

## Why does history repeat itself?

We help private and commercial clients resolve disputes. Our radically different service is focused on reaching agreement and settlement quickly, at less cost and with less stress for you.

We're able to do this because we have specialist skills in mediation, structured negotiation and arbitration, developed during our time working in the military, business and the law. We've seen, first-hand, how the extreme pressure of litigation, a consequence of business disputes, has triggered or been triggered by rebellious or revolutionary behaviour.

In our contemporary world we're increasingly aware of conflict in the workplace. We all face the threat of cybercrime, fraud, fake news, turbulent employee relations and breaches of trust at all levels. And, however well you may administer the day-to-day complexities of business, if you find yourself in an 'unprovoked' fight it will be vital you have allies who have a strategy that balances tactics for winning with options for compromise and conserving goodwill. I recall Churchill's famous words:

*"... however sure you are that you can easily win, there would not be a war if the other man did not think he also had a chance."<sup>1</sup>*

When they embark on litigation many people believe they are right to fight and will certainly win. Equally, many also believe that to engage in mediation is tactically unwise and shows weakness. But this description by war historian Andrew Wheatcroft, on the rise of Ibn Saud and his successful campaign, recognises that battle can also be approached as a strategic dance with complex conventions:

*War in the desert was as much a ceremony as combat. ... Two groups would meet in the desert, trade insults and war cries, a few shots would be fired and the weaker party would retire. Often the shots would be omitted, for ammunition was costly.<sup>2</sup>*

In the context of a battle, skilled negotiation has a defining role. It emerges from a desire to use minimal force, the need to preserve scarce resources and discerning leadership with an eye on the end game.

We have many examples of case law in our library. They show how mediation in the civil courts has grown in importance, especially over the last two years. There are also more and more examples of exasperated judicial comments on cases which are “crying out” for mediation and cost sanctions “if one party frustrates the process by delaying and dragging its feet for no good reason.”<sup>3</sup>

This all begs the question, why, when dealing with disputes, do so many business leaders avoid negotiation and mediation only to end up in the courts and be admonished by the very people they thought could only see it ‘their way’?

*References:*

<sup>1</sup> Winston Churchill, 1930. *My Early Life*, London: T Butterworth.

<sup>2</sup> Andrew Wheatcroft, 1983. *The World Atlas of Revolutions*, London: Hamish Hamilton Limited.

<sup>3</sup> *Thakkar and Anr v Patel and Anr* 2017 EWCA Civ 117