
Talk to the UK Borland User Group
Disputes –
avoiding and resolving them

Clive Douglas
Partner

Wragge&Co

Talk to UK Borland User Group

Disputes – avoiding and resolving them

Typical user scenarios

- We didn't contract for this work and we're not paying!
- It doesn't work!
- It doesn't do what you promised it would!
- It's blown the budget and its still not finished!
- It should have been delivered months ago!

Talk to UK Borland User Group

Disputes – avoiding and resolving them

Typical supplier scenarios

- They just told us to get on with it and we did!
- They are too stupid to use it properly!
- They never really knew what they wanted!
- They kept on changing their requirements!
- If they had done the testing we could have finished it!

Talk to UK Borland User Group

Disputes – avoiding and resolving them

Back to basics

- Contracts should:
 - Match mutual understandings and expectations
 - Set out the details on who and how those understandings and expectations will be achieved

- Required elements for a contract:
 - offer
 - acceptance (not counter-offer)
 - consideration

Talk to UK Borland User Group

Disputes – avoiding and resolving them

- Verbal Contracts
- Battle of the forms
 - when does acceptance occur?
 - is there a contract at all?
- Interim Contracts

Talk to UK Borland User Group

Disputes – avoiding and resolving them

Drafting points

- Framework/ call-off contracts
 - conflicting provisions /governing law/ jurisdiction
- Schedules
- Correlation between rights granted to you and those you grant

Talk to UK Borland User Group

Disputes – avoiding and resolving them

Resolving disputes

- Litigation
- Arbitration
- Expert determination
- ADR/ Mediation

Talk to UK Borland User Group

Disputes – avoiding and resolving them

Litigation

- Last resort

Expert determination

- paper only
- parties lose some control
- decision binding

Talk to UK Borland User Group

Disputes – avoiding and resolving them

Mediation

- cheap(est)
- fast
- parties retain control
- confidential
- not binding

Talk to UK Borland User Group

Disputes – avoiding and resolving them

Mediation

- Costs driven trend emerging

- duty to consider mediation

- Dunnett –v- Railtrack (2002), Cowl –v- Plymouth City Council (2001)*