

Commercial Court Users Group

Meeting 12 June 2017

Rolls Building

This is an update for users of the Commercial Court on the matters discussed at the Commercial Court Users' Group Committee, at its meeting in the Rolls Building on 12 June 2017.

This will in due course go on the Commercial Court website

Recipients are welcome to circulate the document to anyone who may be interested in its contents.

The meeting was chaired by Mr Justice Blair, Judge in Charge of the Commercial Court.

CE File

Compulsory filing has been operative since 15 April 2017. The email address on the website can be used to send feedback and comments on the system as well as for queries regarding CE File use.

Mr Justice Blair thanked those who had sent comments ahead of the meeting.

For ease of use, documents submitted through CE File should be filed under a document name that informs the judge and court staff of what the document is when the file is looked at electronically.

The following document name categories should be used. This will particularly help the judge and court staff deal with applications without having to open the document first to find out what it is:

- Application.
- Witness Statement.
- Exhibit to Witness Statement (separate for each exhibit).
- Signed Consent Order (PDF).
- Draft Consent Order (Word).

- Draft Order (if not by consent) (Word).
- Correspondence.
- Other (only to be used if none of the above).

Judges have also asked that when an application is made to vary an order, the original order is filed in the same application. Judge's clerks are now responsible for the sealing of orders - drafts should be provided in Word format to ensure that this can be done in a timely manner.

Training for CE File users is available from Steve Rogers.

Generally, the mandatory introduction of CE File has been successful, and while teething problems are inevitable, these should resolve as it beds in.

It is expected that CE File will be expanded to the regions, once funding is available.

New edition of the Commercial Court Guide

The 10th edition of the Commercial Court Guide should be available soon. It will be distributed electronically and later it is intended to produce it in hard copy. Mr Justice Knowles thanked all who had contributed, and the meeting thanked him for his immense work on it.

Shorter Trials Scheme and Flexible Trials Scheme

Under the Shorter Trials Scheme, for claims that can be tried with limited disclosure within a 4 day listing window (inclusive of reading time) a trial date can currently be given with 8 months of the CMC. Judgment should be given within a year of the issue of the claim.

There are currently 16 Shorter Trial Scheme claims in the Commercial Court list, but listing has found that there is not a high level of awareness of the scheme.

Mrs Justice Carr gave the example of the recent case of *National Bank of Abu Dhabi v BP Oil* as a successful use of the Shorter Trials Scheme.

The Flexible Trials Scheme can be used where a matter does not fit the requirements for a Shorter Trials Scheme, but extra flexibility is for some reason required. The Commercial Court has traditionally been flexible in any case, and that continues to apply.

A judge does not need to be assigned if this would (for example) make early listing more difficult.

Disclosure

As many present were aware, after the GC100 raised the issue of the cost of disclosure a working group was set up by the MR chaired by Gloster LJ. Phillips J has led for the Commercial Court with Knowles J joining the group more recently. Contributions to this working group are welcomed from a range of sources, and Ed Crosse in particular was thanked for his work.

Moving forward, standard disclosure will no longer be the default position, with greater exchange between parties informing the best option for disclosure in each case. To encourage exploration of alternatives, new guidance will be provided and a Disclosure Review Document will be created before the CMC to allow for a clearer position to emerge at an early stage. Work on the new rules will take place throughout the summer.

Standing International Forum of Commercial Courts

The inaugural meeting of the Standing International Forum of Commercial Courts led by the Lord Chief Justice took place in the Rolls Building 4th and 5th May this year. This was a meeting of 60 justices from 28 jurisdictions in 23 countries, opened with a dinner hosted by the Foreign Office. A report of this event can be found on the judiciary website. The forum will have a Secretariat based in the Rolls Building, in part funded by the City of London.

SIFOCC provides the opportunity to build a framework within which commercial courts internationally can be seen to have a coherent relationship with each other and the wider world of users.

A work programme had been agreed beginning with a multilateral memorandum which will explain how judgments of one court can be enforced in another court under existing rules.

The next meeting of the forum will be hosted by the Southern District of New York and held in Fall 2018.

Business and Property Courts

A memo from the Chancellor of 18 May regarding the new Business and Property Courts “umbrella” can be found on the judiciary website. The launch event for the Rolls Building will take place 4th July 2017. Regional events will be taking place, with thanks to Carr J for her continued support of this.

For the Commercial and Admiralty Courts, the new umbrella term does not imply cross-deployment or other changes of this nature.

As Mr Justice Blair put it in welcoming the introduction of the Business and Property Courts at the launch on 4 July:

“Commercial Court cases will continue to be tried by Commercial Court judges. We are open for business as usual across banking and finance, shipping and insurance, and trade and energy.

As the Chancellor said, our procedures and practices will continue. The same of course applies to the Admiralty Court.

The Commercial Court has a hundred year history, and its sister the Admiralty Court is hundreds of years older still. Crucially, the world-recognised names of these courts stay.

These courts are of course parts of the Queen’s Bench Division of the High Court, and the President of the Queen’s Bench Division will speak shortly.

As most people here will know, the great preponderance of the work of the Commercial Court is international. Commercial parties bring their cases here through choice. English Law is a global business law as a result of choice.

That choice is also central to our success in arbitration, and the Commercial Court is the supervisory court supporting international arbitrations which are seated here. The importance of arbitration, not least for London, and the future of its legal sector, cannot be overstated.”

Commercial Court judges are committed to the Briggs Report recommendation that no case is too big for the regions,

In the same spirit, the Mercantile Courts are being renamed, to Circuit Commercial Court and the judges will be known as Circuit Commercial Judges. This helps make the link with the Commercial Court in London clearer.

HHJ Waksman QC supported the change of name as it should make it clear to court users the Commercial Court structure. He has set up a new user group for the London Mercantile Court, approaching 50 different companies for their input, but will welcome any others who wish to join.

Admiralty Court Users Group

Mr Justice Teare reported that a Fast Track Scheme for collision cases has been established as a result of the use of new electronic tracking data.

A new Admiralty Bar group has also been formed, and the court will be working with this body to ensure that its procedure remains relevant and updated and to inform the Guide.

Statistics

1003 cases were issued in the Commercial and Admiralty Court in 2016, and 180 cases were issued in the Mercantile Court.

The equivalent figures for 2015 are that 1090 cases were issued in the Commercial and Admiralty Court, and 209 cases were issued in the Mercantile Court.

These figures reflect the spike that occurred before the April 2015 filing fee increase. Specifically, in March 2015 there were 3 times the number of cases usually filed, which skew the figures for that year.

Following the increase in the filing fee (over which the court had no control) the court has seen fewer small "debt collecting" claims in the shipping field. When these factors are taken into account, the overall trend of use of the court appears to be upwards.

Arbitration claims continue to see an increase in numbers, 26.6% of total claims issued in 2016 being arbitration claims up from 25.7% in 2015. Some of these were challenges, but most were supportive applications.

Membership of the Commercial Court Users Group

The judges emphasised the importance of the Users Group to the court and expressed their appreciation for the high attendance. They asked for any recommendations for new members these be passed to Joe Quinn, the Senior Listing Officer.