I’ll see you in mediation

John Viney JP describes how disputes can be settled without resorting to litigation

‘I’ll see you in court’ has become the phrase for sorting out civil disputes between parties who cannot find agreement. Entrenched litigants feel that winning in court will result in punishing and shaming their opposite number, producing vindication and sometimes even profit. But that is if they win.

I was made aware of another way that these matters could be handled. A newspaper advertisement said: ‘Become an accredited mediator: develop the skills required for successful conflict resolution.’ I went on the course, approved by the Law Society, the Legal Services Commission and the Bar Council, finding a fascinating new direction in helping others sort out difficulties without resorting to the courts. But what is mediation, and why use it?

It is a process that both sides voluntarily commit to, and is completely confidential and ‘without prejudice’. The mediator acts as a facilitator, helping parties reach a conclusion that is ‘good enough’ to satisfy both. The mediator is not a judge or adjudicator, nor someone who imposes a resolution. It has been described as being like a midwife, assisting in the birth of a settlement. On reaching an agreement, both sides sign a ‘Heads of Agreement’ form on which all disputed areas have been agreed, including any actions that either has to engage in, together with time frames.

A powerful incentive for agreement is the provision of ‘time-limited mediation’, where both sides agree to finish discussions at a certain time, the mediator ensuring this is adhered to where possible. As the time-limit reaches crisis point, this often focuses realistic viewpoints from both sides and helps participants re-evaluate their high expectancy and agree to a more workable solution.

THE PROCESS

Once a mediator has been agreed upon, they contact the parties for a brief case summary, establishing what core difficulties are in dispute. The mediator normally arranges three rooms at a suitable venue and parties sign a pre-mediation agreement that include fees payable and ground rules of behaviour throughout the discussions. Each side usually gives an opening statement, and then occupies a room. The mediator then visits each in turn to further explore their position. This is where the skill of the mediator is fully tested, as frequently expressions are heard such as ‘you can tell that so and so that I am not budging’ or ‘if he thinks he can get one over on me, he has another think coming’ or ‘I will not stay in the same room as him’. They may not have spoken for many months, or even years.

By visiting each room over time, and speaking to the parties and legal advisers (if present) in private and in confidence, the mediator is able to reveal the underlying drivers of the dispute. More private sessions may be needed, or it may be that the individuals can discuss proposals jointly that lead to an agreement. Results attained by mutual agreement are more likely to be adhered to, and compliance rates are high when parties have found the solution themselves, with the mediator simply facilitating the process. So how did a change of attitude happen?

If I tell you my course was run by the School of Psychotherapy & Counselling Psychology at Regents College, London, unsurprisingly many techniques employed by therapists are employed in mediation. Of course, other institutions train mediators but I would have to agree with a colleague who stated that ‘psychotherapeutically trained mediators can acquire an edge over mediators without such knowledge’, but perhaps that is being controversial! The skill is enabling each party to see the problem from the other’s perspective, and trying to understand any underlying emotional blockages. Added to this is the need to employ good listening skills, showing empathy and demonstrating impartiality.

With financial constraints paramount, mediation is being proposed now from all directions, including the government and judges, as the way forward where appropriate. Some benefits are:

- disputes settled quickly, weeks rather than months or years waiting for court;
- cost effective, at a fraction of litigation costs;
- stress and inconvenience minimised with businesses, family and health protected;
- private and confidential so reputation harm minimised.

Mediation can be employed for most conflict resolution including personal injury claims, commercial disputes, employment issues, property and boundary disputes, and family financial disagreements. Community mediation is commonly used by local authorities and housing associations to resolve neighbour arguments. Being newly qualified, I am still feeling my way but I have enjoyed alternative dispute resolution activities so far and look forward to other opportunities in the future when litigants say ‘see you in mediation’.