

focus on...

DISPUTES

To sue?,,,or not to sue?...that is the question. Or sometimes to defend or not? To compromise or not? Whatever the question, we have the expertise to advise you.

THE START

Whatever the nature of the claim, you must be prepared to help us to help you. As solicitors, we can advise you only on the facts and evidence as you present them to us. Preliminary homework saves money and aids success. In most cases a clear written statement from you is the most productive starting point: it enables us to understand your claim, identify gaps in your story and advise you accordingly. Time is money: solicitors are professionals who charge for their time and expertise; your time is valuable to you and neither solicitor nor client should waste it.

COSTS

Details of how our charges are calculated can be obtained on request, although we do provide information to you in this respect at the outset. An hourly rate is applied and all work is charged on a time spent basis. You can set a costs limit with us but remember, litigation is not for the light hearted - be prepared to go flat out to win!

You may be eligible for financial assistance for costs from the Public Fund or have the benefit of insurance cover for our costs. Public Funding usually has to be repaid in the event you are successful in recovering property or money; either the loser is made to pay or you repay out of your winnings.

Public Funding is simply funding, not a one off grant. Repayment to any insurer depends on the terms of your policy. For those with a good case to pursue or defend, ineligible for Public Funding and without current insurance, insurance may be “bought” by successful application to one of the many providers, to cover the cost of losing up to the level of costs purchased.

If paying privately you will be personally responsible for your costs incurred with us; cover by applications for Public Funding or under any pre-existing insurance policy is not retrospective.

WHERE

Different types of cases are dealt with in different venues. Those different venues include the County Court, High Court, employment Tribunal or Arbitration which are all adversarial. If the matter proceeds to a trial there is always a winner and a loser. Some disputes by their very nature require this type of resolution but there is another way, that is, by Mediation. We refer to this as Alternative Dispute Resolution or ADR for short. No final decision is imposed on you or your opponent, rather you reach your own agreement and settle by identifying your wants and needs not simply arguing your legal rights. ADR can be a convenient way to dispose of disputes quickly, privately and with less expense but it does require both sides to agree. Litigation is unilateral; Mediation is consensual.

HOW LONG

The question “how long will it take?” is usually answered with another - “how long is a piece of string?” Any matter almost

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inevitably proceeds at the pace of the slowest party; sometimes the Court delays matters by e.g. problems over listing for hearings. There are procedural timetables to be followed once a case is issued at Court or Tribunal. It is your responsibility to give us full and prompt information and instruction when asked. The case is yours and we will do everything we can to progress to a satisfactory conclusion but we need your help and input to achieve this.

SMALL CLAIMS

Small claims are heard in the County Court. They are generally claims valued at £5000 or less except for personal injury claims where the limit is only £1000. The District Judge's decision is final although appeals can be made in certain limited circumstances. A claim for more than £5000 can be referred by consent to the Small Claims Track.

Those claims worth less than £5000 are sometimes removed from the small claims process if the claim is legally complex and therefore unsuitable for this relatively informal process. In the "Small Claims Court" parties are encouraged to represent themselves. The winner rarely recovers costs, except for a nominal amount, although there are exceptions. Limited Companies should obtain permission from the Court to be represented by a director.

THE ANSWER

There is no answer in law. Every solicitor, every barrister and ultimately every Judge gives an opinion. The judge's opinion is called a judgement and binding subject to appeal. Sometimes the loser will appeal in

the hope a higher Court will overturn that judgement by giving them a more favourable opinion. Appeals can take years to be heard. The highest Appeal Court in England and Wales is the House of Lords which considers points of law and public policy.

These notes are for assistance only. Every case is considered individually. Please contact Hilary Messer at our Pangbourne office or Richard Apley at our Goring office for advice.

See also focus on Civil Claims October 2001

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