

# Litigation:

## Commercial Approach to Litigation



**Litigation can be expensive and may not accordingly prove cost effective. It is important therefore, that at the outset all options for recovery are explored and a commercial strategy adopted. This guide explores alternative options that exist if settlement cannot be achieved.**

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### **Strategy to Adopt**

It is not possible to devise a one suits all policy, as this will depend on the importance of the dispute (which may not reflect the amount being sought) and the complexity of the issues. The categories set out below are based on the amount sought to be recovered but this is only a rule of thumb and not based on any statutory or limitation contained in the Civil Procedure Rules.

#### **Claims for less than £30,000**

As a rule of thumb, proceedings are unlikely to be commercial where the amount in dispute is less than £30,000 as there is a real risk that, even if successful, the irrecoverable costs may prove to be greater than the amount sought. Consequently, even if successful it may be a pyrrhic victory and only justified if the proceedings are a matter of principle. Usually in cases of this size a settlement negotiated at the outset makes commercial sense, even if the amount to be paid seems unjust on the basis of the position of the parties.

The Courts are increasingly recognising that the costs are a bar to justice and exploring ways in which the costs can be fixed as a proportion of the amount sought. There is already in existence the Small Claims Court, which deals with claims of a financial value of less than £10,000 (see attached guide).

This offers a way in which the Claimant can pursue the matter without incurring legal costs.

Where the claim is seeking recovery of less than £30,000, it is imperative that alternative methods of resolving the dispute are explored.

#### **Claims between £30,000 - £300,000**

Costs remain material even in relation to sums within these parameters and it is therefore important to devise a strategy which reflects the anticipated costs that will be incurred.

Alternative methods of resolving the dispute without the use of proceedings remain important. Also the use of CPR Part 36, which is a method of seeking to resolve the dispute by making a proposal to the other side, which if they refuse to accept, can have material costs consequences for the other party.

# Let us Introduce Ourselves



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**Disclaimer:** This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

The Courts are also proposing to introduce a fixed costs regime for claims up to £100,000 which will significantly reduce the steps in the proceedings and therefore the costs that will be incurred. If introduced this will offer the prospect of proceedings for sums between £30,000-£100,000 being more economic and reduce the bar to justice.

## **Claims for sums in excess of £300,000**

Costs are still a material issue but should not be a bar to the proceedings. There is also the opportunity of obtaining funding from third parties, which will reduce the cashflow issues regarding funding the proceedings and also the opportunity for After the Event (“ATE”) Insurance providing cover against the risk of the claim being unsuccessful and having to pay the other parties costs. This offers up the prospect of risk free litigation which is increasingly appealing to Claimants.

Even though the amounts sought are more substantial the alternative methods of dispute resolution should not be ignored and may still be the better course to adopt so as to achieve a commercial outcome to the claim.

The aim should always be to ensure that the strategy adopted is cost effective and, as much as is possible at the outset, takes account of how any proceedings will progress and the likely timetable.