

INSTRUCTING SOLICITORS TO OPPOSE A LITIGANT IN PERSON – A BURDEN OR BENEFIT?

For many civil cases, the statutory limitation date (the latest date that an action can be pursued) is 6 years from the date of the accrual of the action or breach. There are exceptions for other types of action and also when the action or breach was discovered later. With property disputes, these can be longer; 6 years from the date which rent arrears became due, right up to 12 years for breach of lease if made by deed.

I heard someone in the office say, “can you believe it is 4 years this month since COVID happened”. Difficult economic conditions have given rise to more debt-related disputes but also the increase in those moving homes during the SDLT reduction have brought about land disputes from their new neighbours. Not forgetting those landlords wishing to exit the market before the proposed ‘Section 21 Notice’ abolishment.

What this means for the world of litigation, is that actions that have been ongoing since 2020 will start to come to a head. Whether that is issuing the claim at court before the 6-year period expires, or someone picking up the phone to enquire about legal advice after years of getting nowhere by themselves for the last few years. In turn, this means more people need legal assistance but with a limited means to pay.

It would seem that the justice system has encouraged a ‘DIY’ approach in recent years; thanks to the implementation of Money Claims Online and the Official Injury Claims Portal. There has never been a time in history where people have had the ease of access to more information. Giving them basic know how, on how to conduct their own case as a Litigant in Person (“LiP”).

What is a Litigant in Person?

Formally known as self-represented litigants, they can be individuals or companies and they have a right to appear in court on their own, as well as take any steps in relation to the litigation in question. They even have rights of audience, meaning that they can appear before and address any court including the right to call and examine witnesses. They can even claim costs for the period they are a LiP. The bottom line is that a LiP must deal with a legal system that is designed for lawyers. Making them feel at a disadvantage from the outset in what is a foreign language to them.

For more information about how we can help you please contact:

Opposition Solicitors and the Court.

People ask me what a lawyer involved in litigation does. Simple, they are the wedding planner. Someone who handles a multitude of tasks both in the months leading up to the event and on the big day as well. Court directions, disclosure of documents, booking counsel, arranging witness and expert attendance all of which lead up to the big day (the trial). Should you fall short of any of those steps, then sanctions can follow. This is something a LiP will not appreciate. So, in reaching case management decisions, a court must have regard to the fact a party is a LiP. Prolonging litigation.

The court may be minded in issuing further directions, but there is an expectation that the legal representative can assist the court to direct them to issues that the LiP may require further explanation on. The Law Society Guidelines suggest that if it ever appears that a LiP is heading towards non-compliance with a case management order, lawyers should consider drawing this to the LiP's attention.

An opposing solicitor is under no positive duty to assist a self-representing opponent; the paramount duties remain to the client and to the court. However, this increases costs but the benefit can be significant. Offering a LiP some practical assistance may in fact assist their client to progress the litigation or come to a resolution a lot quicker compared to both Claimant and Defendant acting as a LiP.

"Vexatious Litigants"

Lord Bingham said, *"the hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law...its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion...and that it involves an abuse of the process of the court"*.

The court can make a 'Civil Restraint Order', but this is a high bar. The court has to balance that multiple applications made by such a LiP may not have merit but it only takes one to have merit which is important for the LiP's case. In most cases, opposition parties still have to engage during a dispute and manage a case efficiently. Instructing solicitors can do that on your behalf.

For more information about how we can help you please contact:

How Chadwick Lawrence can help with Litigants in Person.

We have no obligation to teach the 'Green Cross Code' to the LiP but we can hold their hand while crossing the road. Investing in legal advice, can bring an ongoing dispute with a LiP to a swift conclusion.

One of our commercial clients came to us with a small claim dispute made against them that had been ongoing since 2016. The LiP issued proceedings a few weeks before the statutory limitation period expired in 2022 and both parties represented themselves through 1 interim hearing until our client could go no more when it was listed for a 2nd interim hearing to hear the LiP's application. Whilst the claim was worth less than £10,000, two parties arguing amongst themselves no doubt wastes time and money.

Within 3 weeks we were able to review, summarise the issues in dispute, brief counsel to attend the hearing and corresponded with the LiP. There were 8 years of disputed facts which included 162 paragraphs in the LiP's Particulars of Claim and around 150 paragraphs in the LiP's own witness statements. We narrowed this down to allow a District Judge to hear from both parties and approved an Order on one sheet of A4. There was no doubt that the client's actions of instructing us helped both the LiP and the Court focus on the real issues.

One of the pillars that applies to all solicitors, is that they must act in a way that upholds the constitutional principle of the rule of law and the proper administration of justice. The example above not only cut the lifecycle of the case from reaching its 10-year anniversary but has assisted all parties and conducting the case at an efficient cost. Even if one party instructs solicitors, it is one way to help everyone navigate this alien environment. The ever-increasing cost of living may awaken the sleeping giant of mass LiP actions; something which our legal system is not prepared for in its current state.

[For more information on how we can help you with an opposition LiP, contact Oliver Newton in our Dispute Resolution team on olivernewton@chadlaw.co.uk]

For more information about how we can help you please contact: