keidan harrison
disputes and insolvency lawyers

ADVISORY, LITIGATION AND DISPUTE RESOLUTION KEY FACTS

- This document contains key facts in respect of this firm's Advisory, Litigation and Dispute Resolution services. It should be read in conjunction with your retainer documents and any Statement of Work Schedule provided.

- It also contains a general overview of the basic litigation process in England and Wales under the Civil Procedure Rules ("CPR"), including steps to be taken before a claim is commenced. It does not cover every stage of the process but is intended to highlight some of the most important issues which are likely to apply to most cases and which you should be aware of at the outset of a matter. The rules and procedures in respect of arbitration are not the same as in court litigation and will depend on the rules applicable to the ad-hoc or institutional arbitration in question. In so far as is necessary we will provide specific advice in connection with arbitration cases based on the specific rules of the relevant tribunal.

Undisputedly different

The litigation process in England and Wales

As each case is different, the particular steps required and timetable followed, will depend on the facts and circumstances and the type of dispute. There are also factors that cannot be predicted in advance, such as actions taken by the other party(ies), evidence that emerges during the case, and directions or orders given by the court. The following summary is intended to give you a general indication of the procedure and steps that may be required in a multi-track action bought under Part 7 of the CPR. The procedure will be different in a fast or small claims track action or if a claim is bought under the CPR Part 8 procedure.

The overriding objective

One important principle that underpins litigation in the English courts is the "overriding objective" of enabling the court to deal with cases justly and at proportionate cost. The key factors include:

- Enforcing compliance with the CPR and any court orders.
- Dealing with a case in a way that is proportionate to the amount of money involved;
- Importance of the case;
- Complexity of the issues;
- Financial position of each party;
- Saving expense; and
- Ensuring that the case is dealt with expeditiously and fairly.

These factors must be borne in mind at each step of the litigation process. When either the CPR or a court order requires you to carry out a particular step in the proceedings, it is very important that you do so, in the manner stipulated, and within the relevant time limit. As part of its case management powers, the court may impose penalties on any party that does not comply with the court rules or orders. These penalties can include costs sanctions or striking out all or part of your evidence or claim.

Pre-Action Protocols and Practice Direction – Pre-Action Conduct

- The courts will expect parties to act reasonably in exchanging information and documents relevant to the dispute before proceedings are even commenced. The aim is to avoid the need for legal proceedings where possible. There can be adverse costs consequences if a party fails to follow the relevant pre-action procedure, whether these are contained in a specific Pre-Action Protocol applicable to a particular type of claim, or where the applicable rules are those where no specific Pre-Action Protocol applies.

- To ensure we comply with the rules, we should normally where acting for a claimant send a "letter before claim" to the potential defendant. This letter sets out the details of the claim and the remedy sought, and lists the key documents on which you intend to rely. It may include a request for documents or information from the defendant. The letter should also invite the defendant to agree to some form of alternative dispute resolution ("ADR") procedure, such as mediation.

- The defendant normally needs to be permitted a reasonable time to respond to the letter before claim or a particular period if if a Pre-Action Protocol applies.

Statements of case

Each party to the proceedings must prepare certain documents that contain the details of the case they wish to advance. These documents (the statements of case) must be filed at court and served on the other party. The documents that comprise the statements of case are each dealt with below.

Claim form

Proceedings are started by issuing a claim form at court and paying the required court fee (which can be £10,000 or more). The claim form contains a concise statement of the nature of the claim and the remedy sought (for example, damages). It must also include a statement of value of any money claim.

It is necessary to serve the claim form on the defendant within the prescribed time. The time limit is generally four months after the claim was issued; however, if it is necessary to serve the defendant outside England and Wales, we would have six months from the date of issue. The terms limits for service are strict ones and it can be crucial to comply with them, particularly where a statutory or contractual limitation period would otherwise have passed. We should take steps to serve the claim form as soon as possible after issue unless there are very good reasons to delay.

Particulars of claim

The particulars of claim set out full details of the claim, including the alleged facts on which the claim is based. The particulars of claim must be served on the defendant within 14 days of service of the claim form or within 28 days of service of the acknowledgment of service in the Commercial Court.

Acknowledgment of service

The defendant must file an acknowledgment of service within 14 days of service of the particulars of claim or within 14 days of service of the claim form in the Commercial Court. In the acknowledgment of service, the defendant must indicate whether he intends to defend all or part of the claim. He may also indicate that he intends to contest the court's jurisdiction to hear the claim.

Defence

Unless the defendant admits the whole of the claim, he must file a defence. In the defence, the defendant must state which allegations in the particulars of claim he admits, which he denies and which are neither admitted or denied but he requires the claimant to prove. Where the defendant denies an allegation, he must state reasons for the denial and put forward his own version of events. The defendant must file a defence either:

- Within 14 days after service of the particulars of claim, if he has not filed an acknowledgment of service or
- Within 28 days after service of the particulars of claim, if he has filed an acknowledgment of service.

The parties may agree an extension of time of up to an additional 28 days for filing the defence. If the defendant wants more time, he will need to apply to court for a longer extension. If a defence is not filed, the claimant can apply to the court for judgment in default of defence.

Counterclaims and additional claims

The defendant may make a counterclaim against the claimant, or an additional claim against another party to the claim or a third party. For example, he may make a claim for a contribution or indemnity from another party. A counterclaim against the claimant, or an additional claim for contribution or indemnity against another party may be served with the defence without the court's permission, or at any other time with the court's permission.

Subsequent statements of case

A claimant may file a reply to the defence but is not normally obliged to do so. A claimant will not normally be taken to have admitted any matter raised in the defence if he fails to deal with it in a reply; he will be taken to require that matter to be proved by the defendant.

If a counterclaim is served, it is normally necessary to file a defence to the counterclaim within 14 days of service of the counterclaim, absent an extension of time being agreed. In principle, it is then possible for there to be further statements of case, such as a reply to the defence to counterclaim. In addition, a party may seek to amend its claim or defence, although it is likely to require the court's permission to do so.

Statement of truth

Each statement of case must be verified by a statement of truth. This confirms that the person making the statement believes that the facts stated in the document are true. Statements of truth must also be signed in each witness statement and certain other documents filed in proceedings.

There are serious penalties for signing a statement of truth without an honest belief in the truth of the facts being verified and this can amount to a contempt of court. Further, a failure to verify a document can mean that the party will be unable to rely on the document as evidence of any of the matters set out in it, or that a statement of case is struck out.

Interim remedies and final judgments without trial

There are certain procedures that might enable us to obtain a remedy or judgment against the defendant before a trial. In some circumstances, this might avoid the need for a trial altogether.

If the defendant fails to file a defence within the relevant time limit, it is sometimes possible to obtain a judgment in default of defence, which means that judgment is entered on the claim without a trial.

Summary judgment is a means of obtaining judgment against the defendant at an early stage, avoiding the need to pursue the claim to trial. It may be appropriate to apply to the court for summary judgment, either on the whole of the claim or on a particular issue, if it can be established that:

- The defence has no real prospect of succeeding, and/or
- There is no other compelling reason why the claim or issue should be disposed of at a trial.

Note that summary judgment may also be sought by a defendant, on the grounds that there is no real prospect of the claim succeeding.

The court has the power to strike out a party's statement of case (including a claim form, particulars of claim or defence), either in whole or in part, if one of the following apply:

- The statement of case discloses no reasonable grounds for bringing or defending the claim.
- The statement of case is an abuse of process.
- There has been a failure to comply with a rule or court order.

Security for costs

The defendant might in certain circumstances seek an order that the claimant provide security for his costs of the proceedings, for example, by paying a sum of money into court. The court will only make an order if certain conditions are satisfied and it is satisfied that it is just to do so in all the circumstances of the case. The rationale for this measure is to offset any possible injustice to a defendant who may otherwise be unable to recover his costs of defending proceedings a claim against him.

Interim injunctions

An injunction is an order that requires a party to do, or to refrain from doing, a specific act or acts. For example, a freezing injunction could be sought to preserve the defendant's assets pending judgment or final order, if there is a risk that the defendant will dispose of assets that would otherwise be available to meet his liability.

An application for injunctive relief is not a step that should be taken lightly. A claimant is usually required to give a cross undertaking in damages, that is, an undertaking to compensate the defendant for any loss incurred, should it later transpire that the injunction was wrongly granted. Should it appear that it would be appropriate to seek an injunction, we will advise you in more detail.

Case Management

After a defence has been filed, the court will serve a notice of proposed allocation. Assuming this is the case, the notice of proposed allocation will require the parties, by the specified date, to:

- Complete, file and serve a directions questionnaire; File
- proposed directions; and
- Comply with any other matters.

The aim of the directions questionnaire is to provide information to assist the court in allocating the case to the appropriate track and in giving directions for how the case should be conducted. In the directions questionnaire, a party must set out his proposals in relation to the following:

- Disclosure of documents;
- Scope and extent of disclosure of electronic documents;
- Expert evidence that will be required;
- Witness evidence that will be relied on;
- Directions, that is, the procedural timetable for the matter; and
- Possible settlement, or reasons why they do not wish to settle at that stage.

Each party must also file a budget of his costs for each stage of the litigation including trial – it will normally be essential for the client to agree the budget prepared by his lawyer and if he does not do so then the lawyer may well be unable to continue to act for the client. The directions questionnaire must be filed by the date specified in the court's notice of proposed allocation. Therefore, it is necessary to address each of these issues at an early stage in the proceedings.

A costs and case management conference ("CCMC") is a procedural hearing where the court gives directions for the future conduct of the case until trial. There may not be a CCMC if either the parties have agreed directions, or the court issues its own directions, and there is no other reason to have a hearing. If a CCMC is held, the court will usually:

- Consider the issues in dispute and whether they can be narrowed before trial;
- Approve or amend costs budgets;
- Consider the suitability of the case for settlement;
- Set a pre-trial timetable for the procedural steps required, such as the disclosure of documents, exchange of witness statements and expert reports; and
- Fix a trial date or period in which the trial is to take place.

Interim applications

An interim application is made when a party seeks an order or directions before the trial or substantive hearing of the claim. An application may be made for a variety of procedural or tactical reasons, depending on the circumstances (for example, to seek an interim injunction, specific disclosure of documents or an extension of time to complete a procedural step).

If the other side makes any interim applications, it will be necessary to incur some additional time and cost in responding to them. Any costs orders that the court makes in relation to an interim application may have to be paid immediately at that stage of the proceedings and are not generally re-opened or revisited at the end of the case.

Settlement, ADR and Part 36 offers

It is important to keep settlement in mind at all stages of the proceedings. The CPR and the courts encourage settlement of disputes in a number of ways; in particular, by the use of ADR or Part 36 offers to settle the case (see below). Although the court cannot order the parties to enter into ADR, it may impose costs penalties on a party who unreasonably refuses to participate in a form of ADR. If there are any prospects of settling, it usually better to do so sooner rather than later, to avoid further legal costs.

A Part 36 offer is an offer by a claimant or a defendant to settle the claim that complies with the requirements in Part 36 of the CPR. The rules provide for specific costs consequences where there has been a Part 36 offer that was not accepted, and the party to whom the offer was made then fails to achieve a better result at trial.

Part 36 offers are an important tactical step in litigation, as they put pressure on the other side to settle the case and, to some extent, protect the offeror's position on costs.

Evidence

To succeed in litigation, a claimant must prove his case on a balance of probabilities. It is necessary to adduce evidence to support each of the essential ingredients of your claim. The defendant will also need to adduce evidence to support his defence to some or all of the essential ingredients of the claim. The evidence is usually comprised of:

- Contemporaneous documents (including electronic documents as well as hard copies) intended to prove the issues in dispute.
- Statements of factual witnesses, to tell the story behind the dispute and to fill in any gaps that the documents leave.
- Expert evidence (where appropriate and permitted), to assist the court when the case involves complex technical, academic or foreign law issues.

It is important to consider, at an early stage, the evidence that is likely to be required to prove your case to enable us to prepare for the first CMC as discussed above.

Disclosure of documents

General

The purpose of disclosure is for each party to make available documents which either support or undermine any party's case. This may include documents that are harmful, sensitive or confidential. Disclosure is often a time-consuming and costly stage in litigation. Initially, it will be necessary to identify:

- What documents exist (or may exist) that are or may be relevant to the matters in issue in the case.
- Where and with whom those documents are or may be located.
- The estimated cost of searching for and disclosing them.

Disclosure usually takes place by listing documents and serving the list of the defendant. It will be necessary for you or an appropriate senior representative to organise and supervise the disclosure search. This individual should also sign a disclosure statement in the list of documents, certifying that he understands the duty of disclosure and that, to the best of his knowledge, he has complied with that duty.

It is vital at the outset of the case to preserve all documents that are potentially disclosable, including electronic documents such as e-mails, voicemails and text messages. Care should also be taken to avoid creating any further document that might damage your case, and to limit the circulation of existing documents relating to the dispute.

After the parties have exchanged their lists of documents, each party is entitled to inspect the other's disclosed documents. In practice, inspection often takes place by way of exchange of copy documents.

Privilege entitles a party to withhold documents from inspection. In particular:

- Legal advice privilege protects confidential communications between a client and his lawyer that came into existence for the purpose of giving or receiving legal advice.
- Litigation privilege arises when litigation is contemplated, pending or in existence, and protects communications between a client or his lawyer and a third party, provided certain criteria are satisfied.
- Without prejudice privilege applies to communications made in a genuine attempt to settle a dispute.

In the Business and Property Courts – The Disclosure Pilot Scheme

In January 2019 the Disclosure Pilot Scheme was launched for use within the Business and Property Courts which introduces a number of additional disclosure requirements and duties on the parties.

In particular the Disclosure Duties are to:

- Preserve documents;
- Undertake any searches in a responsible and conscientious manner;
- Act honestly in relation to the process of giving disclosure;
- Disclose known adverse documents, regardless of whether an order for extended disclosure is sought or made, unless they are privileged;
- Comply with any order for disclosure made by the Court; and
- Not to "document dump".

Legal representatives must ensure that all reasonable steps are taken to advise and assist the client to comply with the Disclosure Duties, cooperate with the legal representatives for the other parties to promote the reliable, efficient and cost-effective conduct of disclosure and undertake a review to ensure that any claim to privilege is properly made and its basis sufficiently explained.

As soon as litigation is contemplated, it is a requirement that all relevant documentation and materials are preserved. A party must be able to demonstrate the steps taken internally and show that reasonable steps have been taken with third parties in order to secure the preservation of such documents or material. This includes sending a written notification to all relevant employees and former employees and any agents or third parties, identifying the documents or classes of documents to be preserved. We can assist drafting this communication if required.

At the point of preparation of a statement of case, Initial Disclosure will be undertaken. Initial Disclosure requires the parties to disclose key documents on which they want to rely and those documents that are essential to assist the other party to understand their position. Depending on the complexity or facts of a case, this requirement may be dispensed with.

After the statements of case are filed the parties must complete the Disclosure Review Document if Extended Disclosure is required. It is likely that unless a matter is very straight forward with little documentation, Extended Disclosure will be necessary. This document is designed to provide judges with all the information they require for a Case Management Conference where they will need to make decisions relating to disclosure. It will be a single document prepared jointly by both sides. Each party will also be required to prepare a List of Issues for Disclosure and serve it on the other party. This will only be key issues, not every issue in the case, and the parties will have the opportunity to revisit this list at a later date if necessary.

At the Case Management Conference, The Court will direct the relevant methodology in order to carry out the Extended Disclosure. This will include directions as to what and how documents should be provided. It will be at this stage that both parties undertake the disclosure exercise in accordance with the Court's directions. Regardless of what the Court directions are however, each party is now obligated to disclose any adverse documents.

Despite disclosure now being more limited under the Disclosure Pilot Scheme, a party cannot sit on a known adverse document simply because they have not been asked or ordered to disclose it. Each party will be providing a certificate to the other party and the Court confirming that they have complied with their Disclosure Duties and therefore the obligations seriously. A party know knowingly or recklessly gives a false certificate will suffer serious consequences including potentially being held in contempt of court.

Privileged documents as set out in paragraph 51 above can still be withheld where privilege is properly claimed.

Witness statements

It would be helpful to identify those individuals who were involved in the events giving rise to the dispute. If the action proceeds, it will be necessary to prepare a written statement of the evidence that each individual intends to give to support the claim. These statements will be sent to the defendant, who will prepare and serve his own statements.

The time period for exchanging witness statements will be agreed by the parties or ordered by the court at the first CMC. The court may also give directions identifying the witnesses who may give evidence, or limiting the number of witnesses and the issues that may be addressed. A witness may be called to trial to be cross-examined on his statement. A witness statement must.

- Be in the witness's own words, if practicable;
- Indicate which of the statements in it are made from the witness's own knowledge and which are matters of information or belief and state the source of those matters; and
- Include a statement of truth (see paragraph 27 above).

Expert evidence

Expert evidence is used where the case involves matters on which the court does not have the requisite technical or academic knowledge, or the case involves issues of foreign law.

The court's permission to call expert evidence is always required. If it grants permission, the court will limit the evidence to the named expert or field ordered, and may specify the issues which the expert should address. Parties may instruct another expert to assist them, but any evidence from that expert will not be admissible and the costs of instructing that expert will not be recoverable from the other side.

The court may order that expert evidence is to be given by a single joint expert, namely an expert who is instructed on behalf of both parties. However, this is not common in multi-track cases.

Expert evidence is usually given in the form of a written report, which must be the independent product of the expert. The expert's overriding duty is to the court and not to the party that instructed him. Expert reports are usually exchanged simultaneously, but may be exchanged sequentially. However, in some cases, expert evidence may be given concurrently.

Following the simultaneous exchange of expert reports, a party may put questions to the other party's expert for the purpose of clarifying his report. Questions must normally be put within 28 days of service of the report. There is then likely to be a discussion between the experts for the purpose of reaching an agreed opinion on the issues where possible. An expert may give oral evidence at trial only with the court's permission.

Preparations for trial

The courts are very reluctant to postpone a trial date or period that has been fixed without a very good reason. Therefore, although most cases settle, it is important to be properly prepared in case the matter does proceed to trial. Some of the steps required are set out below.

The court may order that a pre-trial review ("PTR") be held, particularly in more substantial cases where there are significant issues between the parties. The main purposes of the PTR are to:

- Check that the parties have complied with all previous court orders and directions;
- Prepare or finalise a timetable for the conduct of the trial, including the issues to be determined and the evidence to be heard; and
- Fix or confirm the trial date.

Trial bundles are files of the statements of case, relevant orders and key evidence that are used by the court and the parties during the trial. Preparing the trial bundles is usually the responsibility of the claimant's solicitors but the court expects co-operation between the parties to try to agree the documents to be included. It can be a time-consuming and expensive task and requires significant planning and attention to detail.

Each party will be required to supply the court and the other party with a written skeleton argument, namely a written outline of that party's case and arguments before trial. Skeleton arguments are usually drafted by counsel, but the instructing solicitors and parties should have an opportunity to consider the drafts and make comments or amendments.

Trial and Judgment

You should note that:

- The length of the trial will depend on the complexity of the legal and factual issues to be resolved and the number of witnesses permitted to give evidence;
- The trial will be held in public, unless the court has ordered that it may be held in private because it involves matters of a confidential nature and publicity would cause harm or damage; and
- The judgment may be given immediately after the trial but is often "reserved" to a later date, particularly in complex matters. This means that the parties would not know the judge's decision until some time after the end of the trial.

Appeals

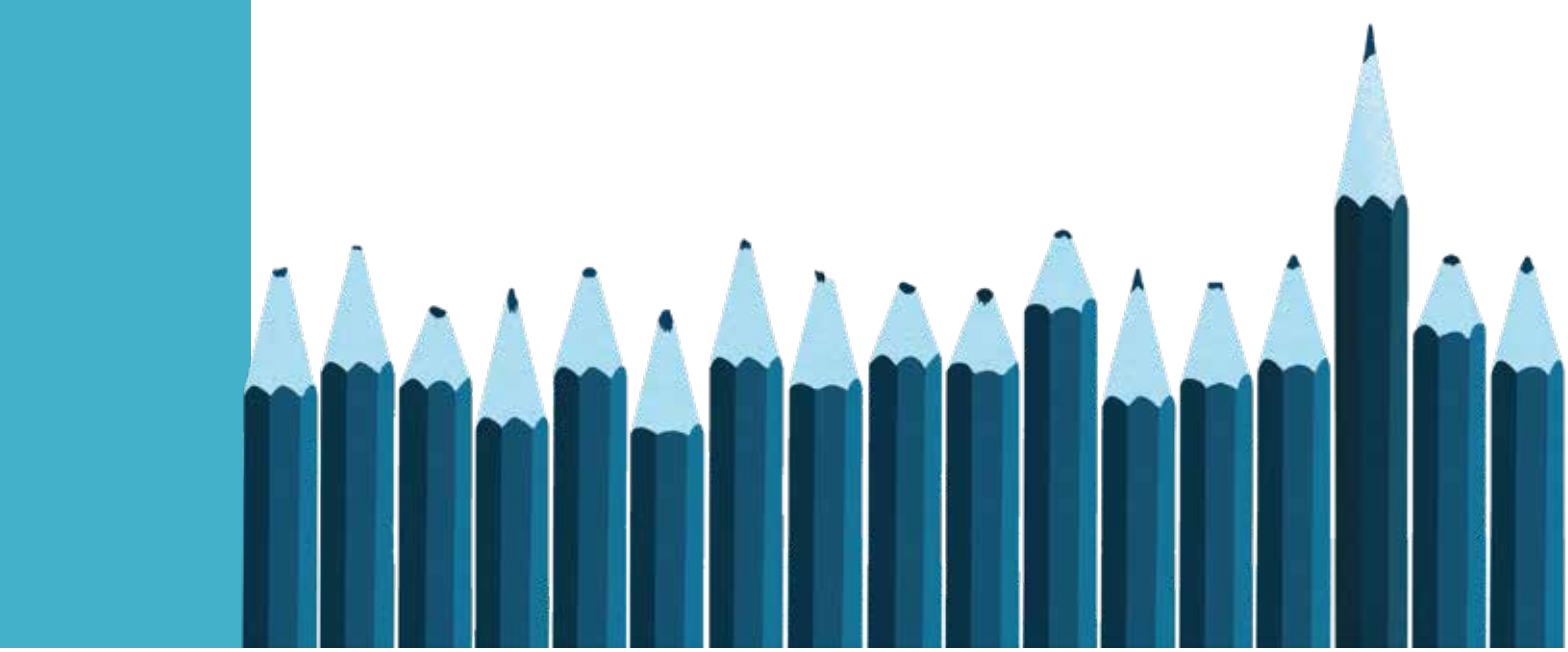
It is open to the unsuccessful party to apply for permission to appeal a judgment or order. A decision may be appealed only on the basis that it was either wrong or unjust because of a serious procedural or other irregularity in the proceedings. Notice of an appeal (or application for permission to appeal if permission was not granted by the trial judge) must be filed within 21 days of the judgment or order.

If there is an appeal, it may be necessary to apply for a stay of any order or enforcement of the judgment, albeit such stays are not granted as a matter of course.

Costs

It is important that you understand that you will be responsible for paying our fees whether or not you achieve your objective and/or are successful in any action you bring or defend.
The general rule regarding costs in litigation is that, if your claim succeeds, you will be entitled to recover some of your costs from the defendant. This does not usually apply to proceedings in the small claims track and only a very modest amount of costs can be recovered in cases on the fast track. On the other hand, if the claim fails, you are likely to be required to pay the defendant's costs. However, the court has discretion to make a different costs order and so it is not always the case that the loser is ordered to pay the winner's costs. The court will consider factors such as the conduct of the parties and any Part 36 or other admissible offers to settle the case. The court has considerable discretion when it comes to what costs order to make and has several options available.

It is very unusual for a party to be able to recover all, or even close to all, of the actual costs incurred in the litigation. The actual amount of costs to be paid is subject to an assessment process, unless the parties can agree the amount that will be paid. The standard basis of assessment is to allow costs to be recovered that were reasonably incurred, reasonable in amount and proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred. The application of this test of proportionality adds a considerable additional element of uncertainty to the question of the proportion of actual costs incurred which may be recovered. It is no longer the case that on success a level of costs recovery in excess of 60% of the actual costs incurred can be assumed, although this is often still the case (at least where substantial interim costs orders have not been made against the client). Unless you instruct us otherwise, we will normally proceed on the understanding that we are instructed to undertake such work on the case as is reasonable to advance your position in the case, even where there is a risk that the cots of such work may be considered not to have been necessarily incurred, to be disproportionate, and thus disallowed.



The court will also consider the party's costs budgets for each stage of the claim. Each party is required to submit a costs budget, and to revise it as appropriate as the case progresses. The costs budget will normally act as an absolute cap on the amount of costs which may be recovered from the paying party. However, this does not impact on the question of what costs a party is required to pay its own lawyers, which is subject to a different set of considerations. Where a costs budget is prepared it is to be treated only as an estimate and not a cap on the fees that a lawyer may charge his client. Further, it is subject to the assumptions set out in the budget and to what is stated in our Terms of Service (section 2) about estimates of costs given to the client.

The estimated costs of the litigation, set against the risks of the litigation and the amount to be gained from it, can be one of the most significant factors to consider when deciding whether to pursue a case.

Enforcement

Once judgment has been obtained, the judgment debtor should pay voluntarily any money owed under the judgment. If payment is not made, there are several enforcement procedures available to the judgment creditor to enforce payment. Examples include:

- Execution against goods owned by the judgment debtor, where an enforcement officer is commanded to seize and sell a judgment debtor's goods.
- An attachment of earnings order, under which a proportion of the judgment debtor's earnings is deducted by his employer and paid to the judgment creditor until the judgment debt is paid.
- A charging order over property owned by the judgment debtor.

The appropriate procedure will depend on the circumstances, including the nature and location of the debtor's assets.

Although you might obtain a judgment for a sum of money and an order that the other party pays a contribution toward your costs, this does not guarantee that you will receive payment. It may be necessary to take steps to enforce the judgment. This will involve additional costs for which you will be liable, and it may take some considerable time after the court has given judgment to obtain payment, if at all. The fact that you fail in recovering money from the other party does not absolve you of your responsibility for payment of all our fees.

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Funding and Insurance

- In addition to funding our services via our standard hourly rates it may be possible to fund an assignment via an alternative means ("Alternative Funding").
- Alternative Funding includes a conditional fee agreement ("CFA") or discounted conditional fee agreement ("DCFA") also known as "no win no fee" or "no win lower fee" agreement. There are two types of no win no fee agreement. One involves higher hourly rates being charged retrospectively if we succeed in the case (or, in some cases, succeed in an interim application). The other involves us working for a percentage of what we recover and is sometimes known as a contingency fee agreement or damages-based agreement ("DBA").
- Third party funding ("TPF") may be available whereby your costs are paid by a third party in consideration for a share of the damages or some other fee in the event you succeed with your action. TPF is generally only available to claimants and where the case can be demonstrated to have good merits and is against an entity which afford to pay damages and costs. In appropriate cases we can assist you to approach either funding brokers or funders directly. The costs involved in obtaining and administering are chargeable in the normal way but are not normally recoverable from the other party irrespective of the outcome of the case.
- Where a claim can be demonstrated to have good prospects, it may be possible to obtain after the event insurance ("ATE") to insure against your potential liability to pay the other side's costs if you lose the case. The cost of ATE is generally higher the later it is taken out. Taking out ATE later also generally reduces the prospects of an ATE insurer offering to insure a matter and/or may increase the cost of the premium.
- There are pros and cons of Alternative Funding and ATE and we can discuss the options with you once we understand your needs and objectives. It is important that you receive full advice before you enter into the arrangements and that you fully understand the nature of the funding arrangements. If you decide to enter into a CFA, DCFA or DBA it is recommended that you seek independent legal advice on the merits of entering into the arrangement with us.
- The ATE premium and any CFA/DCFA success fee will not generally be recoverable from the other party and can accordingly increase the ultimate costs that you have to bear even if you win. It may be cheaper, therefore, for us to act for you under our standard hourly rates, which are very competitive for London dispute lawyers. The costs you incur under a DBA potentially form part of the costs you can recover from the other party up to the percentage of what we recover as prescribed in the DBA – but such costs will in any event be limited by reference to the costs that would have been charged to you had we been acting on the basis of normal hourly rates, so it is possible that there could be a substantial shortfall. The cost of advising on and arranging Alternative Funding and ATE, and ongoing administration of the same, is not generally recoverable from your opponent.
- You should check to see if you have legal expenses insurance or before the event insurance ("BTE") as an add on to your house, motoring, business or some other insurance policy which may indemnify you in respect of some or all of your legal costs. You should contact the insurance company as soon as possible if you have such insurance to find out their requirements and whether any assignment is covered. Insurers will not generally back date the cover. You will be responsible for paying our fees unless they are paid by your insurance company.

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