

A PARTNERSHIP DISPUTE

The background was that there were 4 equal equity partners with no written partnership agreement. The Senior Partner (Bill) aged in his 50's, had 3 younger partners in their early to mid 40's. The "youngsters" believed that Bill's position as such was hampering proper development of the partnership, and his fee-earning was inadequate. They wanted Bill to resign from all formal management responsibilities and to retire from the equity to become a "salaried" consultant. Nobody wanted to air their differences publicly, but would if pushed. They all wanted a solution, not "victory".

Bill claimed that the problems with practice development had occurred because (against his better judgement), he had gone along with decisions which he said were wrong at the time and in respect of which he had been proved right. He said that the drop in his fee income for this type of work was only a reflection of the recessionary times.

The solicitor-mediator analysed the core issues with the parties separately. It transpired that there were two core issues for the youngsters, namely management and profit-sharing. The issues for Bill were the same, except that, extra, he had financial needs which meant that if he were to retire from the equity, he would need extensive lump sums to put to pension payments, repaying capital he had borrowed to put into the partnership, and paying his current income tax bills. There was also his status in the community and ensuring that he didn't feel he was letting down his second wife, who was much younger.

The net assets of the high-turnover business had dropped to under £1,000, as all the heavy capital contributions had been mopped up in the extensive stress on cash flow. All partners had taken drawings to the hilt, if not beyond. All parties told the solicitor-mediator that no-one had access to capital, other than by further borrowing.

The problem had been simmering for years and was brought to a head by the recession. There was a history of half-finished discussions, prejudice and resentment.

The solicitor-mediator began by trying to ensure the management issue was resolved. At the solicitor-mediator's request all four partners sat round a table and answered a standard set of psychometric management team tests to see how they appeared to themselves. This

caused some hilarity and chit-chat which broke the tension of what might have been a set-piece confrontation of difficult long-standing issues.

Without revealing the results at this stage, the solicitor-mediator then asked them to evaluate themselves and their colleagues in management roles against defined management role-types. This subjective appraisal of each other, broadly matched the objective psychometric tests, but the bringing of this out into the open helped clarify the issue, when results were revealed.

As a result, the "mirror of reality" showed that Bill had never been cut out to be a good manager, that he did have a part to play, and that the youngsters did have significant management ream roles to play to the partnership's advantage. Bill immediately agreed to pull out of any management role, and accepted that he was prepared (on terms) to consider pulling out of the equity, if he was to be out of management.

So far, one hour of the mediation had passed successfully, and the main outstanding issue (money) was now constructively addressed for the first time. Bill was not minded to settle at anything less than the maximum he thought the youngsters would (or could) pay. However, Bill began to recognise that because he had no liquid capital resources, if he stayed in the equity, there was a high probability of further calls on non-existent capital for running the business, for paying his tax and for an external venture in which the partnership was involved. Enquiry by the solicitor-mediator revealed that he also had a joint and several obligation on very heavy bank borrowing for the office and personal liability on the office Lease. He had almost no unpledged collateral for further borrowing. He had also to repay his overdrawn current account in the partnership.

Extensive consideration of the worst alternatives made grim reading for the youngsters, too. If the financial package they offered to Bill to retire from the equity was inadequate, Bill would not go. Further capital would have to be found by them alone (as it was agreed that Bill had no resources available), yet any net profits would be split equally. Projections showed net profits to be declining unless the partnership gripped all the problems, of which this was one. So both sides had a vested interest in early settlement.

There were two things which helped. First, there was a close personal friendship between all of them, but this was under stress inside the office. Second, Bill was considered by the

youngsters to have a good role to play in the business, but not as a manager or equity partner.

Against the solicitor-mediator's suggestion beforehand, Bill attended the mediation alone, unaccompanied by his spouse or any adviser. This meant (as predicted) that Bill sat on his own, depressed and possibly resentful, during the solicitor-mediator's private sessions with the youngsters. This resulted (as predicted) in Bill undergoing significant mood and policy shifts between private sessions, which lengthened the process very considerably.

The close personal friendship was used to advantage by the solicitor-mediator arranging a joint lunch for all parties, where all topics could be discussed other than the matter in hand - weekend shoots, social events, etc. This helped re-forge the primary objective of settlement on fair terms and maintaining the deep personal friendship.

By 4.30 p.m. Bill had become so frustrated with the (as he saw it) inadequate terms on offer by the youngsters, he decided to "try his luck" on a dissolution. The solicitor-mediator promptly re-convened a joint cup of tea, for all parties, on the same basis as lunch, where the personal friendship was re-kindled. After some minutes rest and relaxation with jolly talk, the solicitor-mediator led an in-depth discussion about the appalling legal and financial problems a dissolution would bring for everyone. The solicitor-mediator then took Bill back into private session, his previous decision to terminate having clearly been forgotten, or ignored.

By 6.00 p.m. pressure by the solicitor- mediator resulted in disclosure that the spouses of the youngsters might have access to capital in their own right, and that some of Bill's close family also might have capital resources. None of these were desired to be tapped by anyone, but at this stage everyone considered it a possibility.

The solicitor-mediator strongly suggested to Bill that Bill's wife (now home from work) be called in to discuss things with him, if he was going to "pull the house down", or settle on terms.

Background information of which the solicitor-mediator was previously unaware, (but which by persistent questioning he happened to discover) resulted in the youngsters themselves looking at a revised "mirror of reality" now they discovered that Bill's wife was about to be

present. There was also recognition that the mediation was reaching a possibly final crisis stage.

A significant re-appraisal by the youngsters of the overall financial package took place, both in tax-efficiency and tapping outside resources to pay for it. The worst alternatives (dissolution, or even the status quo) were looming large for all.

Bill's wife, on arrival, had spelled out to her by the solicitor-mediator in private session with Bill the choices available, which Bill had not previously told her. That was because they had only emerged during the day. She certainly had no prior idea, but took a robust common-sense view.

Encouraged by her support, Bill became much more positive in private session, and very much more open-minded in continuing re-appraisal. He also wanted to settle the deal, to go out to a dinner-party at 8.30 p.m., with his wife.

Both sides recognised by the end that they had pushed the other to the very brink of what was mutually acceptable. The solicitor-mediator declined to allow adjournment to the next day, and suggested that if settlement were to take place after so many years of running dispute, it had to take place in the heat of the moment.

Physical tiredness and boredom played their part in the settlement; as did the existing personal friendship which had to be topped up by neutral joint lunches/tea etc to revive flagging spirits. Both sides felt they had reached a fair conclusion in the unhappy situation, and that the good personal relationship had a good chance of being maintained in and out of the office. Both sides had looked "over the precipice" and were unanimous in that they disliked what they saw.

One area which required the solicitor-mediator's particular assistance was an agreement about future restrictive covenants on Bill. Knowledge of potential problems on restraint of trade covenants was very helpful in putting the right questions.

By 8.30 p.m. the youngsters were told through the solicitor-mediator that Bill had agreed to retire forthwith on a consultancy basis on a short-term contract with restrictive covenants broadly acceptable to both sides. Bill had agreed to receive a salary package and a lump

sum payment to meet immediate, (though not long-term) needs. Bill was also to be off the personal liability on bank borrowing and his overdrawn current account in the office wiped clean, and (if the landlord agreed) to be off privity of contract on the office lease. The solicitor-mediator had to carry on his work right to the end in helping to formulate heads of terms acceptable to both sides. These were then signed and the parties parted on friendly terms.