



Finding Effective Solutions to Disputes

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Ongoing disputes can be costly, not only in lawyers' and other fees if the matter reaches court but in time wasted, resources diverted, morale reduced and business and personal relationships harmed.

Internal disputes or conflict can harm whole departments and reduce operational effectiveness at individual and collective levels. Differences with suppliers, distributors, sub-contractors or commercial partners can seriously affect profitability or market-place perceptions, leading to accusations, allegations and antagonism.

This is nothing new. Differences and conflict have always occurred. Nowadays, however, there is increasing realisation that ongoing, unresolved disputes strike at the effectiveness of business to deliver. Getting an early solution, maintaining commercial relationships, keeping key employees focussed on the job in hand and finding practical, constructive ways forward are often essential.

In the USA, many of the Fortune 500 corporations have become "dispute-wise" and more profitable as a result. They have found ways to bring disputes to a conclusion early and with less expense. One of the most effective ways of doing so is to bring in an independent mediator to work with those in dispute to help them find a solution. In Scotland, this use of the mediator is on the increase in the business world.

Mediation has a remarkably successful record. The great majority of matters which are addressed using this process resolve satisfactorily. Disputes which might have festered for weeks at local level, or for months or even years in a court, can be sorted out in a day or two. Why? Most people want to reach an agreement and to move on. But experience shows that people need to be heard, to get their point across. It also shows us that people often don't understand where the other "side" is coming from. Similarly, people can find it difficult to negotiate creatively and openly when there is animosity or suspicion arising out of past events or behaviour. Often, we look for blame or fault.

The mediator's job is to bridge the communication gap, absorb the emotions which have often run high and to explore the options for a solution, testing out the commercial and practical realities, while helping those involved to focus on the real issues and interests. The mediator does not make a decision or issue any judgement or determination. It is for those involved to work out what works best for them within the framework provided by the mediator.

These anonymised examples from Scotland help to illustrate the value of mediation.

Two contractors had a long-standing commercial relationship. However, external commercial factors changed. One party wished to alter the arrangements between them. The other argued that the change constituted a breach of contract. The matter could have been fought out and resolved in a court. Neither side wanted that. They worked with their lawyers and a mediator to find a commercial solution that met their needs going forward. To do that, each side had to draw on the goodwill of past years and acknowledge mistakes or misunderstandings in recent communications. It took a day and a half of talks to reach a new ongoing commercial arrangement.



A serious breakdown in relations had occurred in a firm of financial advisers. At a moment of high tension, a leading player was told to leave. He did so and sought legal advice. A claim was launched in court for unpaid bonuses, commission allegedly due, damages for breach of contract and loss of share options. The whole affair was damaging to all concerned and the publicity of a court action was bound to be detrimental. While monetary issues were important, personal reputation and saving face were critical. A day of mediation provided the platform for a full discussion of the options. A deal was struck, made possible by personal acknowledgements, combined with undertakings on future communications with others and a financial settlement.

These are just a two illustrations of the way in which skilled mediators are being employed across a range of difficult business and financial situations in Scotland. Some institutions and organisations will turn to a mediator at an early stage, to nip the problem in the bud – perhaps especially if the matter is internal. Some are developing systematic dispute management approaches so that conflict is addressed before it escalates. Others recognise that retaining a neutral facilitator may enable contractors to stick to timetables and minimise distractions when problems arise.

Mediation works. As one small businessman said after mediation: “For the first time in six years we can look forward instead of backwards. All our energy can now be channelled into positive things like building our new business.....

There is absolutely no doubt in our minds that ...mediation was the key to making both parties face reality and focus on an outcome that could let us all put the past behind.”

John Sturrock QC is founder and chief executive of the Core Solutions Group and is described in the latest Chambers UK Guide to the Legal Profession as "the foremost mediator in Scotland