

Moving on from Ground-Hog Day. Dealing with Vexatious Litigants with Extended Civil Restraining Orders.



Dealing with vexatious litigants is costly and frustrating. Having obtained a hard fought-for order, an unchecked vexatious litigant could potentially keep you in the court process for years; issuing one application after next on the same facts, driving-up costs and leaving you with a feeling of Ground-Hog Day.

A 'vexatious litigant' is an individual who keeps litigating when earlier litigation has been unsuccessful and demonstrates an irrational refusal to '*take no for an answer*'. To stop a vexatious individual litigant issuing repeated applications, a party can apply for an Extended Civil Restraining Order ("**EXCRO**") against them.

An EXCRO once made, restrains the vexatious litigant from issuing further applications in the High Court and/or any County Court in the same litigation without the Court's express permission. If a vexatious litigant attempts to issue further applications without the Court's permission, the EXCRO will *bite* and their application should be immediately dismissed. Typically, an EXCRO will be in force for two years and may be renewed for a further two years thereafter.

So how do you obtain an EXCRO and move on from Ground-Hog Day?

There are two preconditions. Firstly, there must have been two or more orders against the vexatious litigant dismissing their applications as being totally without merit.

Secondly, the Court must be satisfied that the vexatious litigant is 'persistent' in their conduct. Persistence is



demonstrated where an individual, (i) '*keeps on litigating when, on any rational and objective assessment, the time has come to stop*' and (ii) '*displays an obsessive resort to litigation and a disregard of the need to have reasonable grounds for making an application to the Court*' (**Society of Lloyd's v Noel [2015] 1 WLR 4407**).

Where the preconditions are met, the Court will consider whether there is a '*risk that the individual litigant will, unless restrained, make further applications or claims which are totally without merit and which will waste the time and resources of the courts*'. Multiple 'totally without merit' orders will almost inevitably demonstrate such a risk. If the court determines that the vexatious litigant will continue issuing applications that are hopeless and totally without merit, it should go on to make the EXCRO.

If you are experiencing difficulties with a vexatious individual litigant and would like to discuss applying for an Extended Civil Restraining Order, please contact our [commercial disputes team](#).



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