



“A risk for London is that it starts being perceived as slow – and therefore expensive.”

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What kind of disputes were you seeing in the years before 2020?

My perception as a civil fraud practitioner is there are fewer cases with their centre in Russia and former Soviet countries and more in China. As power and wealth has moved to China so have the fraudsters. There's been a massive, exponential increase in cases involving China, Hong Kong and that part of the world, which are litigating at least partly in London.

That's due to the growth of China's economy, presumably.

Where there are large amounts of money, there is always scope for fraud. English law is also well known for having the kind of remedies, worldwide freezing orders, which lend themselves to that kind of dispute. Often the fraudsters are from outside China but the centre of the case is in China. It's a challenge and an opportunity, as China has its own very sophisticated legal system and there's also a huge problem with enforcing judgments in China.

Looking at the fraud pipeline, you must be expecting a busy few years ahead?

For sure – all the fraud people would say that. I don't know if it has never been busier, but there's been a constant stream of it. London has the ability to fashion remedies which claimants like. London is also still an attractive place for the super-rich to live and some of those super-rich have acquired wealth by means that are not wholly legitimate. If they are here, they can be served here and proceedings may then take place here – even if the dispute concerns another part of the world.

What was it like as an advocate dealing with 2020?

We learned very quickly to deal with online hearings. Some people like them, but most don't – they take longer, are more tiring for everyone, particularly the judge, and it's much harder to build a rapport with the court. The young barristers are used to seeing everything online, but people of my era, we may be comfortable online, but often we still prefer hard copy bundles. Because commercial disputes are well resourced and we've been using electronic trial bundles for years, it's not been that much of a stretch for commercial solicitors to put the documents online earlier for remote hearings.

How well did the commercial courts deal with the pandemic?

They've dealt well, but the problem is things take longer and delays are increasing, absolutely no question. I appeared for Wirecard in a hearing just before it went bust – we got a £25m fraud case struck out – and the other side appealed in June 2020. That's eight months ago and we still haven't heard. If the Court of Appeal gave permission tomorrow or today then we wouldn't get a one-day hearing until the end of the year at best, maybe early 2022, so if the appeal is allowed there would effectively be a two-year delay in the case. In a way, it doesn't matter how quickly the Commercial Court deals with things –

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although it is slowing down and it's more difficult to get trial dates – if there is a blockage at the appeal level. One of the risks for London at the moment is people start perceiving it as slow and therefore expensive.

Are delays getting worse because of Covid, or was that already systemic?

It's got worse during the Covid period. It's a lack of investment in the judiciary, I guess, and a reflection that if you've got more cases you need more judges. You can see the numbers – the delays in getting hearings are increasing across the divisions. They've been increasing for a few years, but the impact of Covid has made it worse because hearings take longer. You'll routinely have judges saying: “If we could all be in court we could deal with this in half a day, but we'd better allow a day.”

How do you feel about investment in the judiciary?

It's not that the people who are going to the Bench aren't extremely good – there are some brilliant judges around at the moment. There just aren't enough of them.

Will London sustain its global position for disputes over the next five years?

Probably in the short term, because people won't notice any difference. As long as you can still get an urgent hearing for an injunction, that's key, and London's brilliant at that, no question. We've adapted very well to Covid, we've got very swift response times, we've got teams of lawyers who are ready to work around the clock to give you an answer. Longer term, it's more difficult to say. It's a question of balance. When I grew up, people always came to London because they thought they could get the right answer... eventually. That's probably still true, it's just that getting the right answer can be expensive and sometimes GCs aren't particularly interested in the right answer, they just want an answer that comes quickly one way or another, rather than having everyone tied up in litigation for years.

Many people have talked about a notable tilt towards arbitration – is that your sense?

There probably has been an expansion of arbitration – it's a strong US influence, with US firms coming to London and setting up offices. But the problem with arbitration, as is often said: “It's hard to get justice in a small room.” You're at the mercy of the arbitration panel, appeals are limited, but you do have confidentiality. Sometimes people say they want arbitration because they think it's quicker, but you try and get three arbitrators' diaries together for a five-day hearing – you're not talking this year.

How much impact do you see from Covid on the disputes cycle?

There's been a pause with people thinking about not starting litigation unless they had to in 2020. But my impression in 2021 is that people have said: “We're going to hit the ground running; this is going to end and we need to start gearing up.” Cases are picking up again now.

Will Covid generate much litigation?

Yes. Everything will have a Covid flavour. There are obvious Covid cases like the business interruption dispute, but more you'll be finding that there are cases about, “We have this contractual obligation, we couldn't perform it because of Covid, what kind of latitude is the court going to grant in terms of construing the contract?” I don't know if the commercial world, apart from insurance, whether you'll have many cases that are only about Covid. As an act of God, it's got limited litigation potential.

What are you expecting in disputes in the next three-to-five years?

It's going to be busy. The movement of funds around the world is getting quicker every week. You're going to find a lot more bitcoin and cryptocurrency elements to frauds – that will be a big thing. There will be big developments so far as disclosure is concerned, because on the one hand, there is the pressure to reduce disclosure and keep costs down; on the other, there is a strong view that you can't get justice unless you have proper disclosure. There is going to be a very large debate about how disclosure works.

How should the commercial disputes market be shaken up in future?

If London is to retain its place as a litigation centre then we need to give clients what they want, which is essentially speed and accuracy. It's not only that you get a decision, but that the decision will be right or as close to right as you can expect. I'm reasonably positive about that. London has excellent lawyers and an excellent court system with some great judges – the key thing is focusing on those strengths. That way, clients will want to litigate here.

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