

**STATEMENT IN COURT BY MR. JUSTICE ANDREW SMITH,
JUDGE IN CHARGE OF THE COMMERCIAL COURT**

**ABOUT THE REPORT OF THE
COMMERCIAL COURT LONG TRIALS WORKING PARTY**

I wish to make a Statement about the report of the Commercial Court Long Trials Working Party. I make it with the approval of Sir Igor Judge, the President of the Queen's Bench Division.

The report of the Commercial Court Long Trials Working Party was published in December 2007. (It can be found at http://www.judiciary.gov.uk/docs/rep_comm_wrkg_party_long_trials.pdf and the related press release at http://www.judiciary.gov.uk/publications_media/media_releases/2007/3807.htm.) As David Steel J, then the Judge in Charge of the Commercial Court, said in his Foreword, its proposals and recommendations will be put into practice in the Commercial Court for a trial period from 1 February 2008.

During the trial period the Judges of the Commercial Court will be managing cases in line with those proposals and recommendations. The parties and their advisers will be expected to be familiar with the report and to conduct litigation accordingly. It should be noted that, despite its title, the report is not about only long or particularly complex or "heavy" cases. Most of the recommendations apply to all cases in the Court.

The Judges will adopt the approach of the report in managing all cases which are issued after 1 February 2008 and also all existing cases in which a Case Management Conference is held after that date. In some existing cases, the Court will order a further CMC in order to make case management orders in accordance with the report. Typically these will be cases with a trial estimate of more than two weeks, but there is no hard and fast rule. In any event the parties are expected to co-operate to implement the aims of the report to existing litigation as far as practicable, and to consider restoring the CMC if there is significant disagreement or it is thought useful to involve the Court.

We recognise that the recommendations will need to be applied flexibly and with sensitivity to the requirements of the individual case. This is particularly so where they are to be applied to litigation in progress. Where pleadings, lists of documents, statements, reports and the like have already been prepared, the Court will exercise appropriate restraint about making orders that require work to be repeated or revisited.

A check list has been prepared which identifies matters which the Judges will consider when managing cases during the trial period. It will be available from the Commercial Court Listing Office and should assist parties and advisers to identify points that they should consider and be prepared for Judges to raise.

Two specific points:

1. Time estimates for CMCs: when providing estimates, advisers must consider carefully both the hearing time itself and the reading time that the Judge will require, bearing in mind the additional demands upon judicial time that the recommendations will make. In extreme cases (for example, if a thoroughly irresponsible estimate leads to a hearing being adjourned) it might be necessary to consider costs sanctions, but primarily the Court asks for the court users' particular help about this. It is most important that when an agenda is lodged before a CMC (see paragraphs 55 and 57a of the Report) the time estimate for reading and the hearing is reviewed by all parties, and that it is either confirmed by all advocates or the Registry is promptly notified of an adjustment to the estimated reading time or the length of the hearing or both.
2. With regard to summary assessment of costs, attention is drawn to paragraphs 114 and 124(b) of the report. If a party cannot explain the bill for costs as the report contemplates, the amount awarded is likely to reflect this.

In the Foreword to the report it was contemplated that the trial period should continue until 31 July 2008. This now seems unlikely to be long enough to allow a proper assessment of the proposals and it is intended to continue the trial period into the Michaelmas term. It is hoped that it will be sufficient to extend it to the end of November 2008.

The Report is the product of co-operation between the Court and its users. The Judges recognise that the success of the trial period – and so of the proposals in the Report - depend upon the continuing support of its users, for which we are always grateful. We shall, of course, over the coming months welcome the views of users about how the changes are working.