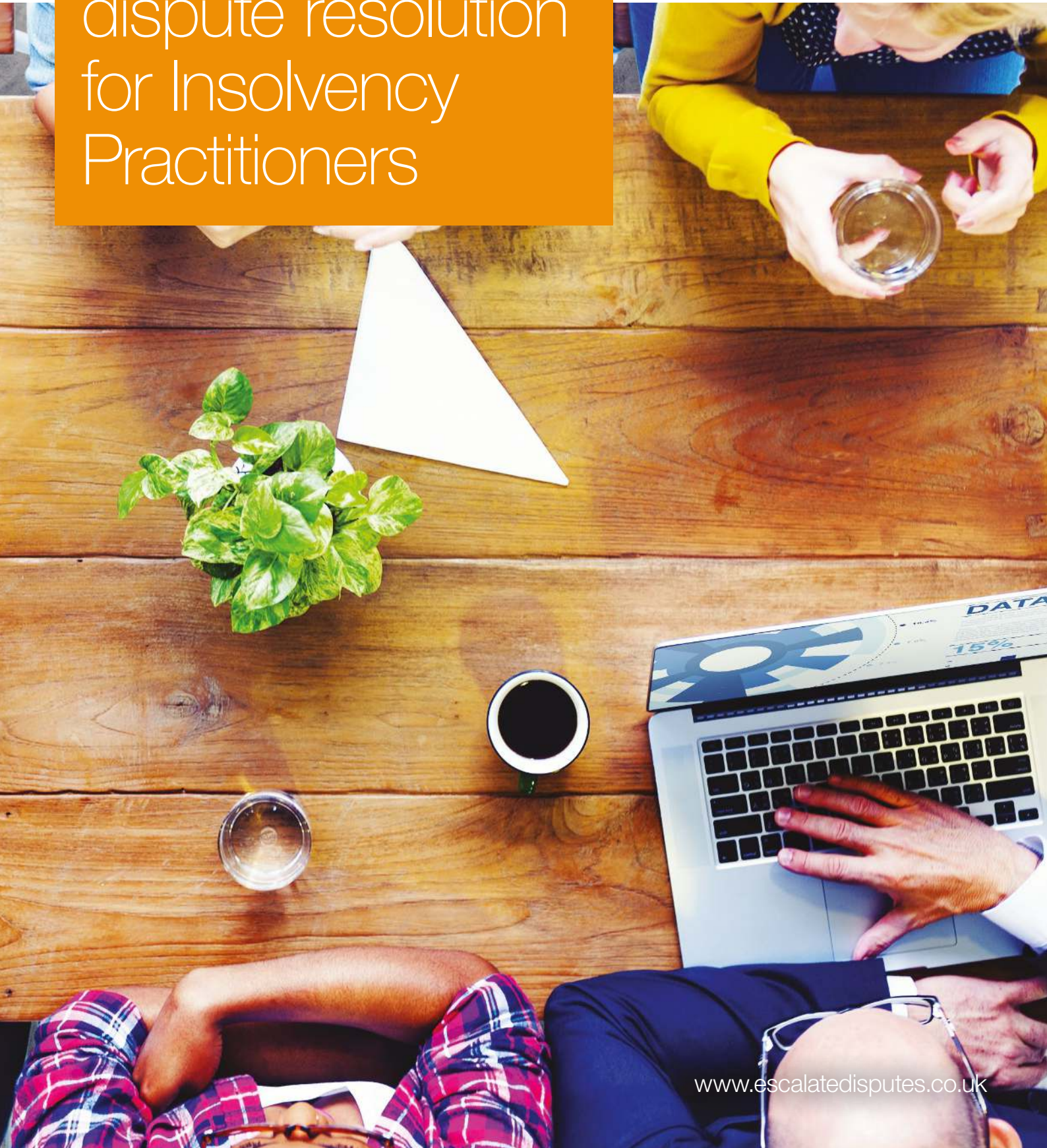


A new wave of
dispute resolution
for Insolvency
Practitioners



Our difference

At Escalate,
it's all about you.

When you come to us for advice and support, we'll focus on providing exactly the right service for you so you meet your Insolvency Act obligations.

A smarter way to resolve insolvency disputes

Since the Jackson changes, pursuing an insolvency claim has become costly, lengthy and risky to undertake. That's why we created Escalate.

It's not difficult to see why: your lawyers will typically bill you, based on the amount of time they spend working for you.

Given that the average litigation case within an insolvency is around 18 months, it's not uncommon for these bills to spiral to the level of the damages that you're claiming. Even if you can find a lawyer to act for you on a 'no win no fee' basis, you'll still have to pay up front for disbursements such as court fees, from your own office account if there are no funds in the estate. And, of course, you could be liable for all or some of the defendant's costs as well as your own if you lose the case. It's hardly surprising, then, that it has become more difficult for Insolvency Practitioners to pursue a claim and they will reluctantly write-off good claims because of the risk.

That's why Escalate was created, a smarter way to resolve commercial and insolvency disputes that prioritises the returns available for creditors by focusing on a quick settlement, removing upfront costs and minimising risk.

Escalate takes a completely fresh approach. Once an initial review has been completed, Escalate utilises a two-stage process: a period of intensive negotiation, with

“ 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

teeth, through our specialist Escalate partners targeting a settlement in under three months; and then, if necessary, litigation using specialist legal teams that are funded all the way to the High Court.

By looking at the process from your perspective, we're transforming how you will manage insolvency disputes:

- **No financial risk** – you don't pay out unless we reach a successful settlement
- **No initial outlay** - we pay for all of the up-front costs
- **Rapid results** – we aim to get your money back in just three months; if we can't settle quickly, we have the financial backing to support you all the way to a High Court resolution (including cover for all disbursement costs such as court, barrister and experts fees).
- **A fixed fee basis** – complete transparency from the start

There are no restrictions on the types of cases we tackle – bad debt, contractual, negligence, IP infringement etc. – any value – and, importantly, we can revisit potential claims that are up to three years old.

The Escalate approach gives you an opportunity to resolve disputes in a way that saves you money, time and hassle.

We've produced this guide to explain how effective resolution of claims works. Contact us or read on to learn how Escalate can help you deliver for the creditors you represent.



The dispute resolution process

It has become more difficult for Insolvency Practitioners to pursue claims in an insolvency because of high upfront costs, long delays and considerable uncertainty - but there is now another way.

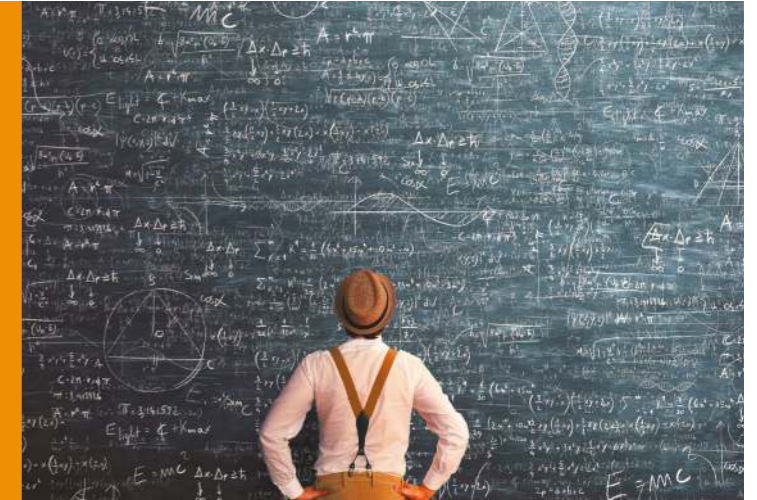
Escalate was created by looking at each of the steps of the traditional dispute resolution process from our clients' perspective and finding ways of improving them. The result is a completely new approach that focuses on making recoveries and reducing risk.

How does the traditional dispute resolution process work? And how does Escalate compare with it?



Help with managing insolvency disputes

Providing a straightforward, contingent insolvency dispute solution that removes all financial risk, including upfront costs.



Traditional Process

Negotiation



Parties are encouraged by the Courts to attempt to share full details of their claim and negotiate a settlement before beginning legal proceedings. However, there is no fixed time limit for negotiations to conclude and defendants are often incentivised to delay the outcome. Meanwhile your lawyers will typically bill you based on the amount of time they spend working for you, so the longer this period goes on, the more expensive it is for you.

- ✗ No or low incentive for a quick solution
- ✗ Potential for uncapped, hourly legal fees that you pay regardless of the outcome.

Escalate Process

Negotiation



We begin negotiating on your behalf as soon as you engage us, working together with our specialist Escalate partners to encourage the defendant to settle quickly in your favour, without the need for litigation. We allow up to a maximum of three months for this negotiation.

- ✓ Experienced commercial negotiators, with teeth
- ✓ Incentives to settle within three months
- ✓ Fixed fees that you don't pay unless a successful settlement is reached.

Litigation



You'll typically need to make a considerable upfront payment before you begin litigation to cover the Court fee for issuing the claim, as well as fees for the barrister and any expert witnesses you require. Legal fees, which are often calculated on the basis of the time spent on the case, will then need to be added. It's not uncommon for the total of these bills to increase to the level of the damages that you're claiming.

- ✗ Typical 18 month duration
- ✗ Considerable upfront payments
- ✗ Potential for uncapped, hourly fees that you pay regardless of the outcome
- ✗ You could be liable for the defendant's costs as well as your own if you lose the case.

Litigation



If the defendant is unwilling to settle in this three month timeframe, we immediately begin preparing for litigation. We'll take care of this process for you, paying the upfront fees and associated costs all the way up to a High Court resolution.

- ✓ No upfront court costs, counsel fees etc
- ✓ Fixed fees that you don't pay unless the case is successful
- ✓ You don't pay the defendant's legal costs if you lose.

Case study

A flooring company had purchased products from a well-known supplier of cementitious materials. The product was defective, which resulted in the customers' floors failing after a short period. The company was faced with significant claims from many of its clients and the prospect of insolvency, through no fault of its own. It wanted to recover the value of those claims and its other losses from the supplier.

The problem

The client did not have the financial resources to be able to pursue such a significant claim against a large multi-national company – and the defendant knew this. It attempted to delay the process and force the claimant to incur further costs so it had no option but to drop the claim or settle it quickly. An inability to recover a substantial value in the claim would have immediately resulted in insolvency, as would the cost of pursuing such a claim.

How Escalate helped

Once engaged, we quickly moved to issue and serve proceedings. The supplier continued to delay, but we gave a very simple message – the more you delay, the more it will cost you. The claimant, meanwhile, had no financial risk going forward, and it was able to focus on running its business again.

Outcome

We made a substantial recovery for the client through a settlement shortly before trial. This resulted in the client avoiding an insolvency process.

“ Escalate is a truly game changing product and has enabled us as a mere minnow to swim with sharks and hold them to account. You have given us a chance to carve out a future that would have otherwise been very difficult and would have no doubt meant the end of our business.”

Statement of Insolvency Practice 2 Investigations

We understand the duties you are required to undertake under the Statement of Insolvency Practice (SIP2).

Escalate can help you with these duties, either by offering advice on the SIP2 report, or by preparing the report. We can also then pursue the recovery of any potential claims or monies owed.

We will help you investigate what assets can be realised and what other recoveries can be made. Our service begins with an analytical review, that helps to determine if there is a prima facie case for further, investigation into any aspect of the company's affairs. This follow-up activity could include inviting creditors to bring to the Insolvency Practitioner's attention any matters that may require investigation; conducting a preliminary review of the books, records and minutes for the last six months in order to identify any unusual or exceptional transactions; and identifying any payments from the company records

Escalate, a smarter way to resolve insolvency disputes. We prioritise your cash flow by focussing on a quick settlement, removing upfront costs and minimising risk.

and bank statements that require detailed investigation.

We can then help you to recover any sums owed to the company, including overdrawn directors loan accounts, unlawful loans, VAT refunds, debtor monies and transactions at an undervalue.



Frequently asked questions

What types of cases can you pursue?

There are no restrictions on the types of disputes Escalate can tackle – bad debt, contractual, negligence, IP infringement.



My lawyer has offered to support me on a 'no win no fee' basis. Is that the same as Escalate?

Even if you can find a lawyer to act for you on a 'no win no fee' basis, you'll still have to pay upfront for some costs (such as court, barrister and experts' fees), which can total tens of thousands of pounds and are not recoverable if your case is unsuccessful. You're also likely to have to pay some or all of the defendant's legal fees if you lose your case, unless you take out insurance. The traditional dispute resolution process typically takes 18 months to resolve; Escalate targets a solution in just three months. The Escalate process has brought together the professional advisers needed to resolve your dispute, and protect your financial risk in one seamless service. Escalate is unique and there is no similar service that prioritises your Insolvency Act obligations by focussing on a quick settlement, removing upfront costs and minimising risk.



Why do disputes take so long to resolve?

Unfortunately, the current system creates and allows bad business behaviour. There tends not to be a strong incentive for the defendant to settle quickly in a traditional dispute resolution process; by delaying the outcome for as long as possible, they increase the chances of you as the claimant giving up or running out of funds. The Escalate process targets a result in less than three months by employing a team of experienced dealmakers to negotiate on your behalf.



Why do so few disputes get resolved?

Typically due to a combination of considerable upfront costs and legal bills which are based on the amount of time your lawyers spend on the case, accompanied with long delays (a typical case may take as long as 18 months to reach a conclusion). Alongside these issues, there may also be significant uncertainty of the outcome of the case and the total cost of pursuing a case with an uncertain outcome can deter many businesses. Escalate directly addresses all of these issues, removing the barriers that currently prevent businesses from fighting their corner.

Why don't you use lawyers during the negotiation stage?

We work with our highly skilled and experienced Escalate partners - as in most cases you would try to achieve a recovery in any event before you transfer to a lawyer - and our backing on a case provides teeth in the negotiation. This encourages the defendant to settle quickly in your favour without the need for litigation. Together we follow a pre-agreed protocol that incentivises the defendant to settle quickly. Our experience shows that this approach is likely to secure a better deal for our Escalate Insolvency Practitioners.

Can I use my existing lawyers through Escalate?

We work with a panel of specialist law firms that are regarded as experts in the field of dispute resolution. If your existing lawyers are not on that panel, they can apply to join by contacting us.

What happens if I lose my case?

In a traditional dispute resolution process, you'll be liable for your own costs plus at least part of the defendant's bills if you lose your case. Escalate removes the financial risk – you don't pay out unless we reach a successful settlement.

If your case is unsuccessful, you won't be required to pay the defendant's costs either because of Escalate's adverse cost protection.

I have a dispute from two years ago that I decided not to pursue at the time. Can I use Escalate?

Yes. We can revisit disputes that are up to three years old, enabling you to start to recover monies from those estates that you could not previously pursue, providing an unexpected injection into the estate if successful.

What are the costs of resolving a dispute?

Escalate charges a fixed fee of 30% of the amount recovered, ensuring you will receive at least 70% of the damages received.

Everything is included in this fee, including upfront costs such as court fees and expert witness and barrister fees, so you have complete transparency and certainty from the very start of the process. And remember that you don't pay unless there is a successful outcome.

In contrast, we estimate that a £200,000 dispute undertaken through a traditional mechanism would incur costs of over 50% of the recovered amount*. The costs will increase further if you take out insurance to protect yourself against the defendant's costs in the case of an unsuccessful outcome. In these circumstances, it is possible that you could end up with as little as one third of the original value of the claim under a traditional dispute resolution approach.

* Assuming a 70% recovery of damages and 50% recovery of costs from the defendant.





“ 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

We are here to support you

An award winning insolvency dispute resolution platform

Escalate, the ground-breaking insolvency dispute resolution process, was named ‘Accounting Innovation Project of the Year’ at the 2017 British Accountancy Awards, ‘Best Collaboration Initiative’ at the Lawyer Awards 2018, and awarded ‘Excellence in Business Development’ at the Law Society Excellence Awards 2018 and the ‘Legal Services Innovation Award’ at the British Legal Awards 2018.

By removing financial risk, providing transparency on process and pricing, and ensuring that the claimant remains the main beneficiary on settlement, Escalate gives Insolvency Practitioners an opportunity to resolve their disputes in a way that helps rather than hinders their cash flow and the return to creditors.

“ The first time we looked at this entry we knew it would be a winner. The judges particularly liked the collaboration and scalability and value for clients. ”

Judging panel, The Law Society Excellence Awards





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