



Summit
LAW LLP

4 IMMEDIATE STEPS

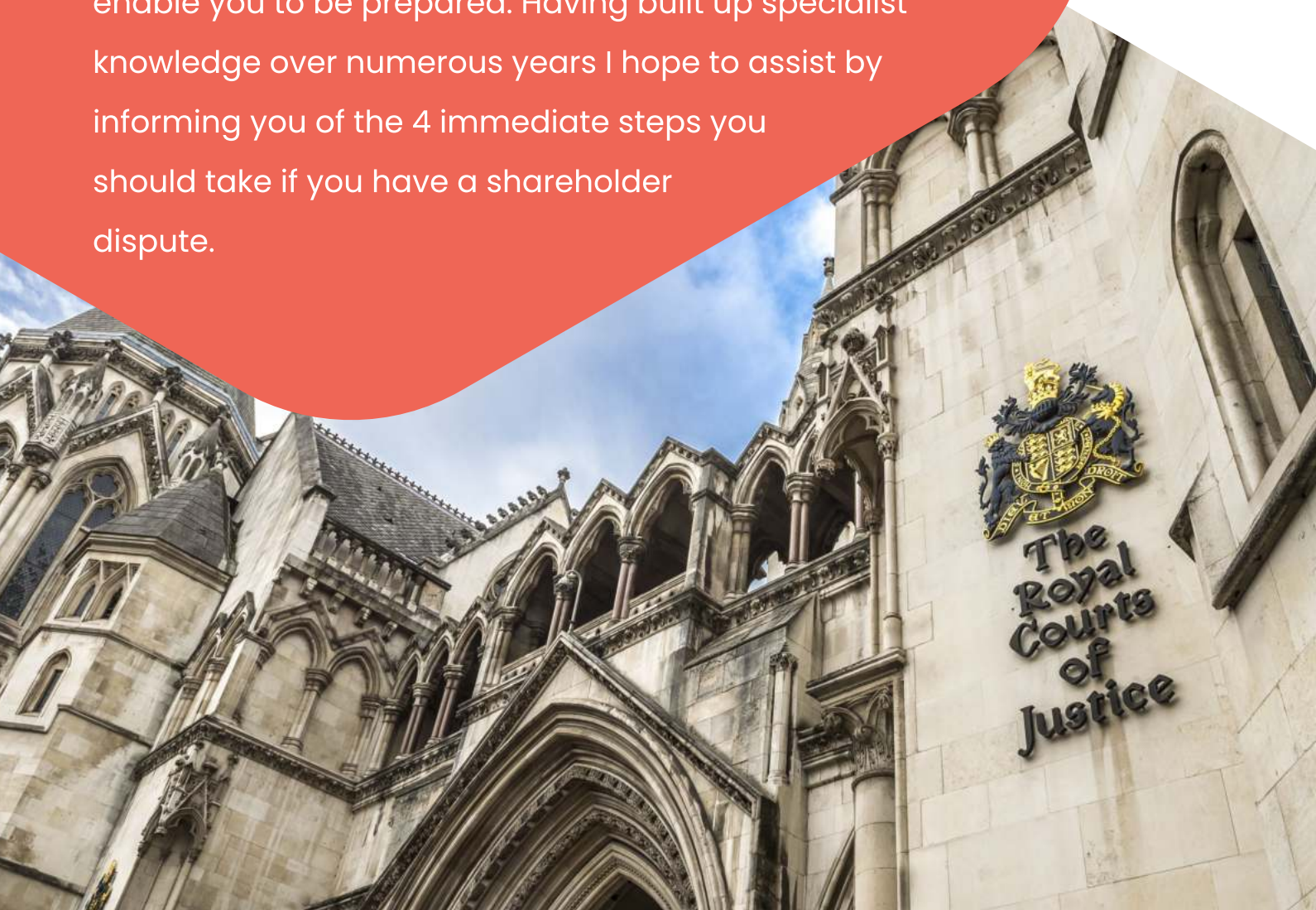
TO TAKE IF YOU HAVE
A SHAREHOLDER
DISPUTE

Introduction

The purpose of this article is to assist shareholders who find themselves embroiled in a dispute with a fellow shareholder(s) and wish to know what steps should be taken.

A corporate divorce?

Anyone who has been through a divorce will know that it can be incredibly expensive and not to mention an emotional rollercoaster. Corporate divorces or shareholder disputes are not dissimilar. If you are involved in one you must seek specialist advice and be knowledgeable about this regime, because being forewarned is being forearmed. In other words, knowledge in advance will enable you to be prepared. Having built up specialist knowledge over numerous years I hope to assist by informing you of the 4 immediate steps you should take if you have a shareholder dispute.



Immediate Step 1:

Instruct a specialist solicitor to present what is known as a Section 994 petition.



Perhaps the greatest protection that you have as a minority shareholder, is a right to petition the court for an order under section 994 Companies Act 2006 which provides that: -

“A member of a company may apply to the court... for an order... on the ground that the company’s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of its members generally or of some part of its members...”

In essence section 994 is attempting to protect minority shareholders, meaning those with a 50% shareholding or less in a situation where the majority shareholders are seeking to act in a way which is ‘unfairly prejudicial’ to the minority shareholders’ interest.

What does “Unfairly Prejudicial” mean?

In summary the minority member has to show serious mismanagement of the company’s affairs. Other typical examples of ‘unfairly prejudicial’ conduct include: -

01

Abuse of power by the controlling directors and breaches of the company’s articles.

02

The awarding of excessive remuneration.

03

Exclusion from management in circumstances where there is a (legitimate) expectation of participation.

04

The diversion of business to another competing company in which the majority shareholder holds an interest.



“Unfairness” has a certain meaning defined in case law so as you can see from the latter and the above, it is an extremely specialist area of law. This can therefore be a real problem or a challenge for some solicitors who are not familiar with shareholder petition cases. It could mean that some lawyers spend their time having to research the law and may not be aware of tactical considerations. They may also try and charge you for their research which is simply not fair. If you instruct a specialist lawyer, you should expect that they know the law. In other words, you should not be paying a solicitor to research simple matters that our lawyers already know. For example, it is quite common to make what are known as “O’Neil v Phillips” offers which can be very complex and require great consideration and skill when drafting. If the solicitor you instruct is not familiar with these offers, you may well find that your case and the litigation go on for longer than strictly necessary. This means that it will be more expensive for you, the client. So, remember do your research carefully and instruct specialist solicitors to advise on your section 994 unfair prejudice petition.

Immediate Step 2

Make sure you are registered as a shareholder and that you are treated as a member of the company.



The ability to petition the Court under s.994 Companies Act 2006 to complain about unfair prejudice in relation to the management of “the company’s affairs” is generally confined to a person who is a “member” of the company.

In substance this means a person who is on the Register of Members or should be on the Register of Members of the company. It is therefore important to ensure that the statutory books of the company should be kept up to date as it is the Register of Members that is determinative and not the annual return or any other filed documents at Companies House.

So, what is the solution?

If you have always been treated as a member and the majority member blocks registration it may be possible to make an application to court to rectify the Register of Members; or even to complain that the failure to register the membership is itself evidence of unfair prejudice.

By way of example, we had a client who was a minority shareholder and who had been treated as a member, but the majority members refused to register him. We sent a formal legal letter to the Company Secretary threatening to make a formal court application to rectify the members register and fortunately for our client they were added to the register. As a consequence of this successful outcome, we were then able to file our client's unfair prejudice petition.

Immediate Step 3

Do not delay commencing your unfair prejudice claim

In many types of court proceedings, the claimant only has a set number of years in which to bring a claim before it can become "statute barred".

This is a danger because it means that if a claim is not brought in time the case can be struck out and the claimant/petitioner can lose his or her opportunity for the court to make a determination of the issues.

Delaying is therefore a huge problem because it could mean that your petition or complaint will go unheard, and you will not be able to seek redress from the court for ever!



The impact can therefore be devastating and could mean that you lose the opportunity for the court to order that your shares should, for example, be bought at a certain price.

Although there are no strict limitation periods for unfair prejudice claims, there is a risk that if a petitioner delays in issuing a petition they may have been said to have acquiesced (i.e. agreed or waived their right to object) in respect of any unfairly prejudicial acts which were known to them. It might also be argued that they delayed too long in taking appropriate legal action so as to prejudice the respondent.

This is exactly what happened in a case called *Re Grandactual*. In this case the respondents applied for an order striking out a petition in circumstances where the acts complained of, and in which the petitioner had participated, had occurred nine years before the petition was issued. The court stated that it would not countenance proceedings where the petition was presented nearly 10 years after the events complained of and struck out the petition.

Accordingly in short if you do want to use the unfair prejudice procedure it is important to remember that the court does expect the member to “get on” with the petition. That being the case to avoid this happening to you, why not contact us today!

Immediate Step 4

Be very careful about which solicitor you instruct!

Not only should you instruct a specialist solicitor with experience of shareholder disputes, but you should also make sure there is no conflict of interest if the company's solicitor acts for the majority members.

The Solicitors Code of Conduct lays down strict rules which must be complied with. A conflict of interest is defined as including a situation where the solicitor owes separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict or there is a significant risk that those duties may conflict.

Accordingly, often in a shareholder's dispute situation where the solicitor has acted for the company and is then approached by the majority member, it is likely that the question of conflict will be raised by the minority member.

The problem here is that this can often be used as a tactical manoeuvre to place pressure on the majority shareholder to change solicitors. In most cases it is difficult for the minority member to force a removal of the solicitor where the solicitor maintains that he has considered the conflict point and dismissed it.

Usually, common sense dictates that a petitioner should join all the other members so that they are bound by the order made by the court.

The other respondents are not allowed to use the company's position as co-respondent to justify using company money to fund a joint defence effort *Corbett v Corbet*. Accordingly, if you are a minority shareholder it is important to ensure that the majority members do not use company funds to defend the petition.

A petitioner should also be alert to the majority members (normally the directors) awarding themselves bonuses and pay increases as a disguised means of funding their defence.

Accordingly, it is very important to ensure you instruct solicitors who have the experience to deal with these situations and who can give expert advice.

It's Time to Take Action!


If you are engaged in a shareholder's dispute either as a minority or majority shareholder, then call us urgently to find out what are the key issues you need to address and what your next step should be in order to protect your position. To arrange a no-cost 20 minute "Shareholder Disputes Session Consultation", please call our office on 020 7467 3980.




About the author



Jeremy Boyle L.L.B (Hons) is a solicitor and partner and an expert in dispute resolution who undertakes shareholder dispute litigation. Jeremy is often asked to write articles for leading publications and to provide talks on litigation related matters. Accordingly, he is well versed in assisting shareholders to bring or defend shareholder dispute claims.

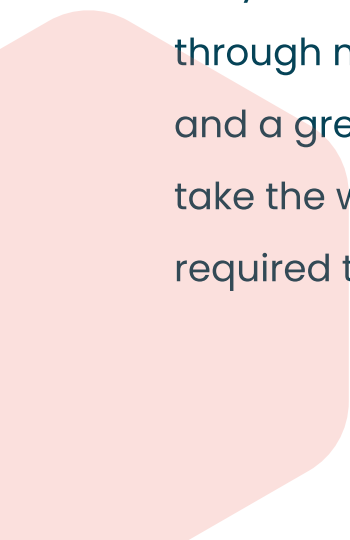


So why should I instruct you and not another solicitor? What's in it for me if we hire you?



Summit Law is a central London specialist law firm situated near the Inns of Court and Royal Courts of Justice and Rolls Building. We are committed to fighting our clients' corner and because we are specialists, we have a wealth of experience and knowledge to draw on.

We are also committed to resolving claims without going to court, wherever possible, to save you money in legal fees and stress but also to give you certainty of outcome.



By instructing Summit Law at the outset, you are investing in specialist lawyers who might well be able to stop a claim or settle it early through mediation. This will potentially save you huge legal bills and a great deal of stress. We can also help to ensure that you do not take the wrong steps or make an admission when you are not required to do so.

Because we are specialists working day in and day out on dispute resolution cases, unlike other solicitors, we do not have to research the law, we know the relevant provisions so it can save time which brings in huge cost savings for our clients whereas other lawyers who might claim to be experts will waste time having to research this specialist area of law.

What others say
about us
(Don't just take our
word for it)

"I was recommended to Jeremy Boyle of Summit Law by another firm of lawyers to advise on a bitterly contested and complex shareholders' dispute where I and a business partner were minority shareholders. There were several parties involved and a lengthy trial ensued which I am very pleased to say we won. Summit Law fought tirelessly to win our case. I have no hesitation in recommending them." (P Bass, former director, and shareholder).



"I first contacted Summit Law LLP late on a Friday morning. At the start of a bank holiday weekend. I had received by email that morning an instruction that a court hearing had been made related to an issue that I was involved with. After preliminary discussions with Jeremy Boyle (Senior Partner) about the case I decided to instruct Summit Law to represent my interests at the court hearing. The Summit team were super-efficient and kept me up to speed on all aspects of the case. The barrister selected was professional and efficient. Without the commitment of the whole team at Summit Law LLP I am sure the outcome of the court proceedings would have been vastly different. Their attention to detail, professionalism, speed of action and importantly communication was exemplary. Thanks to all concerned". (A Summit Law client).





Disclaimer

This article is for general knowledge purposes only and does not constitute legal advice and is not a substitute for instructing a specialist solicitor. You are strongly urged to seek legal advice on your case.

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