

# SLS Solicitors

Construction & Engineering Specialists

## **Taking an unreasonable position in mediation may result in adverse costs**

***Earl of Malmesbury v Strutt & Parker*** [2008] 118 Con LR 68 QBD. The claimant had succeeded on liability in relation to a negligent valuation in connection with leases of land used by Bournemouth International Airport as a car park. The parties subsequently agreed to go to mediation on the quantum aspects of the case. The claimant offered to accept £9 million in settlement but was ultimately awarded £900,000. The court held that the claimant's position was unreasonable and caused the mediation to fail. The court held that unreasonableness in the actual mediation process could be the same as refusing to go to mediation. The claimant's costs totalled £1.84 million but their unreasonableness was reflected in the costs order, which gave him 80% on liability and 70% on quantum. This is the first case in which a court has been asked to consider the cost consequences of a party who agrees to mediate but then subsequently adopts an unreasonable position in that mediation process.