**Case management: clients (script)**

[Diagram showing 'people' in relation to dispute resolution, and pointing to 'experts', 'opponent', 'witnesses' and 'client'. 'Opponent' is then linked to 'opponent's solicitors'. 'Client' is linked to 'directors', 'executive team' and 'legal team'.]

This is one of a series of elements looking at the management of a dispute in a little more detail. We are going to consider people and documents – not because there is a technical or legal reason to consider it this way, but rather because viewing the litigation process as a whole through these lenses brings to life some of the complexity of litigation. When you first study dispute resolution it is common to study it stage by stage, and for very good reason – this allows you to understand how litigation progresses over time and how one stage leads to the next. However, in practice, the reality is that you cannot just consider one stage at a time. Rather, you need a good understanding of the entire litigation process, and often need to have the whole process in mind when considering a strategic or practical issue. Over a number of elements we will therefore look at the process as a whole and what it means for people and for documents.

For example, a corporate client will have directors that are involved in strategic decisions and in decisions which are reserved to the board. It may have a management team that manages the day-to-day business of the company. It may also have a legal team which advises in relation to legal matters and liaises with external counsel.

When assisting the client with dispute resolution, while you must act in the best interests of the company, you should also consider the roles of all these individuals too. For example, have you set out your advice in a way that not only assists the legal team who you might be liaising with, but also enables them usefully to convey it to the management team and / or directors too? When considering the impact of dispute resolution on the business, are you taking into account the broader business concerns faced by the directors and management team? Have you considered that the legal team may, in effect, be competing for time and attention from directors, the management team and others? If you are liaising with the head of the legal team, have you considered their position in the business: what pressures do they face, what is the business expecting of them? What targets do they face? What can you do to facilitate these concerns? These considerations all have an impact on how you carry out your work.

Imagine your corporate client has a dispute with a customer. Your client’s position is that the customer owes it £100,000 for services received. You have weighed up the merits of your client's position and your advice is that your client should consider settling the dispute for £60,000. When explaining your advice to the legal team you might focus on how no claim is certain to succeed, that the costs of pursuing the matter to trial would be significant, and a good proportion of those costs would not be recovered even in the event of success.

Having considered the people involved in the client, let's look again at the overview of civil litigation that you are already familiar with to consider how the client and their concerns are relevant to different stages of litigation.

[Diagram showing the stages of civil litigation, which are captured in the text that follows]

**What are your client’s objectives? Priorities? Options? Timescales?**

At the outset of a dispute you need to identify your client's objectives, their priorities, what options are open to your client and the likely timescales for those options. While these are initially pre-action considerations, you need to revisit them throughout the litigation as they can all change as a result of developments in the litigation and the influence of external factors (for example, your client's financial situation, or other business concerns).

**Is your client prepared for the loss of privacy / confidentiality as a result of the disclosure of documents, witness evidence and trial?**

The publicity and loss of confidentiality involved in litigation can be a key concern. Have you considered with your client what documents will need to be shown to the opponent at the disclosure and inspection stage? Are your client's witnesses prepared to give an open account when it comes to the preparation and exchange of witness statements and ultimately when they are required to attend trial for cross-examination? If your client faces a security for costs application, is it prepared to disclose details of its financial position in order to defend that application?

**Does your client have the time and other resources for the various stages of litigation?**

Does your client understand the time and resources that it will need to devote to the litigation? For example, their involvement in identifying the documents for disclosure. What about the preparation of witness statements - will it arrange for witnesses to be made available for interviews? What about for trial? Even if your client is prepared to pay for solicitors and other technical advisors to help with these tasks to the greatest extent possible, significant client involvement is still required. For example, solicitors cannot carry out the initial scoping of a disclosure exercise or obtain the documents or document repositories without involvement from the relevant people at the client.

**Is your client exposed to an application for a freezing injunction? A search order? Security for costs?**

In addition to advising your client on the steps it might choose to take in the litigation, you must also consider their opponent’s tactics and advise your client about the consequences of various steps their opponent may take. For example, is your client susceptible to an application for security for costs and have you advised on the consequences of a successful application? The client’s inability to pay security for costs or an unwillingness to provide information about its financial situation could alone be enough to dissuade a client from pursuing court proceedings. Other examples of applications that your client could face include freezing injunctions and search orders – have you considered if these are relevant to the facts and provided appropriate advice?

**Has your client thought about all the consequences of an adverse judgment? Can it afford to pay? Regulatory interest? Negative publicity?**

Have you explored with your client all the consequences of a judgment obtained against your client? Can your client afford to pay a damages and/or costs award made against it? What will be the reputational impact of an adverse judgment? Is it something that regulators would be concerned with? What about your client’s own key clients? Would an adverse judgement affect any banking or loan arrangements? Or any future business sale?

These are just examples of how you must draw on your understanding of the litigation process as a whole to best advise and protect your client at all stages.