



Going viral

The Covid-19 pandemic will trigger a sizeable wave of litigation in the short-, medium- and long-term.

Covid-19 initially resulted in a sharp and sudden decline in disputes activity. But this quickly rebounded, and practitioners were reporting robust levels of claims in the latter stages of the year. Data from litigation analytics company Solomonik shows that almost 4,000 new commercial claims were filed in the English High Court during 2020 – a 24% increase on 2019 and well ahead of any year since 2015. This spike is most striking for contract claims, which topped 1,000 last year – nearly double the number in 2019 and significantly above the levels seen throughout the 2010s.

One Essex Court's Sonia Tolaney QC notes that the Bar ended 2020 already "exceptionally busy with a mixture of pandemic-type litigation, insolvency work and the usual commercial litigation", adding: "It's likely we are at the start of the cycle of insolvency actions, recovery actions, financial claims and fraud actions, and then the professional negligence claims that inevitably follow."

Arbitrator Dame Elizabeth Gloster, a former Court of Appeal judge, forecasts: "With the fall in oil prices, there are going to be a lot more energy disputes and insolvency – a lot of issues arising out of loss of money, loss of contracts, force majeure. Also, price disputes. People fight when it's better to fight than settle."

After an initial flurry of insurance-related disputes and insolvency-driven work, the pandemic is likely to trigger a substantive increase in litigation from the second half of 2021. But even as many businesses defer decisions on litigation to focus on survival, some cases are being pushed forward amid cash collection concerns. LCM Finance executive vice chairman Nick Rowles-Davies notes: "History dictates [the post-Covid dispute cycle] should be big. The challenge is: against who? One of the reasons we're seeing an uptick in disputes is people are saying: 'Will they still have money in six months? We need to get in now.'"

Covid-19 aftershocks are then set to trigger subsequent waves of disputes throughout the decade, with many forecasting that the main surge will manifest in the mid-2020s. As well as obvious claims in employment, insolvency and insurance, many are braced for significant activity in real estate disputes, fraud and professional negligence. However, though the volatility and economic shock of the pandemic is widely expected to generate substantial disputes activity, practitioners and clients remain divided on if Covid-related work will represent a huge wave of disputes – or merely a sizeable strand of a busy wider litigation market through the decade.

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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