



The devil is in the data

The challenge of managing and protecting data will drive disputes and corporate risk.

Data, including its handling and protection, is one of the most cited areas of concern among GCs – one already manifesting as high-impact risks for many companies and widely forecast to drive disputes throughout the decade. Such concerns encompass follow-on litigation, freedom of information issues, privacy, data security and regulatory factors. One need only consider the lengthening line of companies suffering major cyber breaches. Vodafone legal chief Rosemary Martin speaks for many, noting: “Privacy is an area where you think, ‘Oh my, this is difficult,’ because the requirements are very difficult in practice.”

Data is also frequently highlighted as an area that is least understood as an evolving field, thanks in part to the 2018 introduction of the EU General Data Protection Regulation directive and the fast-moving technology inherent in the area. BT general counsel Sabine Chalmers observes: “There has been enormous evolution in the world of data, tech and IP – these areas of law are changing and expanding very quickly.” The field is further complicated by the UK’s departure from the EU, and diverging agendas between US and European regulators.

Only adding to an increasingly challenging area of risk is tougher enforcement from authorities such as the Information Commissioner’s Office in the UK, and companies trying to safely handle data with unprecedented numbers of staff working from home. Maaïke de Bie, group GC at easyJet, can speak to such challenges, after the airline was subject to a high-profile cyber-attack in 2020 and a string of follow-on claims. He says: “So far we haven’t seen any evidence of fraud or other loss, so it feels distasteful that a law firm is jumping on the bandwagon and advertising to get people to make claims against us – very much like a ‘no win, no fee’ case. We are looking at years of dealing with this, including getting some decisions from courts to provide further clarity.” Many of her peers will face similar challenges.

This is an excerpt from an HFW report on the future of dispute resolution. To read the rest of the report, which includes a series of 30 interviews with senior in-house counsel and other leading figures from across the global disputes industry, as well as insights from our expert litigators, visit: www.hfw.com/litigation

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