

“Our approach to litigation is now primarily to avoid it.”



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How was 2020 for you?

From a working-from-home perspective, it's been an eye-opener as to how effective and efficient it can be. From a legal perspective, it's been an incredibly busy year. There's been so much going on Covid-related, especially on the retail banking side, payment holidays, bounce-back loans, Government lending schemes – all of which legal are heavily involved in. The speed of decision-making has gone through the roof.

Pre-Covid, what were the trends in the risks and disputes facing Lloyds?

Specific to Lloyds, it was our strategic focus since the last financial crisis to be more UK-centric. There has been some long-running litigation. With those cases coming to an end, the vast majority now has a UK focus. Also, the way we approach litigation has evolved. It's much more a focus now on trying to resolve disputes at an earlier stage and engaging with customers to stop it escalating into litigation. It's litigation avoidance primarily.

What was it like for the legal team trying to manage through 2020?

The first aspect is ways of working, which has been a really good experience for a lot of people. It brings its challenges, but it has accelerated the use of technology. Nine months ago, would your preference for contacting someone have been on Teams? Now we are all so comfortable interacting virtually. Peers tell me: “We had a three-week virtual trial.” The courts wouldn't have entertained that [previously]. That will be a real step change and we'll retain the best parts of that.

There has been so much wider change that has involved the legal team to make sure we are interpreting things correctly, dealing with government-related schemes, payment holidays, regulatory requirements. What's been interesting is we stopped talking about [the UK's] EU exit for a few months. A lot of the legal work related to Brexit had been done in 2018 and 2019. EU exit was always going to be a difficult legal issue, but we've managed it pretty well so far.

You said Lloyds' style of handling disputes has shifted to avoiding litigation – how do you achieve that?

It starts within the business, as opposed to legal. It's that first expression of dissatisfaction – how do you empower colleagues so they don't escalate? Once it has escalated, at what point does legal get engaged to say, “What is the best solution here?” Ultimately, if you end up in litigation, it's lose-lose for everyone.

Is that primarily in consumer issues or B2B disputes as well?

Primarily the retail and SME space, but certainly it goes into more of the corporate side. If there's a suggestion of a class action, it's less possible to avoid that because that is likely to be an issue of principle.

“We want lawyers to partner with us on cases, rather than saying ‘Our hourly rate will be X.’”

How do you see the pandemic playing out in the disputes cycle, in both general disputes and the insolvency side?

There will certainly be an economic impact on customers, whether retail or commercial customers. There will undoubtedly be some issues with the way government schemes have been applied that customers dislike, either with complaints that “you did lend to me”, or “you didn’t lend to me”. Do we anticipate more litigation coming out of that? Undoubtedly, yes, but trying to predict the volume at the moment is impossible.

The banking sector is regarded as becoming more progressive in dealing with distressed loans – is that how you see it?

We’ve all learned. Go back 20 years, it was viewed as a process: if someone’s defaulted, we sent the demand, litigation follows if people don’t repay. Now we want to find a solution that helps everyone. If that means we avoid litigation, then great, because that’s probably the best outcome for the bank and best for the customer. If you think about how litigation has changed over the last 20 years, mediation also became more prevalent. You end up with an outcome that’s probably similar, but no parties have large amount of costs.

What kind of disputes or risks concern you the most?

There will always be a concern around risks that manifest as a result of things that have been done for a large volume of customers. Errors that may have been built into a process that could lead to enforceability issues for the Consumer Credit Act. So, unintentional. It’s not PPI mis-selling – it’s something systemic in the approach that causes risk. We are good at creating controls to mitigate that, but if something did manifest itself, it could be significant. The other issues are those that would be reputationally sensitive, for whatever reason. And related to that is conduct-related issues – those are very sensitive. There are also some unknowns coming out of Covid and we want to put in place controls now that minimise the risk of those manifesting.

How do you de-risk the business and avoid disputes?

You don’t look at it as preventing litigation – you look at what to do to get the best outcome for customers. If you do that, you are mitigating the litigation risk. Whether that’s from having good processes or ensuring that products offer fair value. When it does go wrong, we’ve also seen the way you communicate with customers matters. What used to be the standard legal letter, it’s accurate and does what it needs to from a legal perspective, but for the customer it could be a really poor experience. We’ve looked at those letters and asked if we can word it in a different way that has the same effect legally, but receiving it as a customer you can now go, “Ah, I know what I need to do to resolve this.” That is as opposed to writing, “We are going to seek an order for repossession in 28 days.” The message is the same, but the impact is totally different. We’re doing more of that and we’re market-leading on that.

Financial regulators are now talking more about culture. How much culture change has been made in the industry since the banking crisis?

A huge change. It is central to what we do. Conduct, culture, our purpose: helping Britain prosper, not helping Lloyds prosper. If you have that different mindset and that permeates down the conduct and culture of an organisation. That applies across the industry. It’s still something we need to work on.

Do you see the regulatory framework for finance being stable in the years ahead, or will it keep getting more robust on enforcement?

The focus of the regulators and the banks is doing everything you can so that enforcement isn't necessary. The main event for us when events do happen is that we pick upon the underlying issues more quickly, so if customers are impacted, it will be a smaller number over a smaller period. That's what the FCA is looking for.

Looking ahead, how should external counsel be evolving their service?

Technology will play a bigger part and we're seeing that through the courts and the way things like disclosure are evolving. Our law firms have moved a long way over the last few years and that will continue. It will be partnering with us on cases and coming with innovative ways of supporting us through that litigation rather than, saying: "Our hourly rate will be X."

Is that around risk sharing?

Potentially. On the litigation side, that's more difficult, but certainly on the commercial issues. Loyds is a little more conservative than some, but we are going to be prepared to consider other things in the future.

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