

Part 1: How to win at trial

GET YOUR BUSINESS FIGHTING FIT

with Beswicks Legal

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HOW TO WIN LITIGATION, HOW TO WIN IT QUICKLY – AND HOW TO AVOID IT ALTOGETHER

Introduction

Welcome to our Fighting Fit programme for businesses.

If you have never been involved in a court case, well done!

If you have, you'll know the cost in terms of time and money, and you'll be familiar with the uncertainty and worry it brings.

You'll also know how long it can take to reach a conclusion – often years.

And if in your court case you actually ended up in the witness box giving evidence on oath about things that happened a long time ago (while a lot of other things were going on around you and your business) you'll know what an utterly stressful experience that is.

A trial in front of a judge is where litigation ends up if it is not settled before then. History is littered with stories of trials that didn't go as expected. Not only is it costly and traumatic to get there, the outcome can in no way be guaranteed however much you think you are in the right.

Our proactive approach

We, in the Dispute Resolution Team at Beswicks Legal, have been through such things with many, many clients over the years.

Rather than wait for the phone to ring with yet another business needing help to resolve a dispute they had become embroiled in, we wanted to go the extra mile to help businesses to lessen the cost, the trauma, and the uncertainty associated with such disputes. We, therefore, designed and launched our Fighting Fit programme.

Over the years we have seen how delays and costs can be decreased, and certainty and prospects of success in litigation increased. We have identified the simple ways in which a business can achieve all of these things.

As we developed our toolkit, we could see that the things that you can do to help you win at trial, can in fact help you shorten a case and even avoid litigation altogether.

PART 1: THE STARTING POINT – HOW TO WIN AT TRIAL

In this Part 1 of our programme we look at what happens when a dispute goes all the way to trial, so we need to imagine that you and your business are embroiled in a dispute and that you are unable to settle it as the court case progresses.

The judge

If litigation cannot be resolved, you will inevitably end up in front of a judge at a trial. That judge will decide who wins and who loses. It's as simple as that. How will he or she decide who wins? That is simple too – by weighing up the evidence that is produced by each side. Evidence! It's all about evidence – the judge doesn't really know what happened between the parties – he or she has to rely on the evidence that is put before them by each side.

Evidence

To win at trial, you have to have more compelling evidence than the other side. It's all about evidence, evidence, and evidence!

That evidence comes in a number of forms, the main two types are :

- Documents
- Oral evidence from the people who were involved at the time

Let's look at each of these in turn.

(a) Documentary evidence

The best way to look at the value of documentary evidence is to look at what happens without it.

For example, one witness may say that the parties agreed a price of £10,000. The other side's witness may say the price agreed was £5,000. If that's the only evidence that there was in relation to the price, the judge would have to decide who was telling the truth. That's a precarious position for you to be in a trial!

That's the power of documentary evidence – the judge will find it very compelling indeed, and they will no longer need to decide which witness is telling the truth because it's there in writing.

The moral of the story is, therefore, in all of your business dealings make sure that everything is recorded in writing one way or another. A detailed contract is of amazing value – but even a quick confirmatory email to the other side (confirming any discussions) can be worth a fortune to you at trial. Make sure all your people know the power of paper, and train them to make sure that details are recorded and evidence is thus preserved. When we talk about 'paperwork' we mean anything that is written down, so electronic communications and records, such as email, are just as good. Such evidence is generated by you having ongoing communications with the people you do business with – you never know when something you mentioned in an email or telephone call will have its day in court!

(b) Oral evidence

The key people involved in any dispute will have to give evidence on oath at trial if a dispute cannot be resolved. Ahead of the trial they will have to prepare a detailed witness statement setting out their evidence, which is sent to the other side.

At trial, the other side will be able to question you in detail. Their primary aim will be to show that you are mistaken or that you are lying. It will be powerful enough for their purposes though if they can simply show that you cannot remember any of the detail – particularly if their own witness comes across as having a full grasp of all the detail. That would make it easy for a judge to say, "I prefer their detailed evidence over your vague evidence".

To make your oral evidence – in your witness statement and in the witness box – more compelling therefore, it makes sense for you to keep notes and records of all your business dealings. Times, dates, topics, agreements reached, deals done, etc – keep a careful note of all of these. Keep detailed diaries too. And send the emails mentioned above.

All of these notes and records will allow you to talk in impressive detail when it comes to preparing a witness statement and to giving evidence in the witness box.

What will then happen at trial?

If you have the documentary and oral evidence set out above, a judge is going to find it hard to dispute the detail of your evidence. More than that though, you are going to come across as an honest, organised, compelling witness and the judge is going to feel justified in believing you. Compare that to someone who runs their business in an apparently chaotic and totally informal way.

Pausing there..

Hopefully you can already see the strong position a party can be in if they have paperwork (any paperwork!) as compared to a party that has none and who comes across as disorganised and lacking in thoroughness and detail.

In many a judgement a judge has had to explain how they are persuaded by the presence of evidence.

The obvious message is, make sure you are the 'party with the paperwork' if you want to win at trial.

But it gets much better than that, because – as we'll explain in Part 2 of our Fighting Fit programme – not only do these steps help you to win at trial, they can mean that you never actually have to go that far in the first place.

If you need advice about a dispute, please don't hesitate to get in touch by phoning us on 01782 205000 or emailing enquiry@beswicks.com. We'd love to help you.

THE DISPUTE RESOLUTION TEAM
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