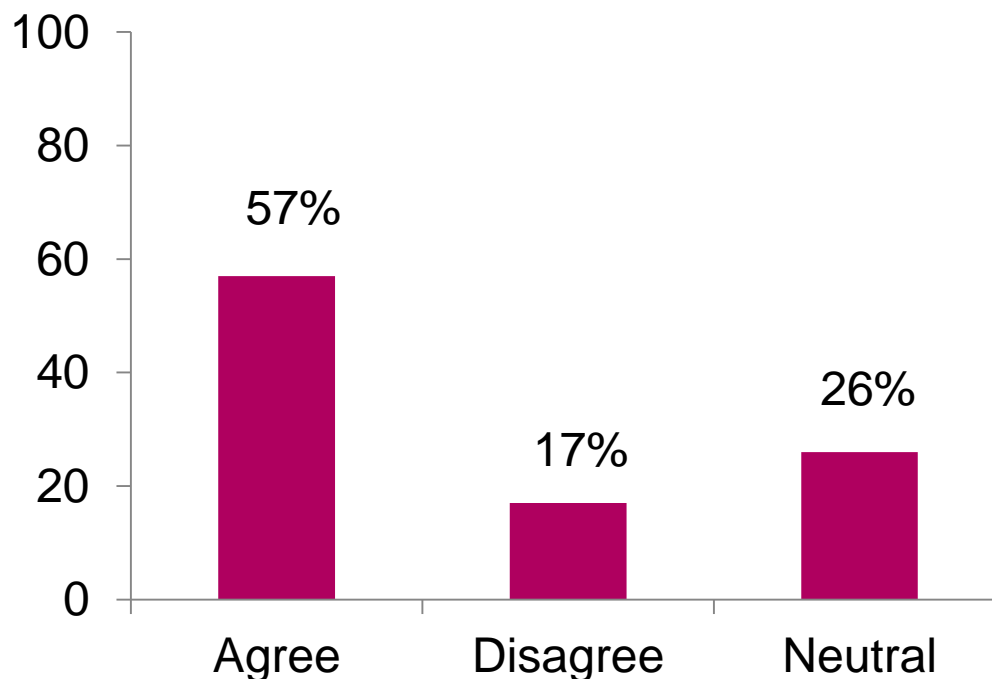
- > mediators should not handle more than 2 one day mediations per week



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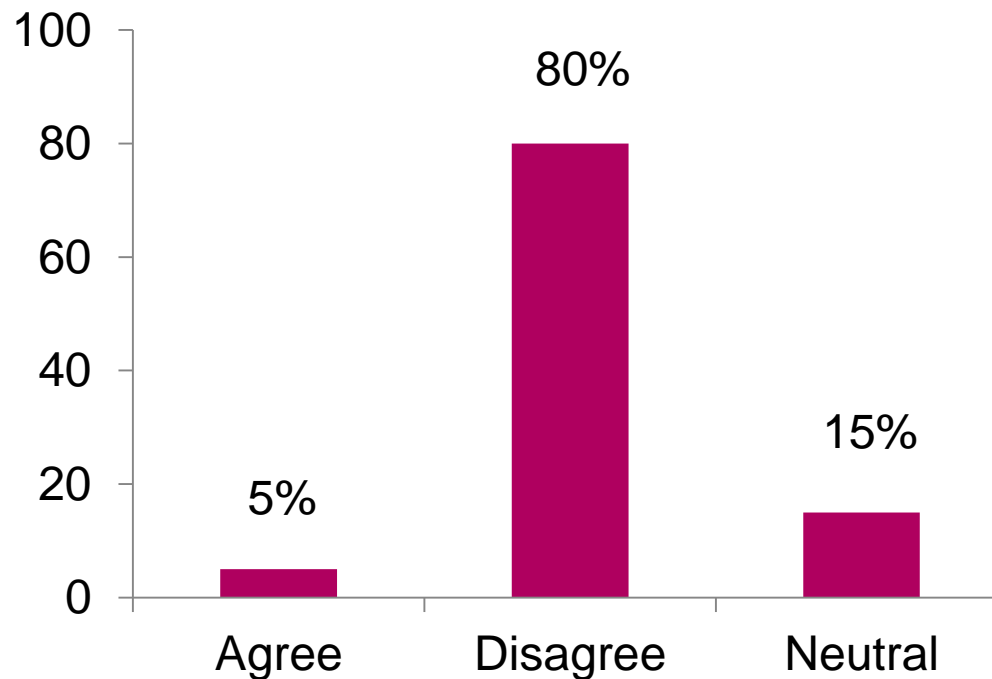
- > mediators should increase their fees for complex disputes to enable them to increase the time and quality of their preparation



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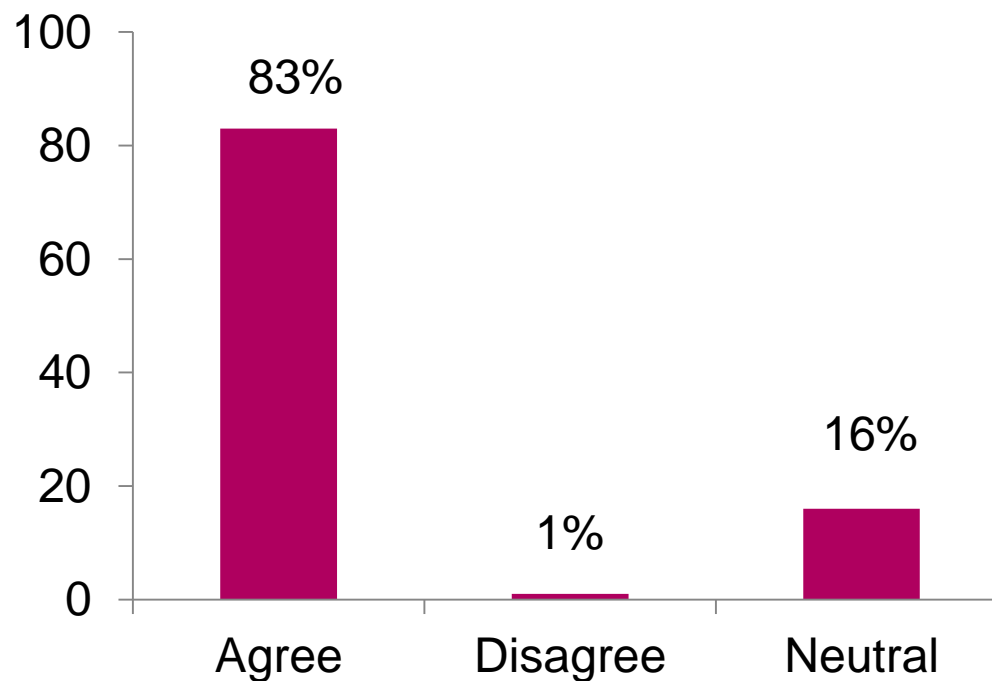
- > litigation solicitors are an impediment to the mediation process



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- > most mediators engaged by my firm provide services of a high quality



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Thank you