

Tricks of the trade

Paul Turner outlines the development and work of the new commercial mediation service offered by the Institute of Chartered Accountants in England and Wales

Seeking alternative routes to resolving disputes – outside the courtroom and as early as possible – clearly makes commercial sense to companies and their lawyers in any economic climate, especially today's. Research has demonstrated the desire and need for outcomes that are swift and expedient.

The Institute of Chartered Accountants in England and Wales (ICAEW) and the ADR Group have created the Co-mediation Commercial Dispute Resolution Service, a new commercial dispute resolution service to help FTSE boards and their advisers. Launched in June, it is designed for companies facing complex disputes. It brings together a specialist panel of 20 expert lawyers and accountants, trained in mediation and dispute resolution, including Lord Woolf of Barnes, Cherie Booth QC, Joseph Wan, CEO of Harvey Nichols, and Jim Eales and Philip Haberman of Ernst & Young. The uniqueness of the service is to combine, on a co-mediation basis, mediators from the two professions.

The process begins with a telephone conversation with a mediator, in which initial information will be given and details about the dispute taken. One of our service co-ordinators will then arrange to visit each of the parties, to ensure that they have a full understanding of the process and the issues, make recommendations as to the co-mediators, arrange a suitable venue and dates, and agree terms for the provision of the service.

The ICAEW has operated a dispute resolution service in relation to disciplinary matters for over 15 years, with an average satisfaction rating of over 90%. Having trained as a family mediator, I was used to working with a co-mediator, and was well aware of the advantages of co-mediating, which led to my developing the new service to deal with non-disciplinary disputes, building on the experience and talent of my team, and with additional

training from the ADR Group. It was a natural progression to develop a service aimed at companies with which the ICAEW already had a close relationship.

The professional background and personal style of the mediator have enormous potential impacts on the nature of the service provided, and it is crucial that the selected mediator is the right one. The service offers an informed choice, with a range of styles, experience and technique, united by proven track-records.

lawyers for a number of years to advise clients on the financial aspects of commercial and regulatory disputes. He has experience of dealing with financial and accounting aspects of disputes in a wide range of industries, usually as an expert witness, and has also been a quasi-judge in expert determinations.

Lord Woolf of Barnes has a long-standing interest in alternative dispute resolution (ADR) and his Access to Justice report is seen as the catalyst for the

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Part of the service co-ordinator's role is to establish the issues, objectives and needs of the parties and to make a recommendation as to the most appropriate co-mediation team. The parties to a dispute are, of course, at liberty to choose, but our recommendation helps avoid the problem of parties to a mediation arguing over the choice of mediator.

Historically, the majority of available mediators are lawyers, but accountants, especially those who work both in practice and in business, can also contribute expertise in all models and types of negotiation, frequently acting as catalysts for creative problem-solving, so parties can negotiate more constructively, efficiently and productively. Experience among the ICAEW / ADR Group panel includes expertise in business turnarounds, mergers and acquisitions, and corporate governance. Others have been responsible for risk management strategies and policies, and have dealt with customer-supplier and employee disputes. Philip Haberman from Ernst & Young, for example, leads the dispute services team, and has worked alongside

development of ADR in England. He believes that the involvement of accountants in the process places the emphasis on achieving a commercial outcome rather than focusing on the legal merits of a claim, and points out that it is intended to complement rather than replace litigation as a means of resolving disputes; litigation is "held in reserve, for the minority of situations where mediation does not either directly or indirectly result in the dispute being resolved".

Quentin Smith, one of the panel's mediators, adds, the "service offers an incisive and dynamic opportunity to resolve disputes as early as possible, save costs and return management to running the business!" ■

● If you are interested in finding out more about the service, or would like to refer clients, contact Paul Turner, tel: 020 7920 8792; email or go to the website at: info@resolvingcommercialdisputes.com; www.resolvingcommercialdisputes.com.

Paul Turner is a solicitor and accredited mediator at the ICAEW.