



What your lawyer is really thinking...

Lawyers nearly always ask for “money on account”.

This is because they need to have ready cash to pay for court fees and other out of pocket expenses that they aren't inclined to finance from their own resources. Often, they also want to get their clients used to the idea of paying fees.

However, this approach can create a strong transactional relationship between client and lawyer. This in turn can make clients resistant to accepting that their lawyer is always giving them the best advice on how to deal with their dispute.

Lawyers want their clients to invest in the sort of expensive legal enquiry that the court system requires – which means examining the minutiae of all the issues and the plethora of associated documents and witnesses that results. This all takes a significant amount of time and money. And, because it deals with peripheral as well as key issues, much of that time and money is wasted.

In David v Goliath cases in particular, this plays into Goliath's hands.

Imagine, for example, that you're in dispute with your employer, or with a public body. In either case, your opponent's legal fees will be met by the organisation. Whereas you'll most likely have to fund yours from your own resources.

This has two clear impacts.

Firstly, it will be easier for the organisation to fund their side of the argument, simply because they're not an individual.

Secondly, and worse, the organisation's cost of losing is likely to be far less serious than yours as the impact, not being personal, will be spread and the responsibility shared. This can make organisations readier to take risks - and damn the consequences.

THE MOOT ROUTE



Whether they're working for a David or a Goliath, lawyers comfort themselves by saying that nobody has ever been accused of being negligent because they were too thorough!

When you read about amazingly high legal costs, this is the thinking that's behind them.

Yet, the best course of action is to limit the enquiry to what actually matters, and drive hard for commercial settlement. Then, if a deal can't be reached, there's still room for a thorough legal enquiry.

Of course, this approach is a much more modest fee earning opportunity for lawyers. And, whether they acknowledge it or not, one that doesn't make commercial sense. For them, at least.