

BACKGROUND AND MODERNISATION

Background

Disputes which relate to matters or transactions in England and Wales or English or Welsh land or which have a connection with England and Wales are heard by English Courts. London has a strong reputation as an international commercial centre. Parties to international contracts often agree that the English Courts decide disputes, even though there is no particular connection with England.

Because of their common heritage, the Irish and English legal systems and Court procedures have been broadly similar. However, a fundamental change in court procedures and practice was undertaken in England and Wales when the so called “Wolfe Reforms” were implemented. These 1999 reforms implemented the “Access to Justice” Report which was chaired by Lord Wolfe.

The Wolfe Report concluded that the pre-existing litigation system in England and Wales at that time was too expensive, too slow and incomprehensible to the public. The simplest case could take years to come to trial and the costs would often exceed the amount the dispute. The system was too adversarial (i.e. conflict driven) and did not necessarily operate in the interests of justice as a whole.

The Woolf Reforms

The England and Wales Civil Procedure Rules prescribe the practices and procedures for the hearing and determination of claims and dispute in England and Welsh Courts. The overriding purposes of the new Civil Procedure Rules are to ensure that the parties are dealt with on an equal footing, to save expense, to ensure that cases are dealt with fairly and quickly and to allocate the appropriate share of the Court's resources to the particular circumstances. Cases are to be dealt in a way that is proportionate to the

amount of money involved, their importance, complexity and the financial position of the parties.

The most significant reform was to transfer the control of litigation from the parties to the Court. The Court and Court Offices now decides the progress of cases by making directions, setting timetables and ensuring that they were complied with.

Active management by the Court includes, encouraging the parties to co-operate, identifying details of what is disputed and not disputed at an early stage and dealing with other issues summarily and less formally. It includes encouraging parties to use alternative dispute mechanisms such as mediation and arbitration and if appropriate, helping and facilitating settlement.

It also involves fixing timetables and controlling progress, measuring benefits against costs, dealing with as many different issues on the one occasion as possible, dealing with cases without the need for a formal hearing or trial, making use of technology and giving directions to ensure the case proceeds.

Parties and their representatives are encouraged to negotiate a settlement. In practice most cases are resolved by settlement. The purpose of the Civil Procedure Rules is to endeavour to ensure that settlement takes place an earlier stage, if possible.

The parties are obliged to give serious consideration to any available form of "Alternative Dispute Resolution". Alternative Dispute Resolution (often called "ADR") refers to certain means of determining disputes without legal action. Courts are entitled by means of their active case management to encourage settlement by Alternative Dispute Resolution, if this is appropriate.

Protocols

Protocols have been introduced to regulate and streamline the conduct of many types of claims. Protocols may stipulate what should be done before commencing particular types of court proceedings. For example, there are Protocols for personal injury,

negligence, construction and engineering disputes, professional negligence etc. They are designed to ensure that Court action is a last resort. The parties must establish what is in dispute, must share information and must endeavour to resolve their dispute themselves. If they fail to follow the procedures in the Protocols without good reason, the Court will apply a sanction by way of costs and reduced interest, if litigation is commenced.

Informal Pre-Trial Procedures

Under the Civil Procedure Rules, many pre-trial hearings take place with relative informality. Many applications are heard by conference call or video conferencing. Even where the applications take place by personal attendance, the parties will not have to appear and written statements may suffice.

Informal procedures are also available where cases are not fully contested or where it is clear that there is no justifiable claim or answer to the claim available, so as to merit a full hearing. For example, a claimant may show that the defendant has no real defence and no real prospect of succeeding in his defence and may apply for a summary judgement in an interim hearing. Correspondingly, the defendant may claim that the claimant has no real merit and similarly seek to have the claimant's claim struck out on a summary application on the basis that there is no real prospect of success.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.