

THE BANKING  
LITIGATION  
LAW REVIEW

FIFTH EDITION

Editor  
Deborah Finkler

THE LAWREVIEWS

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# PREFACE

This year's edition of the *The Banking Litigation Law Review* highlights that litigation involving banks and financial institutions shows little sign of slowing. The legal and procedural issues that arise in banking litigation continue to evolve and develop across the globe, in the context of both domestic and cross-border disputes.

The covid-19 pandemic continued to loom large in 2021, with judicial systems taking part in a forced experiment of embracing new technology to minimise the disruption caused by pandemic restrictions; in some jurisdictions we may see the permanent adoption of measures taken up in response to the restrictions imposed by the pandemic, as well as a general shift towards the greater use of new technology in dispute resolution. This extends to the increased use of virtual hearings (as well as electronic trial bundles and filing systems), although we can expect that physical hearings will continue to play a prominent role, particularly in complex cases. While it is too early to predict the future with any certainty, it seems likely that some form of hybrid approach is here to stay.

Outside the court room, the effects of the pandemic continue to be felt throughout the wider economy. As various restrictions and financial interventions by governments are scaled back, the early signs of the long-term, negative economic effects of the pandemic are now beginning to emerge in many parts of the world. From the perspective of the financial sector, these conditions are likely to translate into an increase in loan arrears and defaults, debt restructurings, bankruptcies and insolvencies affecting banks, their customers and counterparties. These conditions typically presage an uptick in banking litigation and it seems likely that disputes arising from the economic fallout of the pandemic will feature in future editions of this Review.

A continuing trend this year has been the broadening of obligations placed on financial institutions in the name of improving consumer protection. Faced with the challenge of increasing bank fraud and other illicit transactions, governments and courts alike have continued to develop the nature and scope of duties imposed on banks to protect their customers. Claimants will no doubt continue testing the limits of these obligations and duties in the courts.

Last year's preface highlighted the political and economic uncertainty produced by Brexit as the transition period drew to an end. Since then, some welcome clarity has emerged around the foundations of the United Kingdom's new relationship with the European Union, including in the area of jurisdiction and enforcement of judgments. However, the new relationship will take time to bed down, with additional complexities (and potentially disputes) likely to emerge as parties navigate the new reality. That said, there is little evidence that commercial parties, including banks and financial institutions, have been deterred from choosing the United Kingdom as a forum for litigating their disputes.

While 2021 has been another challenging year for many, there has been some cause for optimism: globally stock markets have continued to perform well as economic recoveries gather pace in many parts of the world, while the roll-out of the covid-19 vaccine has allowed many jurisdictions to emerge from a period of seemingly endless lockdowns and suppressed economic activity. Despite these positive signs, however, the global economy is likely to feel the effects of the covid-19 pandemic for some time and in various (and often unexpected) ways, as highlighted by the recent emergence of a crisis in the global supply chain. At the same time, other global challenges, such as climate change, will increasingly dominate the political and economic agenda. Given the various headwinds and challenges ahead, the high volume and broad nature of litigation in the financial sector look set to continue.

**Deborah Finkler**

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London

November 2021



## ABOUT THE AUTHORS

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Deborah Finkler is a partner in Slaughter and May's disputes and investigations group and was formerly head of both dispute resolution and the firm's global investigations group. Her practice covers the broad spectrum of commercial litigation and both domestic and cross-border investigations. She acts on substantial and complex commercial disputes for a wide range of clients, including a number of international banks and financial institutions. Deborah is highly regarded for her banking litigation and regulatory investigations practice. She is also regularly involved in complex corporate recovery and insolvency work.

Deborah is ranked as a leading individual for Banking Litigation and for Financial Services (Contentious Regulatory) in *Chambers UK*, 2021. She is also recognised as a 'Hall of Fame' individual for both Banking Litigation and for Commercial Litigation in *The Legal 500*, 2022, where she is also listed as a 'Leading Individual' for Financial Services (Contentious).

Deborah is described in the legal directories as 'the best there is' and a 'formidable' practitioner with 'massive experience over a very wide range of cases'. She is 'respected by fellow practitioners as a tough negotiator and a forceful advocate for her clients', 'an absolute class act'.

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