

## Horizon scanner

Litigation and Dispute Resolution

---



## RISK RATING

Potential impact



Legal risk	Next steps	Links
<p><b>Mandatory (alternative) dispute resolution (ADR)</b></p> <p>Generally the court has no jurisdiction to force parties to settle claims, although courts actively encourage ADR. The Civil Justice Council (CJC) recently published a report following a request from the Master of the Rolls that the CJC analyse the legality and desirability of compulsory ADR. The report concludes that mandatory ADR is compatible with Article 6 of the Convention for Protection of Human Rights and Fundamental Freedoms and is, therefore, lawful and that a compulsion to mediate could be a desirable and effective development. The report does not provide detailed proposals for reform but is likely to have a significant impact on the future use of ADR and feed into wider considerations as to the post-pandemic court system.</p>	<p>The Ministry of Justice has issued a Call for Evidence calling for input from all interested parties. Companies may wish to contribute. The Call for Evidence closes on 30 September 2021.</p> <p>Note that litigants are already compelled to take part in certain ADR processes. For example, courts have the power to order parties to undertake Early Neutral Evaluation (a form of ADR) without their consent.</p> <p>Consider ADR on every case and be prepared to justify any decision not to participate to avoid adverse costs orders.</p>	<p><a href="#">CJC report</a></p> <p><a href="#">Master of the Rolls speech</a></p> <p><a href="#">MoJ Call for Evidence</a></p>
<p><b>Digital Dispute Resolution Rules</b></p> <p>The UK Jurisdiction Taskforce (UKJT) has published the finalised Digital Dispute Resolution Rules (the Rules) which offer a streamlined arbitration procedure aimed at facilitating the resolution of disputes involving digital technologies such as digital assets, blockchain, fintech and smart contracts. A key distinction between the Rules and more traditional arbitration is the flexibility in the procedure, which allows parties to tailor the procedure to the characteristics of specific technologies, while encouraging swift resolution and the use of technology. While the Rules are intended to apply to disputes relating to novel digital technologies, they may be adopted and applied to any dispute subject matter (the Rules do not apply automatically – parties must agree to incorporate them in writing).</p>	<p>The rules are likely to grow in importance as use of digital technologies continues to grow. Consider incorporating the Rules into technology contracts as an alternative to litigation. For more information, see the linked briefings.</p>	<p><a href="#">Finalised Rules</a></p> <p><a href="#">ES Briefing</a></p> <p><a href="#">ES briefing - Telescope</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p><b>Reforming witness evidence</b></p> <p>Following concerns from a number of judges that witness statements were ineffective in performing their core function of achieving best evidence at proportionate cost, a working group was set up to consider improvements. The Witness Evidence Working Group made a number of recommendations and a new Practice Direction (PD57AC) and Appendix were published to govern preparation of trial witness statements in the Business and Property Courts (B&amp;PCs) from 6 April 2021.</p>	<p>Litigation teams should familiarise themselves with the new rules, which represent a significant change to current practice and are likely, at least in the short term, to increase the time and cost spent on witness statements. As well as changing the procedure for the preparation of trial witness statements, the new rules will also have ramifications for the way in which potential witnesses to an emerging dispute are proofed. At the recent Civil Procedure Rules Committee annual meeting (May 2021), it was noted that it was considered too early to make any decision about whether PD57AC will be extended to other courts, but it is unlikely the scheme will be extended to witness statements in interim hearings.</p>	<p><a href="#">Working Group Report</a>  <a href="#">127th PD Update (includes PD57AC and Appendix)</a>  <a href="#">ES briefing</a></p>
<p><b>Vulnerable witnesses and parties in civil proceedings</b></p> <p>Effective from 6 April 2021, the CPR's overriding objective has been amended (via a new PD 1A) to make clear that dealing with a case justly includes ensuring that parties can participate fully and that parties/witnesses can give their best evidence. Parties are required to help the court to further the overriding objective at all stages of proceedings. The court (with the assistance of the parties) should try to identify vulnerability of parties or witnesses at the earliest possible stage and to consider whether a party's participation, or quality of evidence, is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make directions as a result. Additionally, there is a new CPR 44.3(5)(f) which states that "costs incurred are proportionate if they bear a reasonable relationship to any additional work undertaken or expense incurred due to the vulnerability of a party or any witness".</p>	<p>Companies should consider the new rules and ensure compliance with them in order to avoid costs sanctions/reputational damage. As well as considering whether any customers who are bringing a claim have any vulnerabilities, companies should also consider whether any of its own witnesses have vulnerabilities that need considering.</p>	<p><a href="#">Practice Direction 1A</a>  <a href="#">CJC report</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p><b>Impact of Brexit on cross border litigation</b></p> <p>The UK left the EU with a post-Brexit trade deal, but that deal does not cover civil judicial co-operation. Cross border litigation involving EU or EFTA states is likely to take more time and be more costly going forward.</p> <p>The Hague 2005 Convention, applicable to exclusive jurisdiction agreements, goes some way to fill the void but is not a complete solution. The Government attempted to accede to the Lugano Convention in April 2020 but all signatories, including the EU, need to agree. The EU Commission has recently rejected the UK's application to join. The final decision on whether the EU will consent to the UK's application rests with the Council of the EU. Denmark is also yet to give consent.</p>	<p>Companies to keep a watching brief – there is currently no timetable for the Council's decision. In the absence of a comprehensive regime, such as Lugano, there are a number of issues to consider before initiating or becoming involved in proceedings against a counterparty based in the EU or an EFTA state. See linked briefings for further information.</p> <p>Separately, the European Commission recently adopted a proposal for the EU to accede to the 2019 Hague Judgments Convention. If the EU accedes to the Convention and the UK does too, then it could streamline the enforcement of judgments between the EU and the UK (and other non-EU countries) particularly given the UK is not currently able to accede to Lugano.</p>	<p><a href="#">ES briefing</a></p> <p><a href="#">ES briefing</a></p> <p><a href="#">ES briefing</a></p> <p><a href="#">Note Verbale</a></p> <p><a href="#">Proposal for Council Decision</a></p>
<p><b>CE-filing</b></p> <p>Failure to file court documents correctly may mean that the court does not accept them which can lead to missed deadlines and issues with limitation. CE-Filing already applies to a number of courts, but was recently extended to proceedings commenced after 19 July 2021 in the district registries of the Queen's Bench Division in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle: (1) For legally represented parties, CE-Filing applies on a voluntary basis from 19 July 2021, and on a mandatory basis as from 18 October 2021; and (2) For parties who are not legally represented, CE-filing applies on a voluntary basis from 19 July 2021. CE-Filing does not apply to proceedings commenced on or before 19 July 2021 unless otherwise ordered by the court.</p>	<p>Companies to ensure that court documents are filed using CE-File for participating courts.</p> <p>As from 22 November 2021, for existing proceedings and proceedings started on or after that date in the Court of Appeal (Civil Division), CE-Filing will apply:</p> <ol style="list-style-type: none"> <li>(1) For legally represented parties, CE-Filing will apply on a voluntary basis from 22 November 2021, and on a mandatory basis from 17 January 2022.</li> <li>(2) For parties who are not legally represented, CE-Filing will apply on a voluntary basis from 22 November 2021.</li> </ol>	<p><a href="#">CPR PD 51O</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p><b>Data disputes</b></p> <p>The increased use of data has led to: (1) Growth and impact of cyber-attacks and data security issues; and (2) Cyber/data privacy litigation against organisations. The multiplicity of issues arising can be distilled into four key themes: (1) Group litigation and representative actions for high-profile data breaches; (2) Lower-profile group-type breaches; (3) Frequent and relatively smaller privacy claims; and (4) Corporate data disputes.</p>	<p>Companies should be aware of forthcoming developments in relation to class actions following data breaches. The UK government has now confirmed it will not implement any changes following its consultation regarding allowing non-profits to act for data subjects on a group “opt-out” basis. The Supreme Court’s decision in <i>Lloyd v Google</i> is expected shortly.</p> <p>Separately, companies will be interested to note that the High Court has recently confirmed that a ‘use’ (or ‘positive action’) is required in order for the torts of breach of confidence and misuse of private information to be actionable in an ‘external, criminal third party-attacked’ context (see <i>Warren v DSG Retail Ltd</i> and our linked briefing).</p>	<p><a href="#">ES Briefing – Telescope (August 2021)</a></p> <p><a href="#">ES Briefing – Telescope (What’s new in 2021)</a></p> <p><a href="#">UK Government response</a></p> <p><a href="#">ES Briefing</a></p> <p><a href="#">Warren v DSG Retail Ltd [2021] judgment</a></p>
<p><b>The rise of class actions</b></p> <p>While class actions, US style, have not been part of the legal landscape in Europe, many jurisdictions are developing their own form of collective action. In particular, they are starting to take root in England and Wales via existing legal mechanisms: (1) Group Litigation Orders; (2) Representative claims under CPR 19.6; and (3) Collective proceedings in the Competition Appeal Tribunal. Class actions have already been seen in relation to data breaches and privacy, financial regulation breaches and credit card fees.</p>	<p>Companies should monitor developments and remain vigilant as regulatory breaches in particular, could lead to class actions in the future (e.g. data breaches/financial mis-selling). We anticipate that COVID-19 may also lead to an increase in class actions in the UK.</p> <p>Companies may also be interested to note that the Competition Appeal Tribunal authorised the <i>Merricks v Mastercard</i> case to proceed. The claim has been brought on behalf of over 46 million card holders and is worth over £14bn.</p>	<p><a href="#">Press release – New Deal for Consumers</a></p> <p><a href="#">ES Briefing: Telescope</a></p> <p><a href="#">Merricks v Mastercard</a></p>
<p><b>Digital assets</b></p> <p>The Law Commission has published a call for evidence on digital assets as they are generally treated as property by market participants. The Law Commission intends to make recommendations for</p>	<p>The call for evidence closed on 30 July 2021. Companies to maintain a watching brief.</p> <p>Companies may be interested to note that the City of London Law Society has responded to the call and warned of caution in relation to any proposal for</p>	<p><a href="#">Law Commission Call for Evidence – Digital Assets</a></p> <p><a href="#">CLLS response</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
reform to ensure that the law is capable of accommodating both cryptoassets and other digital assets and allows the possibilities of this technology to flourish. Its work will consider whether digital assets should be “possessable”. This could have significant consequences for the functioning and development of the market in digital assets.	legislative reform to extend the application of the concept of “possession”.	
<p><b>The future of remote hearings</b></p> <p>During the COVID-19 pandemic, most civil court hearings were held remotely (e.g. via telephone or video conference). Some hearings were conducted in a hybrid fashion (e.g. some parties attend in person, whilst others attend remotely). HMCTS is evaluating the use of remote hearings to inform longer term plans and they are likely here to stay.</p> <p>On the whole, the consensus is that remote hearings can work well for simple procedural hearings involving only judges and advocates (or more sophisticated parties). Further they can save time and costs of travel and are useful when a number of individuals from a party wish to attend. However, they have not worked so effectively in trials, particularly where a party is vulnerable and/or live evidence is required.</p> <p>The Berkeley Research Group has also published an interesting report on the psychological impact of remote hearings. The report suggests that whilst remote hearings are here to stay in some form, it is unlikely that universal standards will be implemented.</p>	<p>The future use of remote hearings impacts on how companies manage and resource litigation. Companies to keep a watching brief. The survey by HMCTS closed on 1 June 2021.</p> <p>Companies should note that the rules regarding in-person and remote hearings are the same. Remote hearings must not be recorded unless the court has granted permission. It is also unlawful to take photographs/screen-shots of a remote hearing. Further real time transcription, other than by the official court service, is only allowed with permission of the court and access links to remote hearings must not be forwarded to third parties (the court needs to know who is present on remote platforms). Failure to follow the rules may result in sanctions/contempt of court. Judges may also refer solicitors/barristers in breach to the Solicitors Regulatory Authority/The Bar Standards Board.</p>	<p><a href="#">Law Society views and recommendations</a></p> <p><a href="#">Four Bars Council statement</a></p> <p><a href="#">House of Commons Justice Select Committee inquiry (COVID-19)</a></p> <p><a href="#">The Future of Courts – Richard Susskind</a></p> <p><a href="#">Berkeley Research Group report</a></p>
<p><b>Judicial Review reform</b></p> <p>In March 2021, the report of the Independent Review of Administrative Law (IRAL) was published. The panel concluded: (1) no wholesale codification was</p>	<p>Companies to keep a watching brief. The consultation closed on 29 April 2021. The Judicial Review and Courts Bill was introduced to Parliament on 21 July 2021. In short, the Bill includes provisions for quashing orders to be made subject to conditions</p>	<p><a href="#">Independent Review of Administrative Law – report</a></p> <p><a href="#">UK Finance Response</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p>needed; (2) ouster clauses were not a recommended course of action; (3) exclusion of judicial review would be contrary to the Rule of Law; (4) no change to procedure or tightening of time limits was needed; and (5) clarity in respect of interveners was recommended, but should not be driven by statute. Two proposed avenues for reform were proposed: (1) reversing the decision in <i>R(Cart) v The Upper Tribunal</i> and (2) suspending quashing orders. The government has endorsed the findings but has opened the matter up for further consultation focussing on remedies and ouster clauses.</p>	<p>and removes 'Cart' judicial reviews (subject to limited exceptions). The Bill does not deal with ouster clauses, which define the bounds of the court's jurisdiction, and which had been a controversial part of the government's consultation.</p>	<p><a href="#">Judicial Review Reform – consultation</a></p> <p><a href="#">Judicial Review and Courts Bill</a></p> <p><a href="#">Government press release</a></p> <p><a href="#">Government Fact Sheets</a></p> <p><a href="#">Government explanatory note</a></p>
<p><b>Review of the Human Rights Act 1998 (HRA) Judicial Review reform</b></p> <p>In its 2019 Manifesto, the Government stated that it will update the HRA "to ensure that there is a proper balance between the rights of the individual, our vital national security and effective government". An independent review was launched in December 2020 (led by Sir Peter Goss) and is looking at two key themes:</p> <ul style="list-style-type: none"> <li>(1) the relationship between domestic courts and the European Court of Human Rights; and</li> <li>(2) the impact of the HRA on the relationship between the judiciary, the executive and the legislature.</li> </ul> <p>The MoJ launched a Call for Evidence in January 2021 which closed in March 2021. The review could lead to changes in the way in which judgments from the European Court of Human Rights are taken into account by UK courts and their ability to declare British laws as 'incompatible' with human rights.</p>	<p>Companies to maintain a watching brief. The review panel intends to submit its report of recommendations to the Government in Q3 2021. The Government will then consider its response with a view to publishing an overall position document. Note that the review is limited to consideration of the domestic HRA framework. Potential changes to the operation of the Convention on Human Rights or European Court of Human Rights, or changes to the substantive rights themselves are not within the scope of the review. The Joint Committee on Human Rights has published its response which concludes that there is no case for reform under the terms of the review.</p>	<p><a href="#">Review of HRA</a></p> <p><a href="#">MOJ Call for Evidence</a></p> <p><a href="#">Joint Committee response</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p><b>Costs recovery</b></p> <p>Fixed recoverable costs prescribe the amount of money that can be recovered by the winning party at set stages of litigation. The MoJ is consulting on extending the FRC regime. Such a scheme would have a significant impact for cases up to £100,000. Proposals include: (i) extending FRC to fast track cases (i.e. where damages are between £10,000 and £25,000); (ii) introducing a new intermediate track and corresponding FRC for less complex cases between £25,000 and £100,000; and (iii) running a voluntary pilot of capped costs for cases up to £250,000.</p> <p>The Capped Costs Pilot ended in January 2021. The pilot applied to cases valued up to £250,000 in specified courts, with an overall cap of £80,000 (excluding VAT, court fees, wasted costs and costs of enforcement).</p>	<p>Companies should keep a watching brief.</p> <p>The consultation paper states that a response is due to be published within three months of the consultation end date (6 June 2019) meaning that a response was due in early September 2019. No response has yet been published but we understand that the Government remains keen on implementing the proposals. It is understood that fixed costs are a possible item on the Civil Procedure Rules Committee’s programme for 2021.</p> <p>As regards the Capped Costs Pilot, although it has come to an end, it has been acknowledged that the broad aims of the pilot remain as current as ever and there is a need for schemes of this kind for the efficient despatch of medium value claims. As such, further schemes may be considered in the context of post COVID-19 recovery and new ways of conducting business litigation.</p>	<p><a href="#">Consultation</a> <a href="#">Capped Costs Pilot – PD51W</a></p>
<p><b>On-line courts</b></p> <p>There are growing ways in which claims can be issued and progressed online. There are various pilots/processes:</p> <ol style="list-style-type: none"> <li>(1) Online Civil Money Claims (OCMC) (PD 51R) – which allows unrepresented claimants that are owed sums of up to £10,000 to resolve their dispute completely online;</li> <li>(2) County Court Online (PD 51S) – for legally represented parties with certain specified and unspecified money claims;</li> <li>(3) Money Claims Online (PD 7E) for fixed amounts less than £100,000.</li> <li>(4) A new pilot scheme under PD 51ZB (online damages claims). Participation in the pilot</li> </ol>	<p>Companies should ensure that they are familiar with the pilots/processes. The PD 51R pilot is in operation until 30 November 2023 and the PD 51S pilot is in operation until 30 November 2021. The PD 51ZB pilot is in operation until 30 April 2024.</p> <p>The date of the second reading of the Bill is awaited but will not be before early September as parliament is now in recess.</p>	<p><a href="#">PD 51R</a> <a href="#">132nd PD Update</a> <a href="#">PD 51S</a> <a href="#">Judicial Review and Courts Bill</a> <a href="#">Judicial Review and Courts Bill factsheet</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p>scheme is, for claimants, initially by invitation only for a select number of companies, but can be used by all defendants in respect of which a claim is issued.</p> <p>While the Judicial Review and Courts Bill (introduced to parliament on 21 July 2021) provides for reforms to judicial review, it also provides for procedural improvements for the court system. The Bill creates an Online Procedure Rules Committee, established to make online procedure rules to govern the conduct of proceedings online.</p>		
<p><b>Civil Courts Structure Review and HMCTS Reform Programme</b></p> <p>HMCTS is currently in the process of delivering a significant programme of reform to courts and tribunals intended to modernise and upgrade the justice system. HMCTS accepts that COVID-19 has had an impact on deadlines and milestones but considers that the objective of delivering the reform programme by the end of 2023 remains unchanged.</p>	<p>Companies should keep a watching brief. The COVID-19 pandemic has had a significant effect on the modernisation of the courts, with technology now a key part of the system. We anticipate that HMCTS will revisit its plans for reform and a new strategy for the medium and long term will emerge.</p>	<p><a href="#">HMCTS: information on court reform</a></p> <p><a href="#">House of Commons Justice Select Committee inquiry (COVID-19)</a></p> <p><a href="#">HMCTS annual report and accounts (2020/21)</a></p>
<p><b>Disclosure Pilot Scheme</b></p> <p>For cases within the pilot, there are significant rule changes. Failure to follow those rules risks costs sanctions and delay. Depending on the outcome of the pilot, the scheme may be extended beyond the Business and Property Courts.</p>	<p>The Disclosure Working Group recently published an update. The pilot was originally in operation for two years until 31 December 2020 but has been extended again until the end of 2022. A number of revisions to PD 51U have also been proposed, which the CPRC has approved in principle but require final approval by the CPRC and the Justice Minister (we expect that the further changes will be implemented in Q3 2021). Revisions include that 'less complex claims' worth less than £500,000 will be able to opt into a simplified disclosure scheme and multi-party cases will also be able to avoid the scheme in favour of active case management by a judge.</p>	<p><a href="#">PD51U</a></p> <p><a href="#">Civil Procedure (Amendment) Rules 2021 and 127th PD Update</a></p> <p><a href="#">Third interim report on DPS</a></p> <p><a href="#">DWG update</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p><b>Singapore Convention on Mediation</b></p> <p>Following Brexit, the EU Directive on Mediation, applicable to cross border disputes in civil and commercial matters is no longer applicable between the UK and the EU member states. The Directive allowed parties to convert cross-border mediated settlement agreements to a court order by consent to help with enforcement. The strong culture of mediation in the UK means that parties rarely renege on mediated settlement agreements, but it was nevertheless a useful tool should the counter-party seek to backtrack.</p> <p>The Singapore Convention on Mediation may fill the void. The Convention provides a global regime for the enforcement of mediated settlement agreements. Modelled on the New York Convention of the Recognition and Enforcement of Foreign Arbitral Awards, the new convention gives the same status as the NY Convention gives to arbitral awards.</p>	<p>The Singapore Convention came into force on 12 September 2020 and has been signed by over 53 states (Brazil being the most recent in June 2021). Following Brexit, the UK can now sign in its own right. Companies should keep a watching brief on UK ratification. On 13 May 2021, the Lord Chancellor announced, in a speech at London International Disputes Week 2021, that the Government would begin a public consultation on whether the UK should ratify the Convention; a prospect which, in the Lord Chancellor's view, would promote international mediation and help maintain the UK's position as a dispute resolution hub.</p>	<p><a href="#">Singapore Convention</a></p> <p><a href="#">UK Government policy statement</a></p> <p><a href="#">CMC response</a></p>
<p><b>Legal status and enforceability of smart contracts</b></p> <p>Following the UKJT statement on cryptoassets and smart contracts published in November 2019, the Law Commission published a call for evidence on smart contracts to consider the circumstances in which a smart contract can be legally binding, how they are to be interpreted, how vitiating factors such as mistakes may apply and the remedies available where they do not perform as intended.</p>	<p>Companies to keep a watching brief. The call for evidence on smart contracts closed on 31 March 2021. The Law Commission is now analysing the responses and will use them to inform its scoping study which it intends to publish in Autumn 2021.</p>	<p><a href="#">UKJT Statement</a></p> <p><a href="#">Law Commission Call for Evidence</a></p> <p><a href="#">Law Commission Call for Evidence – Digital Assets</a></p>
<p><b>Review of pre-action protocols</b></p> <p>The Civil Justice Council (CJC) is reviewing the pre-action protocols (PAPs). The review looks at all aspects of PAPs, including their purpose, whether they are working effectively in practice and whether</p>	<p>The CJC has provided the terms of reference of the review and invited completion of an online survey which closed on 18 December 2020. There is nothing immediate for companies to do other than to maintain a watching brief.</p>	<p><a href="#">Terms of Reference</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p>any reforms are required. Any changes to the pre-action protocols will affect the way in which companies are required to deal with potential litigation and its related expenditure.</p>		
<p><b>Review of small claims</b></p> <p>The Civil Justice Council (CJC) recently published an interim report: The Resolution of Small Claims, following a review by a working party of experienced district judges. Recommendations include:</p> <ol style="list-style-type: none"> <li>(1) Ensuring all parties who wish to mediate are offered a mediation appointment for the small claims mediation service.</li> <li>(2) Requirement for parties to provide information in the DQ regarding: (a) wish to participate in remote hearings; (b) vulnerability; and (c) if they consent to a settlement hearing in advance of the final hearing.</li> <li>(3) HMCTS and MoJ should consult with mediation providers and consider setting up private third party mediation for all small claims.</li> <li>(4) HMCTS should urgently analyse and evaluate the benefits of preliminary hearings (such as the model operating in Birmingham Civil Justice Centre).</li> </ol> <p>If ultimately implemented, the recommendations could have far reaching effects on the way small claims are dealt with.</p>	<p>Companies to keep a watching brief. Following this interim report, further consideration is anticipated regarding wider issues in relation to the resolution of small claims. This will be by an expanded working party, and should include a consultation.</p>	<p><a href="#">CJC interim report</a></p>
<p><b>Possible law reform</b></p> <p>The Law Commission (LC) has published a consultation seeking ideas for its 14th programme of law reform. Possible areas of reform are set out and if implemented, may impact the conduct of future litigation:</p>	<p>Companies to keep a watching brief. The consultation closed on 31 July 2021. The Law Commission plans to publish its final programme during the first half of 2022.</p>	<p><a href="#">Law Commission consultation</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p>(1) Conflict of laws and emerging technology. There are several conflict of law issues presented by emerging technologies, including inherent difficulties in determining the geographical location of acts, actors and intangible assets (such as digital assets), which could cause problems when determining whether a particular court will have jurisdiction to hear a dispute. The LC could clarify the domestic legal position.</p> <p>(2) Justice in the digital age. Issues include whether the presumption that computer-generated evidence is reliable unless proved otherwise should be changed in light of the <i>Bates v Post Office Ltd</i> litigation, and whether public bodies should be liable for the other party's costs where the public body loses in litigation.</p>		
<p><b>Simplification of the Civil Procedure Rules (CPR)</b></p> <p>The Civil Procedure Rules Committee (CPRC) has recently approved a two year works programme in principle to simplify the CPR. The first year will consider revisions to the rules and practice directions under Parts 1-30 and then the second year will consider Parts 31-50. The programme is seen as a way of ensuring that the CPR is as clear, simple and concise as possible and more accessible to litigants in person.</p>	<p>The CPRC has also established a sub-committee to lead the programme. The programme will need to incorporate a consultation. Further news is awaited. The programme could result in some kind of CPR style guide including a high level statement of drafting principles.</p>	
<p><b>Welsh devolution</b></p> <p>There is a growing divergence between English and Welsh law which could affect future litigation that companies are involved in if a distinct Welsh jurisdiction is created:</p>	<p>The consultation ended on 31 January 2020 and the responses are currently being considered. Details of the outcome will be published in due course. There is nothing for companies to do, other than to keep a watching brief. If a distinct Welsh jurisdiction is created it could impact on future litigation.</p>	<p><a href="#">Welsh Government Consultation</a></p> <p><a href="#">IEAC first report on justice in Wales</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p>(1) In July 2019, the Independent Expert Advisory Committee on Justice in Wales submitted its first report regarding the operation of the justice system in Wales. The committee recommended that the process of reform of justice in Wales should begin immediately. The UK Government disagreed that Wales justice should be wholly devolved.</p> <p>(2) In October 2019, the Welsh Government consulted on how Welsh law will be classified, consolidated and codified in the future.</p> <p>(3) On 3 February 2021, the Law Society launched its Future of Justice for Wales Manifesto 2021. Recommendations include continuing to implement the recommendations on justice and engage in constructive dialogue with the UK Government to ensure Wales' needs are recognised and maintain/develop a shared regulatory system to accommodate English and Welsh practice and avoid barriers to cross-border working for practitioners.</p> <p>(4) A new Law Council of Wales has been created. The umbrella body is independent of Welsh government and will focus on ensuring a strong and sustainable legal sector for Wales.</p>		<p><a href="#">Press release – Law Council of Wales</a></p>
<p><b>Campaign to create central repository of court judgments</b></p> <p>Not all England &amp; Wales court decisions are reported which is considered a shortcoming of the common law system because an easy to access and complete resource is critical to the delivery of principles of open justice, especially if virtual hearings replace/partially replace physical hearings which is becoming increasingly common due to the COVID-19 pandemic. Secondly, it hinders the use of AI</p>	<p>Companies should maintain a watching brief. The new website is intended to go live in April 2022</p>	<p><a href="#">MoJ announcement</a></p>



Immediate impact



Short-term impact



On the horizon

Legal risk	Next steps	Links
<p>systems and modern technology to help innovate legal services and predict individual case outcomes. The MoJ has recently announced an arrangement with the National Archives to create the first comprehensive and free online repository of court judgments from E&amp;W.</p>		



Immediate impact



Short-term impact



On the horizon

# Contacts



**Chris Busby**

*UK Head of Financial Disputes and Investigations Group*

T: +44 778 095 3544

[chrisbusby@eversheds-sutherland.com](mailto:chrisbusby@eversheds-sutherland.com)

---



**Helen Eastwood**

*Head of Professional Support for Litigation and Dispute Management*

T: +44 788 765 8416

[heleneastwood@eversheds-sutherland.com](mailto:heleneastwood@eversheds-sutherland.com)

---



**Laura Norris**

*Professional Support Lawyer*

T: +44 782 542 0803

[lauranorris@eversheds-sutherland.com](mailto:lauranorris@eversheds-sutherland.com)

---

This document is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of the day it was created; however, the law may have changed since that date. This information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. The authors are not responsible for any actions taken or not taken on the basis of this publication. Where references or links are made to external publications or websites, the views expressed are those of the authors of those publications or websites which are not necessarily those of the authors of this document, who accept no responsibility for the contents or accuracy of those publications or websites.

## **[eversheds-sutherland.com/financialinstitutions](https://www.eversheds-sutherland.com/financialinstitutions)**

© Eversheds Sutherland 2021. All rights reserved.

Eversheds Sutherland (International) LLP is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit [www.eversheds-sutherland.com](https://www.eversheds-sutherland.com).

BIR\_LIT\7922574\4