

EVERSHEDS  
SUTHERLAND

**The key to better  
dispute resolution?**

Navigating the changing  
litigation landscape for the  
benefit of your business



## **The landscape for litigators is changing, bringing with it the promise of faster, cheaper dispute resolution for businesses.**

Briggs LJ has unveiled his vision for a new civil court structure which includes online, lawyer free courts. Shorter and flexible trial pilots are bringing the flexibility of arbitration to court proceedings. Jackson LJ has recommended the implementation of fixed costs in all fast track cases and certain claims up to £100,000 in value and the Enterprise Bill may make Australian-style mandatory mediation a reality.

At Eversheds Sutherland, we are committed to working in partnership with our clients.

We can help you to navigate the changes, understand the new flexibility for dealing with your disputes and achieve the right outcome for your business.

We asked a group of high profile blue chip clients what they liked least about being involved in disputes. The proposed changes, and those currently underway, address all of these issues:

***“Litigation shouldn’t be a one-size fits all process – I want the flexibility to compare options and run disputes on a case by case basis.”***

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The shorter and flexible trials pilot schemes offer **complete flexibility on an opt-in basis**. All but the most complex cases should be heard within a year, with significantly reduced trial times. Meanwhile, the option for mainstream litigation is maintained for 'bet-the-ranch' litigation or cases involving issues of public policy, which cannot afford to be held hostage to rough justice. There is no need for straight-jacketing. **The flexibility currently on offer within the civil justice system puts the parties in control**. This is a hugely important message. It is after all, your process.

***"I struggle to get buy-in from the business to unpleasant, lengthy or time consuming processes such as disclosure or giving evidence."***

Both the shorter and flexible trials schemes can limit disclosure and evidence significantly, allowing you to reduce time, cost and effort involved. Imagine a world where your window for witness attendance is one day instead of several weeks at a time, or where disclosure is only given on the basis of the documents requested by the other side. That can now be a reality.

***"The phrase 'it's in the hands of our lawyers' is immediately unhelpful because people know that means 'expensive, time consuming and adversarial'."***

The changes, both current and proposed, are all about **better dispute management**. They give lawyers the freedom to **run cases flexibly, streamline process and achieve better outcomes for clients**. Taking a more collegiate approach to the management of litigation can help those involved focus on achieving resolution. An understanding within your business that the new approach to litigation is more user friendly might help to change early behaviour within your business and lead to better outcomes.

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***“The flexibility of arbitration is great, but the standard of justice offered by the Commercial Court is unparalleled. Why should I have to choose between them?”***

With the flexible trials pilot in full swing, you don't have to. Parties can agree significant reductions in disclosure, evidence and submissions according to the needs of the case, resulting in substantially reduced trial lengths. Keeping cases within the court system aids the proper development of English law. Win win? We think so.

***“If I want confidentiality, I have no choice but to use arbitration, even if I don't want to.”***

The reforms don't address the issue of confidentiality in cases heard by the courts. However, with 95% of cases settling before the matter reaches a hearing - and confidentiality clauses incorporated into most settlement agreements - this may be less of an issue.

### **How can we help?**

Litigation no longer has to be lengthy, expensive and entrenched. Through better **project management, investment in and use of technology** and **early evaluation of the issues in a case** we can help you to identify the best available route to resolution of your disputes, achieving the kind of streamlined, cost effective litigation that businesses pray for.

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## What do you need to know?

The overriding feature of all of the reforms is outcome focused litigation which will be **quicker, cheaper and more flexible** for businesses. There is a judge-led will to keep costs proportionate to the amount at stake and make the process client-friendly. Below is a summary of the key reforms:

### Shorter trials

- pilot scheme currently under way in the Rolls Building Courts, now extended until September 2018
- heavily streamlined process in order to resolve all but the most complex cases within a year
- active case management by judges
- limited disclosure and evidence
- maximum trial length of four days, with judgment within six weeks
- no cost budgeting – parties submit estimates and costs are summarily assessed

### Flexible trials

- part of the same pilot scheme as shorter trials
- offers flexible case management akin to arbitration without opting out of the court justice system
- parties can agree significant reductions in disclosure, evidence and submissions
- aims to reduce trial length substantially

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### **Fixed costs**

- fixed recoverable costs supplemental report published by now retired Jackson LJ on 31 July 2017
- proposal for universal fixed costs regime in all fast track cases (up to £25,000)
- above this, fixed recoverable costs on a new ‘intermediate’ track for certain claims up to £100,000 which can be tried in 3 days or less and with no more than 2 expert witnesses giving oral evidence per side
- recovery of fees by reference to a matrix based on value at stake and stage reached in the proceedings
- aimed to bring down “exorbitantly expensive” legal costs

### **Online court and other Briggs reforms**

- proposal for an online court for all cases up to £25,000 in value
- tablet/smartphone user friendly
- potential for new set of procedural rules
- designed for use from start to finish without the involvement of lawyers
- substantial investment in IT infrastructure required before implementation can begin
- all cases with regional connection to be tried in those regions, including the High Court of Justice regional centres in Birmingham, Leeds or Manchester
- transfer of routine and non-contentious work streams from judges to case officers to ease pressure on overstretched system



