



# escalate

Managing commercial disputes

A new wave  
of dispute  
resolution



**ArmstrongWatson®**  
Accountants, Business & Financial Advisers

[www.armstrongwatson.co.uk](http://www.armstrongwatson.co.uk)

# A smarter way to resolve commercial disputes

**Pursuing a commercial dispute tends to be a costly, lengthy and risky undertaking.**

It's not difficult to see why: your lawyers will typically bill you based on the amount of time they spend working for you. Given that the average litigation case for a small or medium-sized business is around 18 months, it's not uncommon for these bills to spiral to the level of the damages that you're claiming. Even if you can find a lawyer to act for you on a 'no win no fee' basis, you'll still have to pay up front for disbursements such as court fees. And, of course, you could be liable for all or some of the defendant's costs as well as your own if you lose the case. It's hardly surprising, then, that many businesses decide against pursuing a claim and reluctantly write-off what they are owed.

That's why Escalate was created, a smarter way to resolve commercial disputes that prioritises your cash flow by focussing on a quick settlement, removing up front costs and minimising risk.

Escalate takes a completely fresh approach. Once an initial review has been completed, Escalate utilises a two-stage process: a period of intensive negotiation with corporate recovery experts targeting a settlement in under three months, and then, if necessary, litigation using specialist legal teams that are funded all the way to the High Court.

**Armstrong Watson is a Partner firm of Escalate Dispute Resolution, selected and licensed to operate in the North of England.**



By looking at the process from your perspective, we're transforming how businesses manage disputes:

- **No financial risk** – you don't pay out unless we reach a successful settlement
- **No initial outlay** - we pay for all of the up front costs
- **Rapid results** – we aim to get your money back in just three months; if we can't settle quickly, we have the financial backing to support you all the way to a High Court resolution (including cover for all disbursement costs such as court, barrister and experts' fees).
- **A fixed fee basis** – complete transparency from the start

There are no restrictions on the types of cases we tackle:

- bad debt, contractual, negligence, IP infringement etc.
- and, importantly, we can revisit disputes that are up to three years old.

The Escalate approach gives you an opportunity to resolve disputes in a way that saves you money, time and hassle, and enabling you to get on with running your business.

We've produced this guide to explain how effective dispute resolution works. Contact us or read on to learn how Armstrong Watson can help to resolve commercial disputes.

# The dispute resolution process

Many businesses don't pursue commercial disputes because of high up front costs, long delays and considerable uncertainty - but there is now another way.

Escalate was created by looking at each of the steps of the traditional dispute resolution process from your perspective and finding ways of improving them. The result is a completely new approach that focuses on your business's cash flow. How does the traditional dispute resolution process work? And how does Escalate compare with it?

## Traditional process

STEP

1

Negotiation



Parties are encouraged by the Courts to attempt to share full details of their claim and negotiate a settlement before beginning legal proceedings. However, there is no fixed time limit for negotiations to conclude and defendants are often incentivised to delay the outcome. Meanwhile your lawyers will typically bill you based on the amount of time they spend working for you, so the longer this period goes on, the more expensive it is for you.

- Little incentive for a quick solution.
- Potential for uncapped, hourly legal fees that you pay regardless of the outcome

STEP

2

Litigation



You'll typically need to make a considerable up front payment before you even begin litigation to cover the court fee for issuing a claim, as well as fees for the barrister and any expert witnesses you require. Legal fees, which are often calculated on the basis of the time spent on the case, will then need to be added. It's not uncommon for the total of these bills to spiral to the level of the damages that you're claiming.

- Typical 18 month duration.
- Considerable up front payments.
- Potential for uncapped, hourly fees that you pay regardless of the outcome.
- You could be liable for the defendant's costs as well as your own if you lose the case.

# escalate process

PATH

A

Negotiation



We begin negotiating on your behalf as soon as you engage us, using experienced corporate recovery specialists to encourage the defendant to settle quickly in your favour without the need for litigation. We allow up to a maximum of three months for this negotiation.

- Experienced commercial negotiators
- Incentives to settle within three months
- Fixed fees that you don't pay unless a successful settlement is reached

PATH

B

Litigation



If the defendant is unwilling to settle in this three month timeframe, we immediately begin preparing for litigation. We'll take care of this process for you, paying the up front fees and associated costs all the way up to a High Court resolution.

- No up front court costs, Counsel fees, etc
- Fixed fees that you don't pay unless the case is successful
- You don't pay the defendant's legal costs if you lose

## Case study

An entrepreneur of a business services company sold their business to a UK company with a US parent. They had agreed for three sums to be paid in stages over a two-year period; however the final instalment of £250,000 was unexpectedly not received.

### Challenges

The entrepreneur initially approached the parent company for an explanation, to which they advised there had been a breach of contract.

The entrepreneur then engaged a legal professional for support to explore the claim that there had been a breach of contract resulting in them withholding the final payment. During this process, approximately £20,000 was spent in legal fees in an attempt to recover the monies owed, however, no progress was made.

Having failed to make any meaningful headway, the entrepreneur felt their only option may be to write off the monies owed to them. They then sought advice from their accountant in relation to the relevant tax treatment and their accountant informed them of Escalate and the case was engaged.

*“I am deeply grateful to Escalate and tell everyone I see about the service.”*

### How Escalate has helped

The case followed the normal Path A mediation process for the full three-month period before moving to Path B, the litigation stage.

Aware that there was no legal merit to justify withholding payment, the defendant tried to delay the process by threatening to counter-claim, requesting to switch the case from a regional court to London, and asking for an extension of time for submitting a defence. All of these tactics were employed to frustrate the claimant and increase ongoing costs so they would drop their claim.

As the claimant bore no financial risk through the Escalate process, these attempts to dissuade them from pursuing their case had no impact – in fact, they served to increase the defendant’s own costs. This resulted in the defendant’s lawyers contacting the Escalate team to inform them that costs had now become prohibitive for the defendant, requesting mediation.

The mediation was held but without any settlement reached. It became clear in the mediation that there was no defence for withholding payment and the mediation was another attempt to delay or force the case into a low settlement. This was not achieved and Escalate continued to push for a full settlement.

Six weeks after the mediation the case settled at £325,000. The total cost to the defendant — including their legal fees — in their pursuit to delay the claim amounted to £450,000.

## Frequently asked questions

### WHY DO DISPUTES TAKE SO LONG TO RESOLVE?

Unfortunately, the current system creates and allows bad business behaviour. There tends to be no strong incentive for the defendant to settle quickly in a traditional dispute resolution process; by delaying the outcome for as long as possible, they increase the chances of the claimant giving up or running out of funds. The Escalate process targets a result in less than three months by employing a team of experienced dealmakers to negotiate on your behalf.



### WHAT TYPES OF CASES CAN YOU PURSUE?

There are no restrictions on the types of disputes Escalate can tackle – bad debt, contractual, negligence, IP infringement etc. The process is designed for cases involving disputes of £25,000 upwards; however, if your dispute is below this threshold, we will explore your options with you and endeavour to apply the Escalate process where possible.

### I HAVE A DISPUTE FROM TWO YEARS AGO THAT I DECIDED NOT TO PURSUE AT THE TIME. CAN I USE ESCALATE?

Yes. We can revisit disputes that are up to three years old, enabling businesses to start to recover monies that were previously written off and providing an unexpected cash flow injection if successful.

### I NEED TO MOVE QUICKLY. HOW LONG DOES THE PROCESS TAKE?

Get in touch and we can begin an initial case review straight away. Escalate targets your money back within three months, so the sooner we engage the quicker we can get your dispute resolved.



## WHAT ARE THE COSTS OF RESOLVING A DISPUTE?

Escalate charges a fixed fee of 30% of the amount recovered, ensuring you will receive 70% of the damages received.

Everything is included in this fee, including up front costs such as court fees and expert witness and barrister fees, so you have complete transparency and certainty from the very start of the process. And remember that you don't pay unless there is a successful outcome.

In contrast, we estimate that a £200,000 dispute undertaken through a traditional mechanism would incur costs of over 50% of the recovered amount\*. The costs will increase further if you take out insurance to protect yourself against the defendant's costs in the case of an unsuccessful outcome. In these circumstances, it is possible that you could end up with as little as one third of the original value of the claim under a traditional dispute resolution approach.

*\* Assuming a 70% recovery of damages and 50% recovery of costs from the defendant*

## WHY DO SO FEW DISPUTES GET RESOLVED?

The combination of high costs (considerable up front costs and legal bills based on the amount of time your lawyers spend on the case), long delays (a typical case takes 18 months to reach a conclusion) and considerable uncertainty (about the outcome of the case and the total cost of pursuing it) deters many businesses from pursuing a debt. Escalate directly addresses all of these issues, removing the barriers that currently prevent businesses from fighting their corner.

## WHY DON'T YOU USE LAWYERS DURING THE NEGOTIATION STAGE?

We work with licenced corporate recovery specialists with a track record of rapidly recovering assets on behalf of claimants, in order to encourage the defendant to settle quickly in the client's favour without the need for litigation. They follow a pre-agreed protocol that incentivises the defendant to settle quickly.

We believe that this approach is likely to secure a better deal for Escalate clients.

## WHAT HAPPENS IF I LOSE MY CASE?

In a traditional dispute resolution process, you'll be liable for your own costs plus at least part of the defendant's bills if you lose your case. Escalate removes the financial risk – you don't pay out unless we reach a successful settlement and, if your case is unsuccessful, you won't be required to pay the defendant's costs either because of Escalate's built-in insurance cover.



## MY LAWYER HAS OFFERED TO SUPPORT ME ON A 'NO WIN NO FEE' BASIS. IS THAT THE SAME AS ESCALATE?

Even if you can find a lawyer to act for you on a 'no win no fee' basis, you'll still have to pay up front for some costs (such as court, barrister and experts' fees), which can total tens of thousands of pounds and are not recoverable if your case is unsuccessful. You're also likely to have to pay some or all of the defendant's legal fees if you lose your case, unless you take out insurance. And the traditional dispute resolution process typically takes 18 months to resolve; Escalate targets a negotiated solution in just three months.

The Escalate process has brought together all the different professional advisers needed to resolve your dispute and protect your financial risk into one seamless service. Escalate is unique and there is no similar service that prioritises your cash flow by focussing on a quick settlement, removing upfront costs and minimising risk.



## CAN I USE MY EXISTING LAWYERS THROUGH ESCALATE?

We work with a panel of specialist law firms that are regarded as experts in the field of dispute resolution. If your existing lawyers are not on that panel, they can apply to join by contacting us.



Give us a call to find out how  
Escalate could help you



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Accounting Innovation Project of the Year -

Dispute resolution platform wins prestigious industry award

Escalate, the ground-breaking commercial dispute resolution process, was named 'Accounting Innovation Project of the Year' at the 2017 British Accountancy Awards.

By removing financial risk, providing transparency on process and pricing, and ensuring that the claimant remains the main beneficiary on settlement, Escalate gives small and medium enterprises an opportunity to resolve their disputes in a way that helps rather than hinders their cash flow.



Best Collaboration Initiative -

The Lawyer Awards 2018

Escalate was awarded the 'Best Collaborative Initiative' at the Lawyer Awards 2018. Comments from the judging panel include "I think the idea and execution is genius" and "It's a clever, clever concept growing out of greater collaboration across a number of industries to give SMEs real prospects of recovery without having to spend exorbitant legal fees or having to write off debt."



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