

Mediation can offer another way to resolve disputes

As far as any activity can be recession proof, the legal profession is. Businesses and individuals always need lawyers' services, which makes it particularly interesting for those that deal with different contentious areas of expertise, such as Paris Smith & Randall LLP partner Clive Thomson and associate Cliff Morris, who both work in the commercial litigation and dispute resolution department.

Thomson's specialist areas include business recovery and personal insolvency and dispute resolution. He is recognised as a leader in his field by Chambers UK for commercial litigation and has also been a long standing member of the Law Society's personal injury panel. Working in an increasingly busy department, he acknowledges Southampton is shielded from downturns through its economic strength – it is in a different position to less fortunate cities in the UK. His main areas of activity are commercial and insolvency litigation, but he is also an accredited commercial mediator with the ADR Group in Paris Smith & Randall LLP's recently formed civil mediation unit.

"Businesses are now looking at ways to resolve disputes other than traditional court procedures," Thomson explained. "As they are looking to keep a tighter control of spending, it makes sense to try and come up with a solution which can be settled without the need for expensive litigation. As a firm we recognise that from time to time disputes will arise which will cause significant disruption to both businesses and individuals, but we also recognise that wherever possible, such disputes should be resolved in a cost effective, timely and efficient manner."

Mediation is a growing area in civil and commercial disputes. Mediation is a process that is not just suitable for typical civil and commercial disputes in a business setting, with customers clients or suppliers, but it is also suitable for disputes between partners, directors and shareholders, or disputes over property and land, contracts and agreements, professional negligence, wills and inheritance; and over employment matters such as dismissal and discrimination claims or grievances. Often the firm receives instructions from fellow professionals such as solicitors or accountants, particularly those engaged in costly or protracted disputes; businesses, organisations or authorities who would prefer to resolve matters without the need to separately instruct solicitors or become involved in litigation.

Thomson is enthusiastic about his mediation work: "Mediation is a process which is able to solve commercial disputes, provided both sides agree, at a speed and cost that

Paris Smith & Randall LLP's commercial litigation and dispute resolution department is increasingly offering mediation and more proactive approaches - especially in the health and safety sector. The Business Magazine's Sue Hughes reports



Clive Thomson



Cliff Morris



The business defence team at Paris Smith & Randall LLP

the courts simply cannot compete with, and can explore commercial solutions that the courts cannot examine. The mediator examines the needs, circumstances and concerns of each side and tries to help find a mutually acceptable solution that both can live with.

"I am currently acting for a partner in a multimillion pound family property partnership where different branches of the family have fallen out about their business dealings. We hope mediation may help to find a mutually acceptable solution, either to continue to trade, or alternatively to wind up all their affairs efficiently and with cost effectiveness, as well as with dignity and respect on both sides."

Morris, meanwhile, specialises in business defence work, including health and safety. He is involved in regulatory defence work, which covers defending cases brought by the Health & Safety Executive, HM Revenue and Customs, and the Local

Authority Environmental Health Department and Trading Standards.

"We review health and safety polices for various businesses to ensure that they are compliant with legislation and we promote an awareness of change in what we view as a highly pro-active approach to keeping our clients informed. At the other end of the scale, we do represent clients in court proceedings, such as prosecutions and even inquests," he said.

"Currently various changes are being brought about by the Corporate Manslaughter and Corporate Homicide Act, which comes into force on April 6. This is the hot topic of the moment. The new statutory offences replace the common law offence of manslaughter by gross

negligence for companies. In effect the company can be punished, not just individual directors, and amongst the punishments available under the Act is an order of publicity about the offence. This is an aspect which is making higher management aware of how a hard-won trading reputation could suffer a serious damage.

"If you look back at Railtrack's record £50 million fine – or National Rail as it was when it admitted breaches of health and safety that contributed to the Ladbroke Grove disaster in 1999 – it was hard to identify whom to prosecute because the layers upon layers of management disguised who was the guilty party. Now you just have to prove negligence – and directors, quite rightly, need to be accountable.

"This not only gives the government more targets to aim at, but also potential fines to defendants could be colossal, depending on the severity of an incident. A fine can range from 1.5-10% of the average past three years' turnover. If you look at a company such as BP, where the Texas refinery blast killed 15 people and injured 180 staff in 2005, resulting in a fine for £44,700 from the USA Occupational Safety and Health Administration, then a hypothetical incident of a similar scale could result in a fine of billions of pounds for an organisation of that size under this new legislation."

Guiding and helping businesses address change in this area through seminars is an enjoyable aspect of Morris' work: "It's pro-active and it covers discussion of change to important company policies. It's different to being called in to sort out the disaster when the business client has to deal with a prosecution for a serious problem which has already occurred, even if it may be a genuine accident. In cases such as these, we work to show the courts that everything that could have been done had been undertaken.

"Recently I've acted for an employer locally in difficulties with a Health and Safety Prosecution following an accident to an employee who suffered a forklift truck crush injury where the employee was at fault; ironically the employee was pictured showing 'how not to do it' in the company health and safety book. Sometimes it's down to operational error, a third party or simply a mental aberration – circumstances that are out of a client's control!"

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