



TRULY GLOBAL REACH



An expert insight into litigation

"There is no substitute for experience", says Nigel Rowley, Managing Partner at Mackrell.Solicitors.

"Litigation – particularly complex cross-border litigation – is a minefield where you need to balance client expectations against complex long established practices and procedures, laws and regulations. Local knowledge is essential, whether you are dealing with the most complicated Supreme Court Appeal, local Magistrates Court application, or document heavy International Arbitration. Never underestimate your opponent; they may have been doing this as long as you have, but do they have the international knowledge, the cultural knowledge, the legal knowledge? That is where experienced, specialist international law firms have and always will have the edge. There is no substitute for experience."

Below, his team speaks more about their work in litigation.

What is the most complex aspect of commercial litigation?

Thomas Crittenden (Associate – Litigation): "There is a two-part answer to this – with both parts intertwining. Firstly, it is strategy – and that is something only gained after many years' experience of reading the other party and anticipating their next move before they decide what it will be.

"Secondly, and linked with that is the process of disclosure of documents – particularly so where the litigation itself concerns complex issues and a multiplicity of documents.

"Disclosure needs to be analysed carefully as documents disclosed must be both relevant and proportionate to the issues raised in the proceedings; determining whether a document or class of documents satisfies these criteria can be a very tricky decision and can have a dramatic effect on your clients' case and strategy."

What is the best method for businesses to avoid litigation in employment matters? How do you advise your team on the best action to take?

Joanna Alexiou (Associate – Employment): "One word: contracts. It is vital that suitable contracts are in place between a business and its employees and consultants; legally, employees are entitled to receive particulars of their employment within two months of their start date however, and perhaps more importantly, commercially, the terms which govern the relationship need to be agreed so that there can be no ambiguity at a later stage.

"Once the agreements and any non-contractual handbooks are in place, in order to avoid litigation, they must be adhered to. For example, even where an employee makes an informal complaint, the grievance procedure should be followed despite this causing additional work for human resources. Provided the correct procedures are followed, any exposure should be minimal at an Employment Tribunal."





In what ways can litigation become complex during cross border disputes and multi jurisdiction litigation?

James Atton (Partner – Litigation): “Jurisdictional arguments and cultural differences are the bugbear of cross border disputes. Many cross-border and cross-jurisdictional disputes choose to apply English law, which is attractive because it relies heavily on the principle of freedom of contract and as a result, attempts to hold parties to their contractual bargains or award damages where this is not otherwise possible. But that can cause issues.

“Many law firms across the globe with strong litigation offerings are able to handle legal disputes subject to English law; they understand the cross-cultural differences and the difficulties in managing differencing demands and expectations of multiple parties when it comes to the softer aspects of disputes such as negotiations or settlement.

With the Mackrell International law network comprising of 170 offices in 60 countries we are excellently positioned to deal with the softer aspects of disputes such a business and cultural differences that can have a huge impact on the people involved and the outcome of the case.”

Are there any regulations you think would benefit your role, and your client’s, if they were to be amended? If so, which and why?

“In criminal proceedings, schedule 7 of LASPO Act 2012 made it much more difficult to successfully recover legal costs on behalf of the defendant in the event of an acquittal. Costs recoverable in both the Magistrates Court and the Crown Court are limited to legal aid rates. Furthermore, legal aid has to be applied for and refused on financial eligibility grounds before any costs recovery can be attempted. It would certainly benefit my role and the financial position of my clients if these regulations were to be reviewed and amended. It doesn’t seem right that a defendant acquitted of all charges can only reclaim a small portion of the legal fees incurred – when they have done nothing wrong.”

How have you seen data security concerns change over the years throughout litigation?

“When receiving case papers and associated trial documents, the Crown along with other investigative bodies (such as HMRC, the NCA and the SFO) is now taking a position

whereby they will only send electronic copies to a secure CJSM email account. This has effectively become the standard procedure in receiving disclosure. With many firms moving towards a paperless practice, safe and secure electronic service and retention of documents is key. It is essential that law firms have up to date systems in place to accommodate this paper-free and postage free environment.”

What are important aspects for clients to follow and remember during their cases with HMRC?

“In terms of preparing their strategy from the outset, a client must be aware of which HMRC department is handling the case against them. The operations and nature of the proceedings differ greatly between departments and it is vital that a client is guided correctly in their initial dealings with HMRC. Secondly, it is highly likely that the client will need to be proactive early on in order to open a dialogue with HMRC and manage an investigation. Clients are strongly advised to begin collating records and documents to put forward to HMRC, and where documents are unavailable, prepare if possible to obtain replacements.”

For more information, please contact us:

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