

“It used to take years for disputes arriving out of current business issues to filter through to the courts – it’s now almost immediate.”



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What has the past year been like for you?

It’s been extremely busy. The commercial courts moved very quickly to enable hearings to go ahead remotely. The impact of stopping work would have been disastrous in creating a backlog. Everything went ahead, except where there was some particular problem affecting the case. I’ve probably done as many hearings and court days in 2020 as any previous year. It’s been absolutely flat out.

What’s it like adapting to that virtual process?

We’re all learning. The initial thought was, “Zoom and all alternatives are amazing and we’ll never need to meet again,” and then slowly working out that it’s not a perfect substitute. It’s better for some things, less good for others. There are some obvious positives in relation to meetings and hearings in terms of efficiency. There has also been a huge acceleration of a move to e-documents for hearings. Moving to electronic bundles has actually led to a much greater discipline on what goes in, very much driven by judges. They like e-bundles, but want them manageable.

What are the negatives?

There is definitely a different dynamic being in court virtually. Because the judge may be looking at documents on screen, it may be harder to take in the broader view. It is significantly different where witnesses are giving evidence over an extended period. No-one is suggesting it’s better – it’s an adequate substitute if you can’t have an alternative. The other aspect that is different is having your team with you in court. That is a big loss, particularly for young lawyers and we have to work out how to deal with that.

How have the courts handled the shift to virtual hearings?

The Commercial Court, amazingly. In terms of logistics and communication with parties to set up hearings, that has gone incredibly smoothly. It’s a matter of public record how difficult it’s been for the criminal courts, but they have other challenges with jury trials. But think of how quickly we have moved. If you look at the Cause List, and see judges doing multiple hearings in a day – all remote – you see the efficiencies gained in not having large groups of people going to court, waiting for their next hearing. They just join as and when.

What have been the key trends in commercial disputes?

It’s extraordinary over the last 30-plus years I’ve been in practice that the trend has been steady: the size of cases is getting larger, and London as a hub for disputes resolution has maintained its position, even strengthened it for really large cases. The huge growth in the number of international commercial courts around the world is a recognition of how well it’s done in London. There are always new areas of work that can develop. They can be crisis-prompted – we had a huge amount of work in London out of the 2008 crisis – but other areas that have previously been five-to-ten-year sources have continued even longer than expected. Russian and CIS cases look to continue being major sources of work and that is very established in London.

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Looking ahead, how would you see the balance between litigation and arbitration?

I don't think there is a trend towards arbitration. There has always been the claim that arbitration is expanding at the expense of litigation – I have never seen it that way. I see very significant growth of both. Using the example of Russia and CIS work, there's a lot in arbitration and a lot in court.

The supposed big selling point of arbitration was that it was quicker and cheaper, but it never was. Clients want their arbitrations with the same quality of service they get in court. The big drivers for arbitration are things like enforcements, the big reason for wanting litigation is the robustness of court sanctions and being able to move cases forward. They are different, they're both good if done well.

You mentioned long-term growth in disputes and arbitration – what's driving that?

It's a reflection of what's happening in the business world. London has always been the first port of call for major business dispute resolution, and as transactions have grown as new areas of business open up, we see that reflected in our work. The time lag has shrunk along with the speed of doing business. Twenty years ago, it might have taken three-to-five years for disputes arising out of current business issues to filter through to the courts – now we are seeing it in under a year. You're seeing almost immediate reflection in the disputes world of what is happening in the global business scene.

What are you expecting for litigation over the next three years?

The pipeline of work is not going to be dependent on pandemic-related work. Obviously, the pandemic has already created significant insurance work and there will be a fair amount of that going forward, but I don't expect that's necessarily going to be a huge source of work. But I'm also not concerned about that. My court diary is already full until the middle of 2022. If I look across chambers, top to bottom, people are really busy. New work is coming in very rapidly and what we're seeing is there was a pause in the middle of the first lockdown in progressing disputes, but that's been unblocked and the pipeline looks very strong indeed.

Any other cases or sub-sectors that will be more significant?

Competition and follow-on claims are a big growth area. Collective actions with the English equivalent of the US class action. Tech-related disputes is another interesting area. Obviously, there's bound to be work generated on the back of the pandemic – we're already seeing significant insolvency and restructuring work coming through.

How much scope is there for dramatic change in litigation?

Technology is undoubtedly going to have a significant impact. There will continue to be new approaches to disclosure for really big commercial litigation. The tension has always been there as the cases get larger between litigators knowing how important documents are to cases, but on the other side, the cost of generating and reviewing the material. We're not going disclosure free – it's a question of finding better, tech-supported ways of helping the process.

Will machine learning or AI make disclosure more manageable?

It's already happening and the potential cost savings are so significant that it will drive the technology forward very fast. It's begun with the very significant support of the courts. You were asking about the courts and arbitration – one of the things which has kept that competition healthy is that innovation in management of cases has tended to be driven from the London Commercial Courts before you see it in arbitration. You can go back to the creation of witness statements, skeleton arguments, all these important innovations about how to manage a case. On the disclosure side, we're going to see this driven very much by the courts.

How should advocates and external advisers be adapting to future disputes challenges?

The area I'd pick on is about our young lawyers. There are really important questions and challenges for law firms and the Bar to make sure we give young lawyers the opportunity to learn, and we have to think about how we do that. There are big questions there around the workplace and how we operate.

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