



## **Contractor & subcontractor dispute mediation case study**

A subcontractor sued the defendant main contractor firm for their refusal to pay a final account. It was alleged that the concrete floors in 15 out of the 25 commercial premises worked upon were defective and had to be re laid by another firm at a cost of nearly £90,000. Although the claimants claim was for £40,000, the defendants counter claim including legal fees and a £20,000 late penalty fee which they had encountered was totalling nearly £140,000.

The claimants relied upon, nothing really was said to them at the time of laying these floors, equally the materials and equipment were those of the defendants as they could source them cheaper. A key contention of the claimants was they were never given the opportunity to rectify the work at the time, and they could not believe the remedial work cost anywhere near £90,000.

Throughout the mediation pieces of information given by the parties allowed for a true picture of what had actually transpired to surface. £40,000 was the final account, however this was the amalgamation of some other work the defendant had simultaneously requested from the claimant in respect of another project, undertaken at the last minute, in an effort to make a quick profit as this other contract was of a higher value, and the first set of contractors this had been contracted to had left site without returning.

This work had been completed on time with no problems, out of which the defendant made a very healthy profit. The materials and equipment used on the insistence of the defendant on these 15 floors which were alleged to be defective were inadequate, which was made known to the defendant at the time, to which he denied.

The defendant advised that the claimant had been late in completion, work was not of the standard as previously seen, the claimant advised to an extent this was correct, simply because they had been told that the other project, which was completed on time without issue was more important, the defendant would not employ any more labour and therefore that is why it overran, equally the £20,000 late penalty was more of a deduction rather than the defendant having to pay this out and was closer to £10,000, rather than £20,000. When the final O & P account was looked at, the defendant still had made a considerable profit over both projects.

It also transpired that although the claimant appeared to be hard done by, a number of his invoices including the final account had a lot of repetition in them, when the figures were actually broken down; he was possibly only owed in the region of £24,000. Due to the litigation risk, and quite clear discrepancies in both of the parties evidence and lack of it, in certain respects, the parties agreed to settle for £20,000, the defendant did finally comment he was glad this was over and was not looking forward to trial, he knew his counter claim

was greatly inflated, however, the settlement figure of £20,000, and even with his legal fees deducted he had still walked away with a reasonable profit on both of the projects.

## **Facts & figures**

- **The mediation took 1 day compared to the 13 months this construction dispute had already gone on.**
- **The mediation cost each party £950.00 each compared to the thousands they had already spent on legal fees and the thousands they would have had to spend had they continued with Court action.**