

wkforensic

Welcome

Welcome to this edition of **wkforensic**. In this issue we concentrate on mediation, a successful discipline helping clients resolve major business disputes. On the second page, we examine the Jackson Report and the review of costs by the Ministry of Justice.

Running a business can be very demanding and stressful, especially in an increasingly difficult and changeable economic climate. Disputes can arise for all sorts of reasons with customers, suppliers and even professional partners and representatives.

Since the introduction of the Civil Procedure Rules, which have encouraged parties to resolve disputes out of the court and to use litigation as a last resort, the uptake of mediation, a more cost effective route to problem solving, has been rising year on year.

Wilkins Kennedy operates a specialist forensic accounting department, a professional team of experts who are dedicated to resolving a wide range of serious business and commercial disputes.

The Wilkins Kennedy team of Forensic accountants includes a number of highly trained professionals who are on hand to support your case and clarify the evidence, making clear and accurate recommendations to the legal team or whoever is representing your case.

Mediation is a form of Alternative Dispute Resolution (ADR) and has been successfully applied in many different situations including business and commercial disputes, insurance claims, ancillary relief in divorce proceedings,

Mediation – handling business and commercial disputes

personal injury and clinical or professional negligence.

The process of mediation is structured and encourages the parties to come to a sustainable, successful conclusion with minimal cost and often the chance to resume a normal business relationship.

A broad scope of issues

The range of services offered by the Wilkins Kennedy professional forensic team includes:

Business and Commercial:

- Mediation
- Disputes between business partners
- Shareholder petitions
- Employment disputes
- Expert determination
- Consequential loss or business interruption
- Diversion of trade
- Commercial property disputes
- Business and share valuations
- Contract disputes

Insurance Claims:

- Mediation
- Claims evaluation
- Investigation of fraudulent claims
- Loss of profit/ consequential loss
- Professional negligence

- Auditors/ accountants/ tax negligence
- The financial impact of negligence
- Fee disputes

Personal Injury and clinical negligence:

- Mediation
- Fatal accident claims
- Loss of partnership profits
- Loss of earnings and profits
- Schedules of earnings
- Loss of pension rights and tax relief
- Sub-contract calculations service

Matrimonial and family issues:

- Assessment of real earnings
- Evaluation of financial standing
- Release of capital
- Tax implications of divorce
- Investigations
- Pensions splitting
- Duxbury calculations
- Valuation of businesses and unquoted shares

Criminal offences:

- Theft Act offences
- VAT and Revenue investigations
- Confiscation orders
- Money laundering
- Drug trafficking
- Director's disqualification

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is this all about to change?

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KENNEDY

CHARTERED ACCOUNTANTS
& BUSINESS ADVISERS

In traditional lawsuits the loser pays... is this all about to change?



Jackson Report and MOJ Review of Costs

This section explores the 2010 report by Lord Justice Jackson, a review aimed at revolutionising the civil litigation process that triggered the Ministry of Justice review of costs towards the end of 2010.

The Jackson Report

From May 2009, Court of Appeal Judge Lord Justice Jackson conducted a comprehensive review of civil litigation costs and in January 2010 published a series of preliminary recommendations in a 663-page report for reform of costs and civil process rules.

The summary of main points to be reviewed:

Success Fees and ATE Insurance Premiums change

Success fees and ATE insurance premiums will cease to be recoverable from unsuccessful defendants, so that the client, not the opponent bears the cost of the success fee.

Qualified One-Way Costs Shifting to be introduced

Under the new regime suggested by Lord Justice Jackson, it is proposed that in a successful defence case, the defendant will now pay his own costs (normally paid for by the claimant, in practice about 70 per cent). In an unsuccessful defence case it is proposed that a defendant will still pay his own costs and the costs of the claimant, but without having to pay the success fee or insurance, thereby limiting the cost to the defendant.

This new rule is particularly relevant to personal injury claims, and is set as a deterrent to frivolous and unworthy claims. The new rule will also remove the requirement for ATE (after the event) insurance by abolishing the two-way costs shifting rules, and the review also recommends capping the success fee at 25 per cent, another factor that has led to an increase in civil litigation in recent years.

Introduction and regulation of contingency fees

A contingency fee agreement allows the client's lawyer to be paid a fee as a percentage of the settlement sum of damages award. This fee is paid only if their claim is successful, and is paid out of the settlement sum or damages awarded, usually as a percentage of the amount and must be countersigned by an independent solicitor and capped at 25 per cent.

Procedural Changes

Measures are recommended to deal with disclosure, to ensure costs do not become disproportionate.

Witness Statements and Expert Evidence will be subject to tighter case management concerning the length of statements and reports.

Pre-action protocol, which encourages early settlement of disputes, will continue to be used, but the Practice Direction – Pre-Action Conduct applying to cases not subject to a pre-action protocol, will have sections 3 and 4 repealed. A provision will be included to encourage communications prior to issuing a claim.

Ministry of Justice Review of Costs:

On 15th November 2010, the Ministry of Justice unveiled plans to withdraw public funding from civil cases as part of the governments plans to cut £350m from the annual legal aid bill.

The government is expecting to cut the existing £2.1bn legal aid budget, mainly from cuts to private family cases including family disputes, clinical negligence, debt, education, immigration, employment, housing and welfare benefit cases.

The government will examine financial criteria for those eligible for legal aid, and the MoJ is also said to be implementing the majority of the funding reforms proposed earlier this year by the Jackson report.

The consultation on the review of costs closed on 14th February 2011 and is awaiting response.

For further information please contact your local Wilkins Kennedy office.

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