

Litigation - Overview of Lodgements (Episode 3)

Hi, my name is Rebecca Martin. I'm a solicitor in our Disputes and Investigations Group and this is our third instalment of the Defendant's Toolkit. This week we're discussing lodgements, another tool which can be used to reduce the burden associated with the defence of litigation.

So what is a lodgement? It's a process by which a defendant puts a sum of money into court in order to satisfy a plaintiff's claim. If the plaintiff accepts this amount, the matter is settled, but if the lodgement is rejected, the case proceeds as normal.

If the lodgement is not accepted and the quantum of damages ultimately awarded by the court is less than the amount of the lodgement, the plaintiff will be said to have failed to beat the lodgement. This means that the plaintiff will be likely to be responsible for paying both its own costs and the defendant's costs from the date that the lodgement was made into court.

So you'll see that making a lodgement will put the plaintiff on risk for the costs of both sides and so can be effectively used to discourage vexatious litigants from pursuing their claims to trial. The lodgement forces a plaintiff to be realistic about the award they are likely to receive at hearing and to seriously consider whether a settlement in advance of trial is the best outcome for all parties concerned.

A lodgement forces a plaintiff to consider the real worth of its case at an early stage or risk being financially penalised. For defendants then, in deciding the appropriate level of lodgement to put into court, consideration will need to be given to the facts of the case and also the value of the time and the cost saved if the proceedings were to be settled at that particular time.

While the earlier lodgement is made the better, defendants should be mindful that their original assessment of the case might change as more information comes to light, through the likes of discovery or expert reports for example.

At that stage the amount lodged might need to be reconsidered. But the last thing to say is that courts do retain some discretion regarding costs even when a lodgement has been made, especially if a plaintiff's award comes very close to the amount of the lodgement.

A court is entitled to consider the gap between the two amounts in deciding whether it was reasonable for the plaintiff to reject the lodgement and to pursue the claim to hearing. For this reason it is important to carefully consider the appropriate level of lodgement.

Should you have any queries about the content or if we can assist you in any way please do not hesitate to get in touch. Thanks again.