

Delivering Escalate

Our commitment to the legal sector



Introduction

Welcome to Escalate – a multi-award-winning process that is transforming how SMEs tackle commercial disputes.

The opportunity

Pursuing a commercial dispute used to be a costly, lengthy and risky undertaking. Independent research identified widespread SME dissatisfaction with the traditional litigation process.

It is clear that whilst the Lord Justice Jackson reforms of 2013 were well-intended, they have not had the desired effect of creating access to justice for many SMEs. In fact, with rising court fees, reduced costs recovery, disproportionate ATE and funding premiums, and a system that is heavily defendant-biased, many smaller businesses are resigned to simply writing off 'good debt' or not pursuing otherwise viable claims. This is borne out by the research:

- 70% of SMEs will have at least one commercial dispute in every three-year period; this means there are, on average, in excess of 1 million disputes generated every year;
- Only 11% of SMEs will instruct a lawyer if they are faced with a dispute, with a lack of trust and cost cited as the reasons for low engagement;
- SMEs are losing in excess of £40 billion a year by not pursuing their disputes*;
- SMEs in the UK are owed £45 billion in late payments.

* Source: The Legal Services Board

Escalate was created to resolve these issues by focussing on a quick settlement, removing upfront costs and minimising risk. The last point is particularly important: uncertainty as to the associated cost of litigation has been a major concern for SMEs. Escalate is uniquely positioned to offer a wholly contingent retainer to SMEs for a fixed percentage of the damages recovered - this means that the client only has to pay if an actual recovery is made and that, in all cases, the client will be the largest beneficiary of any recovery made. It also serves to align the interests of the claimant with all other stakeholders in the claim and maximises the focus on claim resolution rather than fee generation.

Escalate has broken down the barriers that prevented SMEs from gaining access to justice and unlocked a significant new market for dispute resolution and commercial litigation.

This is evidenced by the considerable interest that we have seen in Escalate. We are already helping to unlock £50 million of cash for businesses in a variety of disputes and have reviewed 200+ cases to date.

Our approach

Our approach was to fundamentally challenge the traditional legal dispute process, looking at each barrier in the dispute resolution process and finding a way to overcome it.

We brought together the dispute 'supply chain' into a single R&D process and encouraged everyone to assess the issues in a fresh way. Together, we developed a unique and innovative process to give SMEs access to justice through a cashflow-centric solution.

Our approach is underpinned by our guiding principles:

- Challenging conventional thinking - we constantly challenge ourselves to come up with a better way of doing things and embrace new ideas;
- Collaborating with and supporting our partner firms – our strong and trusted relationships with our partner firms are the driving force behind Escalate's award-winning business model;
- Simplifying complexity - we are pragmatic and commercial, with a commitment to streamlining our processes to our clients' advantage;
- Putting the client first – we understand the challenges that SMEs face and are focused on giving them meaningful access to justice on their terms.

All of the Escalate partner firms share this vision and approach, which has been recognised by us winning four prestigious awards during the last 18 months: 'Innovation of the Year' at the British Accountancy Awards, 'Best Collaboration Initiative' at the Lawyer Awards, 'Excellence in Business Development' at the Law Society Excellence Awards and the 'Legal Services Innovation Award' at the British Legal Awards. Innovation, collaboration and business development are three elements that succinctly capture what makes Escalate so distinctive and successful.

A new partnership between lawyers and accountants

Escalate was not created to compete with existing legal work - it was created for the specific purpose of removing the barriers that were preventing 'access to justice' for many SMEs. In doing so, we have unlocked a new market of work opportunities for the accounting and legal community.

Escalate is accountancy-led for good reason:

- The accountant holds the most trusted adviser position in many cases and, as such, has a much better exposure to the ongoing matters in a client's business. This allows them to identify problems as they occur and, where possible, put them into the Escalate process to get them resolved quickly and before they get buried/written off;
- The accountant, via its Corporate Recovery team's inherent skill sets, also play a very important role in the pre-action protocol of a dispute through pragmatic commercial negotiation, and merit 'flushing and checking' for the next stage (which is led by a lawyer).

However, lawyers are vital to the success of Escalate as they help give the legal framework and strategy for the accountant's work. Every one of our cases has a law firm attached to it - which means that every single Escalate case has a potential law firm fee to be passed to the nominated Escalate lawyer.

In this way, the Escalate accountancy partner originates and cleans up new cases for a law firm; importantly, many of these cases would historically have never made it into the legal system.

Escalate is proud to be working with a number of leading accountancy practices that now offer dispute resolution services to their clients, all of which will require support from Escalate law firm partners.

Working together

We are offering like-minded legal firms the opportunity to join the Escalate platform. In return, we ask for your commitment to uphold the guiding principles that underpin Escalate and to support our overarching goal of shared success for all our stakeholders. These are of paramount importance to us and something to which all our licenced partners subscribe.



The Escalate Way

Delivering Escalate requires the entire dispute resolution supply chain to work together using the 'Escalate way'. But what does this mean?

Escalate was developed collaboratively by questioning traditional orthodoxy and looking for a better way. In doing so, we identified the following principles that now drive our process and set us apart from everyone else in the commercial litigation arena:

1. Accountants are often best placed to identify clients' disputes and bad debts – and, crucially, are typically able to spot these issues earlier than any other advisers - and are therefore our most important source of referrals. To this end, we have partnered with leading regional accountancy heavyweights across the country, developing a trusted network of resellers with access to over 250,000 SMEs throughout the UK.
2. Early engagement with the defendant on commercial terms is typically more effective than a drawn out legal battle through the court system, with all its associated cost and risk. This is why Escalate keeps legal arguments to a minimum at the outset, using corporate recovery professionals to focus instead on achieving a pragmatic and commercial deal for clients. Given the nature of these negotiations, maintaining an ongoing assessment of the defendant's ability to pay is crucially important.
3. The Escalate process is orchestrated at all times by the lawyer, ensuring that suitable pressure is maintained on the defendant at all times in order to encourage a resolution. It is the lawyer's role to drive the claim forward, using the full range of expertise, tactics and processes available to secure a recovery as swiftly as possible on commercial terms. The partner law firm remains central to the delivery of Escalate because proactive case-management underpins our success. In particular:
 - Early engagement of experts is paramount to ensure all possible delays in the traditional process are removed;

- Proactive funding support should be utilised where possible;
 - Use of CPR Part 36 should be utilised aggressively and at an early stage to provide the necessary costs protection and to ramp up pressure on the defendant.
4. Escalate's built-in cover for any liability for adverse costs and own disbursements sends an extremely powerful message to any defendant – it means that the claimant has the financial backing to litigate all of the way to the High Court. It is important that this message is reinforced throughout the process.

In addition, it should be stressed that the claimant has transferred all the financial risk in its claim to its professional advisers (who clearly must have belief in the client's case in order to accept this risk), which means that we can focus on the merits of the claim, and not the cost barriers.

Remember that the focus for all Escalate stakeholders is on:

- the merits of the claim - not what costs are being incurred; and
- the recovery made by the client - not the litigation process run by the lawyer. Protocols need to be complied with but should not be allowed to delay or impede efforts at securing recovery in as short a time period as possible.

“ It's a clever, clever concept growing out of greater collaboration across a number of industries to give SMEs real prospects of recovery without having to spend exorbitant legal fees or having to write off debt.”

Judging panel, The Lawyer Awards

Delivering Escalate — working together

There are three stages to delivering Escalate:

- Engagement
- Path A
- Path B

Engagement

- We can only deliver Escalate once we have received:
 - A completed and signed Referral Form;
 - A completed and signed Engagement Pack; and
 - The relevant documents from the client.
- The timetable for delivery of the Escalate process (including the provision of funding and adverse cost cover) begins once we have received the completed Referral Form and Engagement Pack, and we have reviewed the client's relevant documents.

Path A

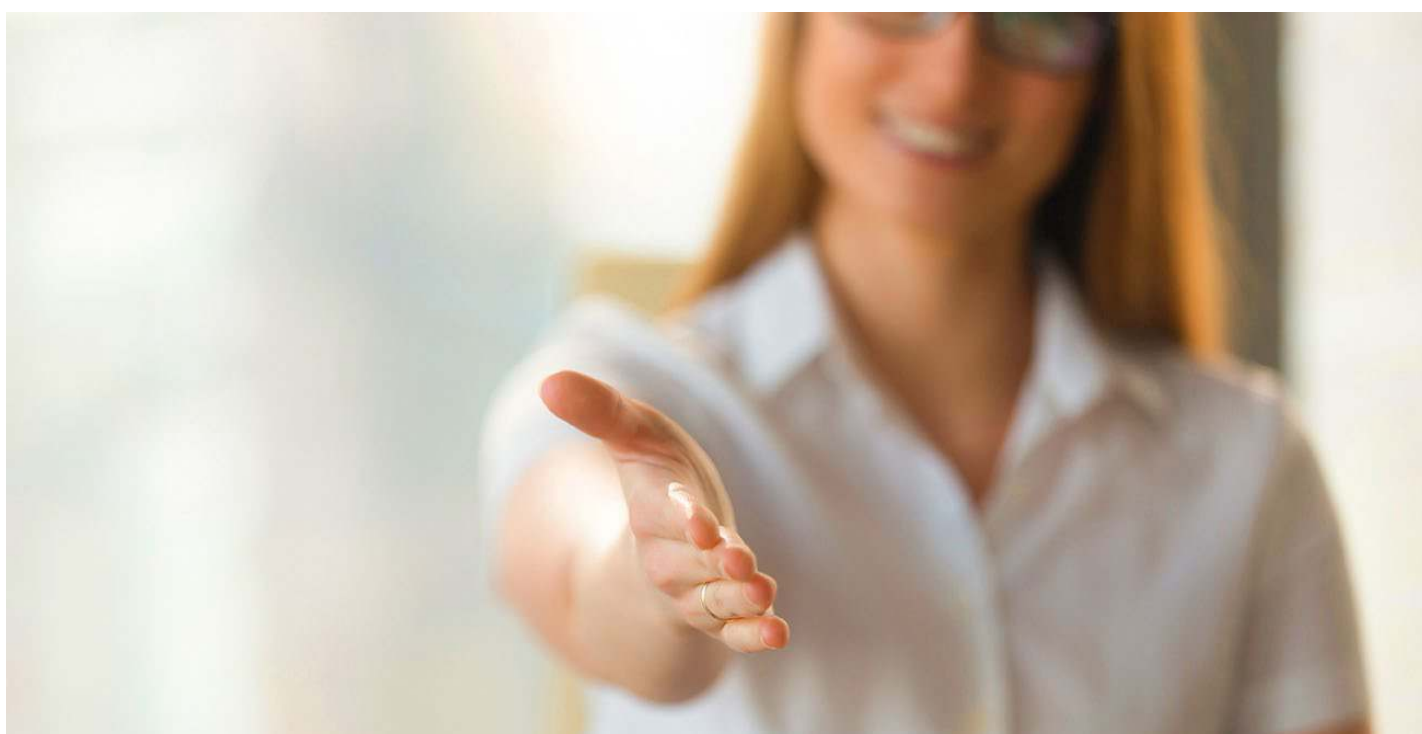
Path A commences on completion of Engagement.

Its purpose is to find a solution and make a recovery without polarising the parties and incurring significant and unnecessary cost. It is expected that Path A will be completed in all cases within a maximum of 6 weeks from engagement, save where settlement is anticipated. That period may be extended where further information is requested.

Path B

Once Path A has concluded, we begin a period of transition to Path B to allow for the necessary legal work to be undertaken and the completion of any required protocols before the issue of proceedings. Path B becomes fully effective once engagement with the defendant passes to/commences with the Lawyer. Our goal is to get proceedings issued at the earliest point possible to drive settlement in the shortest timescale allowable.

A detailed breakdown of the specific requirements under all three stages is provided with the Reseller Licence.



Fees

In all cases engaged by Escalate, the claimant will only have to pay 30% of the recovered amount plus VAT meaning they will, in all cases where the claimant can reclaim VAT, receive 70% of the recovered amount.

Escalate Disputes* reserves the right in its absolute discretion to reduce that fee in cases where the claimant is not VAT registered.

All stakeholders will therefore be paid from the 30% of the recovered amount, plus the costs that are recovered from the other side (if recovered).

Funding costs and ATE premium

All funding costs and the applicable ATE premium will be paid first in all cases, from the 30% recovery.

Accountants

Our partner accountants, who deliver the Path A process, will be paid as follows:

- **In Path A:** two thirds of the 30% recovery, after payment of any funding costs or ATE premium, with the nominated Escalate lawyer receiving the final third;
- **In Path B:** a fixed fee, where the recovery is in excess of £50,000. Where the recovery is below £50,000, Escalate Disputes will agree an accountant's fee on a case by case basis to allow for smaller success fees, and the need in each case for funding and insurance. Should a case carry a significant fee potential, then it is at the discretion of the Escalate team (the nominated accountant and the Lawyer) to change the fee share relationship.

“ I think the idea and execution is genius. I like the fact that it's aimed at creating access to justice and that brainpower has been used to identify the key component parts and the build back up again to deliver the solution. I can see why clients would love it.”

Judging panel, The Lawyer Awards

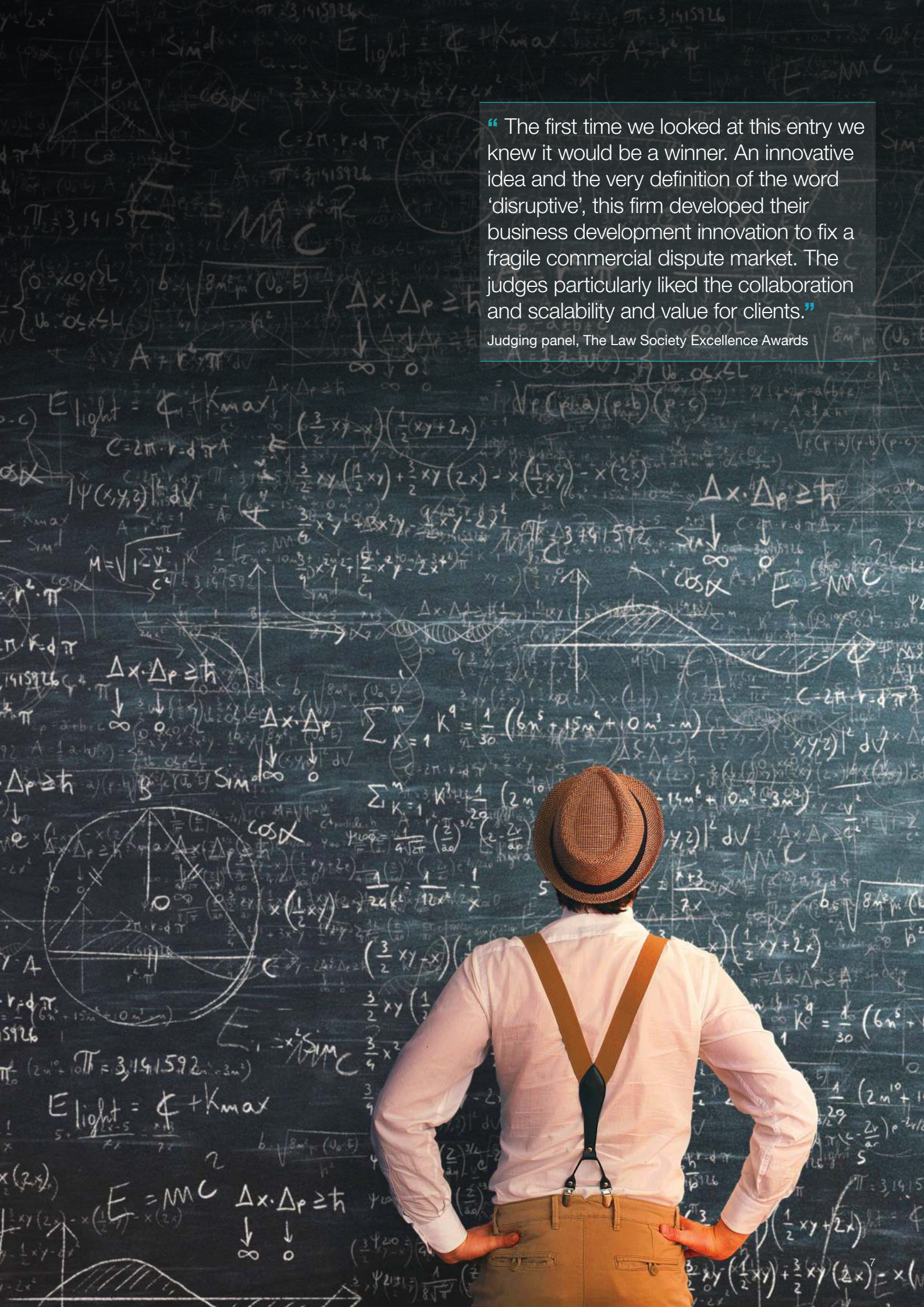
Lawyers

We want to work with a panel of lawyers to help them deliver solutions for their SME clients and for the Escalate partner accountant's clients. As such, we will issue Licence Agreements on one of two alternative bases: either on an ad hoc (case by case), or as a full licenced Escalate partner firm delivering on a portfolio of cases.

- For Ad hoc, case by case Licence Agreements:
 - Escalate Disputes will review each case and will only proceed if the claim is approved for funding and insurance purposes;
 - A temporary licence will be granted to the lawyer that allows them to proceed with the engagement of the claimant through Escalate Disputes, with an appointed accountant also being named if appropriate;
 - On a successful recovery, the appointed lawyer will be entitled to all recovered inter partes costs (subject to assessment as necessary);
 - In addition, the appointed lawyer will be entitled to what remains of the 30% of the recovery, after full payment of funding costs, the ATE premium, Escalate Dispute's management fee and any accountant's fee. Escalate Dispute's management fee will be set on a case by case basis.
- For Partner Firms:
 - Escalate Disputes will grant a Licence Agreement to lawyers if:
 - The lawyer (both firm and individual) is sponsored by one of the Escalate licenced accountant firms;
 - The individual lawyer within the law firm is approved by Escalate Disputes for delivery;
 - The law firm promotes Escalate through its website and other promotional materials;
 - The law firm implements a policy on the use of Escalate, which is agreed with Escalate Disputes.
 - On a successful recovery, the appointed lawyer will be entitled to all recovered inter partes costs (subject to assessment as necessary);
 - In addition, the appointed lawyer will be entitled to what remains of the 30% of the recovery, after full payment of funding costs, the ATE premium, Escalate Dispute's management fee and any accountant's fee;
 - For Partner Firms, Escalate Disputes' management fee will be agreed at a commercially attractive portfolio rate.

"The first time we looked at this entry we knew it would be a winner. An innovative idea and the very definition of the word 'disruptive', this firm developed their business development innovation to fix a fragile commercial dispute market. The judges particularly liked the collaboration and scalability and value for clients."

Judging panel, The Law Society Excellence Awards



Positive outcomes by working together

Escalate has a clear vision and mission. Our purpose is to work together with our partner firms to find solutions that help our clients.

We achieve this by adhering to our guiding principles in a supportive and collaborative environment. Our strength lies in our relationships with like-minded advisers that thrive in challenging outdated thinking.

If you share this philosophy, we look forward to working with you.

Speak to us to find out how we could help you



Chris Clay
Escalate Partner

M: 07875 403 543
E: chris.clay@escalatedisputes.co.uk



Nick Harvey
Escalate Partner

M: 07977 995 620
E: nick.harvey@escalatedisputes.co.uk



Mark Osgood
Escalate Partner

M: 07767 396 435
E: mark.osgood@escalatedisputes.co.uk



“ My business represents over 5,000 small creative businesses. They are crying out for this sort of service and for the legal and financial profession to work differently to deliver it. This is a good example of firms thinking outside the box to deliver something a client actually needs. ”

Judging panel, The Lawyer Awards

Escalate Disputes,
36 High Street
Market Harborough
Leicestershire
LE16 7NL

T: 01858 434174

www.escalatedisputes.co.uk

This document is prepared as a general guide. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the author or publisher. This information is in accordance with legislation in place at 1 October 2018.