



JUDICIARY OF
ENGLAND AND WALES

29 March 2022

Notice from the Judge in Charge of the Commercial Court

In September 2020 HHJ Pelling QC and I raised concerns about the noticeable increase in the number of applications and trials for which inaccurate reading and hearing time estimates have been provided. That Notice focussed particularly on the issue of half day hearings and it is fair to say that the Court has seen some improvement in relation to these shorter hearings.

However, a considerable issue remains as regards longer applications and trials. In particular, the number of points and authorities being sought to be raised is often – and increasingly – completely out of step with the hearing time listed. The result is that on a number of occasions counsel have either taken submissions at excessive speed (as noted, for example, in *Libyan Investment Authority v Credit Suisse International* [2021] EWHC 2684 (Comm) [139-140] - where experienced transcribers were unable to keep up with the pace of speech) or have sought to conduct legal argument by giving the judge a note of key passages in authorities which they would wish the judge to read and consider in depth after the completion of the hearing.

These practices are unacceptable. The lists are always very busy and judges have very limited time available. The oral hearing is the occasion when arguments must be raised and adequately ventilated by the parties. Judges' judgment writing time is limited and is for writing judgments. Judgment writing time is not sufficient to permit it to be used as an extension of the time allocated for oral argument.

Parties should therefore note that:

- Careful consideration needs to be given to what is to be covered in the hearing time, the pace at which documents/authorities can be taken and the time needed for oral argument on the issues raised.
- This consideration should extend to (i) the number of issues which can properly be dealt with in oral argument and (ii) the number of authorities actually required in order to establish the legal propositions relied upon (see here also Guide F12.1, F12.4, J5.3).
- **Inaccurate hearing estimates may result in a case being stood out of the list (either before the hearing or part heard) and relisted for a realistic time estimate with no expedition of the relisting. There may also be costs consequences.**

The Judges of the Court would also urge parties - in the interests of proportionate litigation - to give careful consideration to the number of points which are run, whether peripheral points will realistically lead anywhere if the primary points fail and which legal arguments are realistically open for argument at first instance.

Mrs Justice Cockerill
Judge in Charge of the Commercial Court