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# 3HR Legal Weekly

## Commercial

### Commercial disputes – part 3

This is part 3 of our series on dispute resolution. In our previous newsletter we covered the first stages of a claim – the claim form, particulars of claim, and the defence.

Once a defence has been filed the court will have to decide how the matter will progress to trial. It will therefore set directions, which form a timetable of dates to complete various tasks.

First up is usually disclosure. This is the process where you tell your opponent about all the documents you have that relate to the case. You must disclose everything that hinders as well as helps your case, and it is important that you comply with this obligation as you must sign a declaration confirming that you have carried out a full and proper search for documents. It is therefore important for you to retain all the documents that relate to the dispute.

Disclosure usually takes place by the exchange of lists that identify and describe all the relevant documents. Each party will check the other's list for items that it does not already have, and it can then request inspection of those papers, which will then be copied and delivered to them.

Once copies of all the necessary documents have been exchanged, the next step is witness statements. The statements of case (the claim form and the defence) set out each parties' case in full, and the witness statements provide the evidence to support those cases. Physical evidence such as e-mails or letters can be referred to, and then appended as exhibits to the statements. You must produce a witness statement for every person you want to give evidence at the trial. The statements form the basis of the evidence, and the witnesses must then be available to give evidence and be cross-examined by the other side at the trial.

The other major direction that might be required concerns expert evidence. If there is some technical aspect to the claim the court will want to be guided by a suitable expert. Usually one independent person is appointed to act and provide an expert opinion on the matters in dispute. It is common for both sides to jointly instruct the expert, and then ask any necessary questions about the resulting report.

Aside from a few procedural forms the next stage of the process is the trial. Both parties will normally have instructed specialist counsel to argue the case, and a judge will hear opening arguments, both sides' witnesses (including cross-examination), possibly the expert, and then closing arguments. Once the process is complete, the judge will consider the arguments, and then make a judgement.

The losing party will be given a short period to pay the judgment debt, and then judge will consider the costs of the case. On smaller matters the costs are likely to be summarily assessed, which is where the judge looks at the costs schedules prepared by each party and quickly assesses how much the winning party will be paid. It is rare to recover all your costs, but it can happen if the other party has not acted in good faith in the litigation.

Larger matters are likely to go to detailed assessment, which is basically another case about the costs of the initial matter. As you can imagine, the parties risk paying costs arguing about the costs, so it is sensible to come to an agreement as quickly as possible.

Should you require any assistance in this or any other commercial area please refer to our 3HR Commercial Law team which can advise accordingly.

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