



## Keeping the lawyers away

Projects overrun on time and cost through a multitude of causes, none more common than a dispute between contracted parties. Now, through a company called ResoLex, project managers have a method of ensuring conflicts are resolved, in some cases, before they have even started. It is aimed at project-based industries, such as construction, engineering and information technology projects, though it can be used in any time-sensitive contractual work. Stephen Woodward, its managing director, makes the case for settling disagreements in the lowly Portakabin, not the High Court.



**L**itigation, arbitration, lawyers' fees and broken business relationships are all potential problems project managers do not like to envisage at the start of a new project. A minor disagreement between parties to a contract can escalate, and because it has not been dealt with in a way that satisfies both sides, it ends up in court. Pessimistic? It happens only too often.

Over the last few years there have been major developments in new methods of dispute resolution, with many of these initiatives driven by project managers looking for alternatives to methods proved not to meet their prime objective - project delivery. Litigation and arbitration, often used to settle disputes, work only if the outcome required is to find solutions to problems, regardless of the timescale, costs and consequences. In major construction industry projects this is rarely satisfactory, and there has long been a desire to see a method that could quickly defuse arguments before they arise, rather than slowly and painfully force an outcome which could leave one or both of the parties very bruised.

Since the introduction of the Woolf

Reforms of civil procedure, there has been a move towards using two alternative methods to litigation and arbitration, namely adjudication and mediation, as ways of resolving disputes in construction contracts.

While there has been much discussion about the success of adjudication, it has generally been considered to be better than litigation as an opportunity to provide the solutions to a conflict between contracted parties before a move to court. However, it is the advocates of mediation who have won most professional support. Mediation's Centre of excellence, the City of London based Centre for Dispute Resolution (CEDR) has, over the last ten years, enjoyed an 82% success rate in conflict resolution.

Perhaps the stumbling block of most uses of mediation is that while it ensures continuing dialogue between the parties and aims to satisfy the claims of both sides in any conflict, without alienation, it is often employed too late. In some cases mediation has only begun at the beginning of a trial, where the lawyers' winner-takes-all approach has the potential to undo the work being attempted by mediators.

However, what CEDR has successfully shown is that mediation, as a method of conflict resolution, stands above the other methods on offer. Where it has been unsuccessful is often down to its use after legal writs have been issued, court fees paid, emotions inflamed and business relationships already irreparably broken.

The changing climate, especially in the construction industry, has now created a growing demand for a more structured approach that builds in the best practice of mediation and CEDR, but providing a framework whereby disputing parties can be brought to the negotiating table, before it is too late to talk.

Aware of this need, late last year an alliance was formalised between two companies, the Temple-based Chambers of Roger Henderson QC, a leading chambers specialising in commercial law and dispute resolution, and Symonds Group, the international project management and civil engineering firm.

Their plan was to create a method of conflict resolution that drew upon the success of mediation, but where its use was written into contracts to ensure the parties commitment to the avoidance, mitigation

and early settlement of any differences.

The company they created to supply this service is called ResoLex, 'resolution before the law,' while its dispute prevention and resolution product is known as Contracted Mediation. This process, first and foremost, aims to alter the culture of confrontation that can threaten successful project delivery. Instead of trying to address conflicts after they have arisen, the parties involved in a project agree to resolve their differences by referral to a Contracted Mediation Panel, appointed at the very beginning of the project, and consisting of one legal and one commercial specialist, both qualified mediators. The panel has access to the contract documents and the parties involved throughout the project.

The new service is aimed at project-based industries, such as construction, engineering and information technology projects, though it can be used in any time-sensitive contractual work. Good communication between the parties is orchestrated throughout the project, and the whole process allows the parties to retain a choice about how they resolve any differences.

Contracted Mediation is designed with

the project objectives in mind. Its focus is on needs, not rights. At the outset of a project the Contracted Mediation Panel facilitates a partnering workshop. At this meeting the Panel will make sure the project participants understand how to use the Panel and its services if the need arises, to prevent differences escalating into disputes, and thus avoiding conflict.

If a disagreement between the parties is defused during the course of a project, then the Panel is in place, both to assist in the implementation of the agreement, and to help avoid, manage, and where necessary, resolve any further disputes. The Panel's work runs parallel with that of the project itself, and does not end until the project's successful completion.

A particularly useful aspect of Contracted Mediation is that it can provide contemporary information. However, the Panel members' neutrality is essential.

ResoLex's first major commission is a £15 million runway improvement at Jersey Airport. The project involves replacing the existing surface with a new taxiway that provides a rapid exit from the runway and complies with international air safety standards.

Completion is due for mid April 2002.

The project is in its early stages, and so far the Contracted Mediation Panel has facilitated a successful partnering workshop involving the project participants including the Harbours and Airport Committee, a department of the Jersey States Government, and the contractor, P. Trant Ltd. The parties now understand how Contracted Mediation works, and have jointly signed an agreement to refer any disputes to the Panel.

Contracted Mediation can be seen as an insurance policy that guards against the potentially devastating risks, costs and unhappy outcomes of confrontational disputes that go to court, and the premium is shared between the parties involved.

So as the methods of dispute resolution become more sophisticated, project managers have much to gain by grasping new opportunities to guide them through their projects to a successful conclusion, by a more open and collaborative route. Some project managers might prefer to remain with tried methods of dispute resolution, but those methods have been seen to be inadequate for too long. Now there are opportunities to try a new appealing and promising method, the opportunity should not be missed.