

Mediation offers careers as well as quick solutions

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WHEN Dame Shirley Porter agreed to pay £12 million to Westminster City Council in final settlement of the "homes for votes" scandal, the story hit the headlines again, yet few stories focused on the process that managed to end this bitter dispute.

After exhausting the court system, including an appeal by Porter to the European Court of Human Rights, the parties enlisted the help of mediator Bill Marsh. Working in the background, he brought a 12-year battle to an end in two days.

Marsh is not one to blow his own trumpet, but suggests the central role mediation played in the case merited a little more attention: "The mediation itself - and this is not a complaint - got almost no profile. I can understand why, as the outcome was politically important, and the process that led to the outcome was not. But it is a pity, in a way, because I think there are some real lessons there for business, for government and for the whole legal structure.

"Litigation had gone on for 12 years - they really had used every route the system could provide - and none had produced an ultimate resolution. I think that is a telling point."

Marsh is the founder and director of Conflict Management International, a private consulting firm advising business and government, and has just joined the panel of international mediators at the Edinburgh-based firm Core.

The Porter case is one of the few mediations Marsh can talk about openly from 16 years experience, owing to confidentiality agreements on most others. It neatly sums up the reasons why he considered making the leap from his career as a commercial lawyer.

"When I jumped, corporate law jobs were a dime a dozen," he laughs. "The worst that could happen was that mediation wouldn't take off and I would go back and be a corporate lawyer again. I did it because it was obviously a powerful way forward; once you engage with the thinking behind mediation, it is very hard not to see its potential.

"Much of what I have tried to do is to push back boundaries: where else could we use it? What other situations or difficulties or conflicts might it have an application in?"

The other reason Marsh quit his job was that he was "bored stiff being a corporate lawyer".

"When you are on the inside of something, you see its limitations much more. Being on the inside of law, and constantly having to argue your client was 100 per cent right or the other side 100 per cent wrong, didn't do it for me. Life is not as black and white."

Marsh says the fact so many cases are settled before reaching court doesn't mean there is no room for improvement: "In many cases, a deal is done anyway. The question is, if they are not in the category that will go to court, can you improve the forum in which

settlement happens? That is a different challenge. Can you do it earlier, when the parties have slightly more scope for thinking creatively about the dispute? What often happens when they are in the corridors of the court is yes, they reach a settlement, but their backs are right up against the wall and there is intense pressure on them."

Mediation, he says, is often seen solely as a compromise, rather than a process whereby parties can both gain added value: "They view it in terms of dividing up the cake, not expanding the size of cake first. As any mediator will tell you, you can't always do it, but there are opportunities."

Marsh says some of his most satisfying work has been helping resolve disputes where individuals have brought actions against large organisations, often in medical negligence or product liability claims: "A year to 18 months ago I did a big class action. A large group of individuals used a particular pharmaceutical product where it caused them very significant problems. They brought an action against the manufacturers. That came to mediation and was resolved. It took two days of discussion. As to whether any side saved or gained from the settlement, it depends on your view of risk. Both sides had a chance of winning completely or losing completely."

Marsh hopes more lawyers representing clients with smaller claims might recognise the value of using mediation. "There are lots of lawyers get trained - very few that go on to practice. I doubt there are more than ten or 12 full-time commercial mediators in the UK.

"At the high end, the use of mediation is pretty sophisticated. Where the greater need is, I suspect, is in the large number of small-value claims - tens of thousands of small personal injury claims or small housing claims where cases are not big enough to attract the kind of resources commercial cases do."

The Government has spotted an opportunity with mediation, enlisting Marsh to advise the Treasury and the Department of Health. Marsh helped to advise the NHS on its pilot mediation scheme. As his reputation has grown, he has been in demand internationally, advising governments in Eastern Europe and Russia on conflict resolution and helping draft the UN's International Model Law of Commercial Conciliation.

* Marsh will be the speaker at Core's annual dinner in Edinburgh on Thursday, marking the company's fifth anniversary.