

“I’ve become less of a fan of arbitration: it’s an expensive way to end up in the same place as litigation, but often more slowly.”



**BRENDAN TURLEY** | GENERAL COUNSEL, UK AND EUROPE, LEIDOS

## Have you noticed any shifts in the litigation facing your business in recent years?

I do not think the nature of our business or our relationships are particularly litigious. However, as we continue to grow, the nature of our business means we are often the prime contractor on large-scale public IT projects, working with multiple clients, partners and suppliers. Being prime on big projects will increase the risk of litigation for us. Outsourcing relationships can be long and complex, and the contracts that establish them can reflect these complexities.

## What is driving that?

The market for outsourcing has dramatically changed in the last ten years. Outsourcing projects are typically smaller in scope and shorter in duration to increase competition and reduce risk. Ecosystems have grown with ‘primes’ tapping into a broader supplier base to lower cost. As such, with a rise in the number of companies working together, an increase in the speed with which all parties need to work and a more complex mix of dependencies – a strong legal framework is required as a foundation for success. If you don’t have that framework in place correctly, and given the number of companies now operating in this space, the chances of litigation increase.

## Does Leidos have a defined approach to handling disputes?

Collaboration is one of Leidos’ core values and we try to take that approach to dispute resolution. You never know when you might end up working alongside an organisation again in the future, so we try to find a resolution that works for everyone rather than holding everyone to the letter of a contract. We try to be measured in our approach to disputes.

## How able do you feel to be on top of the litigation risks facing Leidos?

Leidos globally runs a small legal team that sources external legal advice for particular issues or projects. My role is to be visible to other internal functional areas, be that trade compliance, securities, facilities or contracts. I like to be involved early as it does help to hopefully anticipate and mitigate any risks, rather than react to them. Of course, it is in the nature of an in-house role that you will often be reacting to events.

## What’s the best method to manage risk or head off disputes?

I always encourage the leaders of the business to have a sensible, commercial conversation with the other side, rather than hide behind the lawyers. As soon as a legal letter is sent, it leads to formality, and often the opportunity to come to a mutually agreeable resolution is lost.

“Every time I see a company’s name in the news, I wonder if they could have taken steps to avoid the dispute.”

### Some GCs feel that getting the legal team involved with large contract discussions early can head off problems – is that your experience?

For a number of our contracts, we work under relatively standard UK Government contract terms. That means we can invest in a contracts team that are specialists in handling negotiations and agreements with both customers and suppliers. Beyond a contract, it’s all about understanding where the key customer relationships are. The stronger the relationship, the easier it is to resolve any issues or disputes and prevent escalation. This approach will save money over time.

### What kind of disputes or risks concern you the most?

We have many critical secure programmes that we have supported in the UK – some, such as NATS, for more than 30 years. We are also winning new high-profile technology transformation programmes, such as with the Ministry of Defence, the Home Office and the Metropolitan Police, so earning and maintaining a sound reputation is critical for success. Any potential dispute or risk to our or our clients’ reputation certainly concerns my team. More broadly, cyber-attacks and the risks they pose are something of concern to all businesses, as it will often involve dealing with unknown actors in many different jurisdictions and any legal response may be expensive and complicated.

### Looking ahead, where do you see disputes dominating in the years ahead? Will the pandemic drive a lot of litigation?

On the customer front, I don’t necessarily see the pandemic giving rise to issues causing litigation in 12 months’ time. What it may do is create more commercial pressure in the year after and the year after that. That may then manifest itself on the legal side where the customer is looking to end a contract early because they’ve run out of money. And there’s Brexit. We’re a UK business delivering in the UK, so broadly we’re okay. But it will bring more challenge and uncertainty, and that does create an atmosphere where litigation may be used.

### Do you see a shift towards arbitration from litigation?

Personally, I’ve become less of a fan over the years of arbitration. It’s an expensive process to end up in the same place, often slower than going through the courts. The only benefit is the confidentiality. I have had some bad experiences of arbitrators not being on top of the process or parties, which leads to delay through lack of progress. I believe London will maintain its position as a centre for litigation. Brexit maybe changes that but there’s a level of expertise in dealing with commercial disputes in London that will mean it will always be an attractive dispute resolution centre.

### Do you see English law retaining its popularity for international contracts?

I do. English law offers many benefits. There is a good degree of flexibility. I’d be much more comfortable issuing or defending in the High Court in London than holding arbitrations around the world.

### Five years ahead, what should external advisers be doing to adapt their service for changing demands?

Good law firms will not drag you down a litigation path without also making it clear what the broad risk profile is before you press on. Increasingly, it will need to be in context. Every time I see a company’s name in the paper, I wonder if they could have taken steps to avoid those disputes earlier. It’s the reputational side and understanding what prosecuting litigation may mean for the business and how it may play out.

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