

Counting the cost

Litigating in London is taking longer – and costing more.

As part of our assessment of the future of dispute resolution, we scrutinised English High Court data from analytics provider Solomonic, covering more than 25,000 claims and 4,500 judgments over the past six years.

Combing through the data reveals patterns, confirms some suspicions and challenges a few received wisdoms about the realities of litigating in London. It also offers clues to the future trajectory of litigation as we enter 2021.

The received wisdom within the global disputes industry is that the size of cases going before the courts is increasing, meaning they take longer to resolve – and ultimately cost more money.

These are perennial gripes among those litigating in London – and the data does appear to give some credence to these claims.

Case lengths in the English High Courts have increased relatively significantly in recent years. In fact, it took more than 50% longer on average for cases to go from filing to conclusion in 2019 (780 days) than it did four years earlier (517 days).

This trend was reversed in 2020, however, with average case length falling to 638 days. The average length of hearings has also reduced over the past five years, dropping from 3.8 days in 2015 to 3.0 in 2020.

Despite the plaudits the London courts have attracted for adeptly moving to virtual hearings and digital case management during the pandemic, the number of days from hearing to judgment increased by more than a quarter during 2020, up from an average of 31.7 days in 2019 to 40.2 days.

The data also reveals significant variance in the average length of litigation between different industry sectors.

The year-on-year average case lengths for HFW's core sectors highlight that caution is required when looking for firm conclusions from the data, however. Insurance features in top three industries for longest average case length in 2018 and 2019, but is in the top three for shortest average case length in 2017 and 2020. Likewise, construction and oil & gas each feature among the sectors with the longest and shortest average case lengths at various points over the past six years. (Two of HFW's other core sectors – shipping and commodities – only ever rank in the top three by longest average cases during that period, however: shipping in 2015 and 2016, and commodities in 2020.)

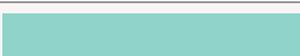
While it would therefore be too broad brush to say that an organisation's sector will definitely impact its cost of litigation, there is one factor that unquestionably and invariably has a significant impact on disputes budgets: legal fees.

Solomonic data reveals that advocacy teams have been getting larger, going from an average of 2.2 lawyers in 2015 to 3.0 lawyers in 2020. But the data suggests this is money well spent: parties with larger teams than their opposition win almost 70% of their cases on average, compared to a Court-wide average success rate of 44%.

Longest Average Case Length By Industry, 2015-2020

Consumer products		899 days
Commodities		872 days
Manufacturing		840 days

Shortest Average Case Length By Industry, 2015-2020

Healthcare		326 days
Public sector		412 days
Construction		464 days

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

HFW LITIGATION

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