

# Commercial Court Update

October 2015

## Commercial Court Users' Group

This update is designed to update users on matters discussed at the Commercial Court Users' Group Committee, the most recent meeting of which took place on **7 October 2015**.

**Recipients are encouraged to circulate these updates to other persons who may be interested in its contents**

## Financial List and Shorter/Flexible Trials Schemes

The details of these innovations are now on the news section of the new Commercial Court website:  
<https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/high-court/queens-bench-division/courts-of-the-queens-bench-division/commercial-court/>

The Financial List is essentially a joint venture with financially experienced Chancery Division judges. No cases have yet been assigned to this list.

Shorter/Flexible trials schemes: these hark back to the founding of the Commercial Court which was designed to provide speedier and more flexible trials.

Shorter Trials Scheme – provides a streamlined, procedure designed to deliver a speedy trial at reasonable cost. The Flexible Trials Scheme enables parties to ask for their own procedures to suit the requirements of individual cases.

Users are encouraged to use the new procedures, and to feedback to the Users' Group about how they work in practice.

## Update on Costs Management

It was noted that recent developments in case law elsewhere (in particular *Tim Yeo MP -v- Times Newspapers Limited* [2015] EWHC 209 (QB) (hearing date 16 July 2015)) indicated that there would be very limited opportunity for retrospective amendment of costs budgets where parties mis-estimated their budgets. HHJ Waksman QC (Mercantile Court) concurred that this was the line which was developing where costs budgeting had been in for some time, and emphasized that where parties had a costs budget and saw an overshoot looming, an application should be made promptly, and before the costs budget figure was exceeded.

Flaux J noted that the practice in the Commercial Court was to give liberty to apply to allow for amendments to costs budgets, as the Court appreciated that it dealt with many cases where precise budgeting ahead of time was not possible. He also noted that the Court was also content, in appropriate cases, to adjourn the question of the costs budget if the parties considered that the first CMC was not appropriate time to deal with it.

## Update on CE (Court Electronic) Filing

Wilf Lusty reported that E-filing should go live in the Admiralty, Mercantile and Commercial Courts on 19 October, 28k cases have been migrated off the old system, and parties should be able to issue electronically on all of them, from that date. Once a party is into the e-filing system they can see all available public documents on the case. A 6 digit number will identify the case for the system. There will be a link to the e-filing system on the website. Training courses will be available for familiarisation purposes.

Flaux J reported that the new system appears to be a considerable improvement on the last attempt and that the pilot in TCC led to good reports and useful improvements.

However practitioners should note that until further notice e-filing should not be used for filing of skeleton arguments.

## Commercial Court Website

Flaux J informed the meeting that, as noted above, the new improved website is now up and running. Further upgrades may follow, but as with CE, this is a great advance on the previous version. He noted that at present two things are lacking – the news and judgments sections are both short of material. Assistance is sought from junior members of COMBAR in providing material for the news page.

A request for (i) a map of the interior of the Rolls Building and (ii) details of how conference facilities can be booked was noted.

## Statistics

Once CE File is up and running it is anticipated that the log jam on this subject will disappear and that it will generate all stats users could want, including the material which the Commercial Court includes, and other jurisdictions do not.

## Consultation on court fees

Ted Greeno reported on the recent consultation on further increase in court fees – conducted at very short notice and very shortly after the previous increase - without waiting to see impact of that change. Reports suggest that already claim forms are 25% down on same period last year.

It was noted that all firms should be encouraged to identify the costs impact on client decisions as to whether to bring proceedings and where to litigate. Some examples have been isolated but so far relatively few. It was noted that the issue extends beyond the commercial ripple effect from oligarch litigation, but also arises in the context of SMEs looking at changes of litigation/jurisdiction policy right across particular areas of business. Feedback on such developments from Trade Associations was noted to be important.

## Shipping/Arbitration issues

Bruce Harris noted that shipping business has gone down over 6 months with the market remaining low and flat.

He also noted that Bernard Eder reports back that internationally stories are being spread about interference with arbitration decisions in London. This is misconceived. Based on BAILII statistics over 3 years there were 56

applications to challenge awards, of which 24 were accepted in terms of permission granted - but in less than 1% of cases was the result overturned.

Flaux J reported that there is no sense of disquiet from bench.

## The Mercantile Court

HHJ Waksman QC noted that he was keen for suggestions for improvements which users would like to see in the Mercantile Court. Users are asked please to address these through Listing to him.

## Commercial Court Guide

An update incorporating recent judicial guidance and other amendments will be made in the near future (target date 1 December 2015, to enable amendments to be included in the new White Book when published).

If users have any amendments they wish to be included in this update they should address them to Hamblen J through his clerk or to Sara Cockerill QC ([scockerill@essexcourt.net](mailto:scockerill@essexcourt.net)).

## Date of next meeting

There will be a further meeting in the early part of the new year.