

Insights

DISPUTES IN FOCUS: QUICK Q&A ON CIVIL RESTRAINT ORDERS

CLARE REEVE CURATOLA SPEAKS TO MEGAN SMITH AS PART OF HER QUICK Q&A SERIES

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SUMMARY

Commercial disputes between individuals and/or companies often involve complex issues and debate. Sometimes, however, a claim is made without any legal and/or factual basis and, despite best efforts, the claimant is persistent in pursuing it. This can lead to the defendant incurring significant unnecessary wasted time and costs.

In this blog, Clare Reeve Curatola outlines what Civil Restraint Orders are and how they can be used in commercial litigation when a company is facing persistent unfounded claims. Clare asks her Litigation and Investigations colleague, Associate Megan Smith, about her recent experience and she offers some great tips on how companies can mitigate risk and address vexatious litigants.

Short on time? Jump to our top tips for responding to vexatious or meritless claims.

QUICK Q&A WITH MEGAN SMITH

Megan Smith is an associate in our team, Business and Commercial Disputes. Megan advises a variety of clients from financial institutions to high net worth individuals on a wide range of general commercial and contractual disputes, as well as regulatory matters. Megan has experience of financial litigation and fraud, and advises on breach of privacy, defamation and reputation management. She also has experience in internal investigations for large financial institutions, and is experienced in freezing injunctions and other interim relief.

BRIEF OVERVIEW: CIVIL RESTRAINT ORDERS

Civil Restraint Orders (“**CRO**”) are court orders that restrain a party from bringing proceedings or making applications in proceedings without the permission of the court. They are often granted by

judges in response to a litigant persistently issuing claims or making applications, which are totally without merit.

These parties are often known as 'vexatious litigants' and tend to be individuals (although not exclusively) who do not have legal representation (i.e. litigants in person).

When making a CRO, the court will consider whether the litigant would, if unrestrained, issue further claims or applications that would abuse the court's process. And, whether a CRO is a just and proportionate response.

The Courts and Tribunal Service (HMCTS) maintains a publicly available list of vexatious litigants and certain CROs currently in force. The majority of those listed are individuals, however there are a number of corporate entities included too.

WHAT IS YOUR RECENT EXPERIENCE OF CROS IN COMMERCIAL LITIGATION?

There are three different types of CROs ranging from the severe General CRO (which prohibits a party issuing **any** claim or application) to an Extended CRO (which relates to specific types of claims or applications) and lastly, the Limited CRO.

My most recent experience involved securing a Limited CRO on behalf of a client in the context of a commercial dispute in the High Court. A Limited CRO prevents a vexatious litigant from issuing further applications in ongoing proceedings. This was a very helpful procedural tool for our client as it avoided the prospect of further costs being incurred in response to such applications. .

As you would expect, the courts won't issue these types of order lightly and in the case of applying for a Limited CRO, there must have been two or more applications that are totally without merit (in those proceedings) before the court will consider issuing this order.

Securing a Limited CRO can be a particularly successful strategic decision in litigation when you know or it seems apparent that the claimant will not have the funds to pay costs orders resulting from their spurious applications. This was the case for our client and it proved effective, along with a separate order to stay proceedings, to halt the litigant's strategy and prevent them continuing the claim.

WHAT ARE YOUR TOP TIPS FOR RESPONDING TO VEXATIOUS OR MERITLESS CLAIMS?

- Ensure there are **appropriate escalation procedures** in place for your staff to follow if they are dealing with a vexatious litigant.

- **Keep clear and detailed records:** ensure that there is a clear log of the contact, which is recorded and stored. Always correspond in writing.
- **Avoid lengthy discussions or correspondence** with the litigant. Do not enter into inflammatory, emotive correspondence. Make sure communications and explanations to the litigant are clear and concise, and use lay terms.
 - Any evidence that you are using the litigant in person's lack of legal or financial support unfairly may be penalised by the court through costs orders in favour of the litigant in person (if a claim is subsequently issued).
- Remember the **Pre-Action Protocol**, and ensure that any pre-action correspondence complies with it. This includes warning the litigant about costs sanctions. Check that the litigant has complied with the relevant pre-action protocol.
- If the **litigant is an individual**, advise them to obtain legal advice.
- **Consider limitation:** If a claim form has been issued by the litigant, check that it has been issued within the limitation period and check that it has been served within the relevant timeframe.
- **Check the HMCTS lists** to check the litigant appears on that list. If the litigant has issued a claim, does it relate to the same issue as a previous claim? If so, consider notifying the court immediately and/or striking out the claim.

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