

Litigation - Holds and Limitation Defences (Episode 1)

Hi, my name is Hannah Shaw and I'm an associate in our Disputes and Investigations Group. Our team focuses mainly on commercial litigation and we've seen litigants quickly adapt to reforms in the operation of the court service, which continue to operate a mixture of hybrid, in-person and remote hearings.

The judiciary have forecasted, and we're expecting, an increase in litigation arising from the challenges of the pandemic. So it's timely to consider some of the tools and strategies available to organisations facing claims.

The aim of this short series, which I'll deliver along with my colleagues Gillian Cantrell, Brendan McGrath, Conor O'Donnell and Rebecca Martin, is to remind you of the various tools and defendant's toolkit which can be used to help achieve a satisfactory resolution of claims. We'll also provide some practical tips to minimise the costs of defending all kinds of claims, whether meritorious or otherwise.

The first items in our toolkit series are litigation holds and limitation defences. Litigation holds can be both a burden and a benefit, but the benefit far outweighs the burden. And what it boils down to is this, as soon as you become aware that you're potentially going to be involved in any kind of dispute that might result in litigation, you should send a litigation hold notice to anyone within your company or any of your agents who might have in their possession documentary evidence in relation to that dispute in order to preserve it.

Any organisations in that situation have an obligation to do so in the first instance, but the litigation hold can also be a strategic tool. All too often, defendants are forced to settle cases because of an evidentiary deficit they're facing which arises when they're simply not in a position to disprove the facts as alleged by the plaintiff.

For example, I recently acted in a case for a client in proceedings where the events subject of the claim dated back to 1996 and my client quite understandably no longer held any files or documentation in respect of that incident because they'd all long since been destroyed or lost.

And anybody with any first-hand information had also long since retired or left the company. Accordingly, when it was coming to trial, there was an unnecessary risk for the organisation in defending the claim, despite its belief in its defence.

So to recap, when you think there is a potential risk of litigation, you should always immediately issue a litigation hold internally, and you'll be very glad you did so later.

Next out of the toolkit is the limitation defence.

When an organisation is facing a claim, it's really important to get early legal advice around whether or not a limitation defence might be available to you. There are different statutory time limits that apply to different types of claims, and it's always important to assess the date on which the plaintiff's cause of action can be said to accrue in order to see if a limitation defence might apply. Because if the plaintiff is out of time, the claim will be statute barred.

Should you have any queries in relation to any of the material covered in this series, please don't hesitate to contact us.