

GPC: TRADITIONAL DISPUTE RESOLUTION MODELS CHALLENGED IN GROUND BREAKING GLOBAL REPORT

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Firm news

A ground breaking report published today by Herbert Smith Freehills, PwC and the International Mediation Institute (IMI), challenges the traditional notions of what clients want and how lawyers should represent them in a dispute.

Unique in terms of scale and format, the research has been gathered from the ambitious Global Pound Conference (GPC) series. This amassed the views of more than 4,000 people at 28 conferences in 24 countries across the globe, plus hundreds more who contributed online.

Four Key Global Themes and four Regional Differences have been identified in the report, which can be viewed in full ([click here](#)).

Significantly, the report finds that:

- Clients (referred to as Parties in the report) are not just looking for justice, but an efficient journey to resolution. Efficiency, including through the use of technology, is identified as the key priority (65%) for clients when choosing a dispute resolution process to use. This calls into question whether traditional dispute resolution processes - litigation and arbitration - are meeting clients' needs.
- Almost two thirds (61%) of clients say that they want to see more collaboration from their advisors - both when lawyers are interacting with them and also with opponents.

- There is near universal recognition that disputing parties should be encouraged to consider processes like mediation before they turn to the courts or arbitration. Interestingly, the data shows a growing desire by clients to see non-adjudicative processes, like mediation, undertaken in parallel with litigation or arbitration.
- The GPC data also flagged some uncomfortable home truths for lawyers, with 70% of global delegates saying that private practice lawyers are the primary obstacles to change in commercial dispute resolution. The results also showed a broad consensus that in-house counsel are considered 'change enablers' and should encourage their organisations (and if necessary, their external lawyers) to consider dispute resolution options more carefully, including using processes like mediation.

The report also uses the global data to identify seven regional groupings: North America; Asia; UK; Oceania; Continental Europe; Africa/Middle East; and Latin America. From these groupings four regional differences emerge including:

- A desire for increased regulation in Asia. Africa/Middle East and Latin America also called for more legislation to promote enforcement.
- In all regions, except Asia, delegates selected efficiency as their top demand - and by a significant margin. In Asia, the leading choice was, again, the demand for certainty and enforceability of outcomes.
- Delegates in Continental Europe say that in-house lawyers should be primarily responsible for ensuring their company understands their dispute resolution process options. In all other regions, save for Latin America, delegates highlight external lawyers as equally or more responsible for this critical role. The UK is the only region to rank in-house and external lawyers equally responsible.
- As the 20th anniversary of Lord Woolf's sweeping reforms to the English civil justice system comes into view, the effects of a generation of lawyers brought up with Alternative Dispute Resolution (ADR) are now evident. 61% of London delegates thought that, when lawyers recommended dispute resolution procedural options to clients, the most influential factor was the type of outcome sought by the client. This was unlike all other regions (Asia 60%, Oceania 61%, Continental Europe 58% and North America 64%), which reported familiarity with a particular type of legal process as the most influential factor.

Chief Global Litigation Counsel at GE Oil & Gas Michael McIlwrath, who is chairman the Central Organising Group for the GPC Series, commented: *"This project focuses on the needs of clients of civil and commercial dispute resolution services. In doing so, it has prompted a much needed global conversation about how conflict can and should be managed in the 21st Century. Pervasive disruptors like technology and globalisation have changed the business landscape almost beyond recognition. Yet dispute resolution processes have simply not caught up. This project has generated actionable data to question the status quo. It has armed us with a mandate for change and the outputs are already informing public policy making and private dispute resolution choices around the world."*

Alexander Oddy, Partner and Head of ADR at Herbert Smith Freehills said: *"Greater emphasis on collaboration between in-house and external lawyers, and between disputing parties, will lead the way for more efficient resolution of commercial disputes. Technology also has a role to play. Social tools and online platforms are making it easier than ever for lawyers to work more closely with each other and with their clients. Advancement in data analysis also enables advisors and legal teams to review and investigate large amounts of data quickly and assess risk in more sophisticated ways. Conventional views on the role of confidentiality are also being challenged. This should facilitate the earlier use of consensual processes like mediation, in advance of, in parallel with, or even integrated into litigation or arbitration. This unique global data indicates a mandate for change in attitudes and approach."*

John Fisher, who leads PwC's Disputes Practice, said: *"The GPC Series was a fantastic opportunity for us to gather truly global perspectives on what changes need to be made to improve dispute resolution. One of the conclusions is that while the need for change is recognised, most people think someone else has to make the change happen. But, in my view, in-house counsel is best placed to facilitate this change, as they own the problem. As in-house counsel rethink how they resolve disputes, there is an opportunity to embrace the acceptance that collaboration brings results. That means drawing on the skills, experience and perspectives of different people to design optimal solutions. It also means considering alternative resolution approaches rather than the traditional adversarial one."*

Chief Justice Sundaresh Menon of the Supreme Court of Singapore said: *"There is much of value that has been generated by the Global Pound Conference series and it is hoped that the findings that have been reported here will inform the choices and decisions of stakeholders who are in a position to shape the dispute resolution landscape."*

About Herbert Smith Freehills

Operating from 27 offices across Asia Pacific, EMEA and North America, Herbert Smith Freehills is at the heart of the new global business landscape providing premium quality, full-service legal advice. The firm provides many of the world's most important organisations with access to market-leading dispute resolution, projects and transactional legal advice, combined with expertise in a number of global industry sectors, including Banks, Consumer products, Energy, Financial buyers, Infrastructure & Transport, Mining, Pharmaceuticals & Healthcare, Real estate, TMT and Manufacturing & Industrials.

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