



Would you ever be happy to bet the house?

Moot recently circulated news of an interesting High Court judgment that supports modern thinking about alternative dispute resolution. The judgement, called *DSN v Blackpool FC*, encourages people to make a genuine effort to settle their dispute before taking it to the courts in order to avoid the very real risk of a significant costs order.

What might a costs order look like?

First, let's look at litigation costs.

Leaving aside peculiarities like conditional fee arrangements or after the event insurance, what normally happens is this.

Your lawyer weighs up your case and gives you a broad-brush costs estimate. In the early stages, not much is known about your case: what the defences might be; how tricky the opposition is; how easy or hard it will be to find the necessary evidence. So, your lawyer's estimate will cover a broad range.

Being human, you hope the fees will come in at the lower end. Being a businessman, your solicitor hopes they'll come in at the other. An awkward tension is already beginning to build.

There will be out of pocket expenses such as court fees, external counsel, couriers and so forth. To cover these, your lawyer will ask for a payment on account which, depending on the scale of your dispute, could be anything from £10,000 to £100,000.

And that is just the beginning.

Monthly bills calculated in six-minute units are then the order of the day until the case is over. This may be long after the judge has given their decision and the damages have been paid.



A word here about the six-minute unit

Like nearly all bad things in life, this was invented by the accountancy profession.

It works like this.

Your legal team will keep a computerised record of everything they do on your case, whether chargeable to you or not. A partner at a big firm in a specialist area of law could be charged out at over £1,000 per hour. Even their most junior assistant (barely qualified yet horribly overconfident) has their ego massaged by their charge rate of £300 per hour. Plus VAT, of course.

Acknowledging a brief email may take 30 seconds. Making a call that isn't answered may take 20 seconds. Yet both will be entered as a single unit of work and you, the poor client, will be charged 12 minutes of fees for activity that actually took less than 60 seconds.

Days that are longer than 24 hours can very easily happen.

No matter how diligent, efficient and honest your lawyer is, the cost of litigating even quite straightforward disputes is crazily high for both sides. And of course, the more money each side invests as they prepare for combat, the more sickened they become by the process, yet the harder they may find it to abandon their investment and try to settle. Even though, as I have written about before, many, many cases settle at the court door after all the costs have been pumped in, the engine is revving, the driver has his helmet on and the starter is priming his pistol.

The numbers can get quite big

Lose the house big.

This is partly due to the high hourly rates and those wretched six-minute units. And it's partly due to the time it takes just to get to court, while complying with all the procedural rules and preparing the case. It means each side walks into the courtroom as a gambler who has placed a very large stake on the table.

Will the witnesses be solid? Will there be any surprises from the experts? Will there be any rabbits produced from hats?

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And will the judge be sympathetic? That is the fulcrum question.

Because, if not, the loser can expect a ton of discretion to land on their head in the form of a damages award (it is only ever about the money in litigation, a key defect of the process as I may have mentioned). And then there's costs - by which I mean a hefty share of the other party's legal costs.

Those same 6-minute units have been piling up on the other side and when the solitaire wheel of justice finally comes to rest, the judicial croupier rakes nearly all the chips toward the winner.

I say nearly all the chips

As an incentive to settle, the winner almost never gets all their stake back. This is to stop people with the strongest cases who are bound to win from having the pleasure of litigating entirely at their opponent's expense.

There are exceptions, and *DSN v Blackpool FC* is one.

If the judge thinks anyone hasn't behaved properly, including for the reasons in that case, they have a very wide discretion to wield the rake as they please to reflect their displeasure. The chips could go anywhere and, as I have said, there will be an awful lot of them.

If you're involved in a dispute, we can help you make and execute a plan that will help you win, on your terms.

Get in touch today.