**Note of the London Circuit Commercial Court Users’ Committee Meeting on 29 November 2021 at 5pm**

**Attendees:**

HHJ Pelling QC (“**HPQ**”)

Kevin Ellmore, Mischon de Reya (“**KE**”)

Michael Tame, Commercial Court Listing (“**MT**”)

Laura Beagrie, Stevens & Bolton (“**LB**”)

Richard Hanke, 3VB (“**RH**”)

Andrew Stevens, 4 Pump Court (“**AS**”)

Simon Winter Charles Fussell & Co(“**SWI**”)

Niamh Cleary, Fountain Court (“**NC**”)

Virginia Jones, Lexis Nexis (“**VJ**”)

**Apologies:**

Robyn Harrison, Macfarlanes (“**RJH**”)

Sophie Weber (“**SW**”)

*Meeting conducted in-person with some attendees joining remotely via Microsoft Teams*

* 1. **Apologies/previous minutes**
     1. HPQ noted the apologies and approved the previous minutes.
  2. **Discussion of LCCC statistics** 
     1. HPQ noted that the courts have seen an increase in anti-suit injunctions which have become an increasingly common feature in the maritime world.
     2. Regarding the issue of transfers of cases down to the County Court, HPQ explained that he could not allow the LCCC to be used because it was perceived to be quicker than the County Court. There was a definition that would be included in the new CCCG which made clear what cases could be started in or transferred to CCCs.
     3. The committee then discussed the impact of Covid on the statistics and it was noted that Covid has caused people to go back and look at things again. AS explained that late settlement seemed to be a feature of what he had been seeing.
  3. **Triaging in the LCCC and Commercial Court**
     1. KE noted that the transfer order (i.e., the transfer of LCCC cases to the County Courts) seemed to be working very well. HPQ explained that he tried to ensure transfer took place early in the process before the costs of complying with disclosure arose.. HPQ said that parties were given an opportunity to make submission before any final decision to transfer was taken and that parties should make submissions not only as to whether the case should remain in the LCCC but whether it should be transferred to a county court other than that identified in the initial “minded to” order or a regional CCC.
  4. **Appendix 5 to revised PD 51U**
     1. HPQ explained that the revised version of the Disclosure Pilot (PD51U) contains at Appendix 5 provisions for a simplified disclosure regime for Less Complex Claims. HPQ explained that the current iteration of the pilot only took effect on 1 November 2021.
     2. Appendix 5 provided that claims with a value of £500,000 or less should be treated as less complex. That will, by definition, not be of much use in LCCC cases since most cases with a value of or below that sum would be transferred to a county court. However, Appendix 5 makes clear that the parties may by agreement agree that the case is a less complex case for the purpose of extended disclosure regardless of value. Under the scheme, extended disclosure was to be given using only Models A, B or D. Models C and E do not apply.
     3. In terms of the approach that the LCCC would take to disclosure, HPQ said he was unable to give a steer on that, as the new scheme had only taken effect from 1 November 2021. However, given that parties can agree before or after the commencement of proceedings that any case can be treated as a less complex case, as a matter of practicality it seemed that there would be scope for an application to be made to take advantage of Appendix 5 where there is no agreement before the work on the DPS has started.
  5. **Circuit Commercial Court Guide** 
     1. As a preliminary point HPQ explained that revised draft of the Circuit Commercial Court Guide (**CCC Guide**) operated on the basis that there was going to be a new suite of LCCC forms. The background to this is that under CPR Part 4 there is an appendix with specialist forms attached and there is one for the Com Ct and not the CCCs. That is almost certainly an error. If you use the standard N1 form and the response pack, the recipient will not think to file an AOS whereas the rules of the Commercial Court and CCC require an AOS for all cases. Therefore, the current position was a trap for the unwary.
     2. Going forward there will be a suite of forms for the LCCC and another for the regional CCCs. This is because the Practice Direction distinguishes between the two (others are in the district registries). When the drafting committee started to look at the forms the Commercial Court forms were very out of date. These forms have now been tidied up, including the CCC forms. Once the CPR committee have dealt with that it will be dealt with as a practice direction. They are very easy to use. The Regional CCC forms allow you to amend the boxes.
     3. HPQ offered his thanks for any typos etc.
     4. By way of background to the new guide, HPQ explained that Andrew Baker J was leading on the Commercial Court Guide. The aim of the edits was to bring it into accordance with modern practice.
     5. The key starting point for the CCC Guide is that it provides that users are to follow the Commercial Court Guide unless the CCC Guide said something different. The main difference between the two is that the CCC Guide looks to remove and simplify things that look expensive for CCC claims.
     6. The specimen directions had been amended and the CMIS form had been updated as necessary to reflect the much closer adherence to Commercial Court practice.
     7. HPQ identified certain key points going forward concerning LCCC practice are as follows:
        1. Default position is e-bundling rather than hard copy bundles;
        2. For hearings of half a day or less, the default position is that they will be remote. This is designed to reduce costs.
     8. HPQ explained that the current draft of the guide assumes new forms will come into place. The draft is with the LCJ’s office for approval, but the aim is to get it ready to go (fix any remaining typos etc) by the end of this term. The discussion is currently focusing on how this is going to work with the new edition of the White Book. They need to get the editorial material for the White Book well before then but as long as material is available by January it is doable. The draft has gone out to users’ committees around the country and will be reviewed in the next week.

*Listing and pre-reading*

* + 1. The committee discussed the new provisions on reading times. MT explained that the current practice is to fix a hearing date with a separate reading date. If that is not clear, please could users let him know. However, now the hearing length will not divide time into separate reading days and hearing days. The hearing length will run from the pre-reading day.
    2. HPQ explained that there is a debate ongoing on in the Commercial Court regarding complex cases. In more complex cases it may make sense to have some more limited time for reading in, then have the parties attend court to open or partly open the case before having some further reading time before completing openings and starting the evidence phase. Therefore, going forward the time estimate will simply say “17 days” rather than “15 days plus 2 days pre-reading”. Reading time is now for the same week as the hearing so that cases can be given to Deputy High Court Judges.
    3. AS noted that for a trial you can see this being managed quite easily at a PTR, but questioned what should happen for (e.g.) an application listed for 2 hours – do you need to tell the listing office? HPQ explained that, as things are at the moment, he finishes on Thursday at 4.30 and then starts reading for the Friday. However, the 9.30 list means that he is probably going to start hearing cases at 9.30am and that squeezes the reading time to about 4 hours. HPQ’s position is that provided that there is a reading list, he will do his best to get it done. There has been a very clear steer from the Commercial Court that the ½ day estimate must include pre-reading and judgment. Non-complying applications are adjourned and there is no expedition in re-fixing it and very often there will be order disallowing the costs for the second hearing. The practice note that HPQ and Cockerill J signed made it very clear that there will be costs consequences for inadequate time estimates.
    4. There is an inclination to underestimate timing. The way in which counsel seem to operate now is to rattle off submissions in a way that discourages judicial intervention; it is driven by a failure correctly to estimate the time needed for the hearing and is not satisfactory. The judge is likely to be unforgiving about cases that are listed for half a day and take half a day of advocacy with no time for judgment. That is the consequence of not getting time estimates correct. If HPQ has to extend hearing times that has a knock-on effect on other people’s applications and it rapidly becomes extremely difficult. That is the message that needs to be got out. If you list something for half a day and say it is going to take a day to pre-read and then that time will be provided. What the Judge can’t do is get into his room 4.30 and it has two 30-page skeletons and 500 pages of paper for each of two half day applications.
    5. In terms of guidance on timings, parties should assume two and a half hours of hearing time will be: 30 mins judgment, 10-15 mins consequential matters; an hour and a half for advocacy and no more.

*Out of hours listings*

* + 1. In relation to listing hearings out of hours, HPQ explained that there is a real concern at Commercial Court level regarding applications being made using the out of hours service, raising questions whether an application was really necessary to have applications made out of hours or whether it could have waited until the following morning. If applications are made to the duty judge that could be made the next day, there is a view that the *Hamid* jurisdiction could be engaged if the if the judge forms the view that not appropriate for duty judge. Therefore, the strong default position is that you should not be using the out of hours service in which case the urgent applications system will work very well.

*Bundles and other matters.*

* + 1. New guidance on PDF bundles preparation is contained in the new edition of the Guide.
    2. LB raised the issue of claimants having to apply for a CMC and whether that needed to be a letter or a formal application. The guidance from the listing office is that they were willing to be contacted by email. KE noted that outside London they require an application notice. HPQ said that listing office guidance should be followed for LCCC cases.
    3. LB raised the issue of adducing documents in evidence. Should the matter be raised with the trial judge and asked how it is going to be done now in light of PD57A. The fact that documents are in trial bundles does not mean that they are adduced in evidence. HPQ explained that the Commercial Court Guide says that the matter should be addressed between the parties and dealt with at first day of trial if not at the pre-trial review. As to the rest of it, the Commercial Court Guide works on the basis that there will be in many cases an advice on evidence. He was hopeful that will not be required in LCCC. However, if there is going to be a debate about it in a given case, maybe there should be an advice on evidence.
    4. VJ queried whether there was a need or benefit in reproducing Part 58 and its PD as an appendix in the Guide. She noted that the appendix was not updated as and when any amendments were made to those CPR provisions, they might contradict and mislead and that perhaps the safer way was to alert practitioners to the need to be familiar with and comply with those CPR provisions rather than seek to replicate them in the Guide. VJ also raised an issue related to timing of implementation vs publication of the proposed reforms, given (increasingly) limited time for practitioners to familiarise themselves and potentially change their practice in time for that implementation date. MT explained that, in terms of publicising, if the implementation date is 1 January, it is for practitioners to familiarise themselves with the new arrangements.
    5. KE asked for confirmation that parties should be following list of common grounds and issues prescribed by the Commercial Court Guide. HPQ confirmed that this is correct.
  1. **Remote hearings - current policy** 
     1. Current policy is half day or less default is remote. Anything more than half a day you will have to justify a remote hearing.
  2. **AOB** 
     1. [None arising]