

How fights over unpaid bills can best be solved by mediation

By John Cranage
Business Staff

Squabbles over unpaid bills will spell an end to many longstanding business relationships as the economy falters and money becomes increasingly tight, a lawyer has predicted.

With so many calls on the cash they have available, firms may be tempted to grasp at any reason to delay paying their suppliers - often cloaking their reluctance in legal actions designed to create delays.

However that stores up even more trouble for the future, with large legal bills heaped onto the original debt, says Stephen Barker, a partner in the Birmingham office of global Top 15 law firm Reed Smith.

"Too often we find that firms not only run up enormous legal costs while withholding payment, but that frequently by the time a settlement is reached, any money they could have paid to their supplier has been spent.

"Unfortunately not all companies take the precaution of putting the contested money to one side," he added. "The longer the situation drags on, the harder it becomes to find the money for an ultimate settlement - and in those circumstances there would be little point in going to the bank for cash, because they might not be very sympathetic."

"My advice to people is that once they find that they are in a hole they should stop digging," said Mr Barker, who says attempts to put off the day of judgment invariably end in costly regrets.

"In the case of a contested £200,000 bill, two parties could easily run up legal fees of £50,000 apiece. If there is a third party involved, as there often is, that adds another £50,000. Interest will also be ticking up as the dispute drags on. It just doesn't make sense. When



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you come to talking settlement, it's £300,000 or £400,000 you're talking about, not the original £200,000.

"Of course if it's a multi million pound dispute, then the costs soar even higher," Mr Barker said. "That leads to a situation where even when firms want to settle they can't because the costs have mounted so dramatically."

He says there is a better way to resolve many disputes.

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Stephen Barker

Mediation provides a low-cost alternative to litigation - and it works in a surprising number of cases, says Mr Barker.

"A mediator will help to find solutions that are more attractive to the parties than fighting on in court. With co-operation on both sides, the mediation process can run from the appointment of the mediator to signing a settlement agreement in a matter of days."

The system is better than fighting in court in a number of ways, he claims, offering benefits such as staged payments rather than single large awards, as well as vastly reduced costs.

Sometimes a little lateral thinking helps, as well. In some cases, he says, it is possible to accept the promise of 'jam tomorrow' rather than 'cash today' with considerations such as future contracts being included in the solution.

"It's a very flexible process," said Mr Barker. "It is possible to come up with solutions and benefits that a court could never provide, preserving valuable business relationships that would never survive litigation, and saving everyone a lot of time."

Both sides in a mediation can also rely on the fact that proceedings are confidential, unlike an open court in which all kinds of dirty washing might be aired.

"In addition it is also a non-binding process, which means that neither side can be forced into a solution it isn't happy with - it is the parties who decide what is fair, not the mediator," Mr Barker added.

"If the process breaks down they can still resort to litigation, although because the mediation process is 'without prejudice', nothing disclosed by either party can be referred to in court," he said.

"The mediator is an entirely unbiased person whose job is to focus on finding a solution, rather than on the problem, and the whole system is designed to encourage openness."

When things look to be reaching stalemate in negotiations Mr Barker often poses a crucial question.

"I ask them 'what happens if we don't reach a settlement today?'"

The unspoken answer, he says, is that the whole issue will go to court, and probably cost tens of thousands of pounds, with the outcome much worse than if they had accepted mediation.

"Suing someone who hasn't got the money to pay you might make you feel better, but it's a complete and utter waste of time," Mr Barker added.