

The proposals are thoughtful. The points which prompt specific comment are;

Questions 4/5; I can't see how a system of loser pays could easily be enforced. I suspect it would create far more problems than it would solve. I'm not sure an upfront fee will improve the standard of complaints. I suspect there may be benefit in clarifying the circumstances in which complaints are liable to fail because of the paucity of information or presentation.

Further proposals. I'm in favour of a likelihood of confusion test. Also it may help to clarify that delay in bringing a claim may impact on chances of success. Also support the anti-avoidance idea in relation to "three strikes" rule. The expert's need to be able to find abusive registrations for reasons not set out in the complaint (it's a safeguard for complainant's, in appropriate cases, who haven't understood the rules). I think experts need to be able to represent parties.

I was not attracted to incorporating explanations as to how experts weigh evidence - this could greatly complicate the process and lead to a proliferation of complaints about whether an expert had followed the guidance. I think that either the reply should be scrubbed or the respondent should have a right to respond to the reply. The concern about this is that the amount of work the expert would have to do would multiply. Maybe if a complainant wants to serve a reply, it should have to pay an additional fee?

I'm a little troubled about proposals that make the DRS more of a quasi-court process. Its attraction at the moment is low cost and comparative informality. If the rules multiply and the framework becomes more complex, it will lose both of those features. So it may be that there is a need to decide whether to stick with a system which delivers reasonable justice speedily and inexpensively or move to a more developed framework.

Antony Gold (Nominet expert)

Partner,

Eversheds LLP