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ENGLAND AND WALES

Business and Property Courts

The Commercial Court Report 2018-2019

(Including the Admiralty Court Report)

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Introduction

This Annual Report on the Commercial and Admiralty Courts aims to serve as both an introduction to those who may not be familiar with the Court, as well as a provider of detailed information and statistics to more regular users of the Court.

This report encompasses the work of the Commercial Court and the Admiralty Court, who share the same judges, procedures and administration. Reference to 'the Court' throughout this report will refer to both the Commercial Court and the Admiralty Court.

As noted last year, whereas tradition would tend to name the Admiralty Court first, since the publication of the 10th Edition of the Commercial Court Guide the practice has been changed, to reflect the balance of work between the two Courts.

The Court continues to attract legal disputes from many countries of the world. So much so that few natural disasters (such as the collapse of the dam in South America or the outbreak of avian flu in North America) and few areas of unrest in the world (such as Libya and Yemen) are not subject to detailed attention and analysis in the Court. The international reach of the Court makes the work of a judge in the Court both interesting and challenging.

We are extremely grateful to the Commercial Court List Office, particularly Michael Tame, for the provision of up-to-date statistics that are crucial for the Annual Report.

We would like to thank the Court staff for their constant dedication and hard work. Particularly in times of pressure and difficult circumstances, staff have continued to work diligently and without complaint. The Court could not operate effectively without them.

We are also very grateful for the support and insights offered by Court users. The Court has, throughout its life, worked closely with the solicitors and barristers who appear regularly in the Court, and with its regular users. As will appear below, their input is vital in ensuring that Court operates efficiently and continues to innovate its procedures to reflect the changing demands imposed by modern litigation.

Mr Justice Teare
Judge in Charge of the Commercial and Admiralty Courts

The Courts

The work of the Commercial Court

The Commercial Court covers a wide jurisdiction, extending to any claim that relates to the transaction of trade and commerce. This may include claims involving commercial agreements, import and export of goods, carriage of goods by sea, land and air, banking and financial services, insurance and reinsurance, markets and exchanges, commodities, oil, gas and natural resources, the construction of ships, agency, arbitration and competition matters.

Following the trend of previous years, the Court has experienced a very busy year in terms of volume and complexity of cases. Although the previous year (from 2017 to 2018) saw a considerable increase in judicial personnel with five new Judges joining the Court, this year has seen just one promotion of HHJ Waksman QC to Mr Justice Waksman in October 2018. He has been succeeded as Judge in Charge of the London Circuit Commercial Court by HHJ Pelling QC. However the Commercial Court will gain some new recruits during the course of the year 2019-2020.

The Court has sadly said goodbye to Walker J, who has retired this year. We are proud of the promotion of Males J to the Court of Appeal in the past year, as well as the announcement of the promotions of Popplewell J, Carr J and Phillips J, which will be taking effect during the course of the year of 2019-2020.

Therefore, the judges of the Commercial Court as at the start of October 2019 are: Teare J (Judge in Charge), Andrew Baker J, Bryan J, Butcher J, Carr J, Cockerill J, Jacobs J, Robin Knowles J, Moulder J, Phillips J, Picken J, Popplewell J and Waksman J. Their clerks' contact details can be found at: https://www.judiciary.uk/you-and-the-judiciary/going-to-court/high-court/queens-bench-division/courts-of-the-queens-bench-division/commercial-court/judges-clerks/.

The Court still handles a varied case load, with the balance of work in recent years straying away from the former Commercial Court Report dominance of international trade, insurance and reinsurance disputes. Although these areas are still very present in the Court, they have been joined by commercial fraud, actions arising out of commercial and business acquisition agreements and claims relating to banking, financial services and securities transactions.

The Court now handles many more banking and financial disputes than previous years, as well as disputes (based in contract or tort) between high net worth individuals from around the world.

Arbitration

Matters arising from arbitration still make up a significant proportion of the claims issued in the Court (around 30%), reflecting London's continued status as an important centre for international arbitration.

The applications include challenges to awards, on grounds of jurisdiction (a section 67 application), appeal on a point of law (section 69 application) or irregularity (section 68 application). However, the Court also receives a number of applications for injunctions that arise from arbitrations, as well as the enforcement of arbitration awards as well as other types of application (for example, applications to the court for the appointment of an arbitrator).

In the last year there was a drop in section 69 applications, from 87 to 39. As in previous years, although a number are granted permission (four were heard in 2018-2019 and a number of cases on which permission was granted are pending), very few succeed: two did in 2017-2018, and none in 2018-2019.

There was a dramatic fall in section 68 applications, from 71 to 19. Again, very few such applications succeed. The Court hopes that this statistic reflects the fact that parties are appreciating the point made repeatedly by the Court in its judgments that the hurdle for section 68 applications is very high.

There have been four hearings of jurisdictional challenges under section 67 of the Act.

The work of the Admiralty Court

The Admiralty Court has exclusive jurisdiction over certain maritime claims. Cases heard by the Court include:

- collisions between ships
- disputes over the transport of cargo
- salvage of a ship, cargo or crew
- disputes over goods supplied to a ship
- disputes over mortgages and other security over ships
- claims by passengers or crew for injuries suffered
- claims by the crew of a ship for unpaid wages
- claims by shipowners to limit liability for loss or damage

The Court hears claims brought against the owner of a ship ('in personam' claims) and claims brought against the ship itself ('in rem' claims). The distinctive feature of the 'in rem' jurisdiction is the ability of the court to arrest and sell ships.

The Court comprises the Admiralty Judge (Teare J), all other judges of the Commercial Court and the Admiralty Registrar. The Admiralty Registrar allocates cases either to the Admiralty Judge or to the Admiralty Registrar (usually those under £1 million). Where damages are to be assessed in a collision action (or any other action) they will, save in exceptional cases, be referred to the Registrar.

Warrants of arrest are executed by the Admiralty Marshal. The Court and the Marshal acknowledge the role played by solicitors in giving early notification of a Claimant's intention to arrest, which notice then enables the Marshal to act without delay when a warrant of arrest is issued.

The number of claims issued in the Admiralty Court has been much the same as in the previous year, 150, with 10 warrants for arrest issued and 4 vessels sold by the court. The number of arrests is not unusual. It is in part a function of the practice whereby notice of an intended arrest usually leads to the provision of a letter of undertaking by a P&I Club. The arrest procedure has been subjected to a detailed analysis by the Admiralty Court and the Court of Appeal in *The Alkyon* [2018] 2 Lloyd's Reports 601 and [2019] 1 Lloyd's Reports 406. What was at issue was whether a vessel should be released unless there was provided a cross-undertaking in damages. It was held that there was no cause for such an undertaking in that case. The Court of Appeal left open the possibility of a change in the future but noted that were the matter to be reconsidered the Court should

only do so *"if properly informed as to the views of the maritime community, including the practical ramifications of any proposed changes and the preferred route to be adopted if any such changes are decided upon."* At present, although there has been much debate by distinguished lawyers as to the merits of the present procedure, there is no evidence that the industry itself is troubled by the present procedure.

This year there was a revision of that part of CPR Part 61 which sets out the procedure in limitation actions. That procedure needed to be updated following the decision of the Court of Appeal in *The Atlantic Confidence* permitting a limitation fund to be set up by means of a P&I Club letter of undertaking. The revision was the work of the Admiralty Court Users' Committee and was swiftly adopted by the Rules Committee.

In early 2020 Jervis Kay QC will retire as Admiralty Registrar. As a result of the county court no longer having Admiralty jurisdiction all smaller value claims raising an issue of navigation or ship management are case managed by the Registrar and, when they do not settle, are tried by him. His tenure of office has been marked by the confidence which the users of the court have had in his nautical knowledge which has meant that the cases tried by him have typically not required expert evidence, thus saving time and cost. The importance of the work of the Registrar is underlined by the fact that whereas in 2019 the Judge tried only one Admiralty case, the Registrar tried 6. The Court is very grateful to the Registrar for his conscientious and effective service and wishes him well in his retirement.

Sources and Volume of the Courts' work

The sources of the courts' business

Throughout the years, the Commercial Court has always handled an international caseload. Often, cases will arise because parties or standard forms in use in a particular trade have a specific provision in their contracts for English law (or the English courts) to resolve any disputes that arise.

The proportion of the Court's business which is international remains stable at around 75%.

A domestic case is one where the subject matter of the disputes between the parties is related to property or events situated within the United Kingdom, and the parties are based in the United Kingdom relative to the dispute. To elaborate, the part of the business relevant to the dispute must be carried on in the UK, regardless of whether the business is incorporated, resident or registered overseas. All other cases not fitting in to the description above are classified as "international cases".

The statistics above reflect the dominance of international business in the Commercial Court.

The volume of the business of the Commercial Court

The Court has seen a slight reduction in the number of claim forms issued from previous years, with 830 claims issued compared with 864 in 2017-2018.

The number of hearings listed in the Court has also seen a slight decrease from 1,788 in 2017-2018 to 1,450 hearings listed this year. However, of the 1,450 listed, only 416 were not effective (due to being vacated, stood out or settled on the day or in advance of the hearing) which compares with 600 ineffective hearings the previous year. The number of effective hearings is therefore very similar: 1,034 this year compared to 1,188 in 2017-18.

With regards to full Commercial Court trials, just 53 were heard out of a total of 145 listed, demonstrating a settlement rate of 63.45%. This is consistent with previous years, with a 60% settlement rate in 2017-2018 and a 62% settlement rate the previous year.

As many readers will be aware, the Court process encourages and promotes settlement by requiring the parties to define the issues at an early stage (before the first Case Management Conference), then evaluating the parties' positions following disclosure and exchange of witness statements and expert reports. Trial dates are then fixed with very reasonable lead times, which constantly focuses parties and lawyers on whether the impending trial should be fought. ADR is often built into the process to further facilitate settlement.

The figures for trial lengths for the past three years are:

Length of trials	2016-2017	2017-2018	2018-2019
Less than one week	27	32	26
Up to two weeks	17	16	19
Up to three weeks	6	9	5
Over four weeks	4	7	11

The statistics show that the average length of trials for both Commercial and Admiralty Courts has increased by 2 days since 2017-2018 – from 7 days to 9 days. While the increase may in part be due to one particularly long trial (the longest trial in the Commercial Court this year was 52 days, compared with just 17 days in 2017-2018) there does appear nonetheless to be an upward trend. In addition, the current figures are likely to be an underestimate of the real time needed for a case, because court time which would previously have been used for openings has been significantly shortened by judicial pre-reading and increasingly there is use of written closings, parts of which are never addressed orally.

The largest value claim in the Court over the past year was for £2,025,000,000, followed by the second largest value claim as £708,000,000. There are other large value claims where no specific figures are available. For example, the case of *Ethihad Airways v Flother*, arising from the insolvency of Air Berlin, concerned the largest insolvency currently heard before the German Courts.

The volume of the business of the Admiralty Court

It has already been noted above that the number of claims issued in the Admiralty Court has been much the same as in the previous year, 150.

Of those, 24 were for damage caused by collision (compared with 16 in 2018). Most of the rest were for personal injury (the County Court no longer having Admiralty jurisdiction), cargo damage and other agency and contractual claims. At the CMC in those collision actions where electronic data had been exchanged, the parties typically engaged with the new fast track procedure introduced by the Court. No such action reached trial this year, no doubt because the exchange of electronic track data enabled the parties to agree what had happened and settle the claims without the need for a trial.

19 actions were set down for trial, of which 7 were tried and 12 settled.

The number of interlocutory hearings before the Admiralty Judge (or a Commercial Court judge authorised to sit in Admiralty) was 16 and the number of interlocutory hearings before the Admiralty Registrar was 14.

The Financial List

The Financial List is part of an active and forward-looking strategy for the United Kingdom regarding commercial dispute resolution, which is designed to respond to users. It was announced by the then Lord Chief Justice in his Mansion House Speech on 8th July 2015, as a specialist list for financial claims exceeding £50 million, or cases that raise issues concerning the domestic and international finance markets.

The List is a joint initiative of the Chancery Division and the Queen's Bench Division, where Judges from both jurisdictions have been nominated to sit as "Financial List Judges". It ensures that cases which would benefit from being managed and heard by a Judge with specific expertise in the law relating to the financial markets, or which raise issues of general importance to the financial markets, are dealt with by Judges with suitable expertise and experience.

The nominated judges of the Financial List from the Commercial Court are: Teare J (Judge in Charge of the Commercial Court), Andrew Baker J, Butcher J, Knowles J, and Phillips J. The nominated judges from the Chancery Division are: Sir Geoffrey Vos (the Chancellor of the High Court), Hildyard J, Mann J, Marcus Smith J, Nugee J, Snowden J and Zacaroli J.

The Financial List had 11 hearings listed over the past year, 9 of which were heard, which remains consistent with previous years. All of the Charging Orders, CMCs, Commercial Trials, Judgments and Pre-Trial Reviews listed in the Financial List were heard. 21 claims were issued in the Financial List over the past year, including Part 7 claims (for example bank guarantees, banking transactions, bonds and derivatives) and Part 8 Claims (including banking transactions, bonds/debt securities and other important issues with financial markets/expertise required).

Case Management

Case management has, since the inception of the Commercial Court, been a key feature of litigation there.

All cases in this List will feature at least one Case Management Conference ("CMC") conducted by a Judge, where all parties should be ready to deal with all aspects of case management and issues so that the Judge can oversee and ensure the case is managed effectively.

The Court will usually set a timetable down to trial at the first Case Management Conference, except in very large or complex cases where this might not be possible. The Court generally aims to set a detailed timetable covering as much of the pre-trial period as possible, as well as fix future CMC's when necessary to ensure the Court carefully monitors progress of cases. It is therefore important that by the CMC the parties have considered the issues for trial carefully and that these are reflected in the Case Memorandum and List of Issues.

Over the past year, 67.98% out of the 203 CMC's listed were heard, and 48.05% of Pre-Trial Reviews were heard.

The Court encourages parties to engage in Alternative Dispute Resolution ("ADR"), which is a way of resolving disputes outside of Court via mediation and arbitration. Parties must consider ADR in advance of the CMC, inform the Court at the CMC of what consideration has been given to the issue and keep the Court updated with the process.

Parties may be agreeable to submitting a shortlist of potential mediators in an ADR Order to the judge conducting the CMC, with an understanding that the parties will work with the judge's choice of mediator from the agreed shortlist.

On occasion the Court will perform "Early Neutral Evaluation". There has been one such hearing in the past year.

When parties attend a CMC, a "progress monitoring date" will be set, which is the date by which parties must report their compliance with the pre-trial timetable and preparation for the trial to the Court. These will then be reviewed and, if necessary, steps taken to ensure the case will be ready for trial on the fixed date.

In the interim any changes to the timetable set out at the CMC are kept under review by the judges of the Court, with any amendments to the timetable to trial having to be approved by order of the judge (usually on documents).

The Court allows parties to agree directions at a CMC in straightforward cases so that costly oral hearings are dispensed with. This has been the process for over 15 years. However, concerns have been raised that sometimes directions are agreed without full consideration being given to the issues, therefore impacting negatively on the efficient conduct of the trial. As a result, the Court requires that the proposed directions, parties' information sheets, Case Memorandum and List of Issues, draft order and a statement from Counsel certifying the case is appropriate for consideration on paper are submitted in very good time, and it is then for the Court to decide whether the draft Order is approved. If the timetable for submission of a proposed draft Order is not complied with, it is unlikely that the judge will vacate the CMC. Even if a draft Order is submitted, the judge may nonetheless require the parties to attend if he or she is concerned about any aspect of the proposed directions.

Shorter and Flexible Trials and expedition

The Court has continued to see a number of cases brought under the Shorter Trials Scheme, although the Flexible Trials Scheme continues to be under-utilised by parties.

The Court is also able to order expedition of suitable cases outside of these schemes. In *Apache Beryl I Limited v Marathon Oil UK LCC* and others [2017] EWHC 2258 (Comm) Males J considered the conditions for ordering expedition, which are considered by the judges of the Court when dealing with such applications:

"… there are four factors which need to be taken into account. First, there is a threshold question whether objectively there is urgency. Second, the court should have regard to the state of its list. Third, the procedural history including delay by the applicant is a factor. Fourth arises the question of whether there will be any irremediable prejudice to the respondent to the application. The authorities also show that so far as the respondent's position is concerned it is the last of these, the question of prejudice, which is important with other matters being comparatively unimportant, although they are matters about which the applicant will need to satisfy the court."

Disclosure

The Disclosure Pilot Scheme for any party commencing or continuing proceedings in the Commercial Court was launched on 1st January 2019. This was a response to feedback (initially largely from the FTSE100 GC, then the larger wider profession) which indicated a concern amongst court users that the existing disclosure process did not sufficiently engage parties, may not use technology as efficiently as possible, and can distract from the principal issues in a case.

The pilot scheme aims not to abolish the existing disclosure regime, but to create duties (a) not to dump large volumes of material on other parties, (b) to co-operate with other parties in the lead-up to a CMC, (c) to use appropriate technology in the disclosure process. The new regime is set down in a Draft Practice Direction, which replaces the governing disclosure in CPR Part 31, and those in the support Practice Directions A and B.

The disclosure duties that the parties and their lawyers owe to the Court are now expressly set out. So under this process any failure to comply with the duties may result in sanction. Sanctions can include the adjournment of hearings and adverse costs Orders. Document preservation is taken extremely seriously under the Scheme.

Perhaps the most striking change is that parties will normally be required to provide disclosure ('Initial Disclosure') with their statements of case. This must consist of the key documents that are relied upon by the party and the key documents that are necessary for the other parties to understand. Initial Disclosure should comprise of no more than 200 documents or 1,000 pages of material, and may be dispensed with. However, this is only where the parties agree or the Court orders it is not required, it would involve the production of more than 2,000 documents or 1,000 pages in material, or where a party is to be served out of the jurisdiction.

If either party wishes more by way of disclosure, they must apply for Extended Disclosure. The Court will only grant Extended Disclosure where it is reasonable and proportionate to do so, having regard to the overriding objective of the Civil Procedure Rules, which is to deal with cases justly and at a proportionate cost. There are a number of models of Extended Disclosure, and parties can agree a single model or choose different models for different issues in the case.

The Scheme is to run for two years and it is anticipated that it will continue formally thereafter if deemed a success. At present the Pilot is approaching the one year mark, and information is currently being gathered to evaluate the success of the Pilot. Users with experience of the Pilot are encouraged to provide this feedback to Professor Rachael Mulheron the official monitor of the pilot at: r.p.mulheron@qmul.ac.uk

To date experience has been broadly positive, both anecdotally and from the Association of Professional Support Lawyers (APSL). Professor Rachel Mulheron has reviewed cases in the first six months, looking at the types of orders being made. Across the Business and Property Courts, in cases where a single model order is made, 53% were for Model C.

Where multiple orders were made 42% were for Model C and the rest either Model B or D. In the Commercial Court 80% of cases opt for Model C.

In larger cases the disclosure pilot has led to a greater focus on narrowing the scope of disclosure. However, there is a concern that in lower value claims the process is increasing costs and this issue is being actively considered. There have also been concerns that there is in some cases "game-playing" with parties taking tactical positions on the completion of the Disclosure Review Document. Encouragement to adopt a cooperative approach remains important.

Preservation notices have caused some issues with large corporates. Initial disclosure has been positive and useful though some users have suggested that it should include known adverse documents (a possibility which the working group had considered carefully but decided not to pursue).

As for DRDs, parties are taking different approaches and not necessarily focussing on the key issues. Very few parties have taken the opportunity for disclosure guidance hearings, and parties are encouraged to think about this option.

Overall there appears to be a need to be vigilant about not overcomplicating the process, respecting the express duty of cooperation, and making sure that judges and lawyers alike keep hearing lengths under control. It is anticipated that 2020 will be key for getting feedback and users are encouraged to keep submitting feedback

Witness statements

The Commercial Court Report of 2017-2018 drew attention to the growing concern of the judges of the Commercial Court surrounding factual witness evidence at trials, from the length, style and content of witness statements to the difficulty of formal evidence in chief referencing an 'aspirational' view of what a witness may be able to recall, resulting in unfairness to the witness and obstruction of the trial process.

In March 2018, presented with that concern, the Commercial Court Users' Committee established a Working Group to consider the issues and whether there was room for reform of rules or practice, with Popplewell J referring to "a fairly widespread feeling that in this area the tools we have at the moment are not doing the trick, and not even saving costs, let alone getting 'best evidence'".

A survey commissioned by the Working Group ran for the Michaelmas Term 2018 and attracted participation from 932 respondents. Only 6% felt the current system for witness evidence fully achieved the aim of producing best evidence at trial, although 48% of respondents felt the system substantially achieved that aim. On the other hand, 45% felt it did so only partly or not at all. 75% of respondents identified reasons why witness statements did not fulfil their purpose, of whom (e.g.) 73% complained about witness statements straying into legal argument, 68% stated they were too long and 68% found witness statements often contained irrelevant matters. In addition, 63% of all respondents felt that existing rules were not being followed, and 80% said they would support their more rigorous enforcement.

In the course of preparing the survey, it became evident that the topic was of interest to the other jurisdictions in the Rolls Building and the Working Group's remit evolved accordingly: participation was extended to cover those other jurisdictions; and the survey was targeted at, and responded to by, participants involved in all of them. 50% of respondents said they were barristers; 42% solicitors; 4% (30 respondents) were judges. Almost 70% of respondents had over 10 years' litigation experience, with 41% having more than 20 years' experience.

Informed by their own views and the results of the survey, the Working Group explored ideas for reform and ideas for improved enforcement through two separate focus groups, before preparing a final report on its work which was completed in July 2019. That report can now be found at www.judiciary.uk/publications/report-of-the-witness-evidence-working-group/. It was considered by the Business and Property Courts Board at the end of November 2019, which welcomed it and endorsed in principle the Working Group's main recommendations, those being as follows:

- An authoritative **statement of best practice** should be formulated for the preparation of witness statements, with a **harmonisation of the Guides** (for the Commercial Court, Chancery Division and TCC).

- There should be a more developed factual witness **statement of truth** confirming that the objective of a witness statement and proper drafting practices have been explained to and understood by the witness, and a **solicitor's certificate of compliance** to be signed if there are solicitors on record for the party serving the statement.

- Oral **examination in chief** on particular issues or topics should be given active consideration at CMCs.

- In the Commercial Court, **page limit extensions** should generally only be considered retrospectively at PTRs, at the costs risk of the party serving if a required extension is not granted so that a statement has to be re-drafted and re-served.

- Judges should be more ready, at PTRs or after trials, to apply **costs sanctions** or express **judicial criticism** where there has been non-compliance or bad practice.

- Consideration should be given within each BPC jurisdiction to the possibility of introducing a **pre-trial statement of facts** prepared by the legal team and served at the same time as witness statements, to serve as the main vehicle for setting out parties' detailed factual narrative case, derived primarily from the contemporaneous documents, removing the temptation to use witness statements as a vehicle for doing that and enabling them to be properly limited to any particular points on which factual witness testimony at trial may really add something.

The Working Group will oversee the work that will now commence towards implementing those recommendations. Andrew Baker J is taking over as Chair following Popplewell LJ's elevation to the Court of Appeal and the detailed initial work may be undertaken by one or more smaller groups reporting to the full Working Group.

Managing the Courts' Business

Lead times

"Lead times" are the time between the date a hearing is fixed and the date the hearing will take place. The Court aims to keep the "lead times" within certain targets, which plays a vital role for the financial, trading and business community by providing rapid and efficient dispute resolution procedures.

The current targets (as at January 2020) for non-urgent applications and trials are:

Dates for application hearings:

Length of hearing	Hearing dates available after
30 minutes to half a day	February 2020
1 day	June 2020

Dates for trials:

Length of trial	Trial dates available not before
1 day to 3 weeks	June 2020
4 weeks or more	January 2021

Up-to-date information can be found here: https://www.gov.uk/guidance/commercial-court-hearing-and-trial-dates.

As section F.3 of the Commercial Court Guide notes, the court will expedite the hearing of applications (including applications on notice) in cases of sufficient urgency and importance. Where a party wishes to make such an application a request should be made to the Commercial Court Listing Office on notice to all other parties.

Parties should note that expedition is available only in cases of sufficient urgency. (Guidance as to what constitutes sufficient urgency can be found above under **Shorter and Flexible Trials and Expedition**)

CE-File

Since 2017, all documents in the Court are required to be filed electronically via the CE-File system.

That system is also used extensively for applications on paper, ranging from consent orders through applications for permission to serve out of the jurisdiction and including on occasion contested applications where the parties are content to deal with the matter on the documents.

There are now many such applications. The number each year is in the region of 4,000. It will readily be understood that this takes up much judicial time, with two judges dealing with CE-File each week in addition to their ordinary workload.

Listing issues

Many listing Issues are raised in correspondence lodged on CE-File. Many of these require to be referred to the Judge in Charge for consideration/determination. It is very important that those raising such issues do so by way of concise written submissions. It is regrettably often the case that lengthy letters referring to other correspondence are lodged. This makes the task of deciding the listing issue more time-consuming – and often necessitates a delay in making the decision, because of the need to find sufficient time to deal with the lengthy submissions.

Parties are reminded that any submissions on listing issues should be (i) concise and (ii) self contained.

Long vacation sittings

Judges of the Commercial Court sit regularly during the Long Vacation, which takes place from 31st July to 1st October.

At least one judge sits in the Commercial Court at all times during this vacation period, to deal with both urgent business and regular business (such as applications). At least two judges sit in September.

The Judges of the Court

There are currently 12 Queen's Bench judges nominated to sit in the Commercial and Admiralty Courts as stated above on page 5.

All of the nominated Commercial Court Judges are judges of the Queen's Bench Division. This means that they will often be taken away from the Court on other judicial business such as sitting on criminal trials on circuit, sitting in the general Queen's Bench list, the Administrative Court and the Court of Appeal Criminal Division. Carr J, Cockerill J and Waksman J also sit on occasion in the Technology and Construction Court.

The Court aims to have about 8 judges sitting at any time. However in the light of the fact that all Divisions of the High Court are currently operating below strength it has not been possible to maintain this figure at all times in recent years.

The complex and heavily documented nature of commercial cases requires the judge to read a large amount of material from a "pre-reading list" supplied by advocates. They rely heavily on the provision by the parties' advocates of realistic reading lists, accurate estimates of pre-reading time required from the judge and for the parties to update the List Office if the estimate changes, as trial approaches.

Due to the expensive nature of all court hearings, time spent dealing with evidence from witnesses and oral submissions in court is kept to a minimum. As a result, Commercial Judges spend much time out of Court either preparing for a hearing or preparing a judgment after a hearing. "Judgment writing time" should also be built into the Court timetable to assist this.

Judges also deal with a large number of applications on paper, for example permission to serve proceedings out of the jurisdiction, leave to appeal to bring arbitration appeals under section 69 of the Arbitration Act 1996 and applications to vary pre-trial timetables.

Two judges act as "duty paper applications" judges during each week of term on a rota and one judge acts as the duty judge in charge of section 68 and 69 applications. This is in addition to the judge's usual workload.

The Judge in Charge of the Commercial Court also deals with applications to transfer in and out of the Court, as well as matters concerning listing.

Use of deputy judges in the Commercial Court

A number of retired Commercial Court Judges and Queen's Counsel who practice regularly in the Commercial Court are authorised to sit as Deputy Judges in the Commercial Court. Retired judges who have sat in the Court over the past year include Sir William Blair, Sir Michael Burton, Sir Jeremy Cooke, Sir Ross Cranston and Sir Richard Field.

Queen's Counsel who have sat as Deputy Judges over the past year include Adrian Beltrami QC, Andrew Burrows QC, Robin Dicker QC, David Edwards QC, Christopher Hancock QC, Andrew Henshaw QC, Stephen Hofmeyr QC, Ali Malek QC, Peter McDonald Eggers QC, Lionel Persey QC, David Railton QC, Patricia Robertson QC, Richard Salter QC, Sonia Tolaney QC, Daniel Toledano QC and Nicholas Vineall QC.

Deputy judges are used for applications and trials to ensure that the targets for lead times can be maintained. Deputies will only be used either when the parties agree that the matter may be dealt with by a deputy, or when the Judge in Charge of the Commercial Court considers it suitable for the matter to be dealt with by a deputy.

The Registry and the Listing Office

The Court depends on the very close and beneficial relationship it enjoys with the List Office, which is led by Michael Tame. A list of current staff is at Appendix 1. The List Office provides essential assistance to the Court with incoming applications and correspondence between parties, solicitors and Counsel. The Office will check on whether parties have complied with the timetable set by the Court at the CMC, ensuring that cases are prepared and ready for trial. The List Office also administer applications under the Arbitration Act 1996.

The work of the List Office is invaluable to the smooth operation of the Court, and the efficient disposal of work, to which we are extremely grateful.

Sources of information about the Court

Reports of cases

Reports of material decisions of the Commercial and Admiralty Courts are published online on the following sites:

- BAILII (the British and Irish Legal Information Institute) – www.bailii.org. This site contains unreported cases and is free to access.

- Published summaries of cases heard in the previous term can be found here: https://www.judiciary.uk/judgments/?filter_type=judgment&search=commercial%20court&tax-single-judgment-jurisdiction=-1&tax-single-court=1140&date-range-after=&date-range-before=

The Commercial Court Guide

The latest edition of the Commercial Court Guide was published in September 2017, and is therefore currently in its 10th edition. It sets out detailed information on the practice of the Court within the context of the full Civil Procedure Rules, and should be referred to by parties when involved in commercial claims.

The guide is regularly updated to reflect rule changes and suggestions for improvements, which are welcomed and can be emailed to the Commercial Court List Office on comct.listing@hmcts.gsi.gov.uk.

The Guide can be found online here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672422/The_Commercial_Court_Guide_new_10th_Edition_07.09.17.pdf.

The Commercial Court Users Committee

The Commercial Court Users Committee has continued to provide an invaluable forum to discuss ideas relating to the work of the Court throughout the years.

The The 2018-19 meeting of the Commercial Court Users Group took place in December 2018 at the Rolls Building, which was attended by Judges of the Commercial Court, Counsel and representatives from bodies such as FOSFA (the Federation of Oils, Seeds and Fats Associations) and LMAA (London Maritime Arbitrator's Association).

The meeting discussed Commercial Court statistics over the previous year 2017-2018, the Disclosure Pilot Scheme and the new witness evidence proposals.

Judicial Assistants Pilot Scheme

The Commercial Court ran a second Commercial Court Judicial Assistants Pilot Scheme in the past year following the great success of the first pilot from 2017-2018, with extremely positive feedback from both Judicial Assistants and judges. The second pilot scheme ran in two phases from October 2018- February 2019 and March 2019-July 2019, and was open to all tenants in commercial practice in their first five years of practice, whereas the first pilot was limited to members of "COMBAR" (Commercial Bar Association) sets. The present Judicial Assistant scheme is open to all solicitors and barristers.

It provides outstanding junior barristers in commercial practice an in-depth and practical understanding of the work of the Court and an exposure to different styles of advocacy.

Each Judicial Assistant provides invaluable assistance to the judge they are allocated by carrying out research, summarising submissions and discussing cases and hearings. Successful applicants are not expected to take on any outside work apart from the scheme, as it is a full-time position, though arrangements to accommodate existing commitments are made on occasion.

The great success of both the 2017 and 2018 Judicial Assistant Pilot Schemes was key to the decision during the year to establish a new Ministry of Justice funded Judicial Assistant Scheme. That has been put in place from October 2019 across all the three divisions of the High Court, including placements in the Commercial Court where the applicant specifies a preference to sit in the Court.

Standing International Forum of Commercial Courts (SIFoCC)

The Standing International Forum of Commercial Courts (SIFoCC) is the global forum for the world's commercial courts. Its three objectives are to: (1) share best practice; (2) promote the rule of law in commercial law by contributing to stability, confidence and stability; and (3) encourage well-established jurisdictions to help those less developed, in accordance with the World Bank's recommendation that jurisdictions develop their own dispute resolution infrastructure in order to encourage investment and prosperity

SIFoCC was created in 2017 following an invitation from the former Lord Chief Justice of England and Wales, Lord Thomas, to his counterparts around the world to come together to create the Forum.

Following the inaugural meeting in London in 2017, a second meeting took place on 27-28 September 2018, and was hosted by the judiciary of the Southern District of New York in Downtown Manhattan. Commercial courts from all over the world were represented, with a total of 35 jurisdictions in attendance through a total of around 100 judges and court staff. There are now 40 member countries in SIFOCC.

SIFoCC exists for three reasons: users (business and markets) will be better served if best practice is shared between the courts and courts work together to keep pace with rapid change, together courts can make a stronger contribution to the rule of law than they can separately, and as a means of supporting developing countries long encouraged by agencies to enhance their attractiveness to investors by offering effective means for resolving commercial disputes.

An example of the work of SIFoCC is the Multilateral Memorandum on Enforcement produced in June 2019, following concentration on this issue at the first SIFoCC meeting in London in 2017. The Memorandum sets out an account of the procedures for the enforcement of judgments of one jurisdiction in the courts of another. It concerns commercial judgments requiring a person to pay a sum of money to another person, although some contributions touch on the position with other forms of judgment. Importantly, the account is from the enforcing country itself. It is available at: https://www.sifocc.org/2019/06/24/multilateral-memorandum-on-enforcement/

Lord Thomas, former Lord Chief Justice of England and Wales, former judge of the Commercial Court and Chair of the SIFoCC Steering Group said that "This Memorandum is a landmark step. It shows to users the readiness of the world's commercial courts to enforce each other's judgments. SIFoCC is pleased to have facilitated the exchanges that led to it".

Visitors to the Commercial Court

Over the past year, the Court has received a large number of international visitors: Mexico (2nd October 2018), Armenia (19th November 2018), Kazakhstan (10-12 December 2018), Ukraine (22nd March 2019), Uganda (2 April 2019), Singapore (1st and 3rd May 2019), Kenya (22 May 2019), India (19th June 2019), China (8th August 2019), Ghana (September 2019) and South Korea (17th September 2019).

Appendix 1: Commercial Court and Admiralty Court Office Staff

Senior Listing Officer (from November 2018) - Michael Tame

Listing Officer - Daniel Hull

Master Kay's Clerk – Shirley Sweeney

Listing Clerk - Gina Hitchman

Listing Clerk – Mark Burman

Listing Clerk – Ben Wallington

Listing Clerk – Talvinder Sehmbi