

## — DISPUTE FUNDING

# No Skin in the Game, No Reason to Settle

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There is an uncomfortable truth at the centre of how most disputes are run, and it has nothing to do with the merits. A dispute that settles early is, for an adviser billing by the hour, a tap being turned off. The incentive to keep it running is structural, and it points in exactly the wrong direction.

This is not an accusation of dishonesty. The overwhelming majority of lawyers are conscientious and act properly. But incentives shape behaviour quietly, at the margins, across a thousand small judgement calls. And the billable hour rewards **activity, not resolution**.

## The arithmetic is the problem

Consider what an hourly model actually pays for. It pays for time: letters, applications, rounds of disclosure, expert reports, interlocutory skirmishes, hearings. Every additional step is revenue. Settlement is the one outcome that **ends the revenue**.

So a perfectly rational, perfectly honest adviser on an hourly retainer faces a built-in tension. The client wants the best net result, as quickly and cheaply as possible. The fee model rewards the opposite: more steps, more time, more fight. Nobody has to act in bad faith for this to bend outcomes. It is enough that, when a case reaches one of those forks, whether to press for an early commercial settlement or issue the next application, the model offers no financial reason to take the cheaper path and several to take the longer one.

## How it shows up

It rarely looks like cynicism. It looks like thoroughness. It looks like “we should protect our position.” It looks like one more expert opinion, one more tranche of disclosure, a robust five-page letter where a phone call would have done.

And it shapes the posture taken with counsel, too. An instructing adviser with no stake in an efficient outcome has little reason to rein in a bullish stance and every reason to let the matter run to the next stage. Settlement gets characterised as weakness; escalation gets dressed up as rigour. The client, meanwhile, carries the cost and the risk while the meter runs and, as I have written before, watches the dispute drag across year-ends and balance sheets that can ill afford it.

## THE POSTURE

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### In fairness

It would be lazy to pretend the picture is entirely one-sided. Reputation, repeat business and professional conduct rules all pull lawyers towards serving the client's real interests, and many firms hold that line with genuine integrity. Costs budgeting and fixed-fee arrangements exist precisely to blunt the incentive. And risk-sharing models are not a magic cure: paid a share of recovery, an adviser can just as easily be tempted to bank a quick, cheap settlement rather than hold out for the right one. No fee model removes judgement. The question is **which way the model leans** when judgement is finely balanced.

### Alignment is the fix

The cleanest answer to a misaligned incentive is to align it, to give the adviser **skin in the game**. When a representative is paid out of what is actually recovered, and only if it is recovered, their interests and the client's converge almost entirely. The adviser now has every incentive the client has: to win, yes, but to win efficiently: to settle at the right number at the right moment, because dragging a case out burns the adviser's own time and puts their own return at risk. Risk-sharing does what conduct rules and good intentions can only ask for: it makes **the efficient outcome the profitable one**.

That is the logic behind **damages-based, no-win-no-fee** arrangements, and it is why, at Systech, we structure our funded offering that way. By backing strong, merit-based claims under a DBA paired with after-the-event insurance, we put ourselves on **the same side of the table** as the client. We are paid when they recover. So when settlement is the right answer, we have no reason to talk anyone out of it, and every reason to get there.

### The question worth asking

Before handing a dispute to anyone, ask them one thing: what happens to your fees if this settles next month? If the honest answer is "they stop, and that's a problem for us," you have learned something important about whose interests the strategy will quietly serve. If the answer is "we'd be delighted. We only get paid when you do," you are talking to someone whose incentives point the same way as yours.

## SKIN IN THE GAME

**Skin in the game is not a marketing line. It is the difference between an adviser who is paid to fight and an adviser who is paid to win.**

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*Have you seen the billable hour shape dispute strategy in ways that didn't serve the client? I'd be interested in others' experience.*