



“Technological evolution should have brought litigation costs down – it seems to have done the opposite.”

SABINE CHALMERS | GROUP GENERAL COUNSEL, BT

How has litigation facing BT changed in recent years?

Over the last year, Covid has obviously led to delays across the globe. Parties to litigation have also inevitably been stepping back, re-assessing priorities and looking closely at force majeure and termination rights. Going forward, I anticipate that everyone will also be keeping a close eye on insolvencies and what that means for contractual enforcement, insurance claims, who bears the loss.

There has also been enormous evolution in the world of data, tech and IP – these areas of law are changing and expanding very quickly. We closely monitor the implications for us – litigation or otherwise.

I suspect that in a post-Covid world, governments will be highly focused on consumer protection and that will have a knock-on impact on regulation. We are already in a highly regulated industry and will continue to monitor this space carefully.

Has regulation plateaued or is more coming?

For the telco industry, it has been and will probably continue to be a constant feature, though with shifts in the expected regulatory outcomes. What will be interesting to see is whether, for some industries, governments will ease regulation to encourage investment to enable the economies to recover or to get things done more quickly. Take pharma and the pressure to get vaccines approved. It's going to be an interesting time.

Has there been a shift in BT's handling of disputes and regulatory risk in recent years?

It's been fairly constant. I would like to think we've done the right thing by the country and our customers. We've worked hard to build a constructive relationship and stronger dialogue with stakeholders, particularly Ofcom. A shift for many industries and companies has been greater dialogue, less resort to the courts.

Has reputational risk come more into your litigation strategy?

Definitely.

What kind of disputes concern you the most and why?

Any disputes where there's a tremendous amount of money or our ability to operate is at stake. Obviously disputes where there might be a big knock-on impact on reputation. Situations where you're at the receiving end of a compliance infraction with associated fines are also very challenging.

How much impact do you see Brexit having on disputes and the risk environment?

We've done a lot of Brexit planning. It's early days and a lot will have to work its way through. Obviously, everyone is watching the data space very closely to see what Brexit means for existing contracts and regulation.

“Has reputational risk come more into your litigation strategy? ‘Definitely.’”

Will London’s status as a centre for dispute resolution endure in the years ahead?

I’m reasonably optimistic. English is the working language of many companies and forums; the historical role England has as a safe and objective jurisdiction to litigate in... I hope that holds up.

Does that extend to the currency of English law in international contracts?

Probably, yes. There’s an element again of the language and the historical reputation for simplicity and certainty. I don’t think we can take it for granted, but it will remain a credible jurisdiction.

What’s your advice to peers in managing litigation or heading off dispute risks?

Litigation for me is always the last resort. Focus first on exhausting dialogue or mediation. And if litigation is unavoidable, be sure to remind business colleagues that it is not an exact science – it takes management time and money, and it’s subject to human error.

What are the big trends you’re expecting in commercial disputes over the next five years?

One of the things that’s always interesting to watch is how many US trends end up being exported – for example, the prevalence of class actions or the increase in the types and levels of damage awards. I think this will continue. I also believe that data and technology will experience an explosion in disputes on a global basis.

Are you expecting more disputes to be handled in Asia-Pacific hubs?

This may very well be the case – especially if strong counterparties based in Asia insist on different venues and choices of law. Particularly as the balance of economic power shifts.

How do you feel about alternative billing or risk sharing?

Litigation is incredibly expensive. I would have expected that over the last five years, technological evolution would have brought costs down, but it seems to be the opposite. I have always been a big believer in risk sharing with law firms, more akin to the US model, but I do not expect this to ever be embraced wholeheartedly in the UK – especially given the constraints of our own conduct rules.

If there was one thing that you’re not getting from advisers that you’d like to see, what would it be?

It’s very easy as an adviser to lay out the options and fall in love with the law. A lot of litigators also just like a good fight. What I always ask advisers is: “If this was your money, what would you do with it?” and I expect a good and honest answer.

Any other points to consider?

What the courts are doing around the world to use technology to speed up and improve the experience. That’s going to be very important.

Do you see signs of those progressive attitudes in the courts?

We’ve seen a little through Covid in how the courts have had to adapt but are now often facing a backlog of cases. In any field it’s important to be flexible and open to doing things differently to enable cases to be handled promptly.

This is part of a series of 30 interviews with senior in-house counsel and other leading figures from across the global disputes industry. You can find the other interviews, as well as insights from our expert litigators, at:

www.hfw.com/litigation

HFW LITIGATION

HFW has one of the most active disputes practices in the market, covering litigation, international arbitration and alternative forms of dispute resolution.

We have more than 350 specialist disputes lawyers across the Americas, Europe, the Middle East and Asia-Pacific, handling high-value, complex, multi-party and multi-jurisdictional disputes, including fraud and asset recovery, insolvency, class actions, and enforcement actions.

Our expert lawyers frequently litigate on behalf of clients in courts around the world.

To find out more about our leading disputes offering, contact:

NOEL CAMPBELL

Global Head of Litigation

T +852 3983 7757

M +44 (0)7774 964184/+852 6113 9280

E noel.campbell@hfw.com

NICOLA GARE

Disputes PSL

T +44 (0)20 7264 8158

M +44 (0)7795 612270

E nicola.gare@hfw.com

DAMIAN HONEY

Head of International Arbitration

T +44 (0)20 7264 8354

M +44 (0)7976 916412

E damian.honey@hfw.com

SEAN TWOMEY

Director of Business Development

T +44 (0)20 7264 8546

M +44 (0)7976 282592

E sean.twomey@hfw.com

**Find us on LinkedIn at www.linkedin.com/company/hfw
or search for #HFWlitigation.**