

**Commercial Court User Group Meeting
November 2023 Meeting Minutes**

Remote Meeting via Microsoft Teams Wednesday 29 November 2023 at 16:45

1. Foxton J: Introduction, statistical updates

i. Mr Justice Foxton welcomed all attendees, including the Chancellor, to the November 2023 User Group Meeting.

ii. Claims issued in the Commercial Court in 2022-2023:

Claims	2021-22	2022-23
Commercial	723	885
Admiralty	119	107
London Circuit Commercial	290	324
Total	1132	1316

iii. 885 new claims have been issued in the Commercial Court this year, which includes 111 new Covid BII claims. Even taking those out, the number of claims is up from 770. If one includes the full set of Admiralty, London Circuit Commercial Court and Financial List, there has been an increase from 1,172 to 1,352.

iv. The number of hearings listed fell from 1325 to 1179 and the number heard from 878 to 839. Those figures do not include without notice injunction applications, nor the short remote hearings which Judges increasingly fix to deal with consequential matters or particularly intractable paper application disputes.

v. Trials listed are down from 136 to 123 and trials heard from 56 to 37. However, it is clear what we are seeing is an increase in the length of hearings because trial sitting days have barely changed, at 429, as against 431 for the last full year.

vi. Total sitting days are up: from 1123 to 1135. Reading and judgment writing days were also up from 850 to 870.

vii. Paper applications in all three of Commercial Courts:

Paper Apps	2021-22	2022-23
Commercial	4212	4309
Admiralty	141	183
London Circuit Commercial	818	885
Total	5171	5377

Paper applications 1 August – 27 November comparison this year to last year:

Paper Apps	1 Aug 22-27 Nov22	1 Aug 23-27 Nov 23
Admiralty	52	56
Commercial	1221	1573
Financial	69	44
London Circuit Commercial	267	340
Total	1609	2013

viii. Reserved judgments:

Number of judgments listed for hand-down comparison:

Reserved Judgments	2021-22	2022-23
Admiralty	6	7
Commercial	131	161
London Circuit Commercial	25	38
Total	162	206

If one widens this pool to judgments reported with NCNs (which would include some of the more significant ex tempore judgments), there were 256 in 2021-2022, and 263 in 2022-2023.

ix. Return Dates (1st August – 28th November 2023):

LISTED		VACATED		HEARD	
2022	2023	2022	2023	2022	2023
13	20	4	5	8	15

The Judges all had the impression that the number of without notice injunction applications has risen. These statistics support that.

x. Lead Times:

There is significant volatility in the figures. The lead time for 1-day hearings has increased from November 2019 onwards. Those for 1-week trials were briefly shorter from November 2019 but are now high.

	Nov-15	Nov-16	Nov-17	Nov-18	Nov-19	Nov-20	Nov-21	Nov-22	Nov-23
1 day	6	12	12	9	21	22	9	21	20
1 week	30	47	25	43	21	22	27	48	57
2-3 weeks	41	60	55	47	25	22	57	50	57
4 weeks	45	60	64	75	25	56	72	50	57

There are a number of long trials coming which are going to have a significant impact on Commercial Court availability:

- a. Skatteforvaltningen (The Danish Customs and Tax Administration) v. Solo Capital Partners LLP (in special administration) and others, which between hearing and judgment writing will occupy Mr Justice Andrew Baker from April 2024 to summer 2025.
- b. Upham v HSBC Bank PLC. 22 January -27 March 2024 (Bright J)
- c. 4VVV Limited and others v. Spence and others. 9 April 2024 – 13 June 2024
- d. Gorbachev v. Guriev. 9 April 2024 – 23 May 2024
- e. Stichting Vestia v Barclays Bank PLC. 20 May 2024 – 18 July 2024
- f. AERCAP Ireland Limited v AIG Europe S.A. and another. 2 October 2024 - 19 December 2024 (Butcher J)
- g. The Public Institution for Social Security v. Al-Rajaan and others. 3 March 2025 – 22 December 2025 (Jacobs J)

Over the coming holiday period, careful thought will be given to the steps which can be taken to reduce pressure on the Court and its Judges during this time. Any suggestions are welcome.

2. Updates on Managed Groups of Cases:

i. Jacobs J on Covid BII

Mr Justice Jacobs began by confirming that the information about this group of cases is up to date on the Commercial Court webpages. A 5-day court of appeal case was due to be heard the week commencing 4 December 2023 but has settled. During October and November 2023, the policy wording hearings took place and judgment is awaited. There are no further particular cases waiting to be heard. 111 new claims were issued over the Summer, but these mainly relate to policies held by pubs and restaurants.

A large number of these claims have settled as the principles have become reasonably well established. There may be issues of quantum to resolve but whether these need to remain in the Commercial Court remains to be seen.

ii. Henshaw J on Russian Aircraft II

Mr Justice Henshaw explained that there are 2 sets of managed claims which have been brought as a result of the impact which the Russian invasion of Ukraine has had upon the aviation industry and their insurers.

Mr Justice Henshaw is managing the category of cases which relate to policy claims made by airline operators. Mr Justice Butcher is managing the category which relates to policy claims made by the lessors.

There are a number of jurisdictional challenges listed to take place in 2024. In February, the 78 Russian law challenges will be heard, and the 7 non-Russian law challenges will be heard in March.

The overall commensurate value of these claims is large and the cases themselves are large. In the lead operator policy case, the dramatis personae extends to 117 pages. Mr Justice Henshaw would therefore be grateful for the cooperation of the parties in respect of hearings, evidence, and the logistics of using CE-File. On 16 November, all parties were invited to file all skeletons via CE-File, the Skeleton Inbox and via his Clerk Jay Howard.

The Judge will be writing to all parties to urge them to file all relevant documentation on the “Parent” file in each claim. This will ensure that the items are automatically copied to the “Child” files which stand behind it. Consideration is being given to a backup Judge being appointed to help manage each set of cases.

Mr Justice Foxton noted that the large number of cases assigned to particular judges, and the long trials, will have a knock-on impact on all other court users.

3. Michael Tame: The View from the Listing Office

- i. Mr Tame explained that the Listing Office is a relatively small team of 6 and currently not at its full complement. This has had an impact on the team’s ability to process the work as swiftly as court users have come to expect. He apologised and asked for forbearance in the hope that the situation will change in a few weeks.

Over the summer, the Listing Officers and the Court Lawyer met with Barristers’ Clerks to explain how urgent applications should be processed. A similar meeting took place with the Outdoor Clerks, where this and the filing of paper applications was discussed. Further meetings are planned in the New Year. Anybody attending these meetings is asked to relay what was said to other court-using colleagues.

During the Covid-19 lockdowns, the Listing Office was receiving 2000 emails per month. That number has increased and on average we now receive 4000 emails every 4 weeks. Users are asked to think before calling or sending chaser emails, as this ultimately delays the processing of your applications and requests. Mr Tame recently received a telephone call at 9:10am to ask whether an application which had been submitted at 9:30pm the previous evening had been considered by a Judge.

The Listing Office receives multiple, repeated queries such as “Will my Friday application be in person or remote?” Sometimes the Clerk knows that it is remote unless the Judge decides otherwise but Counsel still asks them to check. We do think about how and when we contact court users, and we want to work in partnership with you rather than create more work for one another. As Foxton J notes, the uptick in work between August and November 2023 has been very significant so we ask users to bear with us.

Mr Justice Foxton indicated that the volume of work passing through the court shows that London is in rude health as a forum for commercial litigation. The court asks users to ask their commercial clients to be patient whilst we process the work.

(NB: Users are reminded that the Commercial Court’s webpages contain a list of Listing Office FAQ’s)

ii. Expedition

As Judge in Charge of the Commercial Court, Mr Justice Foxton has observed that the number of expedition requests which he receives has risen significantly. Requests have an impact on lead times and should be made (via the Listing Office) only when absolutely necessary. They should be succinct. A request and a response should stretch to 4 paragraphs in total rather than a request of 4-6 pages which attracts an equally long response.

iii. Transfer of Cases which should not have been issued in the Commercial Court

Judges are keen to ensure that judicial time is managed carefully in order to ensure the prompt delivery of judgments. To that end, both Mr Justice Foxton and Mr Justice Andrew Baker have recently dealt with claims involving less than USD 1 million. Please see *Iryna Gordiy v Jekaterina Dorofjeva & Anor* [2023] EWHC 3036 (Comm), [2]-[5] and *Bailey Ahmad Holdings Limited v Bells Holdings Limited* [2023] EWHC 2829 (Comm), [31]-[32]. Claimants should make sure that their cases warrant commencement in the Commercial Court and Defendants should look out for this issue and raise it instantly. Should parties fail to do so, their case will be transferred out whether or not there is a hearing listed.

4. Bright J: Costs in Paper Apps and CE: File

i Mr Justice Bright asked users to share the message that Respondents to applications for permission to appeal in s69 arbitration cases should seek costs at the time of responding to determinations on paper. The process is supposed to be efficient, and costs sought ex post facto applications are inefficient. Please see see *Viking Trading OU v Louis Dreyfus Company Suisse SA* [2023] EWHC 2160 (Comm).

ii Mr Justice Bright then moved onto a potential limitation issue which has arisen when Claimants have failed to provide the correct details for the Defendant/s on CE: File, though the information on the claim form was up to date. The Court’s Issues Team is not responsible for entering this data. A CE: File user will receive a message to say

that the claim has been acknowledged but this does not mean that has been accepted. Incomplete applications will be rejected. In the particular case before him, there was a retrospective application to deal with the limitation issue. Mr Justice Bright wanted to know whether this was a pervasive issue and invited feedback from court users.

5. Robin Knowles J: Update from the Standing Forum of Commercial Courts (SIFoCC)

- i Mr Justice Robin Knowles was pleased to confirm that there are representatives from more than 50 States which have joined SIFoCC in order to share best practice, promote the rule of law and give assistance to emerging market countries. SIFoCC is led from London and the United Kingdom, and its Working Group has produced SIFoCC Presumptions of Best Practice in Case Management and a Multilateral Memorandum on Enforcement of Commercial Judgements for Money.
- ii The International Steering Group of SIFoCC next meets in Doha, Qatar in April 2024. During the 2-day meeting, delegates will tackle issues such as corporate responsibility (in the context of climate change), cross-border cooperation and the relationship between arbitration/mediation and the commercial courts.
- iii SIFoCC will be happy to respond for requests for information sent to SIFoCC Secretariat

6. Dias J: Dates for your Diary

- i Mrs Justice Dias reported that Cockerill J is arranging a Hybrid Seminar on Professional Negligence. This will take place on 7 May 2024 and will be chaired by the Lady Chief Justice. The academic contributor will be Professor Janet A. O’Sullivan of Selwyn College, Cambridge and Leigh-Ann Mulcahy KC represents practitioners and Mrs Justice Dias will be taking the judicial slot.
- ii Please keep a look out for further information about this seminar on the Future Events section of the Commercial Court’s webpages.

7. AOB

There was no further business and the meeting ended at 17:32.

****[Court users are reminded that the Commercial Court will be closed due to the Christmas Vacation from Friday 22 December 2023 until the start of Hilary Term on 11 January 2024]****

