SPURIOUS CLAIMS AGAINST HNWIS: TOP TIPS AND HOW TO AVOID THEM

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HNWIs are particularly vulnerable to spurious legal claims and opportunistic attempts to take advantage of their wealth. Typical claimants include those closest to them, usually following a breakdown in their relationship: domestic staff, business and romantic partners, friends and family. Such claimants are aware that HNWIs, especially those with a public image, may prefer to settle quickly and privately, even in cases that have no merits, rather than incurring the time, costs and publicity of litigation.
Navigating such claims can quickly become complex, even in the simplest of cases which clearly lack merit. This is particularly so in the face of claimant-friendly costs regimes, dealing with litigants in person and/or with the looming threat of the claimant taking their allegations to the media.
In this article, we consider some examples of such challenges faced by HNWIs, their options and the pre-emptive steps to take now to reduce the likelihood of being targeted in future.

Challenges

Legal Issues

It is common for HNWIs to be the subject of threatened or issued claims which lack substantive legal merit, are procedurally deficient and/or incorrectly pleaded. HNWIs are seen as easy targets with deep pockets, so claimants often think they have nothing to lose – and lots to gain. Adding to the frustration in these circumstances is that claimants are often unwilling to engage in co-operative and realistic discussions regarding the merits of such claims (and any counterclaim). Their focus is not on the merits of the claim, but instead in obtaining a payment. Indeed, such claimants might even commence proceedings without giving any prior notice to the HNWI, in clear breach of the pre-action protocols that the court would expect parties to engage in prior to issuing proceedings, which nevertheless puts the HNWI immediately on the backfoot.

Those acting for the HNWI should also consider whether the claimant's conduct constitutes the criminal offence of blackmail, or harassment, which is both a civil and criminal offence. Courts have been known to consider whether threats made in

context of legal proceedings constitute blackmail, when evaluating whether those threats were improper.

Commercial Issues

Even if, as above, the claim is baseless and would likely be dismissed at trial, it is unlikely that the HNWI would at that stage be able to recover all of their legal costs. This is particularly relevant for lower value claims, which are managed by the court on the fast or intermediate tracks where the costs recoverable by successful HNWIs are fixed at relatively low levels.
HNWIs should also be aware that additional claimant-friendly costs rules may apply. For example, in personal injury claims, claimants may have the benefit of the "Qualified One-Way Costs Shifting" (QOCS) regime, which (subject to limited exceptions) limits the liability of an unsuccessful claimant in relation to the legal costs of the HNWI.

Reputational Issues

HNWIs, especially those with a high public profile, may be subject to threats by claimants to take their allegations to the media. Such threats are often put forward to pressure the HNWI to pay out and enter into a settlement or non-disclosure agreement, even if the claims are without merit. HNWIs will be wary of any negative publicity – particularly where the allegations are repeated online without proper scrutiny, which could open the floodgates to other unmeritorious claimants coming forward thinking they too might be able to negotiate a payout.

The Opponents

It is often the case that spurious claims are brought by litigants in person. This can present challenges for HNWIs as it may be difficult to negotiate and work constructively with claimants who have not been formally advised on the unmeritorious nature of their

claims. For HNWIs who are legally represented, this issue needs to be finely balanced with professional expectations for dealing with litigants in person (as to which, see the Law Society's guidance here).

Where claimants are legally represented, their solicitors should also be complying with their professional obligations and the SRA guidance on solicitors' conduct in disputes (see here). That guidance makes clear that it is unacceptable for solicitors to bring claims on behalf of their clients that are without merit and that have been brought without sufficient investigation of the merits or of the underlying legal background.

In addition, letters of claim which threaten that their clients will reveal publicly embarrassing information if the HNWI fails to settle could amount to a failure to act with integrity. In extreme cases, where it is suspected that the claimant's representatives are not acting in compliance with their regulatory obligations, it may be appropriate to report their conduct to the SRA.

Options

Push Back

When a HNWI first becomes aware that a claimant intends to bring, or has already brought, a spurious legal claim, the first step will often be to instruct lawyers to send an appropriate but robust letter pushing back on the allegations. It is important that this correspondence clearly sets out the legal and factual position, for the record. It can also be helpful for claimants to see that the HNWI is taking the matter seriously by obtaining formal legal advice, and do not intend to simply accept their baseless claim. Following receipt of a firm rebuke, claimants will often not pursue their claim further.

However, particularly determined claimants may not be willing to back down as easily. When faced with claimants who intend to pursue their claim regardless of the likelihood of success, engaging in subsequent protracted correspondence with them regarding the details of their claim is unlikely to be productive, and risks incurring unnecessary legal costs. In these circumstances, HNWIs may instead need to consider alternative options to resolve the dispute, as outlined below.

Settlement

HNWIs may initially be resistant to settle claims where the allegations presented are without merit. It can be unpalatable to "reward" individuals who they perceive to have no genuine grievance. However, particularly in low value claims, the commercial reality for HNWIs is that, given the unfavourable costs rules discussed above, it is likely to prove more expensive for them to take the claim to trial instead of reaching an early settlement. Further, hearings are in public – so any claims, however unmeritorious, will potentially be picked up in the press.

By settling a claim, HNWIs can also better protect their confidentiality and mitigate the likelihood of future claims, by ensuring that any settlement agreement includes stringent, risk-averse confidentiality provisions and a wide release clause to protect against future claims.

Reputation Protection

Where claimants threaten to go the press, the HNWI should consider taking immediate, precautionary action.

Firstly, they should remind claimants of any confidentiality obligations or undertakings they are subject to and the consequences of non-compliance (this is particularly relevant to domestic household staff, who are likely to have entered into an employment contract where the confidentiality terms prevail notwithstanding resignation or dismissal).

Secondly, they should put the claimants on notice where the allegations they are threatening to ventilate are defamatory – or where they are planning to disclose private or confidential information – and their potential legal liability.

Thirdly, the HNWI should make clear that any credible media organisation will be obliged to give them a right of reply before publishing, and will need to be satisfied that their platform is not being weaponised and that there is a genuine public interest in publication to their audience. This right of reply affords the opportunity to advise publishers of the true position and of their own legal liability should they repeat the allegations or wrongfully disclose private information. It may, depending on the circumstances, be possible to obtain an emergency injunction to prevent wider publication or disclosure.

If the claimants do proceed to publish defamatory or otherwise damaging material, the HNWI should consider with their advisors the merits of legal action, including a defamation claim to vindicate their reputation, seeking damages and a final injunction.

Interim Court Applications

If a claim has been issued, and if the claimant does not present a convincing legal case, the HNWI should consider applying for the claimant's statement of case to be struck out or applying for summary judgment. The court can grant strike-out in various circumstances, including where the statement of case "discloses no reasonable grounds for bringing or defending the claim" and can grant summary judgment where the claim "has no real prospect of succeeding". The courts will use their powers to strike out carefully; where an application for strike out would require a more detailed consideration of the facts, an application for summary judgment may be more appropriate.

In addition, or alternatively, the HNWI can apply for strike-out on the grounds that the claimant's statement of case constitutes an "abuse of the court's process". For example, claims have been struck out where they were deemed to be brought to cause expense, harassment or commercial prejudice beyond the level normally faced during properly conducted litigation. This occurred in the case of Wallis v Valentine (2001), where the claimant wrote to the defendant threatening that, amongst other things, "I will then embark upon a period of sustained and extensive litigation" and stating "I am impecunious and you may not recover your costs".
Where there is a risk claimants will be financially unable to contribute to the HNWI's costs if the HNWI is ultimately successful and is awarded their costs, the HNWI may consider applying to the court for a "security for costs" order. This requires the claimant to pay money into the court which can be used to pay the HNWI's costs at the conclusion of proceedings. However, it may not always be possible to obtain a security for costs order, for example, depending on the track the claim is allocated to.

Open vs. Without Prejudice Correspondence

When trying to settle a dispute, the standard practice is to engage in "without prejudice" or "without prejudice save as to costs" correspondence, so that this cannot be referred to and relied upon in open court. One of the primary benefits to this is that it enables parties to speak openly and make concessions/accept liability, without fear of that being used against them.

However, in cases which lack legal merit, HNWIs should consider from an early stage whether it is beneficial to conduct any settlement discussions on an open, rather than without prejudice basis. This is particularly the case in circumstances where the claimant's case is weak yet they have been acting unreasonably, as it may be advantageous to have as much of that correspondence available as possible to bring to the court's attention as evidence of the claimant's conduct.

Avoiding Spurious Claims

Given the challenges discussed, HNWIs should consider taking preventative steps to avoid being the target of spurious claims in the future at an early stage. For example, in contracts with employees and business partners, they could include appropriate (but fair) confidentiality and dispute resolution provisions, such as choosing arbitration as the dispute resolution mechanism instead of court proceedings, given the confidentiality protection afforded by arbitration proceedings. HNWIs should also discuss with their legal representatives whether additional protections, such as non-disclosure agreements, would be appropriate to protect their interests. Finally, it is always prudent for HNWIs to keep thorough records, including of relevant documents, electronic communications and notes of meetings, to corroborate their account of events.

Conclusion

Unfortunately HNWIs are always going to be a target and spurious claims are almost inevitable. The threat of publicity from someone going to the press or the court case itself means that – frustratingly – payments are made more often than the unmeritorious nature of the claims themselves should require. However, as explained above, there are ways to mitigate the risk and to deal with the claims as they arise.

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