



Sturrock assists senior executives in dealing quickly with difficult issues. Picture: Jon Savage

Mediation is not a soft option for problem-solving

JOHN STURROCK

I BEGAN THIS PIECE on Jersey where I was working with the States - the island's Parliament - as it prepares to introduce ministerial government and scrutiny of executive activity for the first time. Using training methods developed with the Scottish Parliament, which included video-taped simulations, we concentrated on questioning techniques for scrutiny panels tasked with reviewing decisions and policies of ministers. Jersey parliamentarians are keen to focus on issues and policies rather than scoring political points; they want to identify the interests of the people and to work co-operatively rather than antagonistically. There will be differences, but managing these maturely is the goal, recognising the need to be rigorous in examining decision-making while maintaining working relationships.

These ideas are mirrored in the work of the performance team at UK Sport. They develop and fund programmes to support UK Olympic and Paralympic medal prospects. I recently worked with the performance directors responsible for these key athletes. We discussed how to manage the differences and disputes which inevitably arise in the high-pressure world of top-class sport. Central themes were aligning individuals' concerns and needs to team goals, finding practical, speedy solutions and minimising unhelpful distractions from the primary objective of winning gold.

Last week, at the invitation of the Scottish Community Foundation, we worked with various aid agencies to identify projects and raise, allocate and distribute funds from the Scottish Malawi Appeal Fund. The plan is to encourage co-operation rather than competition in joint fundraising events and to find appropriate projects to get people working together to make best use of resources.

The idea of finding creative and forward-looking ways to handle differences, whether in politics, sport, business or other groups, marks a significant shift in thinking. If company directors fall out, there are choices: prolonged infighting, public slanging matches and court action, or a speedy, constructive discussion of the issues and a search for a realistic commercial solution. Core Mediation regularly helps senior executives deal with difficult issues in a day or two, minimising loss of productive time and maximising opportunities for putting tensions behind them and to get on with business.

By mid-May, the number of mediations conducted in 2005 by Core Mediation, Scotland's longest established commercial mediation service, matched the total for all of 2004. The range of issues covered has been extensive and has included property transfers, professional services, employment contracts, commercial distribution, fund management, environmental pollution, North Sea oil installations and motorway construction. Cases which would traditionally spend time in the courts are also being dealt with. The rewards can be significant.

A leading insurance manager says: "The case had been outstanding for seven years. There were two significant factors to deal with - emotion and expectation, both of which ran high. At the outset, the parties were about £250,000 apart. This was not a straightforward case. Traditional methods of negotiation had failed. The next stop was the courtroom.

"We agreed to try something different: mediation. It worked. Why? The mediator acted as a voice of reason and, when needed, poured oil on waters. The value of this independent voice of reason should not be underestimated. All parties parted on good terms - no acrimony, no bad feeling, no loser. It's the first time I have, as an insurer, been able to personally wish the claimant well following settlement and that type of personal inter-action can only reflect well on our business. The result was a genuine feel-good factor for me personally and, I believe, for all involved. It's easy to find an excuse not to mediate... but the benefits are there for those who are willing."

Reflecting a willingness to secure these benefits for patients and doctors, the NHS in Scotland has launched a pilot scheme to assess the use of mediation to resolve claims of medical negligence. Experience shows people in such cases often need to receive an explanation, reassurance or acknowledgement of pain and anger in addition to - or instead of - compensation. The availability of a private process in which this can be done quickly is welcome.

The Commercial Court in Scotland has introduced rules to encourage pre-litigation negotiation and dispute resolution. The English appeal court recently highlighted mediation's rate of achieving successful outcomes and its importance, when run parallel to the court system, as a track to a just result. Many lawyers are undergoing training in how to best use mediation for clients. These developments and the Executive's growing commitment to mediation matches the shift in thinking in many other countries. A proposal for a European directive makes the point that mediation holds "untapped potential as a dispute-resolution method and a means of providing access to justice for individuals and businesses".

There are reservations and uncertainties. However, most who use mediation find it a constructive and effective way to deal with disputes.

- *John Sturrock is the chief executive of Core Solutions Group, and the director of Core Mediation.*