

BIICL Guidelines – Constructive resolution of business legal disputes post COVID-19

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Small businesses are the backbone of the UK economy and key to economic recovery post COVID-19 and Brexit. Yet many of them struggle to obtain payment on time, or sometimes at all, and end up facing a difficult choice: to pursue payment by the often slow process of going to court, with the outlay of cost and valuable management time and effort, and the risk of damaging important commercial relationships, or to walk away from money that is rightly theirs. COVID-19 has increased these difficulties with the risk of a further rise in late/non-payments and potential backlogs in the courts as they deal with an influx of cases. This has the potential to impact small businesses in particular as they may have less experience of managing legal disputes and fewer resources to pursue them than larger corporations.

So how can businesses manage legal disputes and reduce these pitfalls? As the dust settles businesses are assessing the cost of the pandemic and looking at their legal options. The courts are re-opening some physical doors and otherwise settling down into a routine of remote hearings. With that in mind Guy Pendell, Adam Johnson QC and I put our combined experience of managing and resolving commercial legal disputes to work, this time to do something practical to help avoid them, or at least to avoid them becoming any more damaging than necessary.

We came up with a short set of [guidelines, published by the British Institute for International and Comparative Law, for businesses](#) (and their lawyers) to refer to when legal disputes loom. They are designed to work in any legal system and are published in seven languages to add to their international reach. Our aim was to produce something simple, clear and flexible that could be used by businesses of any size anywhere. The guidelines are not a code of conduct that must be signed up to. They can be adopted at will by one or all parties to a dispute, on a case by case or more general basis. They are intended to help the parties to think beyond formal legal system boundaries rather than being limited by them. They shouldn't be "weaponised" or used to disadvantage other parties.

Users can approach them in different ways. The guidelines seek to complement and not interfere with rules that might already apply to regulated businesses. Businesses that are not used to legal disputes may find them a useful road map, helping them to understand the options open to them to resolve their problems and to realise that they are not inevitably headed down the road to court. The guidelines could be referred to by any party at the early stage of a dispute, aiming to create a more positive atmosphere for resolution. In this way the parties can take control of the process of sorting out their differences in a way that works for them.

The guidelines are divided into three sections that in turn deal with: supporting contractual relationships; avoiding escalation and resolving disputes without resorting to legal proceedings; and, where formal disputes are unavoidable, running them in an efficient and constructive way that places the least strain and expense on the parties and the courts and tribunals. They include thoughts on renegotiating contracts, ensuring that the right individuals engage in any negotiations, using alternative dispute resolution options and finding ways to narrow issues. Taken together they endorse the message of taking a moment to pause and think before acting.

We know that most small businesses are very pragmatic and want to spend their time building their businesses, not in pursuing legal disputes. They fully understand that disputes cost money, swallow up valuable management time that would be better spent on making the business successful, and damage commercial relationships. Some businesses may think that the guidelines state the obvious and they don't need us to recommend what is basically common sense and good behaviour. But sometimes it's useful to be reminded of what the options are, and it can be helpful to bring a connected set of ideas and themes together in one place. We hope that the guidelines deliver that.

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