Don't be in a rush to take disputes to court

COURTS

Talking through problems can save firms a fortune

TOM SCOTNEY
Legal & Finance Editor
tom.scotney@birminghampost.net

Companies could save millions by talking through problems instead of rushing to court, a Birmingham lawyer has said.

Mediator Stephen Barker says the courts are taking a tougher line with firms that take legal action instead of thrashing out differences.

He said a recent case was a strong message to the business world people who do not do enough to sort out problems outside court would be punished by the authorities. In a recent action for professional negligence, the victorious Earl of Malmesbury had his application for costs reduced by hundreds of thousands of pounds by a judge unhappy with the way his legal team approached the process.

> **"Large businesses can be tempted to use their superior muscle to squeeze every last concession from a smaller party**
> STEPHEN BARKER

The Earl had sued a surveying team from firm Strutt & Parker, claiming they mishandled the negotiation for a lease on land used as a car park for Bournemouth International Airport.

His estimated losses totalled £915,139, but rose to £87.8 million – too much for mediation, particularly as the defendants disputed liability.

In the event the Earl won his case – but only for the sum of £915,139. The court ruled that as the figure was such a small percentage of the claim that it would not order the defendants to meet all of the £5.38 million in costs run up by both sides.

The court said it disapproved of the way the case was handled, describing the costs incurred as "horrendous", and "wholly disproportionate to the sum actually recovered.

Mr Barker said he believed that as the credit crunch bites deeper and cash becomes scarcer, commercial disputes like the Earl's case were likely to increase. Often the targets would be professional firms which are obliged to carry insurance against negligence claims, and are therefore perceived to be worth suing, he added.

"The point here is that once disputes get into the court system, costs can escalate to the point where the value of any ruling is often eaten up in legal expenses," he said. "Many problems arise when parties negotiate, because of perceived inequalities in the bargaining positions between the various sides.

"Large businesses can be tempted to use their superior muscle to squeeze every last concession from a smaller party, who may feel unable to protest for fear of losing the work."

Mr Barker, a panel member of the Association of Midland Mediators, as well as a litigation and mediation specialist in the Birmingham office of leading law firm Reed Smith, said: "Negotiation should not be about taking the 'I am right and you are wrong' Anglo-Saxon approach which so often results in agreement becoming impossible and settleable cases going to trial.

"It should be about seeing what both parties want and trying to reach an agreement that is satisfactory for everyone."

Mr Barker's firm, Reed Smith, is set to relaunch as Hill Hofstetter next year after the Birmingham practice was spun off from the national firm.

Churchill famously said jaw-jaw was better than war-war. But Birmingham mediator Stephen Barker says it could be better than law-law too