

**Commercial Court User Group Meeting**  
**May 2022 Meeting Minutes**  
**Remote Meeting via Microsoft Teams Wednesday May 22 at 16:45**

**Introduction and Current Issues Update: Cockerill J**

Cockerill J began by welcoming all attendees and commenced with a general update:

**Live/remote meetings:**

At the last meeting there was debate about whether this meeting should be live and there was some enthusiasm for a live or hybrid meeting. However, the current meeting took place remotely because Cockerill J is currently in Birmingham.

**Business:**

The court continues to be about as busy as can be. In addition to its usual business (and Covid and related absences, something which can now be taken as read), the court is seeing Covid- related business and complications arising from the sanctions imposed as a result of the war in Ukraine.

*Covid BI cases:*

The Court continues to seek to manage Covid Business Interruption cases in a dedicated sub-list. Details of this list are in the Commercial Court's pages on the judiciary website, under the heading "Test and grouped cases".

The main development which has occurred since the last Users' Group meeting has been the decision in *Corbin & King v Axa*, as to the application of a Non Damage Denial of Access cover in the light of the decision of the Supreme Court in *FCA v Arch*, and as to whether the limit of the policy applied to each of the closures or restrictions in respect of each of the insured's premises separately, or to each of the closures or restrictions in respect of all the insured's premises together. Permission to appeal was granted, but no appeal is to be pursued.

The most important development which is due to occur shortly is the trial of three cases, each arising out of the Marsh Resilience wording, which concern, in particular, the issue of how losses are to be aggregated and specifically whether an insured's losses constituted a Single Business Interruption Loss, or multiple Business Interruption Losses. These cases will be tried, effectively back to back, by Butcher J in June/July. It is envisaged that separate judgments will be given in each of the cases, but at the same time.

A case involving a claim in respect of covid losses under a business interruption cover in a Motor Trade Policy has been commenced in the Manchester Circuit Commercial Court. It will be managed there, but in conjunction with the Commercial Court's covid Business Interruption sub-list.

The Court requests that if anyone is aware of further Covid Business Interruption cases which are likely to arise, they should inform us of them; and also make sure that, if commencing such a case, the Listing Office is specifically alerted to the fact that it is a case which may be suitable for inclusion in the sub-list.

*Russia/Ukraine conflict:*

The ongoing war in Ukraine and the sanctions adopted by NATO members is causing complications to the court's work. The court is not yet seeing sanctions related claims, though it is aware that there is a huge amount of work in preparation.

As with Brexit and Covid, Cockerill J asked users to please keep the court informed if it looks like there is going to be a lot of work incoming in a short period of time. That will enable the court to plan accordingly and to try to get more judges sitting in the court.

She noted that, for now, there are a significant number of existing litigants who are affected by sanctions or by the conflict itself if they are based in Ukraine. The court is seeing applications for extensions of time and adjournments (sometimes around availability of documents or witnesses and not infrequently to do with legal representation issues).

There are no guidelines and there are unlikely to be guidelines. Each case is fact sensitive; it is carefully considered based on its facts and the particular issues which arise.

The Chancellor agreed with this approach and reminded users of the Lord Chief Justice's recent remark that everybody is entitled to access to justice. There may be issues with enforcement but there is no over-arching guidance

### **Update from the Standing International Forum of Commercial Courts (SIFoCC): Robin Knowles J**

Robin Knowles J confirmed that SIFoCC membership comprises 60% of the G 20 nations. The forum has produced a number of useful publications which User Group members will find useful and these can be found on SIFoCC's website <https://sifocc.org>. In particular, the Multi-lateral Memorandum on Enforcement of Judgments is now in its 2<sup>nd</sup> edition and supported by a synthesis of themes and approaches shared across jurisdictions and systems alike.

The 4<sup>th</sup> full SIFoCC meeting will be held in Sydney in October 2022. Topics for discussion on a round table basis are as follows:

- Using litigation arbitration and mediation together in an integrated way;
- Managing those cases with the greatest complexity and looking at complexity as something which needs a constant eye;
- Scrutiny of corporate legal responsibility and the shape that will take as issues such as climate change increasingly feature;
- There are particular areas where jurisdictions can find themselves in conflict or where a problem is shared across borders in terms of insolvency, patent, competition – looking at ways in which judiciaries can examine subjects like that.

As with the previous meeting, the intention is that these meetings will be recorded so that they can be made available for wider interest. SIFoCC has been working with other associations and organisations such as the Commonwealth Lawyers' Association, the Commonwealth Magistrates and Judges Association and ACCA and IBIA on the arbitration side.

The Rolls Building, as well as being proud to host the Secretariat, will be hosting judges from some parts of developing world in June 2022. Users will see SIFoCC's guests from Africa, India, the Philippines and Jamaica around the courts. There will be a reception in the Main Hall of the RCJ on 22 June 2022. As always, SIFoCC welcomes new ideas and reminded the User Group about the resources available on its website.

### **Listing update: Michael Tame**

#### **Lead Times**

Mr Tame’s first update related to lead times. When comparing current lead times to those in 2021, there is now a slightly shorter timescale:

| Time Estimate                           | Lead Time  |
|---|--|
| Half day hearing up to 2 hours 30 mins) | Mid-June 2022  |
| 1 day hearing (over 2 hours 30 mins)    | Mid November 2022  |
| Longer hearings up to 5 days            | Some availability from 1 November 2022 but generally from February 2023 . (This 25-30 week lead time represents an improvement on a 40 week lead time in May 2021) |

### **The Friday List**

The Listing Office receive the same queries about the Friday List on an ongoing basis and asks users to note:

#### *Bundles*

There is no need to call or email the list office about this. The default position is that electronic bundles are expected for all hearings, including those on the Friday List<sup>1</sup>. The court will contact parties if a paper bundle is required.

#### *Remote hearings*

The default position is that shorter hearings up to half a day - including the Friday List - will be held remotely<sup>2</sup>. It is only if the parties believe a shorter hearing is suitable for a live hearing that they should contact the Listing Office to seek a judge's ruling.

Electronic bundles should be received before 12 noon on the Wednesday before the hearing and skeletons should be received by 12 noon on the Thursday before the hearing. If there is going to be a problem with either, contact this Listing Office by telephone asap and BEFORE this deadline. Do not send urgent communication such as this via CE-File.

The default position is that any hearing with a time estimate which exceeds 2 hours 30 minutes will be held in person. Again: the parties only need to contact the Listing office for a judge's ruling if they consider a longer hearing should be held remotely or in hybrid format.

### **Paper Applications**

The latest edition of the Commercial Court Guide has changed the guidance for the submission of all on-notice paper applications (whether by correspondence or by application notice). Before submitting their application, the applicant should have provided a draft of their application to the other parties and allowed them at least 3 working days to confirm whether they consent to it being dealt with on paper and whether it is opposed. This is still not happening. A message was sent to all

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<sup>1</sup> See Appendix 7 para 1 of the 11 th edition of the Commercial Court Guide: "No hard copy bundles, only electronic bundles, should be filed with the Court unless requested by the Judge; and the parties should seek to minimise their own and other participants’ use of hard copy bundles and documents."

<sup>2</sup> See Guidance from the Chancellor and the Judges in Charge of the Commercial Court and TCC: 25 September 2021: <https://www.judiciary.uk/announcements/remote-hearings-guidance-to-help-the-business-and-property-courts/>

users about this when the Guide was published in February 2022. The List Office is working on a checklist for the submission of these applications and this will be circulated in due course. If applications continue to be submitted incorrectly, the court may need to consider whether more stringent action is necessary.

### **Expedition**

All requests for expedition should be sent to the list office at [comct.listing@justice.gov.uk](mailto:comct.listing@justice.gov.uk) and the List Office will liaise with the Judge in Charge. Please do not contact the clerk to the Judge in Charge.

### **Urgent Applications**

All requests for urgent applications should be sent to the list office at [comct.listing@justice.gov.uk](mailto:comct.listing@justice.gov.uk) and the Listing team works very hard to ensure that these are dealt with asap. However, do remember that the application will also need to be uploaded to CE File in due course. Parties should bear in mind that orders cannot be sealed at the end of hearing if the case documents have not been filed on CE File.

### **Gina Hitchman**

Gina has been promoted to Listing Officer at the TCC but remains a valued member of the Listing Team. The team wishes her every success in this role and also thanks Ian Dawson who has acted up until this vacancy was covered. Ian now returns to the Commercial Court Listing Team.

### **Thank You**

Mr Tame and the Listing Office team wanted to thank court users for working with the court to keep business as usual during the pandemic. He thanked the judges (including the Judges in Charge of the Commercial Court and the London Circuit Commercial Court) for their support during the Covid Pandemic. The Listing Team is hugely grateful for the support of Cockerill J as Judge in Charge of the Commercial Court and HHJ Pelling QC as Judge in Charge of the London Circuit Commercial Court.

Cockerill J noted that the Listing Team does incredible work and thinks very hard about how to do things as well as possible to assist users.

### **Permission to Appeal: Males LJ**

Males LJ noted that the number of applications for permission to appear had dwindled, despite the fact that the Commercial Court is extremely busy. He noted that delay should not be a consideration for parties as the lead times in the Court of Appeal are shorter than in recent times.

### **Commercial Court Guide feedback and Update: Andrew Baker J**

The latest edition of the Guide was published in February 2022 and was produced by a very small editorial team with welcome feedback from the Commercial Court Judges and court users. Andrew Baker J gave his thanks to all.

He notes that some typos have been identified and are being compiled into an errata table which will appear on the new Commercial Court webpages. Please could any such errors be notified to the Commercial Court Lawyer who is collating the errata table: [Francesca.girardot@justice.gov.uk](mailto:Francesca.girardot@justice.gov.uk). The online edition of the Guide itself will be amended in due course. Francesca is also the point of contact for any ideas or suggestions for the next edition of the Guide.

### *Guide Queries*

Duncan Matthews QC noted that old paragraph F4.2 of the Comm Court Guide has been removed from the 11th Ed. – this permitted applications in correspondence (without an application notice) for those applications “relating to the management of proceedings”. He asked if it was correct that all applications must be made by application notice (with the related fees).

Andrew Baker J - said that the answer was No. F4.2 was removed as it was seen as surplus to requirements. The court would like parties to consider whether their application can properly be made on paper, whether by correspondence or application notice. Applications by correspondence can be made for the good management of proceedings and should be submitted in the same way as on-notice applications made by formal application notice. F4.1 is the vehicle to do this.

### **Circuit Commercial Courts and hearing cases outside London: Cockerill J**

Cockerill J noted that she was currently in Birmingham –hearing a Commercial Court case: *Kelly v Baker*. This is a case with strong links to the area and Cockerill J ordered it to be heard there due to its proximity to the business in question and the location of the majority of the witnesses.

With that in mind she flagged up the resources available for hearing cases outside London. The Circuit Commercial Courts in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle are each headed up by specialist judges. Cockerill J was pleased to introduce HHJ Cadwallader (judge in charge of the Circuit Commercial Court at Liverpool) and had been delighted to meet practitioners recently during a visit to Liverpool Circuit Commercial Court on 3 May 2022 and in her other visits to the court centres outside London.

Cockerill J reminded users that while that much of Commercial Court business is international, so far as more domestic business is concerned, the Commercial Court (olike the wider BPCs) is moving away from a London-based paradigm. She noted that when visiting the Circuit Commercial Courts, it had been very interesting to see how many major businesses are based near those regional hubs (as was the case in the early years of the Court, when a number of the judges came from commercial practices outside London – including Lord Russell LCJ).

His Honour Judge Cadwallader confirmed that Liverpool Circuit Commercial Court were very happy to have hosted Cockerill J, that the court is heavily invested inthe concept of local work being done locally and he was glad to have the opportunity on behalf of the CCC judges to remind users of this possibility.

Cockerill J reminded court users that there are 3 approaches for cases with local links:

- Cases can be issued, managed and heard in the Circuit Commercial Court.
- Larger cases can be issued in the relevant CCC with a request that they are managed locally but that a HCJ hears larger interlocutory hearings and the trial. These are diarised by the Listing Office in London, so time can be blocked out of the London Diary to ensure the attendance of an HCJ.
- Cases can be issued in London but flagged for hearing elsewhere as HCJ’s are more than happy to travel.

She informed users that all as cases are being triaged for size, that will offer an opportunity also where appropriate to consider transfer to a local Circuit Commercial Court. In addition trial location can very sensibly be considered at the CMC. Listing for the convenience of Counsel or a legal team is not a trump card. Often in cases with a local link one team is local and they will be inconvenienced if

a case is heard in London. There is a balance to be struck as to where a case can best be tried and this should be kept in mind from the outset of proceedings.

The Chancellor remarked that this was a long overdue change which is adopted throughout the Business and Property Courts. He agreed that so far as possible, transfers should be dealt with at CMC if not before.

#### **Time estimates and hearing length: Foxton J**

Foxton confirmed that the too prevalent practice of giving unrealistic time estimates for heavy applications had already attracted adverse comment and had necessitated a Practice Note<sup>3</sup>.

Court users should note that it is not acceptable to expect judges to extend sitting hours or to spend time reading after the hearing. If this happens in the future, hearings are likely to be adjourned or go part-heard, and the Note makes clear.

Inaccurate time estimates have a knock on effect on lead times and the judges are unanimous in agreement that this must stop. Parties should endeavour to triage authorities and consider very carefully which points to take.

The Chancellor confirmed that this applies to all hearings across the Business and Property Courts.

#### **Junior Bar: Kira King (Chair of Junior COMBAR)**

Ms King raised the question of advocacy opportunities. She noted that a number of HCJ have required or encouraged juniors to make submissions but the recent guidance does not appear to have been embraced to such an extent by the Deputy High Court Judges. It would be very welcome if this message could be relayed and if it could be relayed to all Chancery judges.

The Chancellor and Cockerill J confirmed that this message would be relayed.

Cockerill J indicated that she was mindful that the default remote hearing rule for shorter hearings might have an impact on advocacy opportunities for juniors and reminded users that judges are prepared to look at requests for live hearings where appropriate.

#### **Commercial Court Website Update: Cockerill J**

At the last meeting, the group was informed that the Judiciary website was in the process of being redesigned and rebuilt and volunteers were sought.

At this meeting, Cockerill J wanted to send a thank you to those volunteers and confirm that the Commercial Court webpages were progressing well. Thanks to this User Group, both the web team and Fulford LJ (judicial lead on the project) have a really good understanding about the concerns expressed by Commercial Court users.

In the best traditions of the User group, users had been a key part of the work which has done. Cockerill J has had huge help in identifying the issues with the current set up (Sarah Garvey in particular). Cockerill J has now been working with Jacobs J, Foxton J and Waksman J on this project. The judges have had had a great deal of help from James MacDonald QC, Jeremy Brier QC, Madeleine Brown, Nihar Lovell, Lily Waterman, Harry Speak and the Commercial's court's lawyer

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<sup>3</sup> <https://www.judiciary.uk/publications/practice-note-commercial-court/>

Francesca Girardot. The first drafts of some of the pages laid out as they will be on the new site look promising. It is hoped that the new site will be up and running before the end of July 2022.

### **Other matters: Cockerill J**

#### **Arbitration LMAA/LCIA/other split**

Bruce Harris has asked for statistics breaking out the proportion of LMAA/LCIA etc disputes. This is being looked into. It may not be practicable, because claims do not all identify the type of arbitration but the court is trying to find ways of providing more useful and detailed information about this.

#### **Commercial Court Lawyer**

Francesca Girardot has been on secondment from the Administrative Court Office since February 2021 and Cockerill J was happy to announce that her role has been made permanent. She stated that the court has been greatly assisted by Francesca's input in a number of ways since she joined and is very pleased that this will continue.

#### **Financial List guide**

Laura Feldman raised a question about the updating of the Financial List Guide. Cockerill J noted that this (and the question of any changes to the rules governing the Financial List) is currently in the hands of Butcher J and Miles J. She asked for any suggestions or views to be directed to them via their clerks or the clerk to Cockerill J.

#### **Judge in Charge**

Cockerill J closed by informing users that after 2 years as JIC she would be stepping down at the end of this legal year. She conveyed her thanks to all the judges and users for making the job such a pleasure.

Andrew Baker J thanked Cockerill J for her work in leading the Commercial Court, one of the largest first instance lists in the jurisdiction and also for volunteering to do so in the midst of a pandemic. The Chancellor concurred .

There was no further business and the meeting concluded at 17:59.