TENARYS LAW
SOLICITORS

TURNING DISPUTES INTO ASSETS™

COMMERCIAL DISPUTES · GUIDE

Commercial Dispute Viability Guide

A practical framework for deciding whether to pursue, defend, settle or walk away.

PREPARED BY
Tenarys Law

COMMERCIAL DISPUTES
FIXED-FEE DISPUTE VIABILITY REVIEWS

A NOTE FROM KEVIN TIMMS

The most important moment is often before litigation begins

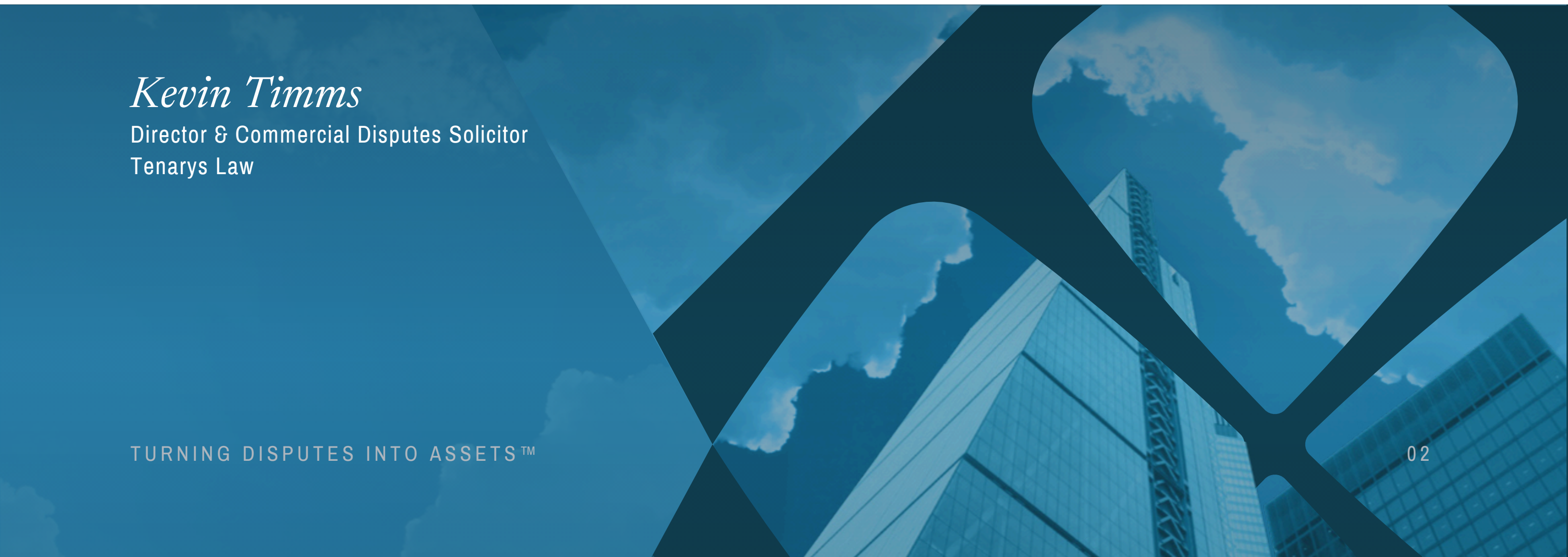
I spend much of my time advising businesses at the point where a commercial problem has become serious, but the right response is not yet clear. Payment may have been withheld, goods rejected, equipment may not have performed as expected, or a claim may have been advanced that appears inflated or commercially unrealistic.

In my experience, the first question should not be whether legal proceedings can be started or defended. It should be what outcome the business is trying to achieve and whether the issue is commercially worth pursuing, defending, settling or walking away from.

That judgement depends on more than the legal merits. The contract, available evidence, value, technical position, relationship between the parties, likely cost and practical prospects of recovery all need to be considered together.

In some matters, the right next step will be a structured dispute viability report. In others, it may be an urgent letter, counsel's advice, expert input, negotiation, a focused investigation or a decision not to proceed.

This guide reflects the practical framework I use when helping businesses assess significant disputes before substantial management time and legal costs are committed. It is intended to help managing directors, finance directors and other senior decision-makers ask the right questions, identify gaps and approach the next step with greater clarity.



Kevin Timms
Director & Commercial Disputes Solicitor
Tenarys Law

INTRODUCTION

A framework for a better commercial decision

Once a commercial issue begins to affect cash flow, operational delivery, contractual exposure or an important business relationship, leadership needs a structured way to assess the position.

This guide brings together the main questions that should be considered before a business commits to formal action. It covers the contract, evidence, loss, causation, recoverability, proportionality, commercial relationships and time limits. It then sets out the principal options and the circumstances in which an independent assessment may be useful.

The aim is not to promote litigation. It is to help decision-makers distinguish between a legally arguable position and a commercially sensible course of action, while there is still an opportunity to preserve evidence, control cost and choose the right response.

The guide can also be used as an internal discussion tool. It can help a managing director, finance director or leadership team identify what is known, what remains uncertain and what should happen next.

PRACTICAL OBSERVATION

"Early clarity gives the business more control over cost, evidence and strategy."

IN THIS GUIDE

SECTION 01

When does a commercial issue become a dispute?

Not every disagreement is a dispute. Disputes over payment, delivery, quality or performance are often resolved commercially, as part of normal operations. That is usually sensible – not every issue needs legal involvement, and not every point should be escalated.

A commercial issue becomes more serious when uncertainty, cost or risk begins to affect the business. This often happens where:

- payment is withheld
- goods are rejected
- a supplier fails to perform
- informal negotiation is no longer progressing
- a customer alleges breach of contract
- defective goods or components cause wider losses
- the parties disagree over scope, specification or responsibility
- the financial exposure becomes material

At that point the business needs a clearer view of its position. The question is not always whether it is right or wrong. It may be whether the evidence supports the position, whether the loss is recoverable, whether escalation is proportionate, and whether a commercial resolution would be better than a formal dispute.

COMMON TRIGGER POINT

"The issue is no longer only operational. It now affects cash flow, commercial relationships, contractual risk or management decision-making."

SECTION 02 · THE FRAMEWORK

Eight questions to ask before escalating a commercial dispute

Before committing to a formal dispute process, step back and assess the position objectively. These eight questions are a practical starting point.

01 What does the contract actually say?

The contract is the starting point – signed terms, standard terms and conditions, purchase orders, acknowledgements, specifications, warranties, payment and delivery obligations, limitation, exclusion and dispute-resolution clauses. Businesses often form a strong commercial view before the contract has been properly reviewed. That creates risk.

02 What evidence is available?

A dispute that feels strong commercially may still be difficult to pursue if the evidence is incomplete, unclear or inconsistent. Consider the documents, correspondence, technical records and internal notes that show what was agreed, what happened, what went wrong and what loss followed.

03 What loss has actually been suffered?

Separate frustration from provable loss. The value of the dispute must justify the cost, risk and disruption of escalation. That means understanding the financial impact, how it has been calculated, and whether it can be supported by evidence.

04 Is causation clear?

It is not enough that something went wrong; the breach or failure must have caused the loss being claimed. In technical supply chains there may be several possible causes – design, manufacture, installation, misuse, delayed delivery, customer handling or third-party involvement.

05 Is recovery realistic?

Winning the litigation and recovering the money are not always the same thing. A strong claim may still be a poor commercial decision if the other party cannot pay, will not comply or has limited assets. Consider whether there is a practical route to an outcome.

06 Does the likely outcome justify the disruption?

Weigh the value of the claim or exposure, the importance of the relationship, the strength of the available evidence, and the practical effect of escalation on day-to-day operations and management time.

07 Is the relationship worth preserving?

Some customer or supplier relationships are worth more than the dispute itself. Where the relationship is ongoing, consider whether formal escalation will help, harm or end it.

08 What happens if the business does nothing?

Doing nothing is also a decision. It may preserve cash and management time, but evidence can deteriorate, losses can grow, the other party can gain confidence and a limitation deadline can be missed. Limitation – the time by which a claim must be brought before it becomes time-barred – may be set by contract or statute and should be considered early.

KEY POINT

“A dispute should be assessed commercially before it is escalated legally.”

SECTION 03

The evidence test: what should the business gather first?

Evidence is often the difference between a dispute that can be assessed with confidence and one that becomes expensive to untangle. Before seeking a formal view, gather what shows what was agreed, what happened, what went wrong and what loss has followed.

- ✓ Signed contracts or terms and conditions
- ✓ Purchase orders and acknowledgements
- ✓ Specifications, drawings, technical documents
- ✓ Delivery notes and inspection records
- ✓ Quality reports or test results
- ✓ Correspondence with the other party
- ✓ Photographs or videos of the issue
- ✓ Complaints or rejection notices
- ✓ Invoices and payment records
- ✓ Expert or technical input already obtained
- ✓ Internal notes on what happened and when
- ✓ A timeline of key events & the financial loss

The evidence need not be perfect before seeking an initial view – part of the assessment is identifying what is missing. But the clearer the information, the easier it is to assess the strength, value and commercial practicality of the dispute.

EVIDENCE CHECKLIST

"Aim to answer three practical questions: what was agreed, what happened and what loss followed."

SECTION 04

Is the dispute commercially worth it?

Not every dispute should become a legal matter. Some are better resolved commercially. Some should be settled early. Some should be defended firmly. Some should be pursued because the value, evidence and strategic importance justify the cost. The decision should be made deliberately, not emotionally.

WEIGH, DELIBERATELY

- the likely value of the claim or exposure
- whether the loss can be evidenced
- whether recovery is realistic
- whether the dispute is strategically important
- whether a wider commercial principle is at stake
- whether the likely outcome justifies the cost
- the time and appetite to pursue the matter
- whether a negotiated outcome would be more sensible

This is where proportionality matters. A business may be right in principle yet face a poor outcome if the likely return, distraction and risk do not justify escalation. Equally, a business may be reluctant to escalate but hold a strong, valuable position that should not be abandoned without proper assessment. The value of early assessment is that it separates the strength of the argument from the commercial wisdom of pursuing it.

PRACTICAL OBSERVATION

“The key question is not only whether the business has a point. It is whether that point is worth pursuing.”

SECTION 05

Pursue, defend, settle or walk away

A proper assessment does not always lead to litigation. Its value lies in helping the business choose the right option.

Pursue

Where the contract position looks strong, evidence is available, loss is significant, recovery is realistic and informal attempts have failed. Take a firmer position, seek settlement from a position of strength, or prepare the matter properly if escalation becomes necessary.

Defend

Where the business faces a claim or threatened claim, liability is disputed, the claimed loss appears overstated, or the other party is applying pressure without sufficient evidence.

Settle

Where evidence is mixed, the relationship is valuable, or an early resolution would protect cash flow and management time. Settlement is not weakness – it can be a commercial decision to control risk.

Walk away

Where the value is too low, evidence is weak, recovery is unlikely, or the likely outcome does not justify the risk and distraction. Sometimes the value of an assessment is in knowing not to proceed.

KEY POINT

“A good assessment should not push the business towards litigation. It should help it make the right commercial decision.”

SECTION 06

Where these issues often arise

Disputes in manufacturing, engineering and technical supply chains rarely involve a single issue – contract, specification, evidence, causation, quality control, customer pressure and the value of the relationship all interact.

Defective manufactured components

A manufacturer supplies components later rejected or alleged to be defective. The dispute may turn on specification, tolerance, inspection, acceptance, causation and whether the claimed loss is properly evidenced – and whether to pursue payment, accept rejection, challenge the allegation or negotiate.

Component failure causing wider losses

A low-value component incorporated into a higher-value product fails; the customer seeks recall, replacement, warranty or lost-profit losses. The question is whether the supplier is responsible for those wider losses, whether they are recoverable under the contract and whether the evidence supports the claim.

Specialist supply-chain delay or non-compliance

A supplier is blamed for delay, non-conforming parts or failing to meet required standards. The dispute may involve contractual deadlines, technical compliance, changed specification, customer pressure and the allocation of responsibility between several parties.

Machinery performance or installation disputes

An equipment supplier faces a complaint that equipment has not performed as expected – involving performance, installation, commissioning, servicing, maintenance, customer misuse or withheld payment. The task is to separate technical fault from contractual responsibility and commercial strategy.

KEY POINT

"In each scenario the same questions apply: what does the contract say, what does the evidence show, what loss has been suffered, and what outcome is realistically achievable?"

SECTION 07

When should a business seek an independent view?

Even where the commercial issues appear clear, businesses often benefit from an independent assessment before committing significant management time and legal costs. This is particularly relevant where:

- the dispute value or exposure is material
- payment is being withheld
- a customer or supplier is threatening a claim
- the other party has instructed solicitors
- internal views are divided
- the evidence is complex or technical
- the business is unsure whether to pursue or settle
- management wants a clear recommendation before spending more

The purpose of an independent view is not simply to start a legal process. It is to bring structure to the decision – to understand whether there is enough evidence, whether the position is commercially realistic, whether further investigation is required and whether the matter is suitable for formal escalation.

PRACTICAL OBSERVATION

“The earlier the business understands its position, the more control it has over the next step.”

SECTION 08

A fixed-fee dispute viability report

Tenarys Law provides a fixed-fee dispute viability report for businesses that need a clear recommendation before committing to a wider legal process. It assesses the available information and helps decision-makers understand whether the business should pursue, defend, settle, investigate further or walk away from the dispute.

FIXED FEE

£5,000
plus VAT

TIMING

14 days
from instruction

OUTPUT

A clear recommendation on next steps

SUITABLE FOR

Significant disputes requiring a structured early recommendation

THE REVIEW CONSIDERS

- ✓ the strengths and weaknesses of the position
- ✓ the available evidence and any obvious gaps
- ✓ the contractual and commercial context
- ✓ the likely value or exposure
- ✓ whether further investigation is needed
- ✓ whether settlement should be explored, and whether escalation is justified

Triage & Viability Report

The dispute viability report is one possible next step. An initial triage helps determine whether it is appropriate or whether the matter requires a different early response, such as urgent correspondence, counsel's advice, expert input or focused investigation.

Request an Initial Triage

The questions the report answers

It is an early decision-making tool – a proportionate way to answer the questions that matter most before significant legal costs are incurred.

01 Do we have a viable position?

02 What are the main strengths and weaknesses?

03 What evidence is missing?

04 Is the other party's position stronger than it first appears?

05 Is the likely recovery worth the cost and risk?

06 Should we pursue, defend, settle, investigate further or walk away?

The report is not intended to replace full litigation advice where a matter must be taken forward. For businesses that have previously experienced open-ended legal costs, it provides a **fixed-fee route to early clarity** before a larger decision is made.

THE ADVISER

About Kevin Timms and Tenarys Law

Kevin Timms
Director & Commercial Disputes Solicitor

Kevin Timms is a commercial disputes solicitor and Director of Tenarys Law. He advises businesses where the legal issues, evidence and commercial context must be assessed together before a decision is made.

His experience is particularly relevant to manufacturers, engineering businesses and technical supply-chain companies. He has advised on disputes ranging from several hundred thousand pounds to tens of millions – including product liability, manufacturing disputes, supply-chain failures, engineering evidence, shareholder disputes, professional negligence, insurance disputes and complex multi-party litigation.

Kevin has acted for both businesses and insurers, giving him a practical understanding of how disputes are evaluated from different perspectives. His focus is not simply on advancing legal arguments – it is on helping clients make commercially sensible decisions: whether to pursue, defend, settle, investigate further or walk away.

POSITIONING

"Senior, commercially grounded dispute advice for businesses that need a clear view before committing to significant legal costs or litigation."

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NEXT STEP

Need a clear view before taking the next step?

Commercial disputes can become expensive quickly, particularly where the evidence, value, risk or recovery position is not yet clear. Tenarys Law helps businesses assess the position and identify the most appropriate next step.

That may be a dispute viability report, an urgent letter, counsel's advice, expert input, negotiation or another form of early action.

If your business is facing a live commercial issue, request an initial triage. The short triage form asks about the nature, approximate value and current stage of the dispute so that Tenarys Law can identify the most appropriate next step.

Discuss the issue before committing significant time and cost.

Request an Initial Triage

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