

## **Dispute mediation is good for business – and for the economy**

CHARLIE WOODS

MORE than £1 billion a year is saved by United Kingdom businesses as a result of using mediation to resolve disputes. That was the finding of a survey carried out last year by the Centre for Effective Dispute Resolution.

According to the survey, savings come through avoiding wasted management time and lost productivity, reducing legal costs and improving relationships within businesses.

And commercial mediation comes in all shapes and sizes from relatively small internal matters in companies to major multi-party cases.

One recent dispute involved six parties, 49 participants, several professional firms, a number of complex factual and legal issues and a multimillion pound claim.

A final overall settlement was achieved after just four days of mediation, thus avoiding the prospect of many weeks of litigation and millions of pounds in costs.

There are several reasons why mediation works. It is quicker because it avoids the need to go through the formality of a court process.

And the less management time consumed by a dispute means that more time can be devoted to the core objective of growing the business.

The opportunity cost is substantial – according to some estimates more than 20 per cent of senior management time is spent on dispute management – with 75 per cent of cases involving the chief executive.

The savings that can be achieved through mediation are particularly critical for smaller and medium-sized businesses.

And the impact of a more-focused management was reflected in a study by the American Arbitration Association, which estimated that the price/earnings ratios of "dispute wise" companies were on average almost 70 per cent higher than the "least dispute wise".

The American study found that "dispute wise" firms also had much stronger relationships with customers, employees and suppliers.

Cost reduction can also be significant. Firms that have actively embraced collaborative conflict management, such as Motorola, systems have reported 75-80 per cent savings in litigation costs.

But the reduced cost is not just financial. A lengthy court case can be a traumatic process at a personal level for those involved.

Significant benefits are also to be achieved by using mediation within companies, particularly in employment disputes.

For example, the United States Post Office reported a 70 per cent drop in formal tribunal cases after introducing a mediation programme.

Greater speed also has benefits in other spheres of activity. Research carried out for the then Office of the Deputy Prime Minister in 2002 estimated that the use of mediation in the planning system could release more than £3bn of investment into the economy more than 40 weeks earlier than if other routes to dispute resolution were used.

As well as being faster and cheaper, mediation can also provide a better outcome for all of those involved in a dispute.

The parties in a dispute retain and feel much more in control of the process than if it goes into the legal system.

Mediation is designed to help the parties themselves find a mutually acceptable solution.

As a result, any solution is going to be "win-win" in nature, satisfying each party's interests.

Mediation is therefore a creative process that adds value, as opposed to a destructive war of attrition.

A "win-win" solution is much more likely to allow the relationship between the parties to continue and develop.

This can be particularly important for two companies relying on each other in a supply chain where both would benefit from continuing to do business.

The benefits of mediation to individual parties to a dispute can be writ large for the economy as a whole.

Better economic performance essentially comes from improving productivity; in other words, greater output relative to inputs.

As mediation can achieve better outcomes, more quickly and at lower cost, it makes an important contribution to the overall productivity and economic performance of a country or region.

This has been recognised by international development organisations, such as the World Bank and the International Finance Corporation, in their promotion of alternative dispute resolution to help facilitate the development of a vibrant commercial sector.

It has particular value in places recovering from war where there is a large backlog of legal cases to clear up, many relating to the conflict.

This clogs up the commercial arteries of the country and prevents a quick return to "normality". Mediation is a way of cutting through this morass.

Mediators can also play a valuable role in improving the success rate of joint ventures by using their experience of why things go wrong to "reverse-engineer" more effective alliances and avoid unnecessary conflict.

This preventative role reduces waste and contributes to better economic performance. There are also wider benefits on top of improved economic efficiency.

Any country that builds a reputation as a place where commercial disputes are minimised and resolved quickly, creatively and cheaply is going to be a more attractive place to do business and invest in.

The skills used to manage conflict at home can also become a source of business service income in their own right when deployed elsewhere.

In short, mediation offers significant benefits to individuals and firms.

At the same time it can help in improving overall productivity and business performance – and potentially generate export income and attract investment.