

## Do you think that the courts offer the best means of solving disputes?

Written by Jamie Duffield (April 2008)

Without any shadow of a doubt, the daunting thought of having to appear in court has undermined the whole point of a legal system; “expressing societies disgust at immoral acts.” Many people will fail to turn up to court, worse still some people won’t even approach the solicitor about their case. Surely, there must be another way of solving a dispute, a method which creates accessibility for all, a situation away from the courts. Over the course of this essay I will be discovering if such a thing exists, and more importantly, is this any better than going through the courts? I plan to find out.

### Standard court proceedings

Most disputes that go to court will be heard in either the High Court or County Court, however the large majority of cases are actually decided in private, i.e before they get to court. The defendant will receive a claim form through the door, and he can either do nothing, which means he’s accepted the compensation, this is called an order in default. If he wishes to contest it then an N9 form must be sent.

The claimant will approach the other side trying to achieve a settlement; invariably this doesn’t work as the defendant might not take the claimant seriously. This could be the best time to settle the dispute as no legal personnel are involved which will keep costs down. On the other hand, the defendant may feel that a lawyer can negotiate the compensation down to a better price. If the dispute is not settled this way then the solicitors will get involved, this results in both sides sending letters and arranging meetings in an attempt to get the best deal possible. If, after all this, there is still no success, and (bearing in mind the costs are only increasing) the claimant feels there is a benefit to be had from pursuing the case any further, he must now take it to the courts. This can only be done on the proviso that significant evidence exists to suggest their civil rights were breached by the defendant; the court is now the last resort to find a remedy. Award can be monetary or orders of rectification. There is a huge risk coupled with going to court because losing the case means you incur your own costs plus the other sides. The seemingly excellent offer of no win, no fee doesn’t protect you against incurring the defendants costs.

It is now a matter of deciding which court the case will go to, as most cases are civil disputes they are heard in either the county or high court. There are 3 factors which might affect the choice of court:

#### Value of Claim

Anything up to £50,000 can be handled by the County Court, above this it must be handled through the High Court.

#### Content

Any cases with complicated details, whose value is thought to be over £5,000 should go to the High Court.

### Specific Jurisdictions of each court

This is the most common way in which court selection is decided, regardless of the content and value. Although both courts have unlimited civil jurisdiction, they do specialize in certain areas; the High Court has 3 divisions, Family, Chancery, and the Queen's Bench Divional Court. The County Court just generally deals with claims under £50,000.

The judge then assesses the case once all defenses are put to him, it can be transferred to another judge in the opposite court. This seems an un-necessary expense, adding time, inconvenience and cost to the case. This will only further discourage someone from taking the case to court.

### Attempts to draw people to use the courts

There are systems in place to try and help reduce costs whilst decreasing lengthy cases; these are small claims procedures, fast track procedure, multi-track procedure, either high court or county court multi-track procedure and finally the top dog, the high court multi-track procedure.

### Small claims procedure

As long as the case is under £5,000 then people are encouraged to avoid using a lawyer, because if you do, then such is the way with the small claims procedure. Alternatively you could use a lay representative who is not in possession of a legal qualification but can still put your case across. This does have the advantage of quickness, it is the quickest of all the methods, however with legal funding not available for this option it does close the door on a lot of people. Further pushing people away from solving disputes in court, suggesting that maybe the courts aren't for the less well off in today's society. This is made worse when you consider, you probably won't receive all the compensation, as research indicates only "60 percent of successful claimants actually received all the money awarded by the court."-Source English Legal System-Jacqueline Martin.

### Fast Track Claims

Here, all claims between £5,000 and £15,000 are dealt with, a District Judge in the County Court will give out an allocation questionnaire and then make a decision as to whether or not he case should be put onto the fast track. The idea behind fast track claims is to speed up court proceedings, this means pre-court proceedings have to be completed in sync with a strict timetable to deter lawyers from deliberately wasting time in order to boost their fees. The ironic point is that a fast track case is heard after 58 weeks, this may seem fast to the government but to everyone else, waiting more than a year for a case seems stupid. As far as I'm concerned this is not a suitable way of dealing with a dispute, as the defendant could easily have moved after 1 year to another country, so it's unlikely they will even appear in court.

### Multi-track claims

Any claims worth more than £15,000 are placed onto the multi-track route, timetables can be set by the Judge who is appointed as a manager, so to speak, he may wish to ask the parties to come to another method of resolution to cut costs.

### The main problems with using the Courts

It is clear then, that the civil courts have many problems, the major one being cost and the amount of it that one may incur if they win or lose. It is not uncommon for the legal fees to actually cost more than the monetary compensation. Where is the value of using courts there? Worse still, a defeat could mean incurring the other side's legal fees which is something a lot of people are unwilling to risk doing. In other words, it reduces the access to justice. Furthermore the case is often the subject of lengthy delays, some people will have to wait up to 5 years if they wish to be heard in the High Court. This seems stupid because it could be an injury that resulted in the claimant having to take time off work. Therefore receiving the money several years later is of little help. Even if the money is awarded, it is unlikely that all of the compensation will be received as statistics prove that on average, only 60% of damages awarded are actually paid. The very point that courts cannot handle certain technical cases, like building disputes, seems to render it somewhat pointless and only suggests to me that using Alternative Methods of Dispute Resolution might be a better idea.

Having said all this only 5% go on to court and this refers back to my earlier point of people wishing to avoid court, it also shows how people are more than happy to accept the agreement out of court, leading me to the conclusion that not only is court unpopular amongst solicitors and people, it is also the least effective way of resolving a dispute. After all if people aren't taking their cases to court then there must be a reason.

Some people may say these are only a few, niggling points but they have all added to reducing access to justice, surely the fact that the government brought this legislation (Access to Justice Act 1999) in to widen the access to justice, would mean they would make sure the court system is flawless to aid the success of this act. This is clearly not the case, and as Lord Woolf and Michael Zander have suggested and are continuing to suggest, reform needs to take place. And fast.

### Alternative Methods of Dispute Resolutions

I briefly mentioned this area before and would now like to return to it in greater depth. Alternative Dispute Resolutions are geared towards removing the element of court from proceedings. The thought of court is intimidating for the large majority of people, statistically people are 95% more likely to solve their dispute outside of court. The strange thing is, ADR sets out to eliminate the very thing it causes, unfair negotiation, ADR will often mean a Barrister coming up against an advisor from the Citizens advice bureau.

### Negotiation

There is always the option of negotiation, a private affair; it can be done with or without lawyers, it is both parties arguing back and forth in an attempt to achieve the best deal possible.

Both parties will want the agreement to come as quickly as possible, because Lawyers getting involved will bump the costs up. Although, its not as if the costs are anything to complain about as resolving a dispute out of court is often the cheapest method.

### Mediation

This is an in-formal way of achieving an agreement, it involves the use of an arbitrator who must assume a neutral stance within the debate. It is his job to try and calm down the situation, he will do this through listening to both sides of the story, then he will be sending offers to both parties. Although he cannot be asked for his opinion but what he feels the merits of the case are and his services are more evaluation-like. There are several advantages to this approach, firstly the matter is kept private which is why mediation is so commonly used amongst businesses as it prevent the damage of their reputation. Also, commonsense is used instead of Law.

### Conciliation

This is often described as a “more active form of mediation” because the conciliator (neutral third party) is often asked to give a solution. But it is important to note that the Parties still have control over the direction of the case, however getting both parties to reach a neutral decision with which both are happy to accept can be difficult. About, half f all employment claims are settled this way, they do so because there is a reliable company of representatives called ACAS who will try to gain a deal to prevent going to court.

### Arbitration

This is where both parties agree to submit their claims to a private arbitrator, this gives the parties a huge level of control as they control the Date, time and place of the hearing, and this can be informal which is very appealing to a lot of people. Also, this dispute can be done privately which is why I is popular amongst commercial business, who will often tie in Scott Avery clauses which is an agreement that any future disputes will be done through Arbitration. Any decision reached by the arbitrator is legally binding, and people will often describe it as an award. Arbitration does offer a greater level of flexibility amongst the parties, however it is argued that this method of AD can be seen as un-fair, especially when you consider it is the likes of big companies coming up against maybe smaller companies or individuals. Also, if the case does require some legal knowledge, the arbitrator along with both parties become un-stuck because the arbitrator is not legally trained. This method does not always save time wither which slightly defeats the object of moving away form court.

### Tribunals

Another form of ADR, this is the option for parties who do not feel it beneficial to go to court, and have to deal with all the court proceedings, and although they are used instead of the courts, it has been argued that the two are very similar what with the Tribunal system having 3 departments (Administrative, Employment and Domestic). If the result of the tribunal appeal is

disputed then the case can be appealed to the Court of Appeal, this eliminates the lower stages of the court structure, speeding up proceedings.

### Administrative Tribunals

These have been created by statute which grants rights of social welfare and various benefit rights. There are around 70 different types of Tribunal, like the Child Support Appeal Tribunal which was created after the introduction of the Child Support Act 1993, there are panels situated all over the country, in fact the total number is about 2,000. The tribunal will be headed up by three judges, one for both sides and a chairperson. The use of lawyers is discouraged as it is thought to only further remove equality between the parties.

### Employment Tribunals

These cover all work-related disputes like un-fair dismissal or the issue of redundancy and their importance cannot be under-estimated.

### Domestic Tribunals

These are private tribunals set up for internal disciplinary action; a good example is the army who has a system of court marshaling to discipline soldiers who violate army rules and regulations. They must ensure all the rules of justice are kept to, and any punishment except can be dished out (within reason), perhaps a fine or maybe even, as would be the case with the Army, imprisonment and a dishonorable discharge.

### Courts v Tribunals

They are described as the same, or very similar by a lot of people, I think that holds some grounds for argument but the fact that they are part of, what is a legal system so complicated it confuses itself, does not mean they have the same problems. After all, the whole process is very quick when compared with the courts, and the fact that the whole system discourages the sue of Lawyers a) keeps costs down and b) helps remove in quality between parties allowing for a fairer trial. For me, the best part of Tribunals is the fact that past precedent does not have to be followed, a case can be judged on merit and the individual facts of the case considered when reaching a verdict. This is a far cry from the Courts whereby a rigid system of precedent means the Law can become out-dated and out of touch with societies current views. Making it unpopular amongst the public, reducing their will to use them, Tribunals are far more relaxed than a court situation, dress doesn't have to be formal and rules are not so strict. This system goes towards removing some of the intimidation felt in a court situation, whilst maintaining order which will help to speed up proceedings and get a result quicker.

### So what is the best way to resolve a dispute?

It is not possible to categorically say that one way is better than another, if you are looking to claim compensation of another person or a company, then the best way is to take them to court. You'll get the maximum amount of money of the defendant so long as you can prove your case; however as the defendant it is advisable to try and resolve the matter right outside the courtroom doors, it can quite literally save you thousands. There was a case involving Ryanair where a stewardess had fallen off the ramp carrying her up to the plane. She had every right to claim, in fact she could have won around £40,000 depending on who the judge is and what mood he is in. Un-surprisingly, and understandably the thought of a courtroom as intimidating for her and when the defense had refused an earlier settlement agreement she felt even worse. Not sure what the opposition was going to do inside the courtroom because of this earlier refusal, when they came at her outside the courtroom doors with an offer of £15,00 she jumped at it and went away.

If the two parties know one another then to prevent relationships breaking down (vital for businesses) and reputations being damaged I tend to feel that ADR is better. After all the matter can be kept private and the situation remains in-formal.

### Conclusion

In conclusion I feel that the alternatives available to court are plentiful, however deciding which route to take should depend entirely on whatever your case details are. A dispute between two parties who know each other should be handled outside of court whereas strangers should head for court. If you wish to be awarded the maximum amount of money then head to court, obviously as the defendant try and steer clear.

At the end of the day I do not feel that the Courts offer the best way to solve a dispute, in the same way that they do not offer the worst.