

## KEY THEMES

This session was designed for in-house counsel developing their expertise in contentious matters, or whose remit is not solely focused on such matters and so come across contentious issues less often. We considered the typical lifecycle of a case and shared our top tips on managing common issues faced by in-house counsel on contentious matters.

### Pre-action

- Critical phase to understand relevant factual scenario, which will feed into a merits assessment and case strategy.
- During the initial fact gathering stage, make sure you get an idea of the key documents relevant to the case and how documents have been kept.
- Always think about document preservation, regardless of whether the dispute is ultimately going to be determined in court or by an arbitral tribunal.
- Issue a document preservation notice and ensure that anyone subject to one responds with a confirmation notice.

- Manage ongoing communications and document creation carefully to take account of legal privilege.

### Pleadings

- Not all documents need to say everything. The package of pleadings should collectively represent the legal and factual claim/defence.

### Documents/disclosure

- In-house counsel are under an obligation to ensure preservation rules are complied with.
- Documents disclosed in proceedings can only be used for the purposes of those same proceedings (and not e.g. in overseas proceedings), subject to limited exceptions.
- Disclosure is an ongoing obligation, even during and after a trial (but pre-judgment).
- In arbitration, ensure you understand the tribunal's approach to disclosure early on, and then continue to review as the case progresses.

### Factual evidence

- In litigation, remember to check if Practice Direction 57 AC applies and, if so, follow its requirements closely.

- Manage the witness' expectations of the evidence proofing process - it will inevitably take time and attention away from their day jobs so they will need management buy-in to ensure adequate time for the proofing process to be done properly.

### Expert evidence

- Engage an expert early, as this can inform the merits assessment and help to strengthen your pleadings. However, if you do so, consider instructing an expert advisor, rather than the person who will ultimately produce an expert report for the court.
- Ensure the expert's retainer/engagement letter is separate to the instructions as terms of engagement are not subject to disclosure.
- Consider what in-house expertise you have, and use that expertise when engaging with your expert.

### Preparation for trial

- Witness familiarisation is permissible, but witness coaching is not.
- Avoid submitting long skeleton arguments.

- Be prepared for last minute flare-ups and make sure to finalise all necessary logistics, arrangements for witnesses (visas? hotels?), transcription services and consultation rooms, if needed.

### Trial

- The role of in-house counsel throughout the trial process is important: be ready to respond to issues as they arise, and plan in advance for any of your witnesses being "in purdah" (and therefore unable to discuss the case with you) when giving their evidence.

### Settlement

- Keep settlement in mind throughout the entire dispute cycle, from the pre-action stage to trial and beyond.
- A well-pitched offer (made under CPR 36 in litigation or just without prejudice save as to costs) can mean you can lose the case but "win" overall with costs protection. Equally, be wary of not accepting a well-pitched offer, which can mean you can win the case but "lose" overall with a large costs liability.

## SPEAKERS



**Carinne Kamdar**  
Senior Associate,  
Dispute Resolution  
**Baker McKenzie**  
[Carinne.Kamdar@bakermckenzie.com](mailto:Carinne.Kamdar@bakermckenzie.com)



**Ben Ko**  
Senior Associate,  
Dispute Resolution  
**Baker McKenzie**  
[Ben.Ko@bakermckenzie.com](mailto:Ben.Ko@bakermckenzie.com)



**Ben Levitt**  
Senior Associate,  
Dispute Resolution  
**Baker McKenzie**  
[Benjamin.Levitt@bakermckenzie.com](mailto:Benjamin.Levitt@bakermckenzie.com)



**Jack Secunda**  
Senior Associate,  
Dispute Resolution  
**Baker McKenzie**  
[Jack.Secunda@bakermckenzie.com](mailto:Jack.Secunda@bakermckenzie.com)