Legal disputes on the rise – a time to mediate?

Background

Much of the current global effort is, quite rightly, focused on protecting the most vulnerable from the health risks associated with contracting Covid-19. Many governments have also developed strategies and initiatives that they hope will mitigate the very significant impact that the virus is expected to have at the micro- and macro-economic levels.

By and large, individuals and institutions have shown that they are prepared to work together for the collective good and a common goal. Yet, although we do not know how long Covid-19 will be with us, as restrictions get lifted and as life begins to "return to normal", people and businesses will naturally turn their attention to their own needs, interests and objectives moving forwards. New challenges will inevitably result in an increase in legal disputes, something that Lord Neuberger, the former President of the Supreme Court of the United Kingdom, was keen to stress in a recent interview on BBC 4's Today programme.

Dispute resolution during lockdown

Disputes arise in all sorts of circumstances, including in relation to commercial arrangements, family matters and dealings with property, inheritance, insolvency and bankruptcy to name just a few. In recent weeks there has been a particular interest among businesses in the effect of "force majeure" clauses that are often included in commercial contracts. Force majeure clauses are intended to protect parties by limiting or altogether removing contractual obligations and/or liabilities when an extraordinary event or circumstance arises that is beyond a party's control and that prevents the party from fulfilling those obligations. However, as with all contractual clauses, there is always a risk that parties might (seek to) interpret a force majeure clause in different ways, especially when the stakes are high.

Generally, the common law justice systems around the world have responded admirably to the challenges that the "lockdown" and "social distancing" requirements have placed on the functioning of the courts and the management of legal cases. However, as the quantity and complexity of legal disputes rise, so too will the workload of, and pressures on, the courts. Inevitably, it will take longer for cases to be heard and for judgments to be made, and that usually means more legal costs for parties too.

It is therefore a suitable moment to reflect on the application and use of Alternative Dispute Resolution ("**ADR**") mechanisms to resolve legal (and non-legal) disputes outside of the formal court process. As alternatives to litigation, ADR methods come in various shapes and sizes, the most notable of which are arbitration and mediation. Whilst arbitration plays an important role in commercial disputes (where arbitration clauses are often found in commercial contracts or where parties decide on an ad hoc basis to arbitrate rather than litigate, for example to ensure confidentiality), mediation can be used in almost any walk of life where disagreement arises.

Mediation

For the uninitiated, mediation is an entirely confidential process by which parties use a neutral, independent third party to assist in resolving their dispute. There are various styles of mediation but the underlying objective of most mediators is to create a collaborative space in which the parties can communicate and negotiate a mutually agreed settlement.

The process is remarkably effective. It is estimated that around 90% of cases that go to mediation either settle on the day (around 75%) or shortly thereafter (around 15%). Even where a case does not settle, the parties will have learnt a little more about each other (and perhaps about their own case) during the mediation process, which will feed into their respective legal strategies moving forward.

From a practical perspective, when choosing a mediator, the parties (or their legal representatives) will look for someone with the relevant sector and/or legal knowledge and experience. Some mediators are listed on panels, while others are independent. Either way, it is critical to identify a mediator with the right skillset for the particular parties and the dispute. Some call for a more collaborative and facilitative mediator, whilst others benefit from a more directive and evaluative approach. Where disputes involve international parties, mediators with multiple languages may be particularly useful.

As to the venue, it is usually best to hold a mediation in a neutral location where the parties can choose to work in separate rooms or come together in one room. Where possible, it is normally preferable for the parties to be physically in the same place for the mediation. However, this is not always possible or affordable so some mediators also offer online mediation, which has become increasingly popular in the last several weeks as a result of the recent "lockdowns".

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As a leading boutique litigation law firm, our lawyers at Signature Litigation specialise in managing and resolving our clients' complex legal disputes effectively and efficiently. We have extensive experience in acting for clients across all stages of a legal dispute, including at all levels of the court system and in complex arbitrations, whether national or spanning multiple jurisdictions.

Across our offices in London, Paris and Gibraltar, Signature Litigation have leading mediators who can help you to resolve your dispute, including via online mediation. Our mediators include:-

Simon Everington, an accredited mediator with the Centre for Effective Dispute Resolution ("**CEDR**") in London, who has experience in trust, probate, regulatory, commercial, personal injury and clinical negligence disputes. Simon has a diverse skillset and spent several years specialising in conflict resolution research before training to become a solicitor.

Julian Connerty, who has over 25 years of experience in handling the litigation, arbitration and mediation of international large scale commercial disputes, with particular expertise in international fraud, insurance industry disputes and regulatory investigations.

If you would like to instruct one of our mediators or would like more information on our services, please contact us at **mediation@signaturelitigation.com** or via the details below.

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