



“Class actions have a place, but are not going to take over English litigation.”

SONIA TOLANEY QC | ONE ESSEX COURT

What's it been like handling cases during the Covid-19 pandemic?

Incredibly busy and fast moving. I appeared at a virtual hearing pretty much the first day they started and since then have done a large number of substantial virtual hearings, including *Travelport v WEX* – one of the landmark pandemic cases so far. That was an expedited trial, so it was rather an intense year.

What's the process like when you're at the coalface?

Until recently, I was used to appearing in court with my team present and standing to make submissions, using at least some hard copy bundles. Obviously all of that is different in the current environment. A good set up and good communication lines are crucial. The style of advocacy is also different. The advocate has closer eye contact with the judge; submissions benefit from being shorter and crisper, with reference to crucial documents and authorities only.

How have the English courts handled the shift?

They have been superb. The Commercial Court was already familiar with electronic bundles and systems, and the judges seamlessly moved to virtual hearings from the start of lockdown.

How much litigation do you expect from the pandemic?

As the chair of **Combar**, I understand that the commercial Bar is exceptionally busy with a mixture of pandemic-type litigation – for example, transactions not completing or about to be frustrated – insolvency work and the usual commercial litigation. It seems likely that we are at the start of the cycle of insolvency actions, recovery actions, financial claims, fraud actions and then the professional negligence claims that inevitably follow. As a result of the pandemic there is the added unique feature of the focus on contractual disputes.

There is a lot of discussion on whether the pandemic encourages disputes or makes businesses just focus on survival. What's your sense?

It is right that some businesses are just trying to survive, but nevertheless, litigation may be inevitable in the wake of the economic aftermath of the pandemic.

Beyond obvious areas like insurance disputes, are you expecting particular types of disputes in the next five years?

We may see more class actions in the next five years. It is likely that we will also see more contractual disputes around terms of commercial transactions. We might see jurisdiction disputes because of Brexit. I also expect there will be recession-type work.

“Virtual hearings require a different style of advocacy: you have closer eye contact with the judge and submissions benefit from being shorter.”

Looking back a few years, what were the trends or cases that struck you as interesting?

A trend over the last few years was the emergence of class actions in the banking sphere – for example, the RBS rights issue litigation, the FDIC LIBOR litigation and the FX litigation. There were also a number of Russian and Ukrainian commercial disputes.

Are bank regulatory claims a fact of life now, or will they fade away?

It is likely that regulatory claims/aspects will form part of many pieces of banking litigation.

Thinking of individual cases, which stood out as significant?

The RBS rights issue case was significant because it was the first very large-scale class action of its type and the privilege aspect of it was interesting. The PAG v RBS litigation was significant because it provided some answers on duty of care. Another significant case was the Autonomy litigation – the sheer scale of that case was striking.

Any cases over the next 18 months that you are keeping a close eye on?

ECU v HSBC (FX trading); ENRC v Dechert; the trucks cartel litigation; Vale v Steinmetz & Ors.

Looking at pandemic disputes, there are varying views on how many precedents must build up to deal with the issues raised. What's your view?

A body of case law will build up on questions of frustration and force majeure. *Wex v Travelport* is an example: in that case, the Court considered the interpretation of a material adverse change clause – and notably did so having regard to US case law.

On class actions, there seems little consensus on how significant they are in European disputes. Do you see the model becoming more mainstream?

Probably, yes. But so far there has not been a flood of class actions. Class actions have a place, but are not – I hope – going to take over English litigation.

How do you feel about London holding its global stature for dispute resolution in the years ahead?

It will remain the preeminent forum for resolving international disputes. We have the depth of the English common law and its flexibility, combined with the integrity and expertise of the judiciary, which is world-renowned. Together with arbitration, where London remains pre-eminent, we are very well placed.

Is court investment sufficient? The Rolls Building was well received, but is that enough?

The Rolls Building has worked very well and the Commercial Court is quite well resourced, as is the Chancery Division. The level of recent recruitment in the Commercial Court and Chancery Division has been absolutely stellar; many top names have been recruited.

Do you see a challenge from other global hubs?

Singapore plainly is going to be well placed with the expansion of Far East interests and concerns over the independence of Hong Kong, but I don't see Singapore or any other court impacting London's status. Singapore itself is drawing from the English Bench for its judges and that's only a good thing, because it demonstrates the calibre of our judges is exceptional and well recognised.

Will English law retain its popularity for cross-border contracts?

I don't see any reason that would change. It has served people well and they feel comfortable with it.

What should advisers be doing to adapt to how disputes will look in five to 10 years' time?

The balance we need is to maintain human contact while keeping up with technology.

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.