

## Making a profession of turning disputes into deals

SCOTT REID, DEPUTY BUSINESS EDITOR

WHETHER in the workplace or the home, most of us will try to steer clear of confrontation. For businesses, however, disagreements are often inescapable and frequently lead to serious financial heartache.

Research into the cost of disputes in business has found that the average bill for small companies is £75,000, with larger firms coughing up £500,000 or more.

A failure to see eye to eye in the corporate world is also likely to tie up valuable manpower - three-quarters of chief executives are said to become personally involved in altercations and nine out of ten say disputes take up too much management time.

Against this backdrop of costly bust-ups and litigation, a less adversarial approach has come to the fore.

In essence, mediation attempts to find common ground between two feuding parties, using the skills of a trained - and neutral - mediator. Sessions typically last a day or two and although a resolution is not guaranteed the success rate is typically more than 80 per cent.

It's a method of resolving differences perhaps most readily associated with the employment conciliation service Acas, and one that is spreading beyond contentious disputes and into everyday business thinking.

Since founding Core Solutions seven years ago, advocate John Sturrock QC has trained hundreds of solicitors - and non-lawyers from the business and organisational sectors - in what he says is "a new way of thinking".

He says the use of mediation in corporate and business matters has grown dramatically in Scotland in the past couple of years but believes there is "some catching up to do" when comparisons are made with the United States.

"Mediation should be about addressing issues up front, quickly, before they fester and become deep-seated", Sturrock says. "The technique can reduce uncertainty, keep costs down and ensure that reputations are maintained."

An initiative, launched this week by Core, aims to widen the role of alternate dispute resolution north of the Border.

Michael Leathes, who recently retired from cigarette giant British American Tobacco, where he was head of intellectual property, has agreed to become an adviser to the Edinburgh-based firm, in what Sturrock describes as something of a coup. Leathes - a former general counsel for two other bluechips, pharmaceutical group Pfizer and International Distillers & Vintners, now part of Guinness-maker Diageo - is pushing for

mediators to be treated as "credible, trusted professionals" and not merely go-betweens.

"I don't think mediation should just be a discipline out on its own," he says. "It should weave its way through everything that people are taught.

"Companies often ask for or threaten things which are ways of defensively preserving your patch, if you like, rather than talking about what they want to achieve, and, better than that, what they need to achieve, and then matching that with the other side. If the latter approach is taken, you can create a more sustainable deal."

Sturrock and Leathes have spent the past couple of days meeting Scotland's financial heavyweights, a "select" group of business leaders from the private and public sectors, academics and in-house legal counsel, in a bid to drive home the mediation message.

It is part of a concerted effort to make Scottish organisations more "dispute-wise", integrating contentious issues into the overall business planning process.

Across the Atlantic, examples of this changing mind-set include the construction industry, where third-party conciliators have helped to address problems as they arise, ultimately keeping a lid on costs.

"The idea is to provoke a discussion on a non-traditional approach to the resolution of issues, not just the resolution of disputes," notes Leathes. "It's about making deals, better deals, deals that are founded on interests - the reasons why people should be talking."

Sturrock is of the firm belief that mediation can play a pivotal role at boardroom level.

He cites the issue of accountability, and the breakdown of communications between, for example, a chief executive and his or her board, or a manager and subordinates.

"We have mediated in disputes which have arisen in start-up companies where the founding member had a difficulty in due course with those who came in to represent the parties providing the financing. In this case, you are looking for speedy, effective resolution of those issues."

Mediation may have its detractors - after all, settlement is a voluntary matter, with no third party imposing a solution. However, the number of converts appears to be on the rise.

Martin Cooke, company secretary of Famous Grouse-maker Edrington Group, has first-hand experience of mediation and regards it as "a very positive facility".

"You get shuttle diplomacy at its very best," he says. "The mediator gives each side the opportunity to use their mouth and ears and gets the parties in a position where they can listen to an independent voice, who's not the enemy, as it were.

"If you can get the issues out in a non-confrontational, non- adversarial way, you discover that very soon the mediator starts to drop out of the picture and you are talking directly with the other side. The process clears away the debris and cuts right through to the main issues."

## **CUTTING COSTS OF FALLING OUT**

MEDIATION can dramatically cut costs for companies attempting to resolve employment disputes, according to recent research by Barclays Bank, London law firm Lewis Silkin and the Centre for Effective Dispute Resolution (CEDR).

It found that a typical case dealing with a disgruntled employee costs £277,000 - a figure that could be cut to £9,000 if the dispute is mediated in the early stages.

More than a quarter of the headline amount - some £72,000 - is said to be spent on management time in tackling the disagreement. The research was combined with a survey of 570 business managers.

The CEDR estimates that conflict costs UK businesses £33 billion a year.