



ALTERNATIVE DISPUTE RESOLUTION IN A COVID-19 CONTEXT

Leading Commercial Litigation Lawyer, Caroline Watson, provides an overview of the options available to those who are facing disputes in the context of the coronavirus outbreak.

The coronavirus outbreak has created unexpected business circumstances. Heightened restrictions are occurring daily in the UK and overseas, limiting people's ability to work and socialise.

Pressure is mounting on businesses, either driven by increased demand or depleted trade. Many will no doubt be anxious that a third-party won't fulfil its obligations, impacting on its own ability to service its clients or customers. Many contracts will contain force majeure provisions which could be (depending on what they say) legitimately activated as a result of the coronavirus pandemic. Businesses should assume that invoking a force majeure provision could be controversial and lead to dispute. They should therefore take specific advice before activating a force majeure provision or at the earliest stage after receiving notice under such a clause to ensure their position is protected.

Each particular issue will have its own pressures and concerns, so it is important to seek specific advice from a disputes solicitor to decide on the most pragmatic but effective approach to managing difficulties with relationships over the coming months.

WHY IT IS IMPORTANT TO NURTURE YOUR SUPPLY CHAIN

Where any difficulties are a direct result of coronavirus, taking a pragmatic approach rather than immediately seeking to enforce contractual rights could have both short- and long-term advantages. Valued suppliers will be working hard to avoid letting you down, and you may need to rely on them in the future. By maintaining clear and regular communication and allowing flexibility, you could work together to find solutions to problems.

However, you should also plan for a worst-case scenario for your business. A disputes solicitor can guide you through the measures you can put in place now to build resilience and mitigate against future issues.



WHEN NURTURE ISN'T ENOUGH

It may be that you have an existing dispute affecting your business which has been exacerbated by current uncertainties caused by the coronavirus. If the dispute is already the subject of Court or arbitration proceedings, these will continue but may progress more slowly because, as with many businesses, the Courts are under significant pressure to change their working practices without notice. You should expect some Court hearings to be postponed and, when they do take place, for this to be by video conference.

The Court also has revised procedures in place to deal with emergency applications for, for example, injunctions and our disputes solicitors can discuss these with you.

THE ADVANTAGES OF ALTERNATIVE DISPUTE RESOLUTION

For both new and existing disputes, now more than ever, parties should consider with their disputes solicitor what forms of alternative dispute resolution (ADR) could be used to leverage swift, cost effective and certain negotiated outcomes. In “normal” times, the Court expects parties to view issuing Court claims as a last resort (and they can be penalised heavily in costs if Court proceedings are issued pre-emptively); in the current context this is even more of an imperative.

ADR options for all disputes are many and varied, ranging from short without prejudice (or off the Court record) telephone calls or correspondence, to formal settlement meetings, mediation (where a trained mediator works to move the parties toward a negotiated agreement that ends their dispute) and adjudication (a swift procedure (often 28 days) where the parties put their case to a third party expert to determine and agree to be bound by the decision reached).

Contracts will often contain specific ADR procedures, which the parties are required to follow in the event of dispute. These will need to be reviewed and followed. If it is not currently feasible to implement something contained in these provisions, it may be possible for the parties to agree a written variation to them.



Key to effectively resolving disputes through ADR in the current coronavirus climate will be a considered and creative approach. There are a multitude of robust ADR options to consider, all of which are flexible in the context of the current coronavirus restrictions. In recent years, technology has increasingly been used to aid ADR. For example, telephone mediation has become the norm in low-value claims and parties report good success rates. Mediators have also developed methods of holding mediations for higher value disputes via video conference.

The method of ADR (or combination of methods) most likely to lead to a swift, cost-effective conclusion is case-specific and depends on a number of factors, the type of dispute, its subject matter and the parties involved.

SPEAK TO A LEGAL EXPERT

As specialists in all forms of litigation and ADR, Thrings law firm can help you decide the most practical route for long-term business resilience both during the outbreak and later down the line. Contact us if you have any concerns about your supply chain, force majeure clauses, questions about avoiding potential disputes or resolving current disputes.



Caroline Watson
Partner

01793 412 563
cwatson@things.com