

Resolving disputes

Louise Hamilton is a solicitor in Nash & Co's dispute resolution team

LOUISE Hamilton gives us an insight into the changing face of dispute resolution and the alternatives to litigation.

"How much will it cost?"

"How long will it take?"

These are the two most common questions asked by those who find themselves involved in commercial disputes. Increasingly the answer to this question should be: '...it depends on when and how the dispute is resolved'. The reason for this is that more and more disputes are being resolved away from the Court room and without the assistance of 'the man in the white wig' and instead through Alternative Dispute Resolution

('ADR') which can be both quicker and cheaper than litigation.

This has been brought about by the publication in 1996 of Lord Woolf's 'Access to Justice' report in which he recommended a 'new landscape' in which litigation is viewed as a last resort. That Report precipitated reform in the Civil Justice system and any civil dispute which finds itself within the Court arena today must be conducted in accordance with a set of rules known as the Civil Procedure Rules ('the CPR') which came into effect in April 1999.

These rules are amended annually and we have now seen the introduction of a number of 'Pre Action Protocols' which prescribe the manner in which parties to

alternative methods without good reason then they are likely to be penalised when the Court comes to consider the matter of costs. This means that the unsuccessful litigant may not necessarily have to pay the costs of the successful party if that party unreasonably refused to consider or engage in ADR. ADR should therefore be considered in all cases and only dismissed in exceptional ones.

There are also compelling commercial reasons to consider the use of ADR. Two of the aims of the Civil Procedure Rules were to reduce the costs and time incurred in litigation and ADR can potentially achieve both of these objectives if successful. ADR also offers the following potential benefits:

- Potentially reducing the amount of management time expended on dealing with the dispute and can be much quicker than litigation;
- Offers flexible solutions for the resolution of dispute and may preserve commercial relationships;
- Involvement in the decision making process and can be much less stressful than litigation;
- Can provide commercially orientated solutions where the parties to ADR have control over the outcome;
- Even if not successful may usefully refine the issues in dispute and to be dealt with by the Court if litigation is unavoidable;
- Frees up the time of the Court to deal with those matters which genuinely cannot be resolved without recourse to litigation.

Nash & Co's dispute resolution team has an excellent track record. It acts for both potential claimants and defendants and understands the issues surrounding involvement in dispute resolution. The team will be pleased to discuss the elements of dispute resolution with you including ADR.

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potential litigation should conduct themselves before litigation is commenced. The effect of the Protocols is that in most commercial disputes the parties (and their legal representatives) are obliged to consider whether an alternative method of dispute resolution might be more appropriate than litigation and potential litigants are warned that if they fail to give proper consideration to these