

Determination of Resolving Disputes: Methods, Processes and Implications

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ABSTRACT

Maintaining justice and peace in society requires finding a peaceful solution to disagreements. This examination examines how disputes are decided, concentrating on the many tools and techniques available to settle disputes. It looks at both conventional and contemporary methods of resolving disputes, such as negotiation, mediation, arbitration, and litigation. This research attempts to provide insights into the variables affecting the choice of dispute resolution procedures and their efficiency in delivering fair results by analysing case studies and legislative frameworks.

KEYWORDS

Arbitration, Conflict Resolution, Dispute, Fairness, Mediation, Negotiation.

I. INTRODUCTION

The law controls every aspect of contemporary corporate life. A modern businessperson must be aware of the potential legal repercussions of his actions. In order to include legal issues into the planning and decision-making process, he will need a basic grasp of business law fundamentals. However, at some point, it is probable that you will require expert legal counsel and assistance, whether it be to draught a legal document, advise on the consequences of a recent change in the law, or aid resolve a conflict. This chapter will discuss several dispute resolution options as well as the sources of legal information and guidance accessible to businesses [1]–[3]. Due to changes started by the Courts and Legal Services Act 1990 and carried out by the Access to Justice Act 1999 and the Legal Services Act 2007, the issue of who is permitted to provide certain sorts of legal services has undergone substantial change.

The Legal Profession

There are two separate branches of the legal profession in England and Wales: barristers and solicitors. Although there is some overlap in their duties, these two sorts of lawyers do separate tasks.

Solicitors

The ordinary practitioners of the legal profession, solicitors provide comprehensive legal services. Although they may work alone, lawyers often work in partnerships with other lawyers. Since solicitors are often the first people with legal issues turn to, the range of their job is wide. Drafting wills, conveyancing the legal procedures involved in purchasing and selling a home, winding up an estate after a person has passed away, and handling compensation claims related to accidents or marital issues are all part of the burden connected with personal or private clients. Different types of work are generated by business customers, such as company formation, partnership agreement preparation, licence applications, contract drafting, tax advice, and new employee-related legal requirements. When a legal issue includes court procedures, the lawyer takes care of the preliminary steps, including obtaining evidence and speaking with witnesses.

Although rights of audience used to be restricted to the magistrate's court and the county court if the matter required an appearance in a higher court, then the services of a barrister had to be sought, a solicitor is now permitted to appear in court on behalf of his client. However, new rules for assessing advocacy rights were established by the

Courts and Legal Services Act of 1990, and as a result, appropriately trained lawyers now have broader rights of audience in the higher courts. Since 1996, solicitor advocates have been qualified for Queens Counsel QC appointments see the section below on barristers for further information. In some instances, such as criminal appeals from the magistrates court to the Crown Court and reading out formal uncontested declarations in the High Court, attorneys without full rights of audience are now permitted to attend in the higher courts [4]. Until recently, a solicitor only option for becoming a judge was to be appointed as a circuit judge. However, the Courts and Legal Services Act of 1990, which extended certain lawyers rights of audience, has made it possible for solicitors to be appointed to higher judicial positions, such as High Court judges.

Solicitors are Governed by the Law Society

It establishes standards for professional behaviours, regulates student education and examinations, provides practicing certificates that attorneys must receive in order to practise, and handles complaints against solicitors through the Legal Complaints Service.

Barristers

Barristers are the consulting experts in the legal profession, with solicitors serving as its GPs. They are qualified to appear in any court or tribunal and specialised in advocacy, which is the act of defending a client in court. In the past, they used to have exclusive access to the higher courts, including the House of Lords, Court of Appeal, and High Court. The Courts and Legal Services Act of 1990, however, destroyed this monopoly and established new procedures for selecting individuals to represent clients in court. The duties of a barrister extend beyond advocacy. In fact, some barristers devote the majority of their time on paperwork, whether it is creating papers or providing opinions on complex legal issues for solicitors. There are two categories of barristers: juniors and QCs Queens Counsel. A barrister may submit an application to become a QC or to take silk after 15–20 years of practice. On the Lord Chancellors recommendation, the Queen appoints Queens Counsel, sometimes known as silks. The top 10% of barristers are represented by them, along with 0.5% of solicitor advocates. Taking silk has a number of benefits: QCs have a better prestige, are paid more, may specialise in certain areas of law, and choose to focus on advocacy and offering advice over menial paperwork that receives little pay.

They are referred to as leaders because they supervise a group of barristers and handle the case often, they only appear in court with a younger barrister. The government released a consultation document on the future of the QC system in July 2003. The Bar Council and the Law Society agreed on new processes for selecting QCs in November 2004. The key components of the new programme include the establishment of an impartial selection committee with lay members, self-evaluation against the competencies necessary for an advocate, references from judges, experts, and clients, an interview with the applicant, and a complaints committee. In 2006, the first appointments were made [5], [6].

Partnerships are not permitted for barristers, who must operate alone. However, a group of barristers will share chambers office space and hire a barrister's clerk to serve as their collective office manager. Any common law rule that prohibited barristers from creating multidisciplinary practises with other professions was eliminated by the Courts and Legal Services Act of 1990, although the Act kept the General Council of the Bars authority to establish rules outlawing such arrangements. Barristers are governed by the General Council of the Bar, which was created in 1987. The four Inns of Court the Inner Temple, Middle Temple, Grays Inn, and Lincolns Inn—are in charge of regulating admission to the bar. The Council of Legal Education is in charge of preparing students for the Bar Exam and administering it.

II. DISCUSSION

The Relationship between Solicitors and Barristers

Solicitors and barristers work together to provide a full range of legal services. Whenever someone has a legal issue, they first consult a lawyer, entering into a contract for legal services in the process. In most circumstances, the solicitor will be able to handle the problems that are presented to him, but sometimes he may need to hire a barrister. The barristers brief may include representing the client in court or providing an opinion on a complex legal issue. According to the cab rank concept, a solicitor may approach any barrister to take up the brief, and the barrister must accept the employment subject to his availability and the negotiation of an appropriate remuneration. In the past, barristers and the attorneys who hired them did not have a formal contract. Since the fee was considered

an honorarium, barristers who refused to accept it could not be sued yet, the same solicitors may file a lawsuit on behalf of obstinate clients. Any common law rule prohibiting a barrister from entering into a contract for the provision of his or her services was abolished by Section 61 of the Courts and Legal Services Act 1990, though the General Council may still make rules prohibiting barristers from entering into contracts.

Until recently, neither lawyers nor solicitors could be sued for carelessness resulting from handling a matter in court or work done in close proximity to one. However, the House of Lords ruled in *Arthur Hall and Co v. Simons* 2000 that the immunity was no longer appropriate. Now, all facets of the legal industry may be held negligently accountable, including both branches.

In the past, a solicitor was the only person who could hire a barrister. The barrister's services were inaccessible to clients directly. Now that the limits have been loosened, some companies and people are permitted to directly engage a barrister on their own behalf or on behalf of clients. The Association of Building Engineers, the Chartered Insurance Institute, and the Free Representation Unit, among others, are suitable organisations and individuals with expertise in specific legal matters. Under the Bar DIRECT scheme established by the Bar Council, these organisations and individuals may apply to the Bar Council for a license to instruct barristers directly for advice, representation, or both in those areas. Additionally, under the Direct Professional Access DPA scheme, members of some professional bodies, such as the Institute of Chartered Accountants and Institution of Chemical Engineers, as well as ombudsmen, such as the Banking Ombudsman, may directly instruct barristers to obtain advice or representation for non-court litigation and in tribunals and magistrates courts.

The legal services regulatory system in England and Wales has been updated by the Legal Services Act 2007, which was signed into law on October 30, 2007. The government hired Sir David Clementi in 2003 to conduct an impartial examination of the legal services industry's regulation. He expressed dissatisfaction with the legal system, the procedures for processing complaints, and the limitations on corporate structure. The government proposed a new regulatory framework in the form of a Legal Services Board and an Office for Legal Complaints in a White Paper titled *The Future of Legal Services: Putting Consumers First* that was published in 2005. It also recommended taking steps to make it possible for legal services to be provided by alternative business structures. Reserved legal activity includes the use of a right of audience, the conduct of litigation, reserved instrument activities such as a contract for the sale or other disposition of land, probate activities, notarial activities, and the administration of oaths.

The Legal Services Board LSB was established to oversee the approved regulators of reserved legal activities, such as the Law Society and the Bar Council. The LSB has the responsibility to advance the regulatory goals, which include safeguarding and advancing the public interest, upholding the rule of law, enhancing access to justice, safeguarding and advancing the interests of consumers, fostering competition in the delivery of legal services, and fostering an independent, strong, diverse, and efficient legal profession. To make sure that recognised regulators are achieving these goals, the LSB will have a variety of tools and consequences at its disposal, including the ability to issue directives, face public rebuke, and impose financial penalties. A Consumer Panel must be established by the LSB. The Legal Services Board LSB will create a stand-alone Office for Legal Complaints OLC, which will run an ombudsman programme for complaints about legal services. This will take the place of the programmes presently run by authorized regulators [7]–[9]. It will be possible to license new Alternative Business Structures ABS to allow, for instance, attorneys and non-lawyers to collaborate on service delivery. In the absence of a competent licensing body, the LSB may license ABS enterprises directly. It will oversee licensing authorities.

Legal Executives

To handle some of the more regular duties of the legal office, such as conveyancing, the majority of law firms use personnel who are not licenced as solicitors. The Institute of Legal Executives ILEX, as they are called, was founded in 1963, giving legal executives professional status. Now, unadmitted clerks who pass the Institute's exams and have work experience together may become members. The Lord Chancellor and four senior judges who were identified by ILEX approved the organization's request in 1997 for restricted rights of audience in court for Institute Fellows who met the necessary qualifications. The Lord Chancellor is empowered by Part 2 of the Tribunals, Courts and Enforcement Act 2007 to include legal executives and individuals who have acquired legal expertise via, for instance, teaching or research in the qualifying criteria for judicial office.

Licensed Conveyancers

Solicitors had a legislative monopoly on conveyancing activity until the middle of the 1980s. The monopoly included barristers as well, but they often avoid doing conveyancing business. It was against the law for an untrained individual to draught documentation for the transfer of property title in order to profit. Conveyancing work was a major source of income for many lawyers, but there were mounting complaints about the fees charged and quality of service. Part II of the Administration of Justice Act of 1985 established the new profession of licenced conveyancers, which resulted in a minimal amount of competition for conveyancing business. The admission, instruction, professional standards, and discipline of licenced conveyancers are under the control of the Council for Licenced Conveyancers.

Lawyers in Industry, Commerce and Public Service

The great majority of licenced solicitors engage in private practice representing a variety of clients. However, an increasing number of businesses are establishing their own legal departments that are staffed by barristers and attorneys. These inhouse attorney's duties vary depending on the kind of company they work for. Lawyers are employed by banks, insurance firms and building societies to handle their specialised legal needs. To assist them in carrying out their statutory duties, local governments and central government ministries each have their own in-house solicitors. The legal department of a private corporation does general legal duties, such as contract drafting, conveyancing, counselling on employment issues, company administration, and so forth.

Information and Advice for Business

A businessperson may get knowledge and guidance on legal issues from sources other than the legal profession. Accountants are knowledgeable about both the intricate needs of business law and the complexities of tax regulations. Large accounting companies have started offering business and management consulting services. For example, the Department for Business, Enterprise and Regulatory Reform may provide information on employment laws, while HM Revenue & Customs can provide information on tax and VAT laws. There are also many government-sponsored organisations that offer information and guidance, including the Office of Fair Trading, the Small Business Service, the Health and Safety Commission, and the Commission for Equality and Human Rights which, as of October 2007, merged the Equal Opportunities Commission, the Commission for Racial Equality, and the Disability Rights Commission. The benefits of trade organisation membership for businesspeople may also exist. For instance, the Consumer Credit Trade Association publishes a quarterly newspaper that details legislative developments. For its members, it also maintains a legal advisory bureau. For those members who work in the corporate world, professional groups like the Chartered Institute of Personnel and Development provide a comparable service.

Community Legal Service Fund

Private persons, as opposed to businessmen, may be eligible for financial assistance in legal disputes through the Community Legal Service Fund, which is managed by the Legal Services Commission and created under the Access to Justice Act 1999. The assistance is as follows. Community Legal Services formerly the Civil Legal Aid Scheme is a resource for those in need of assistance with civil problems. If you have legal issues that come within the purview of the plan, such as housing issues, clinical negligence, credit and debt issues, contract disputes, welfare benefits, or financial claims resulting from divorce, a lawyer may provide legal aid formerly known as advice and assistance. Defamation and malicious lying, conveyancing, corporation or partnership law, neighbour or boundary conflicts are not covered by the plan.

A means test is used to determine who qualifies for emergency assistance and is conducted by the solicitor. If applicants are receiving specific state benefits or have a low income, they will be eligible for assistance. If the application is approved, the lawyer will be allowed to work for two hours or three hours for divorce work. The attorney must ask the Legal Services Commission for authorization to continue if further work is necessary. Only if the application passes a merits test i.e., the petitioner has a strong enough argument to warrant further support will permission be given. A Legal Representation Certificate must be acquired in the event that court proceedings are required. Service for Criminal Defence . The Criminal Defence Service has taken the position of the criminal legal aid system under the terms of the Access to Justice Act of 1999. Private practise attorneys who have agreements with the Legal Services Commission to provide these services may offer advice, aid, and representation

in criminal cases. In addition, the Legal Services Commission directly hires a number of public defenders, who practise criminal defence. The duty solicitor programme makes sure that attorneys are on hand to provide free legal counsel at magistrate's courts and police stations.

Contingent Payments

Conditional fee agreements were first implemented by the Courts and Legal Services Act of 1990. Advocates or litigators might agree with their clients to get their regular fee plus an increase known as a success fee in the event of success but nothing if the case is unsuccessful. The Lord Chancellor will decide the maximum percentage after consulting with the designated judges, the Bar, the Law Society, and other relevant permitted organisations. The percentage of any increase must be mentioned in the agreement. 100 percent uplift is the highest allowed. The 1995 implementation of the programme included restrictions on its use in instances involving personal damage, bankruptcy, and the European Court of Human Rights. However, in 1998, all civil matters outside of family law cases were included in conditional fee agreements. The programme underwent many revisions as a result of the Access to Justice Act of 1999. It permits the cost of any insurance premiums to be similarly recoverable as well as the uplift payable in victorious instances to be recovered from the losing side. Now that personal injury cases with the exception of clinical negligence are no longer eligible for legal aid under the Access to Justice Act of 1999, conditional fee agreements have become a crucial means of funding civil actions.

Numerous nonprofit groups provide free legal counsel and aid to ordinary citizens. Citizens Advice Bureaus provide free legal counsel on a variety of topics, including as housing, social security benefits, consumer grievances, and job issues. Law center provide services to several inner-city neighbourhoods. Law offices often provide more specific guidance and support on social welfare issues, such as immigration, landlord-tenant disputes, debt, and social security payments. Law offices are staffed by attorneys. Additionally, there are dedicated assistance services for housing and consumer issues. With the objective of creating a thorough system of advising and other legal services that meet local requirements, the Community Legal Service will gradually expand the scope of its participation in coordinating the initiatives of these groups. Trade unions often provide its members with free legal counsel and aid on employment-related issues. A person's insurance coverage may include legal counsel and help. Automobile clubs like the AA and RAC provide legal counsel and assistance to its members [10]–[12].

III. CONCLUSION

A careful analysis of the conflicts nature, the parties involved, and the intended results is necessary to decide how to resolve disagreements. The technique of dispute settlement chosen should be appropriate for the particular situation, taking into consideration elements like the complexity of the conflict, the parties cooperation levels, and the need for enforceability. Alternative approaches, including negotiation and mediation, often result in more effective and satisfying solutions while advancing justice, protecting relationships, and lightening the load on the legal system. To guarantee that rulings are legally binding and enforceable, nevertheless, more formal procedures like arbitration or litigation may be required in certain circumstances. The availability of a variety of conflict resolution procedures gives parties involved flexibility and alternatives to reach a settlement that best meets their interests.

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