

Dispute resolution



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Five litigation trends to look out for in 2024

For disputes practitioners, 2023 generated several interesting developments across a number of areas, including new arbitration legislation and the government signalling its intention [realised last Friday] for the UK to sign up to the Hague Judgments Convention to facilitate the enforcement of judgments in cross-border cases. What might 2024 look like? Here are five potential trends for disputes.

Insolvency, fraud and enforcement – have we finally reached the tipping point?

Cases involving insolvency, fraud and enforcement are often closely intertwined. Since the pandemic began almost four years ago, commentators have been predicting that a huge wave of fraud and insolvency cases was imminent. While that has not quite materialised, our fraud and asset recovery team has certainly noticed an upsurge in cases involving a fraud, insolvency and/or enforcement angle.

This is perhaps no coincidence – just before Christmas, the Insolvency Service released statistics for November 2023 which showed that monthly registered company insolvencies had increased 21% since November 2022, higher than pre-pandemic numbers. With higher interest rates seemingly here to stay, and economic pressures continuing, 2024 may finally be the time when those commentators are (belatedly) proven right.

Pressure on legal fees will increase

This year also seems likely to see an increase in demand for alternative legal fee structures, fuelled by the economic climate and an increased awareness – and expectation – that lawyers will be flexible on fees. We are regularly asked to consider such arrangements, such as fixed fees, capped fees, blended rates and discounted contingency fee arrangements. Clients now increasingly ask about litigation finance – although 2024 may also see increased disputes about whether the terms of litigation funding arrangements are enforceable, in whole or in part,

following the Supreme Court decision in *PACCAR* [see also *Week in 60 seconds*, p6]. A follow-up case involving litigation funder Therium emerged in late 2023 and more are likely to follow in 2024.

Russia-related disputes

While the Ukraine crisis and the consequent sanctions regime were seen by many as sounding the death knell for Russian disputes being litigated or arbitrated in London, this has not necessarily proven to be the case. A number of disputes from the region continue to be lawyered from London, and this shows no signs of abating in 2024. Given the preference (at least historically) for contracts to be: (i) governed by English law; and (ii) subject to the jurisdiction of the English courts and/or to an English seat in the case of arbitration, when disputes arise parties will invariably require the assistance of English lawyers.

With the sanctions regime firmly in place and showing no signs of being scaled back, this may be the year where Russian parties start to accelerate once more their use of English disputes services. Indeed, the sanctions regime is itself spawning a new wave of disputes, or satellite disputes, about such factors as the meaning of sanctions legislation, whether a party is sanctioned, and if so how that affects the parties' obligations to one another and the conduct of the dispute. This promises to continue into 2024.

Inexorable rise of specialist boutiques continues

Closely linked to the previous trends already mentioned is the continued march of specialist dispute resolution law firms. While the existence of such firms is not new, what was noticeable in 2023 was the plethora of high-value and high-profile complex international disputes in which specialist disputes firms are involved. For example, we are one of seven such London firms on the court record in the estimated \$13.8bn High Court claim commenced by jailed Russian

businessman Ziyavudin Magomedov. A number of others have been active in the \$2bn tuna bonds case involving the Republic of Mozambique and Credit Suisse, among others.

This trend promises to continue into 2024, buoyed by a number of factors. These include: (i) economic and financial pressures on client budgets in a period of high interest rates; (ii) the conflict-free nature of such firms, which means that they are able to litigate and arbitrate against major UK corporates and banks; and (iii) continued work emanating from Russia in circumstances where many international and full-service law firms are unable to accept such instructions.

Artificial intelligence

Given the volume of words generated about AI in 2023, it would perhaps be remiss for an article dealing with litigation trends in 2024 to avoid adding to the wordcount (albeit briefly). Expect this year to see increased attempts by litigators and litigants alike to rely upon AI. Also expect more stories where this goes wrong; as in the case of the litigant in person late last year who unwittingly relied upon nine fake authorities generated by AI before a tax tribunal.

Interestingly, none of the above trends – not even the increased use of AI itself – was identified by the handful of AI tools I used (after writing the rest of this article, I should add!). AI's answers tended to identify common themes: a growth in cybersecurity and data breach disputes, climate change and environmental litigation, employment disputes, consumer rights and product liability disputes, Brexit-related litigation, and disputes concerning the use of digital platforms and online services. Here's hoping that (at least some of) my five predictions prove right, and that (despite increased use of AI) there remains a place for the good old-fashioned disputes lawyer come 2025.

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