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**Source:** Litigation Futures (Web)  
**Date:** 10 March 2015  
**Page:** N/A  
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## Ageing rockers' ailments - can nothing be kept secret anymore?

By Charles Gordon, a mediator and arbitrator with JAMS International

Gordon: minimising the risk of adverse publicity

The Rolling Stones were apparently "deeply upset" - as anyone would be - after leaked court documents last year revealed confidential medical information on band members. Mick Jagger, Keith Richards and Ronnie Wood, are, it has now been revealed, mortal and subject to the same ravages of age as the rest of us.

Following the death of Mick Jagger's girlfriend, L'Wren Scott, back in March 2014, the band had to cancel the Australian leg of its Asian tour. They, or presumably their management team, had taken out contingency insurance against such an eventuality and the band made a claim against the policy for loss of earnings.

The insurance was underwritten in London and underwriters rejected the claim on the ground that Ms Scott's death was not "beyond her control" and therefore not unforeseen. The band sued for \$12.7m claim in the High Court in London. The underwriters subsequently filed applications in Utah and New York for permission to gather evidence on Ms Scott's mental health to defend the claim. In particular, underwriters wanted to take depositions from her friends, relatives and associates.

The claim between the Rolling Stones and their insurers was eventually settled, but not before somebody made a quick buck by leaking the Stones' medical records. What could have been done to minimise the risk of all this adverse publicity?

The case highlights the importance of considering alternative dispute resolution as an alternative to court litigation to avoid the risk that confidential information may be released.

One of the key elements of court litigation in the UK is that many documents become part of the public record. A non-party is therefore entitled to make an application to the court for copies of these documents under part 5.4C of the Civil Procedure Rules. There is a risk, therefore, that sensitive commercial or personal information can be obtained by the public or interested persons in any court litigation.

In this case, the leak probably occurred as a result of the court applications in the US but the fact is that litigation is a public process and it simply can't be kept under wraps. As a result, ADR has become increasingly attractive. How might ADR help? The benefit of mediation is it allows parties to come to a confidential commercial resolution, and to take into account much broader issues than could be considered by a court. Maintaining a commercial relationship between the parties is still viable following mediation, whereas litigation usually destroys any on-going relationship.

Arbitration has become increasingly popular in recent years and many law firms are finding their dispute resolution work split fairly evenly between litigation and arbitration proceedings. The key advantage of arbitration is confidentiality. Arbitration proceedings are not held in the public domain, so the public are not able to attend hearings, or obtain copies of case documents.

If your case is commercially or personally sensitive, but your client wants litigation-type proceedings, then arbitration is probably the most appropriate forum.

The Rolling Stones suffered some acute embarrassment but not much more. Even their most loyal can't have expected that their bodies had not deteriorated since the 1960s. However, they did serve to bring the issue of privacy and the protection of confidentiality to the front of many litigators' minds.

By admin



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