



**Courts and
Tribunals Judiciary**

**Business and Property Courts
The Commercial Court
Report 2021–2022
(Including the Admiralty Court Report)**

March 2023



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Tribunals Judiciary**

The Commercial Court Report 2021–2022

March 2023

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1. Introduction



The traditional aim of the Annual Report on the Commercial and Admiralty Courts has been to provide an overview of the Court and its work for those who may not be familiar with it, and more detailed information of interest to regular users of the Court. Those aims are now addressed in comprehensive and current terms by the Commercial Court's webpages: [Commercial Court - Courts and Tribunals Judiciary](#). That happy state of affairs is the result of the considerable work done by the Court's judges, and in particular by my predecessor as Judge in Charge, Mrs Justice Cockerill, and those members of the Commercial Court Users Group and the London litigation community who volunteered to assist in this project. Readers of this report are strongly encouraged to visit the webpages on a regular basis, and we would welcome any suggestions as to how they might be improved.

Once again, the report addresses the work of both the Commercial Court and the Admiralty Court, and of the London Circuit Commercial Court, which works in tandem with the Commercial Court, dealing with disputes which are substantial on any view, but whose size or complexity do not require them to be heard in the Commercial Court.

In this last year, the Court has had to deal with various challenges arising from the Russia-Ukraine crisis. This has necessitated the adjournment of a number of trials or hearings in which one party has been unable to pay for legal representation in an ongoing case because of the effects of sanctions, a number of expedited hearings in which parties impacted by sanctions have sought urgent determinations of their effects on ongoing transactions, and significant insurance claims relating to aircraft leased to Russian operators. Mr Justice Butcher has been assigned to manage this last group of claims, in which the proceedings are at an early stage.

In addition, the Court continues to hear business interruption insurance claims arising from the Covid pandemic. The next phase of that litigation is moving forward under the management of Mr Justice Jacobs. The Court has also been dealing with a number of disputes relating to swap transactions entered into by Italian local authorities, in the aftermath of the decision of the Italian Supreme Court in the *Cattolica* case. There have been two trials in the Financial List before Commercial Court judges. Permission to appeal has been granted on a number of issues in the second of those cases, involving the Municipality of Venice, and the Court of Appeal has been asked to expedite the hearing of the appeal.

The Court has remained very busy. While there has been a further reduction in the number of claims issued, this is again in part off-set by an increase in the number of cases being commenced in the Circuit Commercial Courts and there has been a very significant increase in the number of arbitration-related applications. In addition, there have been significant increases both in the number of trials listed, and in the percentage of those trials which are effective. The number of days spent on hearings (sitting days, reading days and judgment writing) remained at or above the same levels as for 2019/2020 and 2020/2021. There was a significant increase in paper applications, which have now risen substantially for three successive years and are some 27% higher than in 2018/2019.

‘Friday list’ hearings and other short hearings (a half day or less) continue to be held remotely in most cases, with trials and other longer hearings now routinely held in person. A pleasing feature of litigation in the Court over the past year has been the increasing frequency with which junior advocates instructed in a case undertake some of the oral submissions. This has proved highly effective, particularly when dealing with parts of the case or its pre-trial phase with which the junior advocate may be more familiar. It is strongly encouraged.

Efforts to support commercial litigation outside London have continued. Mrs Justice Cockerill heard a significant commercial trial in Birmingham, judges have heard interim applications in Newcastle and further hearings are scheduled in Leeds and Newcastle in 2023. In addition the Court is astute to ensure that cases which are commenced in the Commercial Court but can more appropriately be tried in a Circuit Commercial Court are transferred out at an early stage.

Outside the courtroom, the judges of the Court have continued to be engaged in a wide variety of initiatives. These have included projects intended to support efforts to increase diversity in the legal profession, including the Into University scheme to provide work experience for sixth formers, and participation in the “Bridging the Bar” initiative, on which Mr Justice Calver has been the liaison judge. The Court has also continued the “pupils in court” scheme, allowing pupils a “bench-side” view of commercial litigation. The Court held another hybrid seminar, on shipping law, which was chaired by Lord Hamblen JSC, and there are plans for a further event in 2023, to be chaired by Lord Burrows JSC, addressing the topic of unjust enrichment.

Along with other stakeholders in international arbitration, the judges of the Court have liaised with the Law Commission on the subject of reform of the Arbitration Act 1996, with Mr Justice Henshaw taking the lead in co-ordinating the response.

All of the Court's judges would wish to express our thanks to the Court staff for their considerable hard work and dedication during another busy year, and in particular to our clerks and the Commercial Court Listing Office. Michael Tame and his team have also provided statistics about the court's operations which form the basis of the updates given to the Commercial Court Users' Group, and for this Annual Report.

This last court year has seen the retirement of Mrs Justice Moulder, and the "second retirement" of Sir Michael Burton GBE (whose sterling support of the Commercial Court as a s.9(4) judge has run into the insuperable obstacle of the statutory retirement age). The judges would like to thank them both for the significant contribution they have made to the work of the Commercial Court. We look forward to welcoming Dame Clare Moulder DBE back to the Rolls Building this year. We are also delighted to welcome Mr Justice Bright to the Commercial Court in January 2023.

Finally, I would like to thank Jay Howard, the clerk to Mr Justice Henshaw, for her hard work in helping to produce this Report.

Mr Justice Foxton, Judge in Charge of the Commercial Court

2. The Courts

2.1 Judges of the Court

At full strength the Commercial Court has 14 nominated judges. At the start of December 2022, there were 12 High Court judges nominated to sit in the Commercial and Admiralty Courts and they can be found at <https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/about-the-commercial-court/the-commercial-courts-judges/>. As judges of the King's Bench Division, they are often taken away from the Court on other judicial business such as sitting on criminal trials on Circuit, sitting in the general King's Bench list, the Administrative Court, the Court of Appeal Criminal Division and the Competition Appeals Tribunal. Some also sit on occasion in the Technology and Construction Court. From January 2023, Mr Justice Bryan will be the Senior Presider on the South Eastern Circuit.

The Court aims to have about eight judges sitting at any time. However, it is challenging to maintain this figure.

The Court continues to handle a varied case load, with the balance of work including both traditional subject-matters (such as international trade, shipping, insurance and reinsurance) and newer growth areas including commercial fraud, actions arising out of commercial and business acquisition agreements, and claims relating to banking, financial services and securities transactions. The Court now handles many more banking and financial disputes than previous years, as well as disputes between high-net-worth individuals from around the world.

2.2 Judiciary Changes

There have been several changes to judicial personnel during the year.

Mr Justice Foxton succeeded Mrs Justice Cockerill as the Judge in Charge of the Commercial Court in July 2022;

- Mr Justice Fraser became a Judge of the Commercial Court in November 2021; and
- Mrs Justice Moulder retired on 26 October 2022.

Mr Justice Andrew Baker has continued in his role as the Admiralty Judge; and His Honour Judge Pelling KC has continued as Judge in Charge of the London Circuit Commercial Court.

3. The Work of the Commercial Court

The Commercial Court covers a wide jurisdiction, extending to any claim that arises out of the transaction of trade and commerce.

The Commercial Court deals with both international and domestic business disputes, including claims relating to:

- Commercial agreements;
- Import and export of goods;
- Carriage of goods by sea, land and air;
- Banking and financial services;
- Insurance and reinsurance;
- Markets and exchanges;
- Commodities, oil, gas and natural resources;
- The construction of ships;
- Agency; and
- Arbitration and competition matters.

Size of claims

The value of claims in the Court is generally above £5 million. Many of the cases in the Court are worth considerably more than this, with a number of cases worth over £1 billion being commenced every year.

All claims issued in the Commercial Court are audited before a CMC is booked, to ensure that the Court's resources can be given to cases which require its expertise, that smaller cases can benefit from shorter lead times in the Circuit Commercial Courts, and that claims which raise competition issues are heard by the Competition Appeals Tribunal.

Pre-reading and time estimates

Due to the expensive nature of all court hearings, time spent dealing with evidence from witnesses and oral submissions in court is kept to a minimum. As a result, Commercial judges spend much time out of court preparing for a hearing or writing a judgment after a hearing.

Pre-reading time and judgment writing time has to be built into the Court timetable to facilitate this.

The complex and often heavily documented nature of commercial cases requires judges to pre-read a large amount of material from a “pre-reading list” supplied by advocates. The judges rely heavily on the provision of realistic reading lists, accurate estimates of pre-reading time, and on the parties updating the Listing Office if the estimate changes as trial approaches.

The Judge in Charge (together with the Judge in Charge of the London Circuit Commercial Court) issued guidance on these points on 28 September 2020 following an increasing incidence of inaccurate time estimates for hearings and pre-reading. This remains effective and the Guidance can be found at: <https://www.judiciary.uk/wp-content/uploads/2020/10/Time-estimates-Notice-2020-1.pdf> (or via [Time estimates for pre-reading and hearings | Courts and Tribunals Judiciary](#)).

The Judge in Charge issued a Practice Note on 30 March 2022 following a continued problem of inadequate time estimates (particularly in longer applications and trials) and their effect on the conduct of hearings in the Commercial Court. Parties are warned that inadequate time estimates may result in cases being stood out of the list and relisted without expedition. The Practice Note calls for careful consideration as to the number of issues and authorities that can be covered. It reminds parties that oral hearings exist for the presentation of the parties’ arguments, including submissions on the law, and that it is not acceptable for advocates to provide a list of documentary references or case extracts and expect the Judge to read the material after the hearing. The Practice Note is at <https://www.judiciary.uk/guidance-and-resources/practice-note-commercial-court-2/>.

Consequential hearings

As noted at a recent Commercial Court User Group meeting on 30 November 2022, there have been two recent decisions emphasising importance of consequential matters after hearings being dealt with promptly and in a proportionate manner: see *Contra Holdings Ltd v M J C Bamford* (<https://caselaw.nationalarchives.gov.uk/ewhc/comm/2022/2799>) and *Royal & Sun Alliance Insurance Limited and others v Tughans* (<https://caselaw.nationalarchives.gov.uk/ewhc/comm/2022/2825>). Delays between judgment and consequential hearings result in increased reading time and delay the progress of any appeal. There is now an emphasis on determining consequential

issues at short one-hour hearings between 1–2 weeks after hand down, with a strict page limit on written submissions.

Disclosure

Following the Disclosure Pilot which ran from January 2019 to October 2022, permanent changes based on the former Practice Direction 51U were brought into effect by Practice Direction 57AD. Brief further details are set out in section 10 below.

Electronic working

Following changes in how hearings were conducted during the Covid pandemic, there has been a general shift towards ‘paperless’ bundles in many cases, with paper bundles (or selected paper bundles) being used only where requested by the judge. This is the default position in the new Commercial Court Guide.

Parties are now required to file electronic bundles in accordance with the latest directions, updated on 29 November 2021, which can be found at: <https://www.judiciary.uk/announcements/general-guidance-on-electronic-court-bundles/>.

Website

The Business & Property Courts’ website has been completely overhauled, with Cockerill J playing a leading role. The pages relating to the Commercial Court, Admiralty Court and Circuit Commercial Courts can be accessed from here: <https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/>. The new website went live in November 2022, and won an award from the Chartered Institute of Library and Information Professionals. Users are requested to familiarise themselves with the webpages, which include a summary guide to litigating in the Commercial Court (<https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/litigating-in-the-commercial-court/preparing-for-hearings-and-trials/>) and a “Listing FAQ” which raises most of the questions which are regularly asked of the Listing Office (<https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/lead-times-list-and-contacts/listings-faqs/>); and to submit any suggestions for future improvement to the Clerk to Cockerill J c/o Laura.Hope@justice.gov.uk.

Overview of work

The year 2021–2022 saw a fall in claims issued from 802 (in 2020–2021) to 723. This change was in part offset by an increase of claims brought in the Circuit Commercial Courts. In addition, there has been a significant increase in arbitration applications, which the Court seeks to determine in a manner which is consistent with the policy of “speedy finality” underpinning the Arbitration Act 1996: there have been increases of 8% in applications under section 69 of the Arbitration Act 1996, of 54% in challenges brought under s.68 of the Act and of 59% in challenges brought under s.67 of the Act.

There has been both an increase in the number of trials listed, and a significant increase in the percentage of those trials which are effective (from 34% to 41%).

Cases heard in 2021/2022 (which will give some indication of the breadth of the court’s work) have included:-

- *Province of Balochistan v Tethyan Copper Company Pty Limited* [2021] EWHC 1884 (Comm) (challenge to ICC arbitration award on basis underlying agreements procured by corruption)
- *Ivy Technology Limited v Martin* [2022] EWHC 1218 (Comm) (claims for fraudulent misrepresentation, breach of warranty and unlawful means conspiracy in relation to sale of online gambling business)
- *ED&F Man Capital Markets Limited v Come Harvest Holdings Limited* [2022] EWHC 229 (Comm) (claims arising from a high value metals fraud and use of fake warehouse warrants)
- *Kyla Shipping Co Ltd v Freight Trading Ltd* [2022] EWHC 1625 (Comm) (allegations of fraud relating to FFA trades)
- *Deutsche Bank AG v Central Bank of Venezuela* [2022] EWHC 2040 (Comm) (expedited trial of a dispute as to the ownership and control of the republic of Venezuela’s gold reserves and other assets between the “Maduro” and “Guaidó” boards)
- *Stonegate Pub Co Ltd v MS Amlin Corporation Member Ltd and others* [2022] EWHC 2548 (Comm), *Various Eateries Trading Ltd v Allianz Insurance Plc* [2022] EWGC 2545 (Comm) and *Greggs Plc v Zurich Insurance Plc* [2022] EWHC 2545 (Comm) (decisions following expedited trials on business interruption insurance cover for losses arising from the covid pandemic)

- *Banca Intesa Sanpaolo SpA and Dexia Crediop SA v Comune di Venezia* [2022] EWHC 2856 (Comm) (claims in relation to interest rate swap transaction found to be outside the capacity of the Italian local authority)
- *Qatar Investments and Projects Development Holding Co and His Honour Sheikh Hamad Bin Abdullah Al Thani v John Eskenazi Ltd* [2022] EWHC 3023 (claim against antiquities dealer in relation to purchase of antiquities found to be modern forgeries)

In addition to hearings, Judges also deal with a large number of applications on paper: see further section 12.2 below. The Judge in Charge of the Commercial Court deals in addition with applications to transfer in and out of the Court, as well as matters concerning listing and expedition.

3.1 Arbitration

Matters arising from arbitration still make up a significant proportion of the claims issued in the Court (around 25%), reflecting London's continued status as an important centre for international arbitration.

These matters include a range of applications made in support of the arbitral process, such as applications for injunctions in connection with arbitrations, for the enforcement of arbitration awards, and other matters such as applications to the court for the appointment of an arbitrator.

The bulk of the arbitration claims issued are:

- challenges to awards on grounds of jurisdiction under section 67 of the Arbitration Act 1996;
- challenges alleging irregularity (section 68 applications); and
- appeals on a point of law (section 69 applications).

Section 44 applications (injunctions)

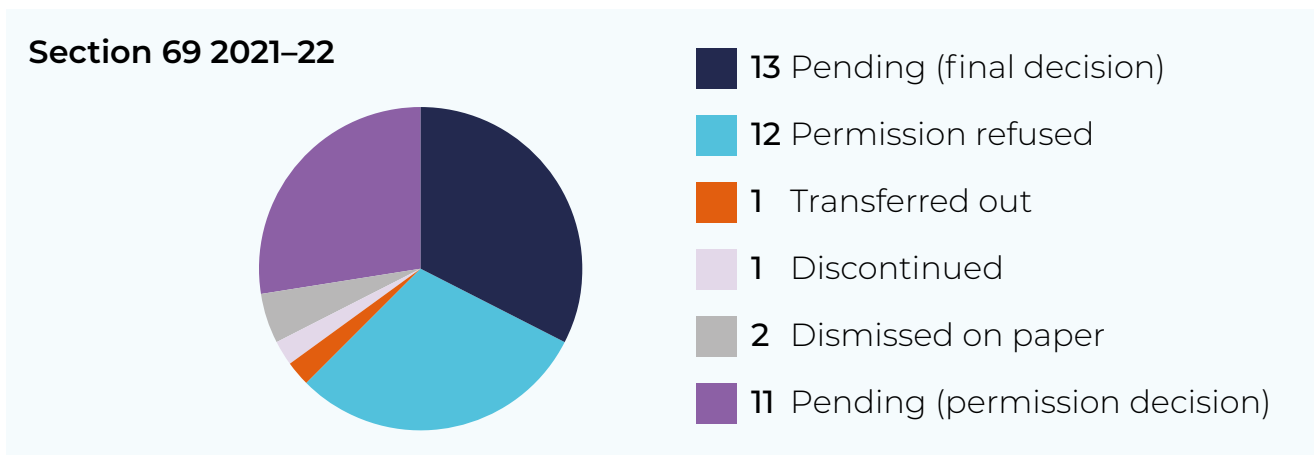
During 2021–2022, there were 15 applications for injunctions under section 44 of the Act, compared with 27 such applications the previous year.

3.1.1 Section 69 applications (appeal on point of law)

The number of section 69 applications received during the year was 40, compared to 37 the previous year. As at October 2022:

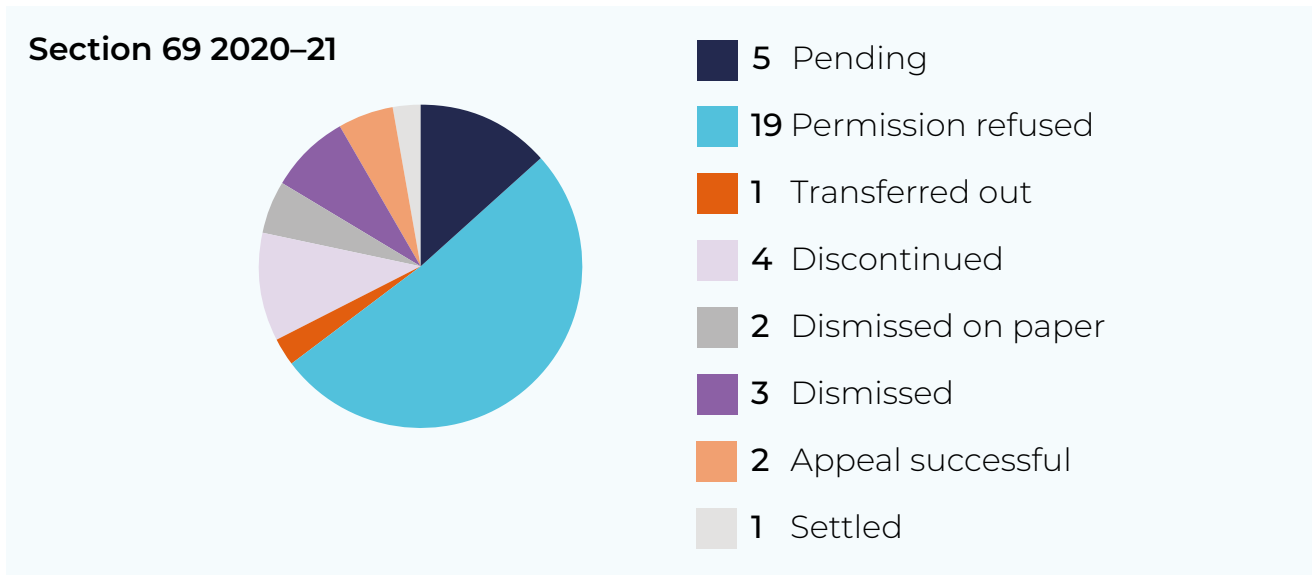
- 13 had been granted permission to appeal, with a final decision pending
- 12 had permission refused
- 2 were dismissed on paper
- 1 was discontinued
- 1 was transferred out
- 11 were awaiting a permission decision

as illustrated below:



As an arbitration case will sometimes span a year-end, a more complete picture is offered by looking also at previous years.

A review of 2020–2021 shows that there were 37 applications received in that year. The final position of these is illustrated below, and indicates that only 2 out of 37 (i.e. 5% of applications were successful):



3.1.2 Section 69 applications – Completion Times

During this year it has taken on average 111 days for a decision to grant or refuse permission to appeal, including the time required for service on the respondent, for the respondent to file its response, for any reply by the applicant, and the provision of a bundle for the judge. This is similar to applications filed during 2020–2021, when the average time was 100 days. The average completion time for applications where permission was granted (from receipt of claim to final decision) was 240 days.

3.1.3 Section 68 applications (irregularity)

During the year the court received 40 section 68 applications (a 54% increase compared to 26 the previous year), of which:

- 5 were dismissed without a hearing (on the papers)
- 1 was dismissed at hearing
- 2 were discontinued
- 1 transferred out

The remaining 31 are pending and awaiting decision.

A review of applications received during 2020–2021 shows 26 applications:

- 1 successful challenge
- 15 dismissed (9 on the papers)

The remainder were discontinued (2), withdrawn (2), stayed (1), transferred out (2), or pending (3). Thus only 4% of applications were successful.

3.1.4 Section 67 applications (jurisdiction)

During the year 27 jurisdiction applications were filed under section 67 of the Act (a 59% increase from the 17 filed the previous year), of which:

- 5 were dismissed on the papers
- 1 was unsuccessful
- 1 was discontinued
- 20 remain pending

By way of update on the 17 applications received in the judicial year 2020–2021, the current position at the time of writing is that:

- 9 were dismissed (five on the papers and four at hearing)
- 3 were discontinued
- 1 was successful
- 1 was transferred out
- 3 are pending

Thus, to date, only 6% of those applications have been successful.

3.2 The Circuit Commercial Court

The Circuit Commercial Court handles commercial transactions that satisfy the following criteria:

1. the case concerns a business dispute, including but not limited to such a dispute relating to:
 - Commercial contracts;
 - The export or import of goods, international carriage of goods by land sea or air;
 - Insurance and reinsurance;

- Banking and financial services, commercial loan agreements, guarantees and indemnities;
 - The operation of markets and exchanges including those concerned with commodities of all types and financial products of all types including securities and currencies;
 - Share sale agreements;
 - Professional negligence;
 - Business agency and management agreements including those relating to professional sport;
 - Confidential information and the enforcement of post termination restraints in employment contracts
 - Ships or yachts (other than to the extent the claim falls within the exclusive jurisdiction of the Admiralty Court); or
 - Arbitrations including appeals and other challenges concerning arbitrations made under the Arbitration Act 1996 and the enforcement of Arbitral Awards;
2. it would be fit for commencement in the Commercial Court by reason of its subject matter but is unsuitable for issue in the Commercial Court by reason of its financial value and/or the nature of the factual, technical or legal issues that arise;
 3. its value merits trial in the High Court; and
 4. the factual, technical or legal issues that arise require or would benefit from the expertise of a Circuit Commercial Judge to resolve.

Cases are normally heard by specialist senior circuit judges authorised to sit as High Court judges, and by specialist Deputy High Court judges. Some cases may be heard by Commercial Court judges.

His Honour Judge Pelling KC is Judge in Charge of the London Circuit Commercial Court. He also sits as a judge of the Commercial Court.

4. The Work of the Admiralty Court

The Admiralty Court has exclusive jurisdiction over certain maritime claims. Cases heard by the Court include:

- Collisions between ships;
- Disputes over the transport of cargo;
- Salvage of a ship, cargo or crew;
- Disputes over goods supplied to a ship;
- Disputes over mortgages and other security over ships;
- Claims by passengers or crew for injuries suffered;
- Claims by the crew of a ship for unpaid wages;
- Claims by shipowners to limit liability for loss or damage.

The Court hears claims brought against the owner of a ship ('in personam' claims) and claims brought against the ship itself ('in rem' claims). The distinctive feature of the 'in rem' jurisdiction is the ability of the court to arrest and sell ships.

The Court comprises the Admiralty Judge (Mr Justice Andrew Baker), all other judges of the Commercial Court, and the Admiralty Registrar (Master Davison).

The Admiralty Registrar allocates cases either to the Admiralty Judge or to the Admiralty Registrar (usually those under £1 million). Where damages are to be assessed in a collision action (or any other action) they will, save in exceptional cases, be referred to the Registrar.

As a result of the County Court no longer having Admiralty jurisdiction, all smaller value claims raising an issue of navigation or ship management are case managed by the Registrar and, when they do not settle, are tried by him.

Many claims for personal injury suffered on board waterborne craft are issued in the Admiralty Court that do not raise any such issue and are likely to be worth well under £1 million. They are identified at the initial stage of claim allocation by the Admiralty Registrar and, in general, are transferred out to a suitable County Court. It is not efficient to require such claims to be commenced in the Admiralty Court, and the need to do so created by CPR 61.2(f) will be removed from 6 April 2023

when that rule is amended as recommended by the Admiralty Court Users Committee.

The importance of the work of the Registrar is underlined by the proportion of hearings conducted by him in the year. The Registrar dealt with 84% of the hearings/applications.

Warrants of arrest are executed by the Admiralty Marshall, Paul Farren.

The Court and the Marshal acknowledge the role played by solicitors in giving early notification of a Claimant's intention to arrest, which then enables the Marshal to act without delay when a warrant of arrest is issued.

During 2021–2022, 17 warrants of arrest were issued and 4 vessels were sold by the court. This compares to figures for the previous year of 17 warrants of arrest being issued and 11 vessels being sold. The number of arrests is typical. The fall in the number of sales is a return to normality after the unusually high number of court sales caused by the arrest and sale of cruise ships linked to the collapse of the cruise industry during the Covid-19 pandemic.

4.1 Update from the Admiralty Judge

Mr Justice Andrew Baker reports that, as indicated by the statistics in section 6.3 below, 2022 saw more effective substantive hearings than 2021, and was again a busy year for interlocutory applications, albeit the total number of hearings (listed and effective) fell somewhat.

Following the Supreme Court decision in *Alexandra I & Ever Smart (Nautical Challenge Ltd v Evergeen Marine (UK) Ltd* [2021] UKSC 6, the apportionment of liability in that case was re-determined by Sir Nigel Teare. The original determination of 80:20 against *Ever Smart* became 70:30, [2022] EWHC 206 (Admlty), leading to some interesting arguments on costs in the light of various offers to settle: see [2022] EWHC 830 (Admlty).

Sir Nigel also determined liability in a collision claim resulting from a collision in a 'Precautionary Area' of the Singapore Straits Traffic Separation Scheme. The judgment discusses a difficult question about whether the crossing rule does not apply where the putative stand-on vessel has created the crossing situation through bad navigation, but a final decision on the point was not required: *m.v. Western Moscow c/w m.t. Wilforce*, [2022] EWHC 1190 (Admlty).

Andrew Baker J determined a range of issues concerning tonnage limitation arising out of the catastrophic fire on board the *MSC Flaminia* in July 2012: *MSC Flaminia*, [2022] EWHC 835 (Admlty); *MSC Flaminia (No.2)*, [2022] EWHC 2746 (Admlty). The Admiralty Judge also determined the apportionment of liability as between *Panamax Alexander*, *NYK Falcon* and *NYK Orpheus*, for the collision between *Orpheus* and *Alexander* in the Suez Canal on 16 July 2018, the morning after *Alexander* had been disabled by the collision considered by Teare J in his last collision trial as the Admiralty Judge (*Sakizaya Kalon*, [2020] EWHC 2604 (Admlty)). Andrew Baker J held all three vessels at fault, and apportioned responsibility between them 5/12 each to *Alexander* and *Orpheus*, 1/6 to *Falcon*: *NYK Orpheus c/w Panamax Alexander*, [2022] EWHC 2828 (Admlty). The Judge also raised in the judgment a possible concern about the adequacy of communication between local pilots and international crews during Suez Canal transits.

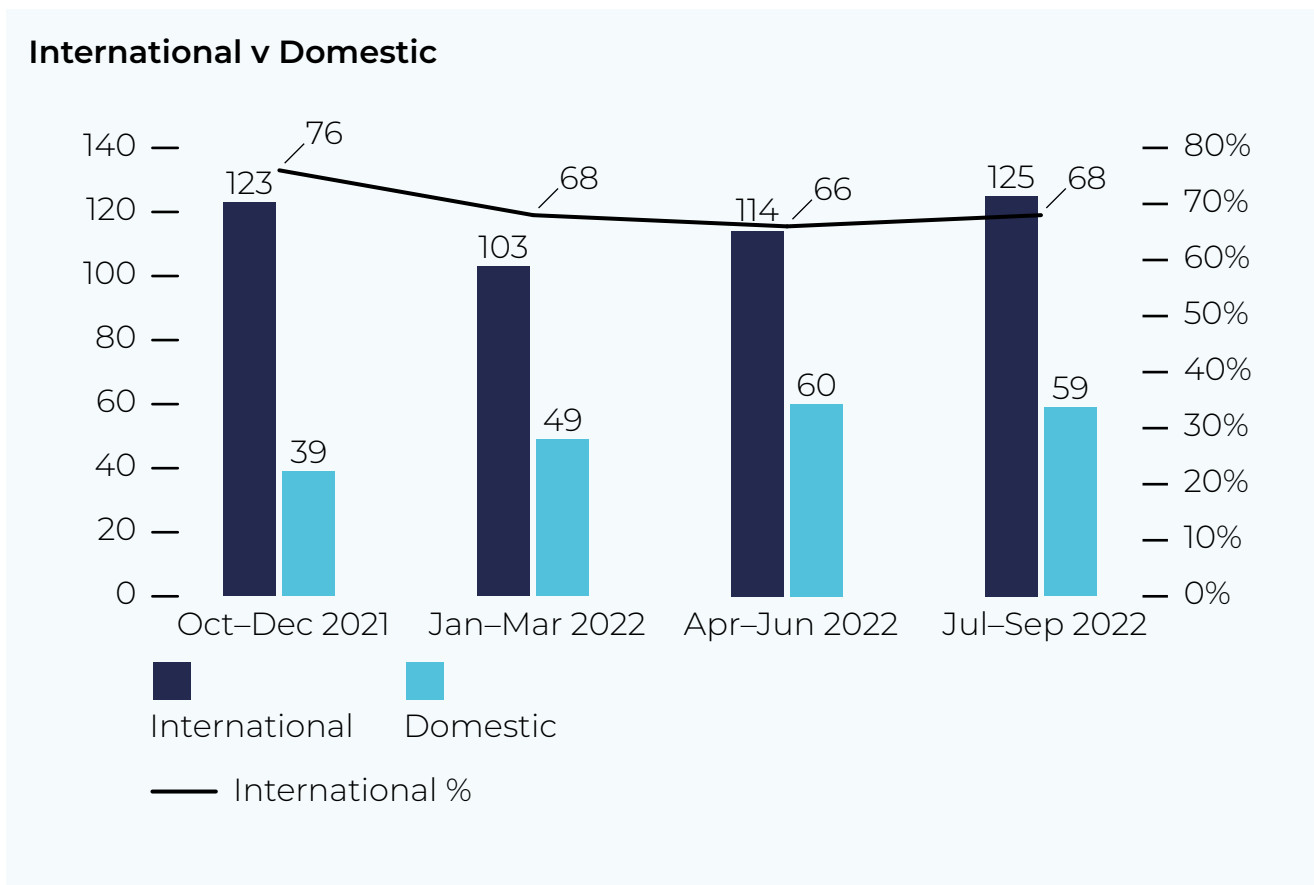
The most significant judgments from the Admiralty Registrar during 2022 were a liability judgment in relation to the personal injury claim of an offshore wind turbine technician severely injured at work on board the *Sea Installer*, engaged in installation works in the Rentel offshore wind farm: *Hoadley v Siemens* [2022] EWHC 3169 (Admlty); and a judgment dismissing a claim alleging negligence in the planning and execution of a professional yacht delivery taking the sailing yacht *Vlaroda* from France to the USA (eastern seaboard): *Arnold v Halcyon Yachts* [2022] EWHC 2858 (Admlty).

As indicated by the mentions of his name above, Sir Nigel Teare continues to assist the Admiralty Court as a result of his authorisation to sit in retirement. With the support of Andrew Baker J and Master Davison as Admiralty Judge and Admiralty Registrar respectively, Jervis Kay KC has continued to be authorised to sit in retirement as Deputy Admiralty Registrar, and it is hoped that will be renewed for 2023, so that there continues to be experienced, expert cover for Master Davison in case the need arises. It will not be possible to renew that authorisation beyond February 2024, however, and the appointment of an additional Deputy Admiralty Registrar (or possibly two) will be sought during 2023 as a matter of succession planning.

5. Sources of the Court’s Work

As in all previous years, the Commercial Court has always handled an international caseload. Cases often reach the Court because parties have contracted on standard forms in use in a particular trade which have a specific provision for English law and/or for the English courts to resolve any disputes that arise. There are also many cases based on bespoke contracts where the parties have actively chosen the jurisdiction of the English courts.

Below is a breakdown of the cases issued during 2021–2022, showing the proportion of international to domestic work, which has been consistent and high over recent years.



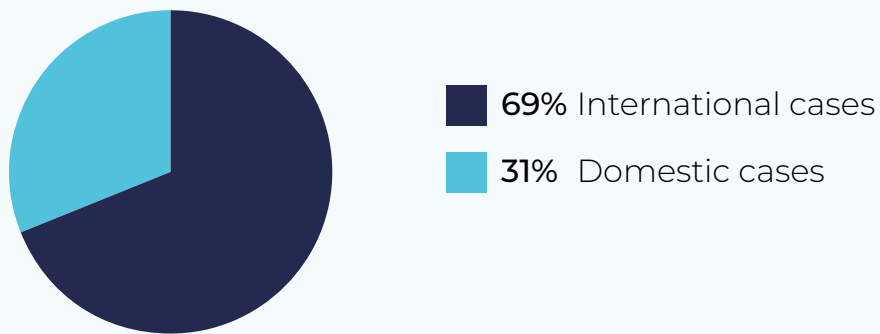
A domestic case is one where:

- a) the subject matter of the dispute between the parties is related to property or events situated within the United Kingdom, and
- b) the parties are based in the United Kingdom relative to the dispute (in other words, that the part of the business relevant to the dispute is carried on in the UK, regardless of whether the business is incorporated, resident or registered overseas).

All other cases are classified as “international”.

Regardless of how many cases are issued within each quarter, the international proportion of the Court's business remains dominant and during the year has ranged on a quarterly basis from 66% to 76%. Over the year as a whole, the proportion has reduced slightly to 69% from last year's 74%.

International v Domestic 2021–22



6. Volumes and Business of the Court

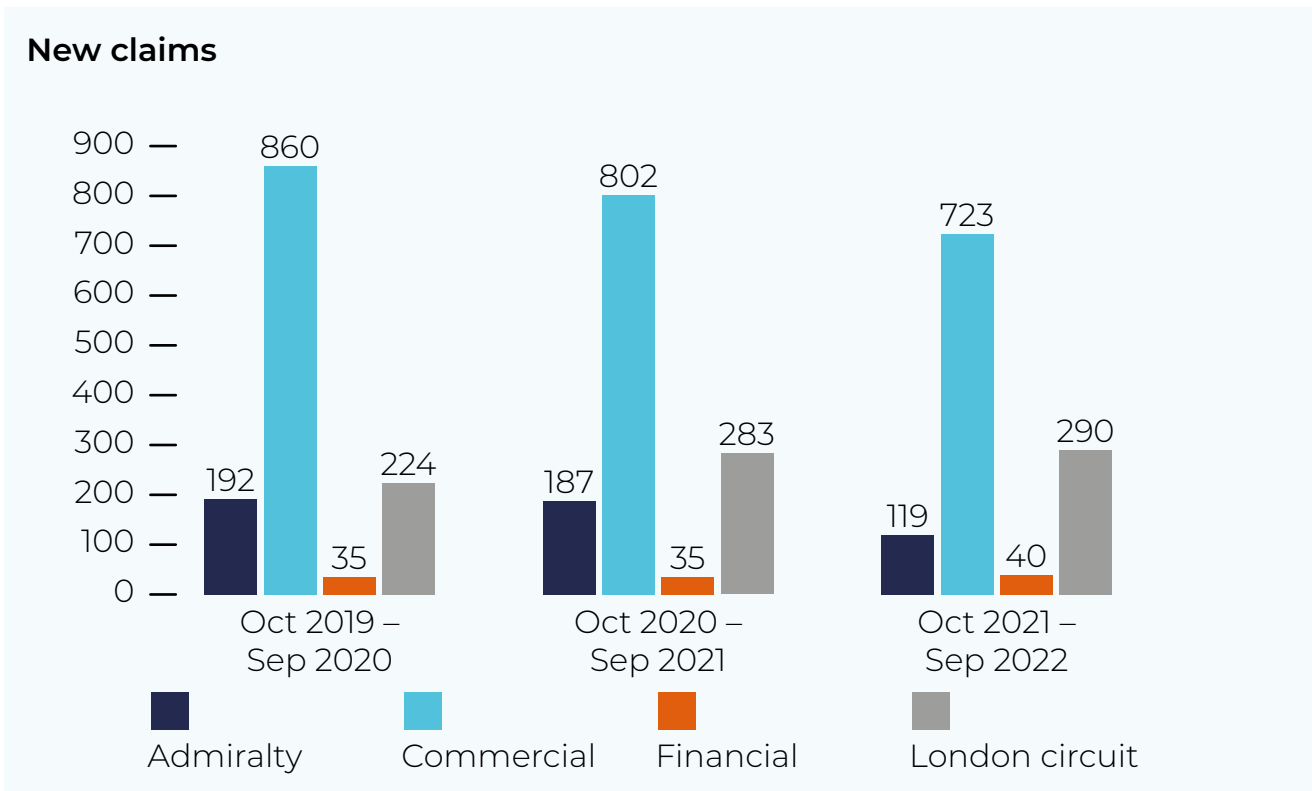
This section contains a more detailed analysis of volumes and breakdowns of the business. This will be reported separately by each of the sub-divisions of the Court: Commercial, Admiralty and London Circuit Commercial.

6.1 Number of new claims

During the year there were 1,172 claims received in total, across all sub-divisions. As reflected in the graph below, the number received overall remains comparable to 2019–2020 and 2020–2021.

The number of claims issued in the Commercial Court this year (723) has reduced from last year’s figure of 802. At the same time there has been an increase in the number of claims in the Financial List (up to 40 from 35) and in London Circuit Commercial Court claims filed this year (up to 290 from 283). It is possible that this reflects parties now correctly issuing smaller claims at the London Circuit Commercial Court rather than the Commercial Court (see section 3 “Size of Claims” above).

The graph below illustrates the overall number of claims issued from October 2019 to September 2022:



6.2 The Commercial Court

6.2.1 Types of new claims

A breakdown of new claims by type is provided below.

It indicates that the largest single category was general contractual claims (166), representing 23% of new claims. That was also the largest category (27%) last year.

Leaving aside 90 new claims categorised as 'other' as their subject-matter was not specified, the top ten categories by number were as follows:

- General commercial contracts and arrangements (23%)
- Insurance and/or reinsurance (7%)
- Pre-action Injunction (4%)
- Arbitration enforcement applications under s. 66 and s.101 (4%)
- Other arbitration appeals/applications (7%)
- Commercial fraud (5%)
- Shipping cargo (4%)
- Arbitration s.67 of the Arbitration Act 1996 (3%)
- Arbitration s.68 of the Arbitration Act 1996 (3%)
- Arbitration s.69 of the Arbitration Act 1996 (3%)

(The category "Other arbitration appeals/applications" reflect the parties' categorisation when the claim was issued.)

The following list illustrates the categories:

Commercial Court breakdown by type

2	Application to transfer in
6	Arbitration application to appoint an arbitrator
27	Arbitration enforcement applications under s.66 and s.101
13	Arbitration injunctions under s.44
24	Arbitration s.67 of the Arbitration Act 1996
9	Arbitration s.68 and s.69 of the Arbitration Act 1996
23	Arbitration s.68 of the Arbitration Act 1996
24	Arbitration s.69 of the Arbitration Act 1996
23	Aviation
9	Carriage of goods by land, air or pipeline
33	Commercial fraud
14	Corporate or business acquisition agreements
4	General average
166	General commercial contracts and arrangements
47	Insurance and/or reinsurance
1	Miscellaneous
2	Norwich Pharmacal
4	Oil and gas and other natural resources
90	Other
53	Other arbitration appeal/application
1	Part 7 claim
3	Physical commodity trading
1	Pre-action disclosure
30	Pre-action Injunction
15	Professional negligence claims
11	Provision of financial services
11	Sale of goods
1	Service out of the Jurisdiction
26	Shipping – Cargo
19	Shipping – charter party dispute
1	Shipping – Construction
8	Shipping – financing
8	Transactions on financial markets or securities and/or banking
13	Unallocated

6.2.2 Hearings

The number of hearings listed and heard in the Commercial Court during the year has remained broadly similar to previous years: 1,325 listed and 878 heard, compared to 1,394 and 948 the previous year.

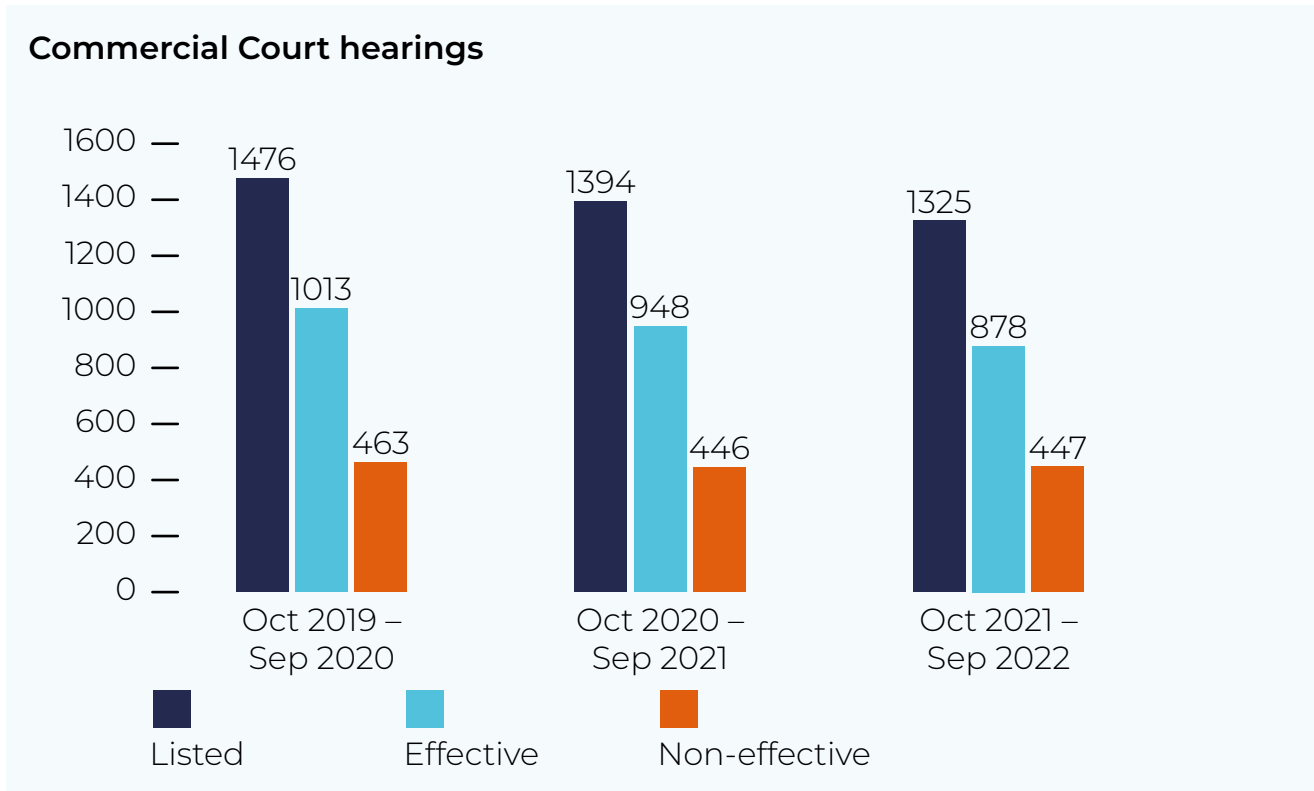
At the same time:

- Even though there has been a reduction in the number of hearings, the total number of “sitting days” (i.e. judge days in court) continues on an upwards curve (as illustrated in the chart in section 6.2.4 below).
- The number of paper applications processed during the year also continues to increase: up by 13% from the previous year (see section 6.5 below).

Of the 1,325 hearings listed, 447 were not effective for a variety of reasons, such as hearings vacated, adjourned, or settled on the day and/or in advance of the hearing date.

The percentage of effective hearings has remained consistent with previous years, having been 66% this year and 68% during each of the two preceding years.

The graph below illustrates these figures:

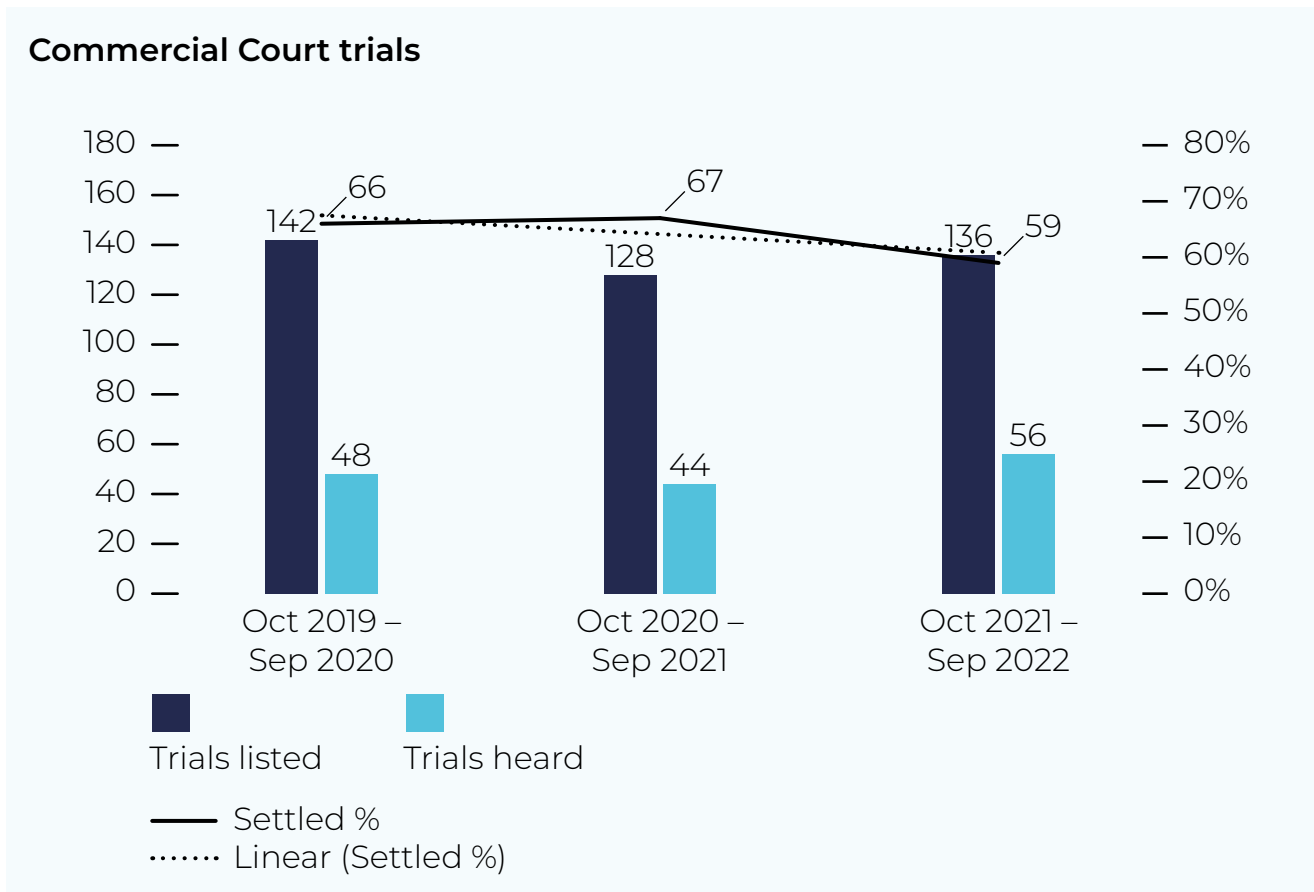


6.2.3 Trials

Many cases listed for trial are settled shortly – or very shortly – before the trial date. Out of 136 full Commercial Court trials listed this year, 56 were heard, denoting a settlement rate at around 59%.

This is comparable to the year before and appears to be an ongoing trend, as illustrated in the chart below.

The total number of trial sitting days this year was 431, compared to 375 in 2020–2021. The increase in the number of trials listed has increased the number of trial sitting days by 37% compared to 2020–2021.

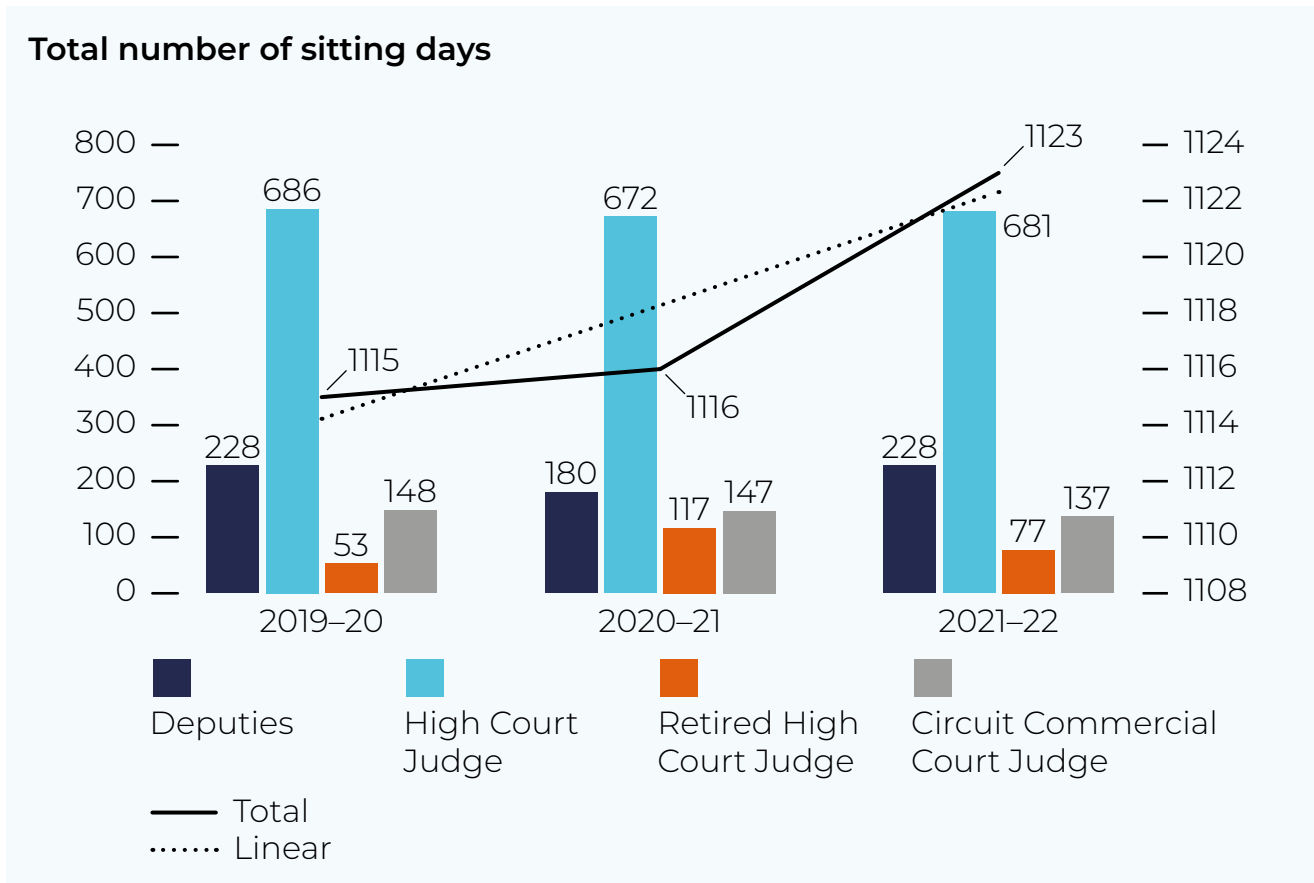


As most readers will be aware, the Court process encourages and promotes settlement by requiring the parties to define the issues at an early stage (before the first Case Management Conference), and facilitating the evaluation of the parties' positions following disclosure and/or exchange of witness statements and expert reports. Trial dates are also fixed with very reasonable lead times, which constantly focuses parties and lawyers on whether the impending trial should be fought.

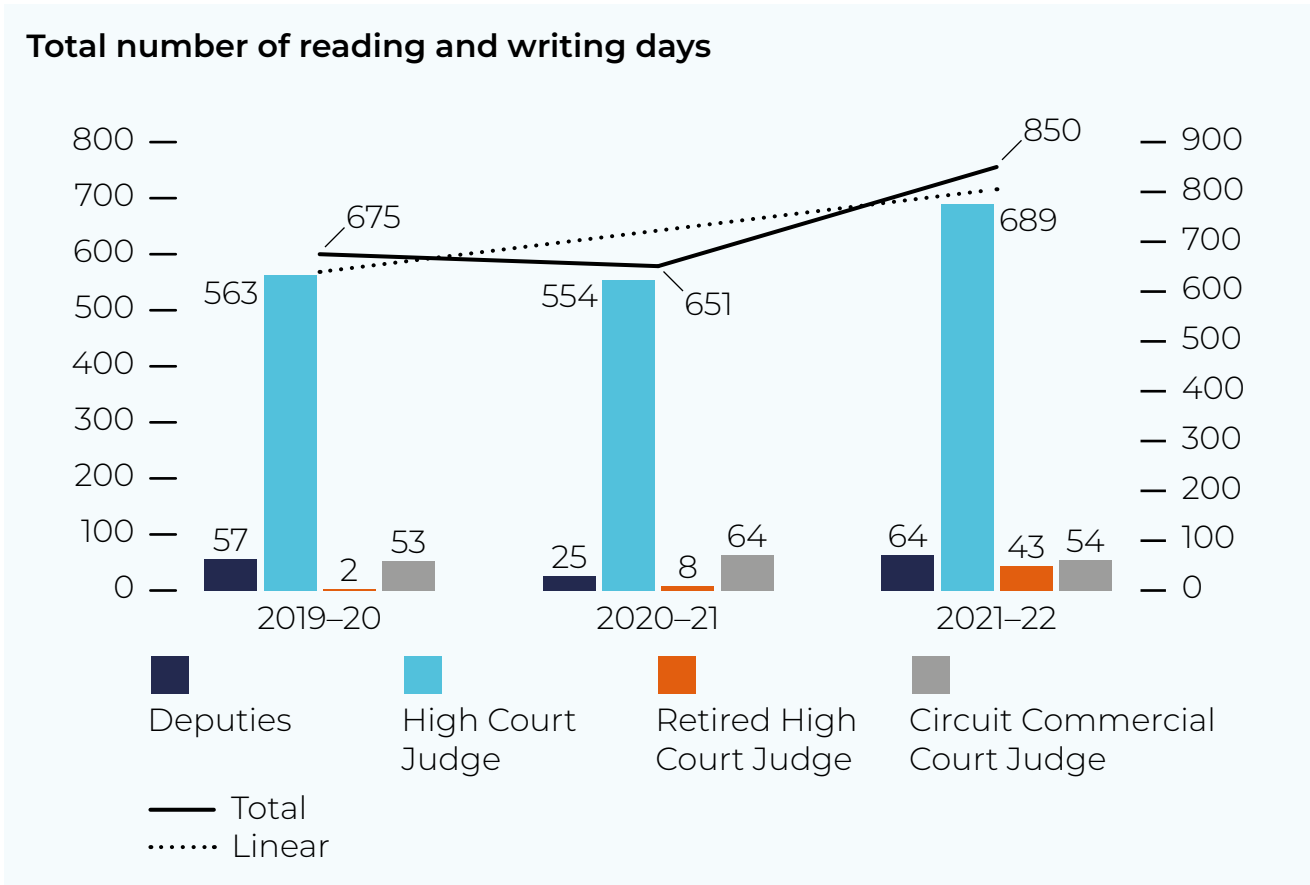
Sir Geoffrey Vos MR indicated in a speech (to be found [here](#)) that over 20 years on from the introduction of the concept of “alternative” dispute resolution, dispute resolution should now be seen as an integrated whole, with mediated interventions being part and parcel of the process of resolving disputes rather than being regarded as “alternative”. Consistently with that view, we refer in this report to “Negotiated Dispute Resolution” (NDR), and that term will be used in the new Commercial Court Guide. NDR is frequently built into the Court’s processes in order to help facilitate settlement.

6.2.4 Sitting days

The total number of sitting days for this year was 1,123, slightly up from the previous year’s figure of 1,116. These include days sat by High Court Judges (681), Deputy High Court Judges (228), the Circuit Commercial Court Judge (137) and Retired High Court Judges (77). Since 2019 there has been a gradual increase each year as illustrated below:



There has also been an increase in the total number of reading and writing days. This year the total number of days is 850, a 25% increase from 651 days in 2020–2021. The increase since 2019 is illustrated below:

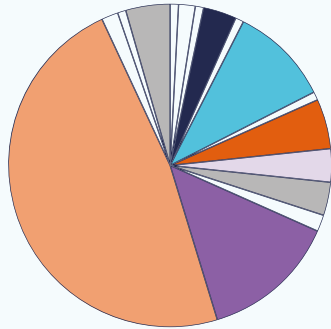


6.3 The Admiralty Court

6.3.1 Types of new claims

Below is a breakdown of the types of claims issued at the Admiralty Court during 2021–2022. It indicates that 48% of claims were classified as relating to personal injury. That compares to 58% of these claim types issued in 2020–2021. The next most frequent types of claim were Other (16) and collision claims (15).

Admiralty Court breakdown by type



- 1 Application to transfer in
- 2 Arbitration enforcement s.66 101
- 1 Arbitration s.68 of the Arbitration Act
- 4 Cargo claims
- 1 Charter party dispute
- 12 Collision
- 1 General average
- 6 General commercial contracts and arrangements
- 4 General commercial contracts and arrangements, inc agency
- 4 Limitation of liability
- 2 Miscellaneous
- 16 Other
- 57 Personal injury
- 2 Salvage
- 1 Ship Construction
- 5 Ship mortgage

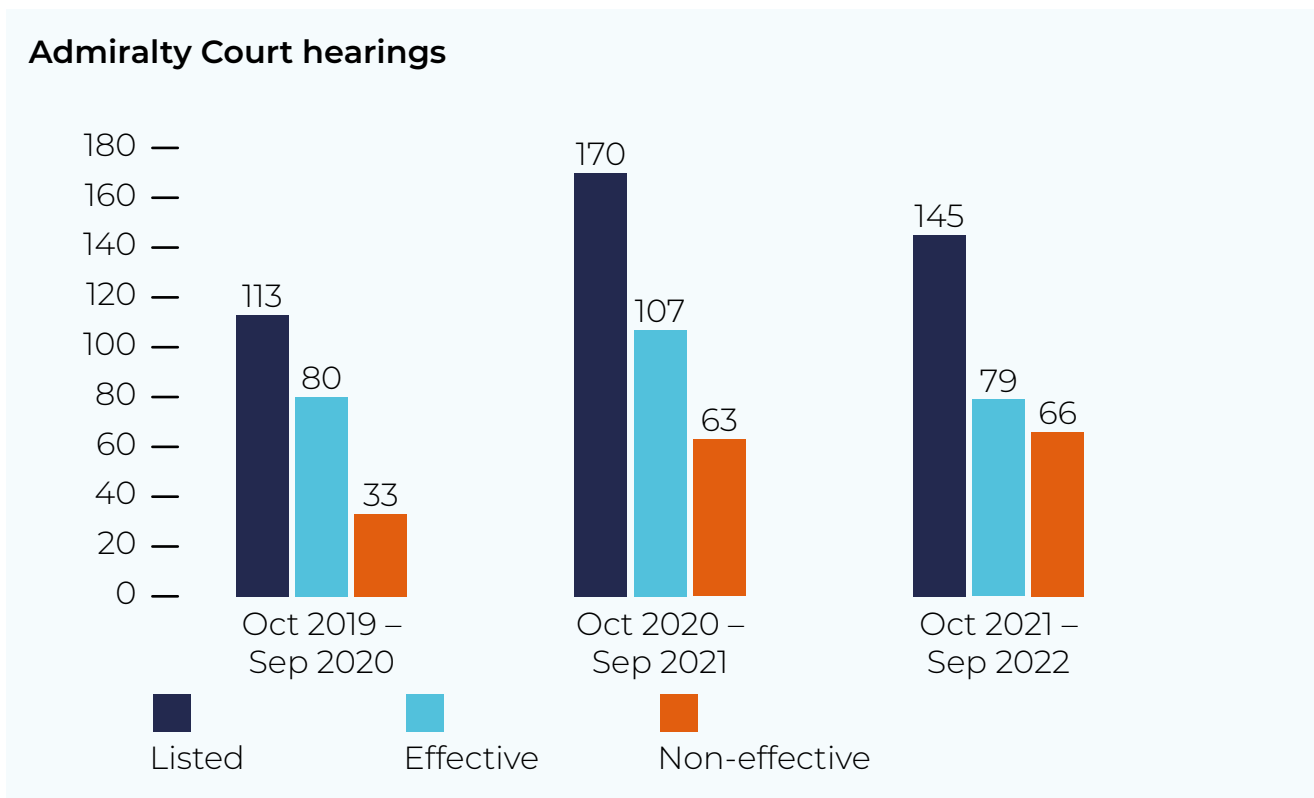
At CMCs in collision actions where electronic data have been exchanged, parties continue to engage well with the fast track procedure introduced by the Court. No such action reached trial in 2019 and only one in 2020 the *Sakizaya Kalon*, in which Teare J observed that the effect of the exchange of electronic track data was that there was “now, typically, no need for a trial to establish the navigation of each vessel leading up to the collision. What remains to be decided at trial are questions of fault”: see [2020] EWHC 2604 (Admlty) at [6].

In 2021, no collision claim came to be tried as to liability, although one settled only just before trial; in 2022 there were two effective collision trials, both mentioned in section 4.1 above.

6.3.2 Hearings

The number of hearings listed in the Admiralty Court reduced from the previous year, with 145 hearings listed in 2021–2022, compared to 170 during 2020–2021.

Out of the 145 hearings listed, 66 were not effective for the usual reasons, i.e. hearing vacated, adjourned, or settled on the day and/or in advance of the hearing. Thus 54% of listed hearings were effective, compared to 63% the year before, as illustrated below:



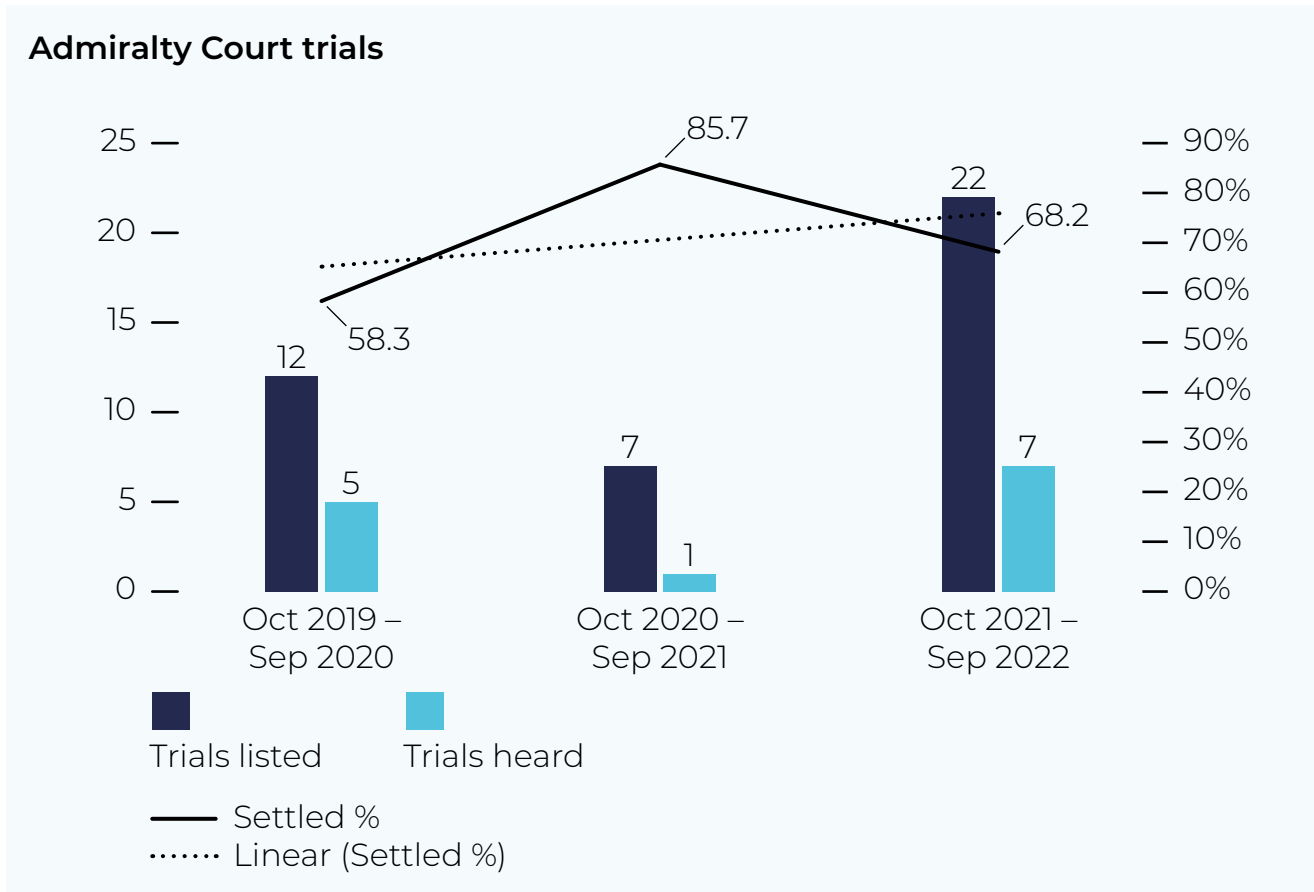
As to interlocutory hearings listed, there was a decrease both in CMCs and in other applications, the latter seeing the proportionately greater reduction:

Hearing Type	2020–2021	2021–2022
CMCs	81	70
Other Applications	68	43

6.3.3 Trials

During the year there were twenty two trials listed before the Admiralty Court, of which only seven were eventually contested, four of which were heard by the Admiralty Registrar.

Thus 68% of the listed trials were resolved before judgment, which has reduced from the previous year when 85% settled, as illustrated below:



6.4 The London Circuit Commercial Court

6.4.1 Update from HHJ Pelling KC (Judge in Charge)

The London Circuit Commercial Court (LCCC) is part of the Commercial Court. It can offer earlier trial dates than the Commercial Court. Cases with a value of up to about £5 million are routinely issued in or transferred to the LCCC and cases of significantly higher value are regularly started there. Cases involving issues of general importance will usually be transferred to the Commercial Court at the first Costs and Case Management Conference (CCMC).

The practice of the LCCC is to hear applications of 1 hour or less between 09:30 and 10:30 on Monday to Thursdays; all other

applications of up to 1 day in length on Fridays and trials and applications estimated to last longer than 1 day on Mondays to Thursdays between 10:30 and 16:30.

In the last 12 months:

- a) All applications of half a day in length or less have been heard remotely;
- b) The Court has operated on a paperless basis, with all bundles being lodged electronically and judges using electronic bundles for all applications and trials save where otherwise directed;
- c) New forms for use in the LCCC were published in January 2022;
- d) The new Circuit Commercial Court Guide was published in February 2022. By design it has brought the practice of the Circuit Commercial Courts much more closely into alignment with that of the Commercial Court with, broadly, the Commercial Court Guide applying to all Circuit Commercial Court cases save where the Circuit Commercial Court Guide expressly provides a different practice. Experience suggests that has been welcomed by practitioners as a means of simplifying the administrative element of conducting Circuit Commercial Court litigation;
- e) Standard trial directions (which will be made at the CMC stage) now apply to the vast majority of Part 7 Claims which has enabled Pre-trial Reviews to be dispensed with in most cases thereby saving both cost and court resources. The directions can be found at: <https://www.gov.uk/government/publications/form-mercantile-template-5-specimen-directions-template-london-mercantile-court>; and
- f) The list of fee-paid Deputy High Court Judges authorised to sit in the London Circuit Commercial Court has continued to expand to ensure that waiting times can be kept within acceptable parameters.

Recent experience has shown the Shorter Trials Scheme to be a particularly cost-effective means of managing cases in the LCCC. An increasing number of parties have taken advantage of Appendix 5 to the Disclosure Practice Direction for cases in excess of the threshold case value in order to reduce cost and delay in getting to the first Case management Conference stage. It is expected that this will further increase as a result of the increase in the threshold value for claims to which Appendix 5 applies.

All parties with low value cross frontier cargo claims are expected to issue proceedings in the LCCC rather than the Commercial Court.

The practice of issuing cases in the LCCC that are not fit for the High Court and do not require the expertise of a Circuit Commercial judge to resolve is discouraged. For that reason:

- a) Practitioners should be aware that all cases started in the London Circuit Commercial Court are triaged by the Judge in Charge of that Court following issue.
- b) Subject to paragraph (c) below, the current practice of the London Circuit Commercial Court is to transfer claims with a financial value of less than £500,000 or the foreign currency equivalent (exclusive of interest and costs) to an appropriate County Court unless retention is justified by reason of the factors set out in CPR r. 30.3(2). No case is transferred without giving the issuing party (and all other parties if they have been served) an opportunity to make representations. In practice cases with a value of £500,000 that do not require the expertise of a Circuit Commercial judge for trial will be transferred to the County Court. For example debt collection claims are routinely transferred. Claims with a value of less than £500,000 have been retained where the subject matter requires it. Example of such cases this year have included business interruption claims arising out of the Covid pandemic.
- c) All international road, sea and air cargo claims (“Cargo Claims”) that would otherwise be started in the Commercial Court but are not suitable for commencement in the Commercial Court by reason of their financial value and/or the nature of the factual, technical or legal issues that arise should be commenced in the London Circuit Commercial Court.
- d) All Cargo Claims started in or transferred to the London Circuit Commercial Court will be retained in that court regardless of financial value and the nature of the factual, technical or legal issues that arise, unless transferred (i) to the Commercial Court or Admiralty Court or (ii) by order of the London Circuit Commercial Court to another Circuit Commercial Court on an application by one or more of the parties.

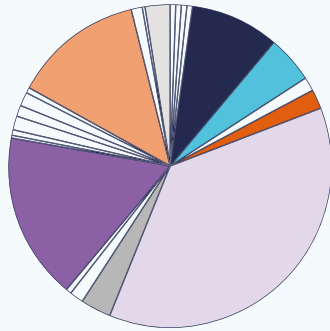
6.4.2 Types of new claims

The majority of the 290 new claims were contractual claims (107), representing 37% of new claims. This was followed by 48 claims categorised as ‘other’, then 38 for shipping cargo. The top categories

are comparable to previous years. There has been an increase in arbitration claims issued in or transferred to the LCCC, reflecting the speed with which these claims can be completed in the LCCC.

The top categories of claim are broadly comparable to previous years.

London Circuit Commercial breakdown by type



- 2 Arbitration enforcement applications under s.66 and s.101-2
- 2 Arbitration s.67 of the Arbitration Act 1996
- 1 Arbitration s.69 of the Arbitration Act 1996
- 2 Aviation
- 26 Carriage of goods by land, air or pipeline
- 13 Commercial fraud
- 4 Corporate or business acquisition agreements
- 6 General average
- 107 General commercial contracts and arrangements
- 9 Insurance and/or reinsurance
- 4 Miscellaneous
- 2 Other arbitration appeal/application
- 48 Other count
- 1 Part 7 Claim
- 1 Pre-action Disclosure
- 4 Professional negligence claims
- 4 Provision of financial services
- 4 Sale of goods
- 1 Service out of the Jurisdiction
- 38 Shipping – Cargo
- 3 Shipping – Charter party dispute
- 1 Transactions on financial markets or securities and/or banking
- 7 Unallocated

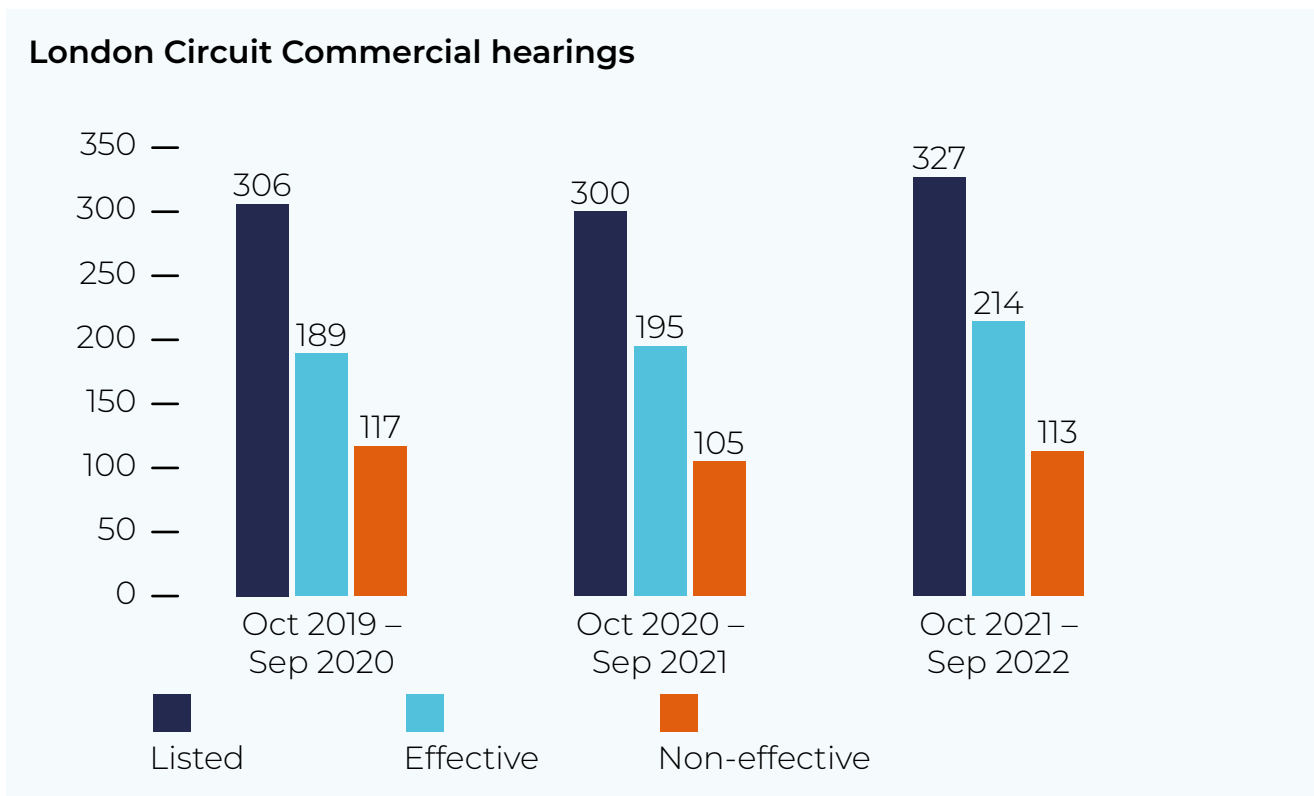
6.4.3 Hearings

There were 327 hearings listed this year, compared to 300 in 2020–2021. Of the 327 listed hearings, 113 were not effective for the usual reasons, i.e. hearing vacated, adjourned, or settled on the day and/or in advance of the hearing. This compares to 105 non-effective hearings the previous year. The number of effective hearings this year was 214, compared to 195 in 2020–2021.

The percentage of effective hearings overall shows an upward trend:

- 65% this year
- 65% during 2020–2021
- 62% in 2019–2020.

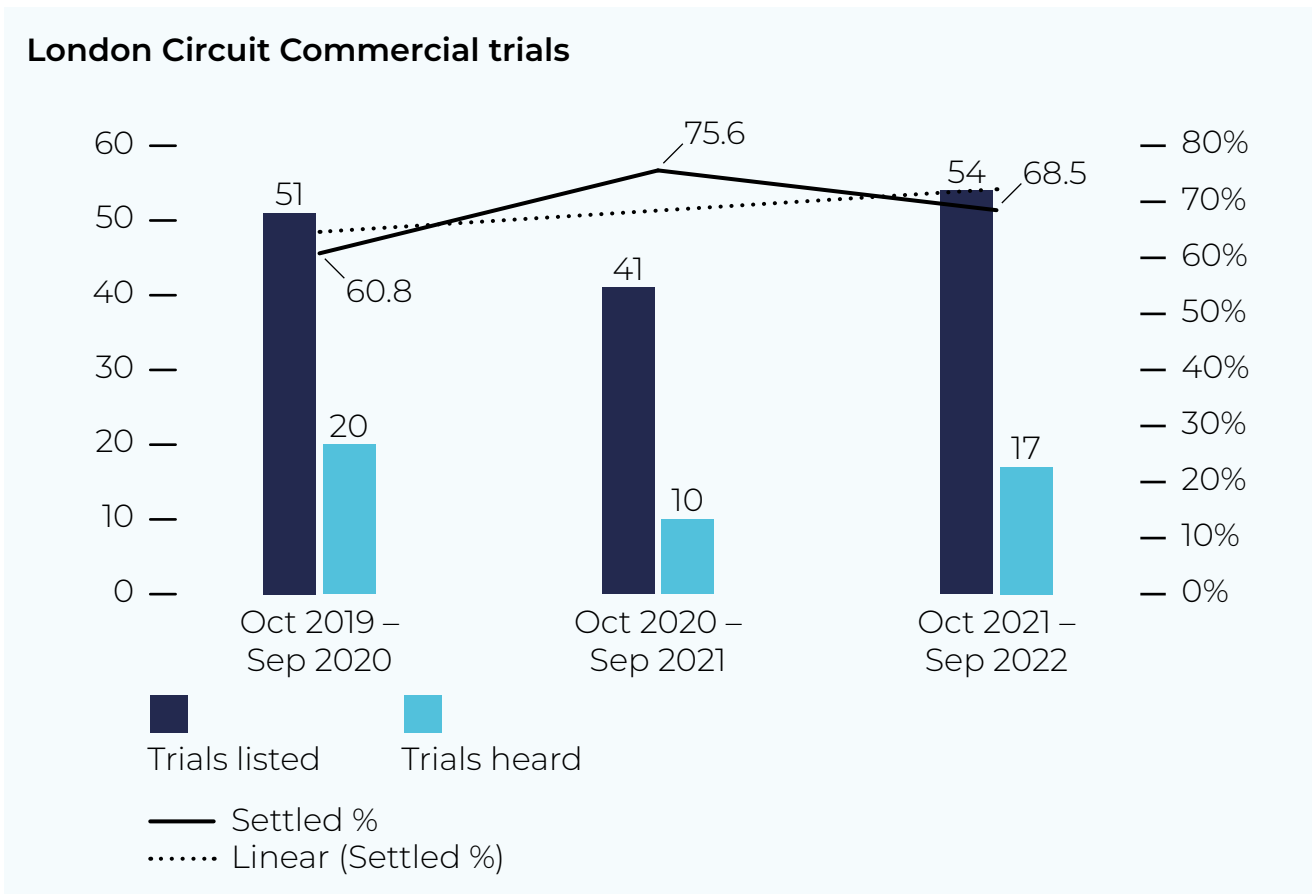
The graph below illustrates these variances:



6.4.4 Trials

During the year there were 54 trials listed before the London Circuit Commercial Court, of which 17 were eventually contested, indicating 68% of cases being settled before judgment. The latter figure is lower than in the previous year, when 75% were settled.

The numbers of trials listed and heard this year have increased and are comparable to 2019–2020.

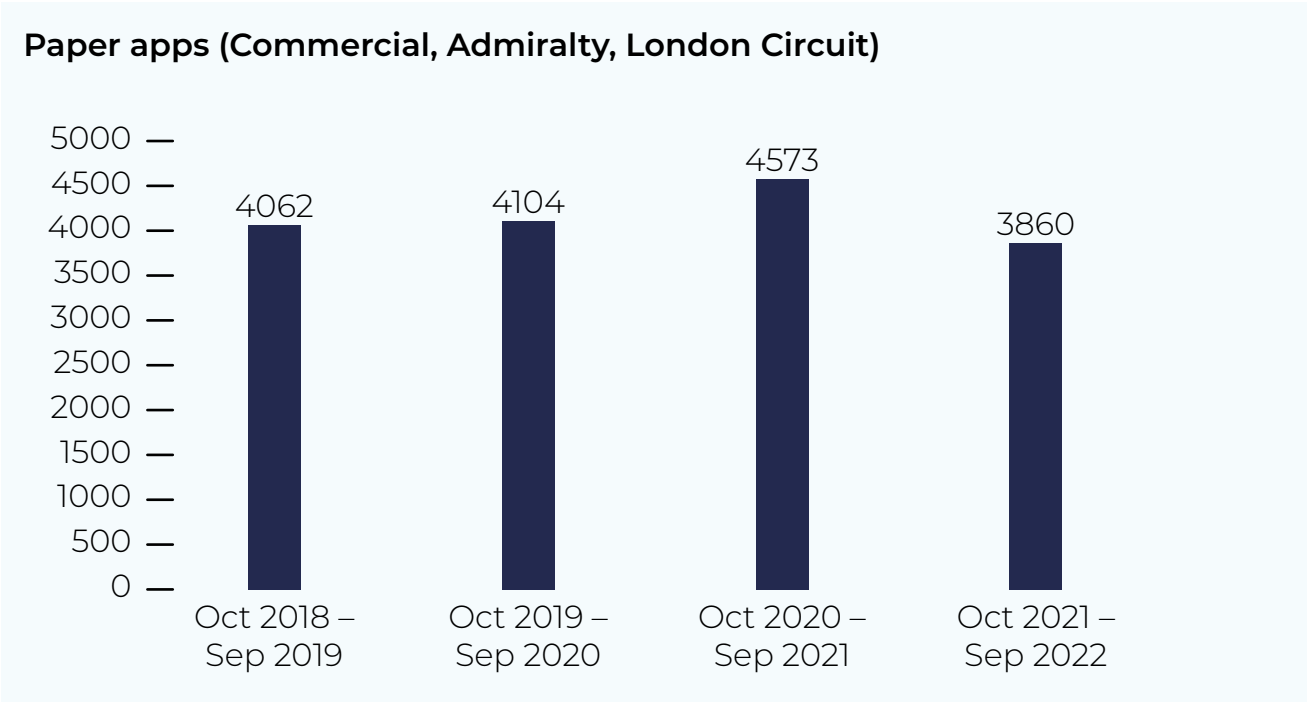


6.5 Paper Applications (all jurisdictions)

Paper applications are frequently used where the parties agree to resolve the whole or part of their dispute, and for minor adjustments to case management directions where the Court can be satisfied that the change will not have an adverse impact on a trial date or other undesirable consequences. Paper applications are generally used where all parties agree that the matter can be dealt with on the papers, though certain types of paper applications are routinely made in the absence of such agreement (e.g. applications for permission to serve a skeleton argument or statement of case longer than the prescribed maximum, or applications made without notice for permission to serve proceedings out of the jurisdiction).

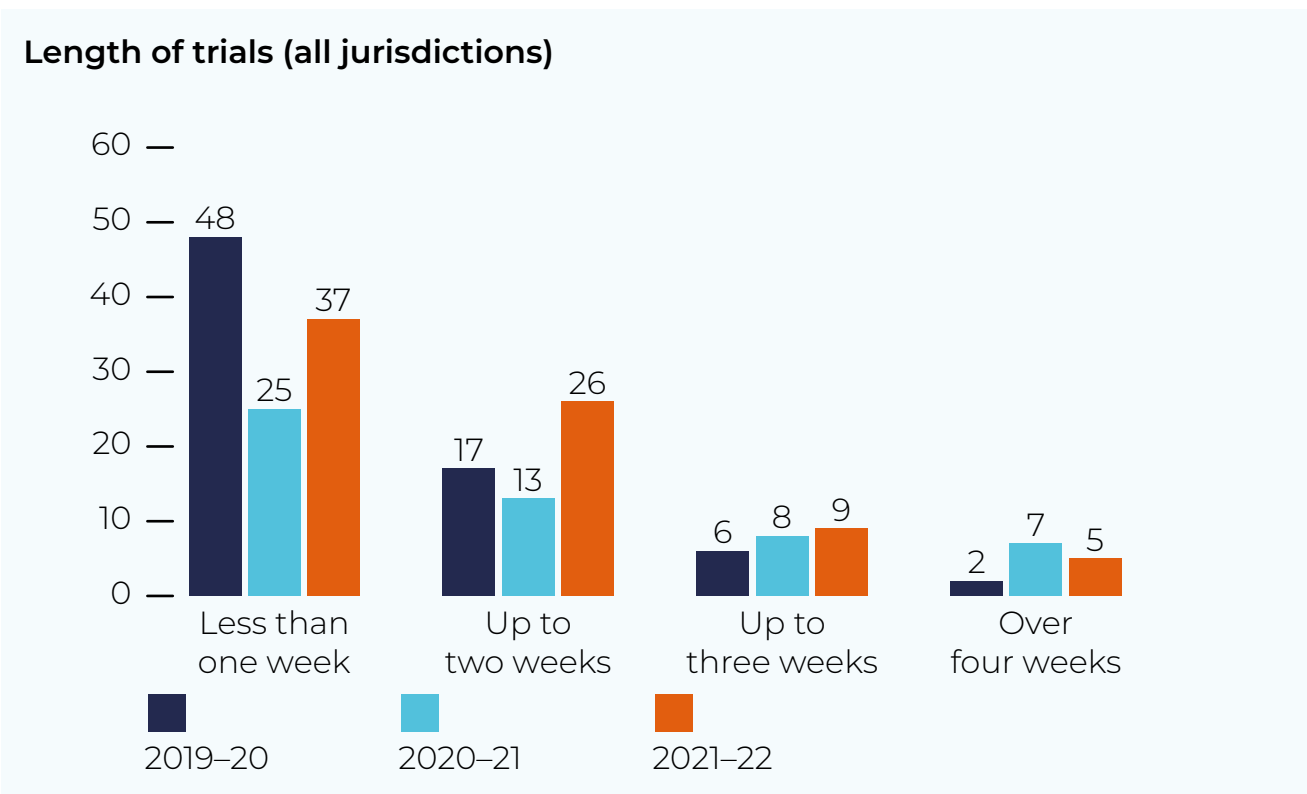
During the year there were 3,860 paper applications received for Commercial, Admiralty and London Circuit sub-divisions combined. This has decreased by 16% from the previous year when 4,573 were processed. The increased numbers of paper apps during 2019–2020 and 2020–2021 are likely to be due to the Covid pandemic. This year’s

figure is broadly similar to 2018–2019 where 4,062 paper apps were processed, as illustrated below:



6.6 Length of Trials (all jurisdictions)

The chart below indicates the length of trials conducted by the Court over the past three years for all three jurisdictions combined (Commercial, Admiralty and London Circuit Commercial):

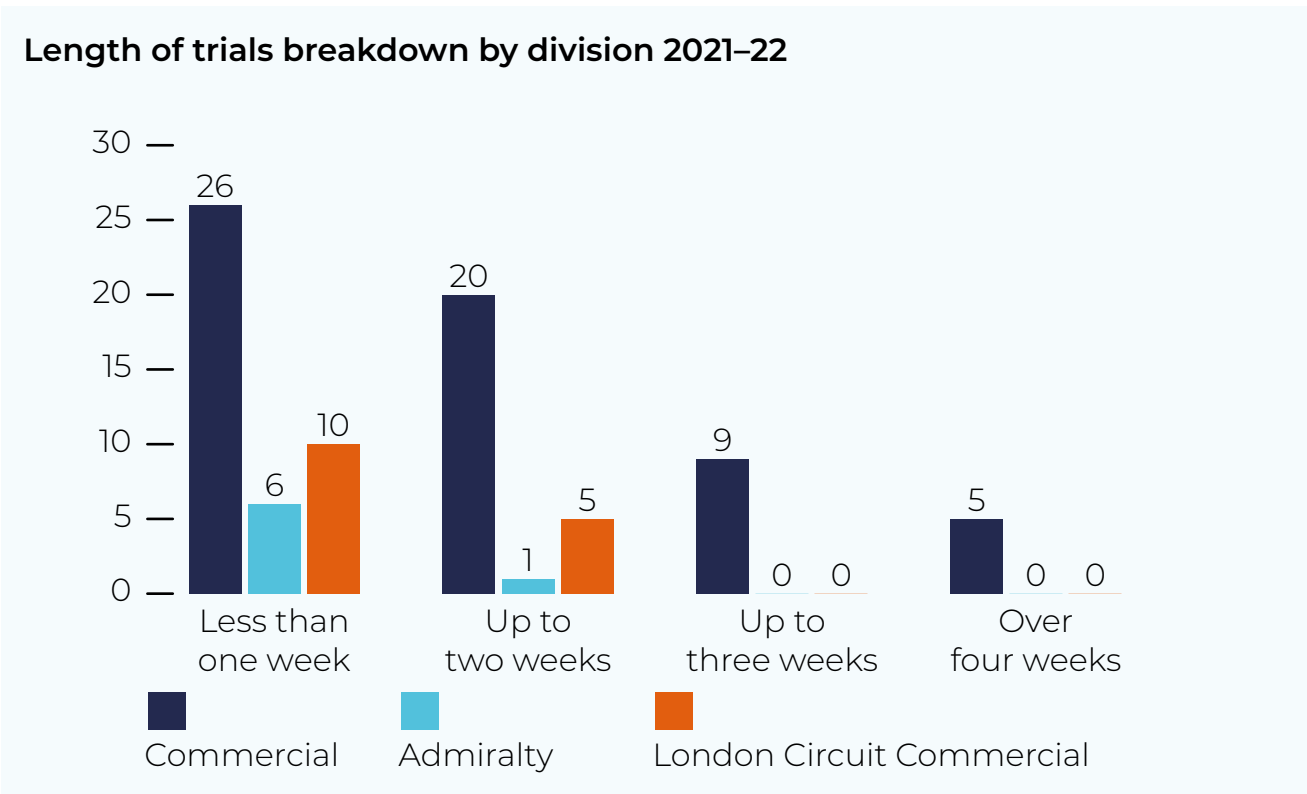


As can be seen, 37 out of 77 (48%) of contested trials during the year were tried within four days i.e. one Commercial Court week. This compares to:

- 47% completed within one week during 2020–2021
- 66% completed within one week in 2019–2020

The chart also indicates that there were more longer trials than in the preceding two years.

Set out below are the lengths of trials reported by sub-division:



As indicated above, most trials this year in the Commercial Court were completed within two weeks. The Admiralty Court heard seven trials, six of those trials lasted less than one week with an average of 2.5 days and one lasted seven days. All of the London Circuit Commercial Court trials were completed within two weeks.

The table below shows average lengths of trial this year and the two preceding years, by division, excluding reading days:

Division	Year 2021–2022	Year 2020–2021	Year 2019–2020
Commercial	7 days	9 days	6 days
Admiralty	5 days	2 days	3 days
London Circuit Commercial	3 days	3 days	3 days

The longest trial in the Commercial Court this year was for 27 days, compared to 40 days in the previous year. The two longest trials in Commercial Court lasted 27 days and 24 days.

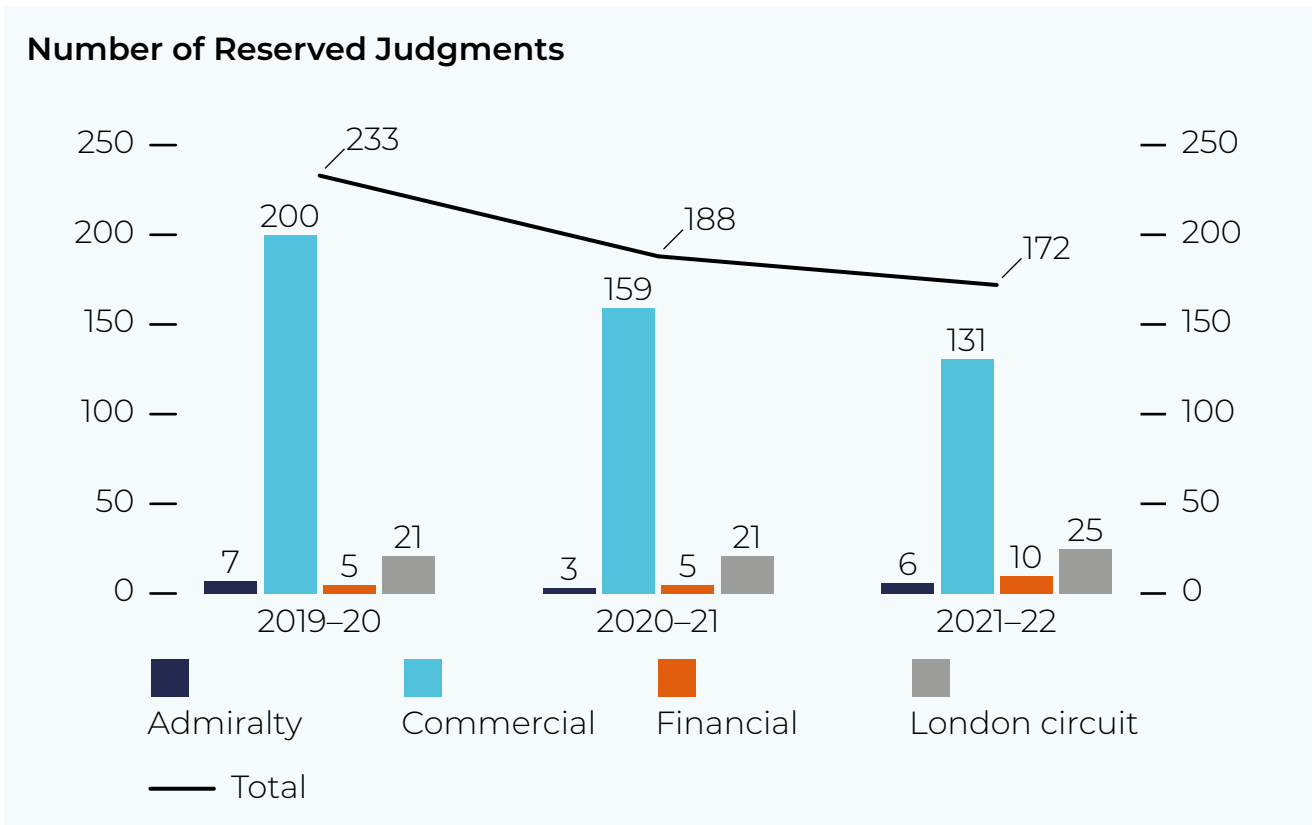
- For the Admiralty Court, there was one trial lasting 8 days, and the others each lasted less than a week.
- In the London Circuit Commercial Court, the longest trial was 6 days this year, compared to 5 days in 2020–2021

6.7 Reserved Judgments

Where, as is very often the case, a hearing results in a judgment, the judgment may be either delivered orally, as an *ex tempore* judgment, or reserved and handed down in writing.

It is not possible to track the number of *ex tempore* judgments, other than by taking the overall number of hearings as a guide. Statistics are available as to the number of reserved judgments, identified by their being individually listed in the Cause List. The combined number of judgments reserved by the Judges of the Court this year was 172, fewer than the number in 2019–2020 (233) and in 2020–2021 (188).

It may be that the reason for less judgments being reserved are because hearings have returned to in person rather than being conducted remotely (as they were during 2019–2020 and 2020–2021 due to the Covid pandemic) and more judges are giving *ex tempore* judgments in court.



- The number of judgments reserved in the Commercial Court was 131, compared to 200 in 2019–2020 and 159 in 2020–2021.
- The number of judgments reserved by the Admiralty Court was 6, compared to 7 in 2019–2020 and 3 in 2020–2021.
- The numbers of reserved judgments in the London Circuit Commercial Court and the Financial List were 25 and 10 respectively. This was an increase from 2020–2021 and 2019–2020 where there were 21 and 5 respectively.

7. The Financial List

The Financial List is a specialist list for financial claims exceeding £50 million, or cases that raise issues concerning the domestic and international finance markets. It was announced by the then Lord Chief Justice in his Mansion House Speech on 8th July 2015 as part of an active and forward-looking strategy for the United Kingdom regarding commercial dispute resolution, which is designed to respond to users. The List is a joint initiative of the King's Bench Division and the Chancery Division, with judges from both jurisdictions having been nominated to sit as Financial List judges. It ensures that cases which would benefit from being managed and heard by a judge with specific expertise in the law relating to the financial markets, or which raise issues of general importance to the financial markets, are dealt with by judges with suitable expertise and experience.

The nominated judges of the Financial List from the Commercial Court are:

- Foxton J (Judge in Charge of the Commercial Court)
- Andrew Baker J
- Bryan J
- Butcher J
- Cockerill J
- Knowles J
- Picken J

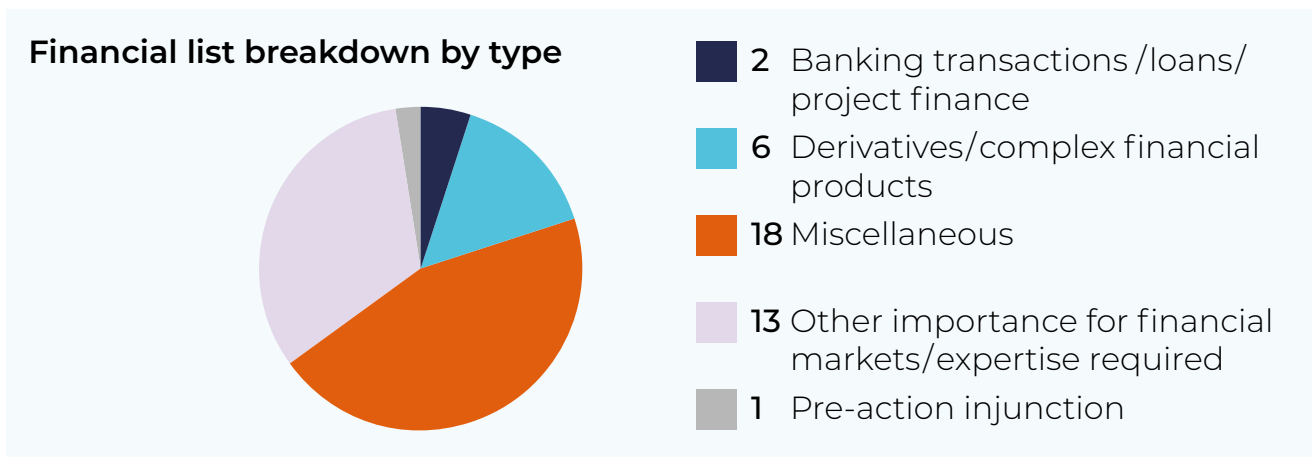
The nominated judges from the Chancery Division are:

- Sir Julian Flaux (Chancellor of the High Court)
- Hildyard J
- Marcus Smith J
- Miles J
- Trower J
- Zacaroli J

7.1 Type of new claims

There were 40 claims issued in the Financial List over the past year. This has increased from the 35 claims issued in 2020–2021 (see section 6.1 above).

The chart below gives a breakdown of the types of claims issued in the Financial List during 2021–2022, with the large somewhat general categories reflecting the parties’ classification when the claims were issued.



7.2 Hearings

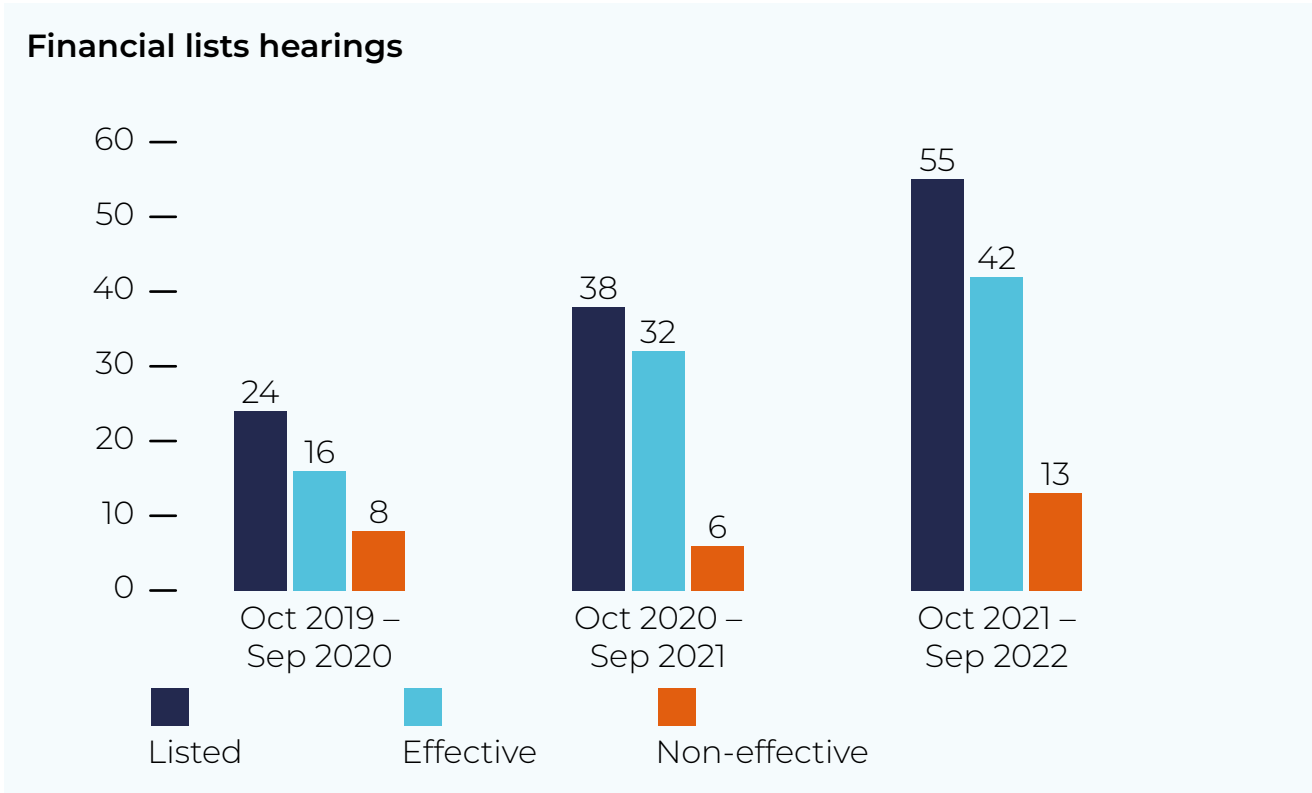
The Financial List had 55 hearings listed during the year, of which 42 were effective, with the balance settling or not proceeding for other reasons.

The effective hearings included 14 application hearings and 7 CMCs.

Overall, the number of hearings has considerably increased year on year:

- 2019–2020: 24
- 2020–2021: 38
- 2021–2022: 55

as illustrated below:



7.3 Paper Applications

During the year there were 237 paper applications for Financial List cases.

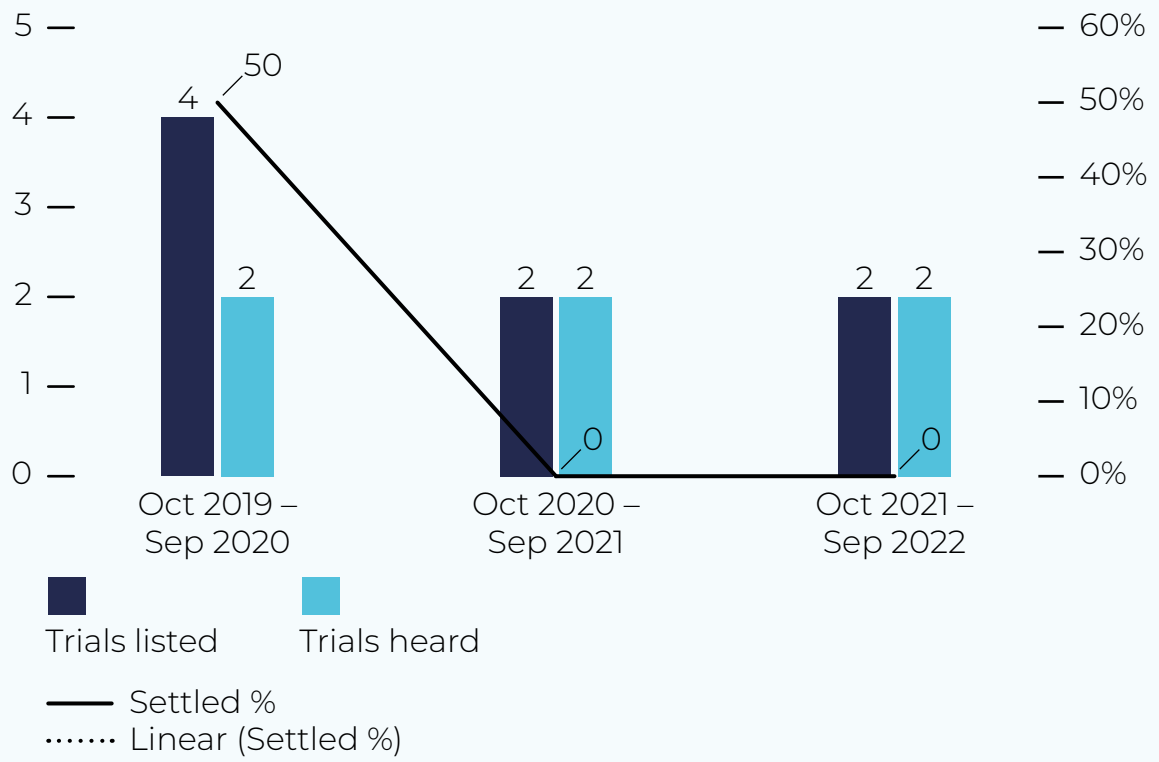
7.4 Trials

There were two trials listed in the Financial List, of which both were contested:

- *Bilta (UK) Limited v SVS Securities Plc* [2022] EWHC 723 (Ch) (Marcus Smith J)
- *Banca Intesa Sanpaolo S.p.A. and another v Comune di Venezia* [2022] EWHC 1656 (Comm) (Foxton J)

The numbers of trials listed and heard since 2019–2020 are illustrated below:

Financial Lists trials



8. Case Management

Case management has been a key feature of litigation in the Commercial Court since its inception.

Case Management Conferences/ Costs and Case Management Conferences

All cases will feature at least one Case Management Conference (“CMC”) or Costs and Case Management Conference (“CCMC”), the purposes of which are familiar to Court users. Briefly, both types of hearing generally set a timetable down to trial. Where costs budgeting applies, the hearing will be a CCMC and will also include consideration of the parties’ costs budgets.

CMCs and CCMCs will normally also include consideration of the Disclosure Review Document (DRD), and, where possible, resolution of any outstanding contested matters in connection with it. The parties are required to cooperate in this regard, and the Court will generally expect to be able to approve the DRD in no more than 1 hour as part of the hearing.

The parties are expected to co-operate more generally in advance of a CMC/CCMC, and the Court will in future require an updated draft order to be provided by 4pm on the working day before the hearing, indicating matters which are agreed/remain unagreed. This and other particular case management matters are addressed in the new Commercial Court Guide (11th edition) published in February 2022.

Where permission to serve expert evidence is sought, the Court will generally wish to specify in any order granting such permission (generally the CMC/CCMC order) the particular question(s), within their expertise, on which the expert(s) is/are to be instructed to provide an opinion. The Court may limit the length of experts’ reports.

Parties should consider whether attendance by their more senior advocates is required at the CMC/CCMC. Whilst each party must be represented by an advocate instructed for trial, the Court often finds that junior advocates are well placed to assist the Court on matters arising at CMCs/CCMCs, including disclosure, costs and directions.

Over the past year, the following percentage of listed CMCs (including CCMCs) were heard:

- 64% of the 231 listed in the Commercial Court;
- 43% of the 84 listed in Admiralty Court;
- 61% of the 67 listed in the London Circuit Commercial Court

Negotiated Dispute Resolution

The Court encourages parties to engage in Negotiated Dispute Resolution (“NDR”) (see section 6.2.3 above), which is a way of resolving disputes outside of court via mediation, conciliation, expert determination or other binding or non-binding process. Parties must consider NDR in advance of the CMC, inform the Court at the CMC what consideration has been given to the matter, and keep the Court updated.

Parties may be agreeable to submitting a shortlist of potential mediators or other facilitators in an NDR Order to the judge conducting the CMC, with an understanding that the parties will work with the judge’s choice of mediator from the agreed shortlist. On occasion the Court will perform “Early Neutral Evaluation”, although there has only been one such hearing (in 2020/21) in the last four years.

When parties attend a CMC, a “progress monitoring date” will be set, which is the date by which parties must report to the Court their compliance with the pre-trial timetable and preparation for the trial. These reports will then be reviewed and, if necessary, steps taken to ensure the case will be ready for trial on the fixed date.

In the interim, any changes to the timetable set out at the CMC are kept under review by the judges of the Court, with any amendments to the timetable to trial having to be approved by order of a judge (usually on the papers). If the judge reviewing the proposed amendments to the timetable is not happy with the progress towards trial, they will call the case in for a review. This is designed to ensure that there is no need to vacate hearings close to trial owing to lack of preparedness.

Pre-Trial Reviews

In larger cases a Pre-Trial Review (PTR) will be scheduled for a few weeks before the trial date. Wherever possible this is heard by the trial judge. A PTR enables the parties to deal with any late applications before trial, and to settle the trial timetable, including the timetable for calling witnesses, and the length and format of closing submissions. Frequently (once again in about 57% of instances this year across the Court as a whole) a listed PTR does not require a hearing and the matters arising can be disposed of on the documents.

9. Shorter and Flexible Trials and Expedition

Shorter and Flexible Trials

The Court has continued to see a number of cases brought under the Shorter Trials Scheme, although the Flexible Trials Scheme continues to be under-utilised by parties.

The Shorter Trials Scheme is designed for cases which can be heard in no more than 4 court days and provides for a timetable which enables determination of a dispute within a year of the claim being issued, together with a streamlined process for the assessment of the costs of the trial. The scheme is suitable for a wide range of disputes. The Flexible Trials Scheme was designed to allow parties to adapt trial procedure to suit their specific case. In particular it is designed to encourage parties to limit disclosure and to confine oral evidence at trial to the minimum necessary for the fair resolution of their disputes. It provides an opportunity for parties to tailor the court procedure to the needs of the individual case – including the possibility of determining certain issues solely on the basis of written evidence and submissions. It therefore has the potential to considerably shorten the time to a final determination.

Expedition

The Court is also able to order expedition of suitable cases outside of these schemes. Applications to expedite hearings are referred to a judge, usually the Judge in Charge, for decision on the documents. The conditions for ordering expedition, which are considered when dealing with such applications were recently set out by Foxton J in *Lopesan Touristik SA v Apollo European Principal Finance* [2020] EWHC 2642 (Comm) citing *Apache Beryl I Limited v Marathon Oil UK LCC and others* [2017] EWHC 2258 (Comm) (Males J):

“... there are four factors ...:

- i) First, a threshold question of whether, objectively, there is urgency.
- ii) Second, the state of the court’s list and the impact of expedition on other court users.
- iii) Third, the procedural history including whether there has been any delay.
- iv) Fourth, whether there will be any irremediable prejudice to the respondent...”

10. Disclosure

The disclosure pilot scheme ran in the Commercial Court from 2019 to 2022. Permanent changes have now been introduced by Practice Direction 57AD, which came into force on 1 October 2022. It applies to existing and new proceedings in the Business and Property Courts.

The changes introduced were a response to feedback (initially largely from the FTSE GC100, then from the wider profession) indicating a concern amongst court users that the existing disclosure process did not sufficiently engage parties, might not use technology as efficiently as possible, and could distract from the principal issues in a case. The new regime is based on a culture of proportionality and cooperation, which aims to focus attention on what disclosure is actually required in order for the court fairly to resolve particular issues in the case.

It remains relevant to note that in *McParland v Whitehead* [2020] EWHC 298 (Ch) Sir Geoffrey Vos, Chancellor of the High Court, set out a number of important points in relation to what was then the pilot scheme, including that the type of any Extended Disclosure must be fair, proportionate and reasonable; the parties need to think cooperatively and constructively about their dispute and what documents will require to be produced for it to be fairly resolved; and cooperation between legal advisers is imperative.

On a practical level, the parties are required to cooperate in relation to the Disclosure Review Document (DRD), and the Court will generally expect to be able to approve the DRD in no more than 1 hour as part of the CMC/CCMC hearing. Parties should bear in mind that any DRD should be kept simple and concise; and in most cases the List of Issues for Disclosure should be shorter (or much shorter) than the list of issues in the List of Common Ground and Issues. It should contain only the key issues in dispute which the parties consider will need to be determined by the Court by reference to contemporaneous documents over and above the Initial Disclosure. A List of Issues for Disclosure is not required at all unless one or more of the parties has stated that they are likely to request Extended Disclosure including the use of Model C, D or E.

We remind parties that paragraph 7.3 of PD 57AD requires that when serving a draft List of Issues for Disclosure, the claimant should state which model it proposes for each issue and, where Model C is proposed, how it proposes the relevant particular documents or narrow class of documents should be defined for that purpose. In this way, a defendant can consider the proposals in the round, rather than being asked to agree an issue or Model C request without knowing what it might mean in practice.

The Court is most grateful to Professor Rachael Mulheron (Professor of Tort Law and Civil Justice at the Department of Law, Queen Mary University of London) for her invaluable work in reviewing the pilot, as well as to all practitioners who contributed feedback during the operation of the pilot scheme.

11. Witness Statements

CPR Practice Direction 57AC, with its Appendix (Statement of Best Practice), came into force on 6 April 2021 so as to apply to trial witness statements signed on or after that date. The Commercial Court Guide therefore now points to the Practice Direction without seeking to add to it (see Section H1.1), and the need to obtain permission for a trial witness statement to be longer than 30 pages was not retained in the 11th edition of the Guide.

Compliance with the Practice Direction should ensure that trial witness statements are limited to the witness testimony that parties realistically could and would adduce from their witnesses if they examined them orally in chief. That should often mean that they are much shorter than has often been the case in recent years, and that where they are of substantial length that is justified by the content without the need for the blunt instrument of a presumptive page limit.

Parties should ensure that the contents of witness statements for interlocutory hearings are also appropriately limited. They should be confined to (a) matters of fact to be relied on in support of, or in resisting, the application, and (b) satisfying any specific requirements under a rule or Practice Direction stipulating that certain matters have to be stated in a witness statement. Argument should be left to be outlined in skeleton arguments and developed orally at the hearing. If the relevance or importance of the evidence set out in or exhibited to the witness statement(s) may not be obvious, consideration should be given to providing with the statement(s) an explanatory covering letter or provisional written submission. Guidance to this effect is included in the 11th edition of the Commercial Court Guide.

12. Managing the Courts’ Business

12.1 Lead Times

“Lead times” are the time between the date a hearing is fixed and the date on which the hearing will take place.

The Court aims to keep the lead times within certain targets, helping it to provide rapid and efficient dispute resolution procedures for the business, trading and financial communities.

12.1.1 Commercial Court

Lead times have remained relatively stable over the last year. There are a substantial number of 1 day applications or CMCs, and the court is now looking at dates for one day hearings from Easter 2023. Longer hearings are likely to be listed from October 2023. However, earlier dates are made available for cases which are genuinely suitable for expedition. The lead times for trials are also relatively stable with a number of trials coming up to cover half or a whole of the Hilary term and another starting in Easter 2023 and covering the whole of Trinity 2023. One trial is already expected to take up the entire Michaelmas 2023.

The position as at 3 February 2023 was as follows:

Application / CMC Hearings:

Length of Hearing	Hearing dates available after
30 mins to half a day	Fridays from 3 March 2023
One day	Week of 9 October 2023
Two days or more	Weeks of 9 October and 30 October 2023 Weeks of 20 November 2023 Then from 22 January 2024

Trials:

Length of Trial	Trial dates available not before
One to three days	Weeks of 9 and 16 October 2023 Then from 12 February 2024
One week	Week of 19 February 2024
Two to three weeks	Week of 19 February 2024
Four weeks or more	Week of 19 February 2024

London Circuit Commercial Court

The position as at 3 February 2023 was as follows:

Application/CMC Hearings:

Length of Hearing	Hearing dates available after
30 mins to one hour	13 February 2023
Up to half a day	Week of 3 March 2023 Then Fridays from 31 March 2023
One day	Weeks of 13 March and 20 March 2023 Then from 2 May 2023

Trials:

Length of Trial	Trial dates available not before
Up to one week	From 26 June 2023
Two to three weeks	26 June 2023
4 weeks or more	October 2023

These dates are subject to change on a daily basis, up-to-date information can be found here: <https://www.gov.uk/guidance/commercial-court-hearing-and-trial-dates>

As section F.3 of the Commercial Court Guide notes, the court will expedite the hearing of applications (including applications on notice) in cases of sufficient urgency and importance. Where a party wishes to make such an application, a request should be made to the Commercial Court Listing Office on notice to all other parties. Parties should note that expedition is available only in cases of sufficient urgency. (Guidance as to what constitutes sufficient urgency can be found above under Shorter and Flexible Trials and Expedition). See also the case law mentioned in section 9 above.

12.2 CE-File

Since 2017, all documents in the Court are required to be filed electronically via the CE-File system. The system is also used extensively for applications on paper, ranging from consent orders, through applications for permission to serve out of the jurisdiction, and on occasion contested applications where the parties are content to deal with the matter on the documents.

There are now many such applications, and this year in the region of 5,200¹ were processed across the three sub-divisions. It will readily be understood that this takes up much judicial time, with two Commercial Court judges dealing with CE-File applications each week in addition to their ordinary workload.

It is important that applications made via CE File include all the relevant documents, and that those documents are appropriately labelled when uploaded to CE File. Non-compliant applications will be rejected, as was made clear by Popplewell J as Judge in Charge in 2018: <https://www.judiciary.uk/publications/electronic-filing-of-applications-to-be-dealt-with-without-a-hearing/>

The judges also deal with paper applications under the Arbitration Act, with one judge each week acting as the duty judge in charge of section 67, 68 and 69 applications. This too is in addition to the judge's usual workload.

¹ This incorporates paper applications received for each of the sub-divisions (Commercial, Admiralty, and London Circuit) and includes those received in the long vacation

12.3 Listing Issues

Many listing Issues are raised in correspondence lodged on CE-File. Some of these require to be referred to the Judge in Charge for consideration / determination.

It is very important that those raising such issues do so by way of concise written submissions. Unfortunately, many such applications comprise lengthy letters, often referring to other correspondence. This makes the task of deciding the listing issue more time-consuming and can result in a delay in making the decision, because of the need to find sufficient time to deal with the lengthy submissions and referenced correspondence.

Parties are therefore reminded that any submissions on listing issues should be:

- concise;
- self-contained;
- focused on the issue which requires the judge's decision.

Submissions which do not meet these requirements may be referred back to the parties for resubmission or may result in the case being called in for an oral hearing in court before or after court hours.

12.4 Long Vacation Sittings

Judges of the Commercial Court sit regularly during the Long Vacation, which takes place from 1st August to 30th September.

At least one judge sits in the Commercial Court at all times during this vacation period, to deal with both urgent business and regular business (such as applications). At least two judges sit in September.

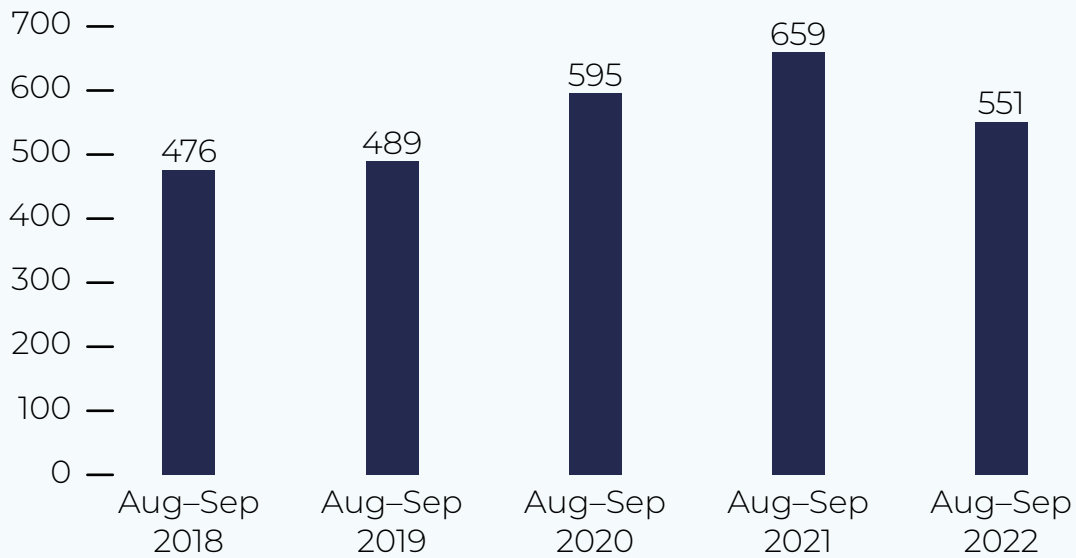
12.4.1 Paper Applications during Long Vacation

There has been a decrease in the number of paper applications processed during the long vacation this year compared to previous years.

In the year there were 551 processed for Commercial, Admiralty and London Circuit combined, compared to 659 in 2020–2021, which represents a 16% decrease.

The increase of paper applications processed during 2020 and 2021 is likely to have been due to the Covid pandemic when the courts had to adapt its ways of working very quickly. One of the ways was to shift towards working electronically. Taking out the years affected by the Covid pandemic (2020 and 2021) there has been a gradual increase in the paper applications processed from 2018, 2019 and 2022, as can be seen in the chart below:

Paper apps long vacation (Commercial, Admiralty, London Circuit)



13. Use of Deputy Judges

A number of retired Commercial Court judges and King's Counsel or other experienced practitioners who practice regularly in the Commercial Court are authorised to sit as Deputy High Court Judges in the Commercial Court.

Here is a list of retired Judges who have sat in the Court during 2021–2022, listed in order of the number of days sat:

- Sir Michael Burton GBE
- Sir Nigel Teare
- Sir Ross Cranston
- Sir Andrew Smith
- Sir William Blair
- Sir Ross Cranston

We were very sad to lose Sir Michael Burton this year, after he reached the mandatory retirement age, following many years of outstanding service to the Court.

Deputy High Court Judges who sat over the past year include:

- Clare Ambrose*
- Lesley Anderson
- Adrian Beltrami KC
- HHJ Bird
- Simon Birt KC
- Simon Colton KC
- Nigel Cooper KC
- Julia Dias KC
- David Elvin KC
- Christopher Hancock KC

- Andrew Hochhauser KC*
- Charles Hollander KC
- Stephen Houseman KC
- Peter MacDonald Eggers KC
- Leigh-Ann Mulcahy KC
- Sean O’Sullivan KC
- Lionel Persey KC
- Simon Rainey KC
- Patricia Robertson KC
- Simon Salzedo KC

(Asterisks indicate practitioners who sat in the London Circuit Commercial Court)

Deputy judges are used for applications and trials to ensure that the targets for lead times can be maintained.

Deputies will only be used either when the parties agree that the matter may be dealt with by a deputy, or when the Judge in Charge of the Commercial Court considers it suitable for the matter to be dealt with by a deputy.

14. Judicial Assistants and Pupils

The Judicial Assistant scheme is now fully established in the Court.

Following an earlier pilot scheme this has been in place since October 2019 across all the three divisions of the High Court. It continues to be the case that the scheme offers placements specifically to the Commercial Court where the applicant specifies a preference to sit in the Court and is selected for that role.

The role of JA offers those in the early years of their professional practice a ringside view of the trial process and first instance decision-making from the perspective of the judge, for the most complex, high value and often high-profile cases.

They assist the judges(s) to whom they are allocated, for example by carrying out research, summarising documents and providing general support for the judge(s) in the organisation of their work and hearings.

Aimed primarily at barristers, pupil barristers and solicitors in the early stages of their legal career, but open to all with suitable qualifications and skills, applications are invited from those able to demonstrate an outstanding intellectual ability, excellent organisational skills and the ability to manage large and complicated workloads, as well as a high level of professional integrity.

The current plans are that the advertisement for the 2023 competition will be published in February 2023. Those applicants who are invited for interview will be interviewed in April 2023 and informed of the outcome in May 2023. Successful candidates can opt for a placement of between two and four legal terms.

Information on last year's scheme can be found here: <https://www.judiciary.uk/recruitment-for-the-high-court-judicial-assistants-ja-scheme/>

During the year, the Court has had 9 JAs sitting with judges, both in court and at virtual hearings – this equates to 3–4 JAs in the Commercial Court at any one time.

14.1 Pupils in Court Scheme

The pupils in court scheme was introduced to the Commercial Court in October 2020 by the Judge in Charge.

The scheme, which is run with COMBAR, allows pupils to sit in with judges (on the Judge’s bench) on live hearings for a day, enabling the pupil to ask the Judge questions about the trial process and the life of a commercial judge.

This scheme has continued into 2022. The feedback from the pupils has been extremely positive.

15. The Registry and the Listing Office

The Court depends on the very close and beneficial relationship it enjoys with the Listing Office, which is led by Michael Tame. A list of current staff is at here at: APPENDIX 2
The Staff of the Court as at 1 October 2021

The Listing Office provides essential assistance to the Court with incoming applications and correspondence between parties, solicitors and Counsel.

The Listing team deal with all documents filed by CE File. They have a daily meeting to address issues, mainly CE File pending alerts, but also outstanding work etc. That ensures that all CE File filings are dealt with promptly.

The team continue to field on average about 250 email enquiries a day and answers in the region of 40 calls a day. In addition, the senior listings officer and the listing officer receive a high volume of emails/calls which also need to be responded to.

The Office will check whether parties have complied with the timetable set by the Court at the CMC, ensuring that cases are prepared and ready for hearing/trial. The Listing Office also administers applications under the Arbitration Act 1996.

The work of the Listing Office is invaluable to the smooth operation of the Court, and the efficient disposal of the Court's work. All the Judges and users of the Court are grateful to them.

15.1 Lawyer for the Commercial Court

In 2020 the Court welcomed a new lawyer to the team, Francesca Girardot. Francesca provides invaluable assistance to the Judges by, among other things, checking paper applications to ensure that all required documents and information have been received. She also works with the Commercial Court Guide editorial team and on other projects.

16. Sources of Information about the Court

16.1 Reports of cases

Reports of material decisions of the Commercial and Admiralty Courts are published online on the following sites:

- The National Archive, judgments section – <https://caselaw.nationalarchives.gov.uk/judgments/results>

This site includes unreported cases and is free to access.

- BAILII (the British and Irish Legal Information Institute) – <https://www.bailii.org/>
- This site also includes unreported cases and is free to access.
- Published summaries of cases heard in the previous term can be found here: <https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/about-the-commercial-court/judgment-summaries/>

16.2 The Commercial Court Guide

A new 11th edition of the Commercial Court Guide was published in February 2022. It can be found here: <https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/litigating-in-the-commercial-court/commercial-court-guide/>. The Guide sets out detailed information on the practice of the Court within the context of the full Civil Procedure Rules and should be referred to by parties when involved in commercial claims. We are very grateful to everyone who has contributed to its development, and to Andrew Baker J, Francesca Girardot, Laura Feldman and Conall Patton KC for drafting and finalising the new Guide.

Suggestions for improvements to the Guide, which are welcomed, can be emailed to the Commercial Court Listing Office on comct.listing@justice.gov.uk.

16.3 The Commercial Court Users' Group

The Commercial Court Users' Group has continued to provide an invaluable forum to discuss ideas relating to the work of the Court throughout the years.

During the year, Users' Group meetings were held on 24 November 2021 and 22 May 2022.

These meetings have all continued to be held virtually using Microsoft Teams and as is usual, the invitees included counsel and solicitor representatives, representatives from bodies such as the LMAA (London Maritime Arbitrators' Association), the judges of the Commercial Court and the Supervising Lord Justice (Flaux CHC).

The latest meeting held in 2022 was on 30 November 2022, and covered topics including lead times and listing matters, updates on the COVID-19 business interruption and aircraft leasing claims, hearings of consequential issues, the new website and disclosure.

The minutes of these meetings can be found here:

<https://www.judiciary.uk/guidance-and-resources/commercial-court-user-group-meeting-november-2021/>

<https://www.judiciary.uk/guidance-and-resources/commercial-court-user-group-meeting-may-2022/>

<https://www.judiciary.uk/wp-content/uploads/2022/12/CCUG-Minutes-November-2022-Approved.docx>

16.4 The London Circuit Commercial Court Users' Committee

The London Circuit Commercial Court Users' Committee aims to meet at least three times a year, or once a term. Its most recent meetings were held on 31 March 2022 and 6 February 2023.

HHJ Pelling KC, Judge in charge of the London Circuit Commercial Court, has issued guidance on draft orders in the London Circuit Commercial Court. The message can be found here: <https://www.combar.com/news/message-from-the-london-circuit-commercial-court/>

16.5 The Admiralty Court Users' Committee

The Admiralty Court Users' Committee met in October 2021, and in March, July and October 2022, taking forward, amongst others, the issues mentioned in this section of last year's Annual Report.

At the Users' Committee's instigation:

- the way judgment in default works in collision cases has been clarified by an amendment to CPR 61.9; and
- two significant procedural reform projects were undertaken, to consider (a) whether to seek removal of the requirement that certain categories of personal injury claim in personam must be commenced in the Admiralty Court (whether or not they are likely to require the specialist expertise and experience of the Admiralty Court) and (b) whether to reform the rules on the pleading of collision claims, to improve the focus and particularity with which allegations of causative fault are pleaded and to introduce a requirement to plead collision defences.

Those reform projects both bore fruit in Michaelmas Term 2022 with the approval and adoption by the CPRC of the CPR rule and Practice Direction amendments proposed by the Committee. They will come into force in April 2023.

17. **Standing International Forum of Commercial Courts (SIFoCC)**

SIFoCC - the global forum of the world's commercial judiciaries – is 5 years old. Its membership is now at 45 jurisdictions, from six continents, and from common law and civil law traditions. This includes 70% of the jurisdictions that make up the G20. Recent members include Indonesia, Pakistan and Zambia, with Japan and South Korea confirming membership after a period as observers.

SIFoCC's three objectives remain. First, to share best practice. Second, to assist courts to work together to make a stronger contribution to the rule of law. Third, to support countries that are developing their work on resolving commercial disputes. Its Secretariat is based in London and it is grateful for the support it receives from the City of London and the Judicial Office.

With deep thanks to Australia's Federal Court and New South Wales Courts, SIFoCC's fourth full meeting was held in Sydney, after the third full meeting hosted by Singapore. The unique judicial roundtable discussion extended over two days, in hybrid format but with a majority attending in person. The themes included integrated dispute resolution, managing complexity, the future for corporate legal responsibility, purpose and governance (with a particular focus on climate change), and jurisdictional conflicts internationally. The attendees from 36 jurisdictions included 15 Chief Justices, with the delegation from England & Wales including the Lord Chief Justice, the Senior President of Tribunals and the Master of the Rolls.

SIFoCC's publications attract increasing interest. Its published international case management principles have been of assistance to jurisdictions reviewing or revising their procedures. A Multilateral Memorandum on Enforcement of Commercial Judgments for money, in its second edition with supporting commentary, and built from contributions across the global membership, is increasingly noted by practitioners.

Events and online roundtables have been organised around these publications, and further support and progress the themes of its full meetings. These have included online roundtables on case management, both international and focused on Africa as a region, on technology working with India's National Judicial Academy, and on corporate purpose and governance working with the British Academy. There were SIFoCC contributions to meetings of the CLA (the Commonwealth Lawyers Association) in the Bahamas and in Belfast, and the CMJA (the Commonwealth Magistrates and Judges Association) in Ghana, and to London International Disputes Week.

The third iteration of the SIFoCC Judicial Observation Programme was held in London, and this time with participation from judges nominated by Jamaica, India, the Philippines and Kenya. With every iteration of this Programme, its body of alumni grows.

18. Visitors to the Commercial Court

As physical visits became possible again, the Court welcomed international colleagues including from Brazil, France, The Gambia, Ghana, India, Indonesia, Japan, Kenya, Nigeria, South Korea, and Zambia.

The topics discussed included the business of commercial courts, case management, judging, mediation and arbitration, procedure, SIFoCC, technology (in court and in disputes), working with the profession.

Online engagement also continued wherever suitable.

In relation to the visits and online engagement the Court was, where suitable, pleased to work together with, among others, CMJA, FCDO, ILBF, MoJ, ROLE UK, the Bar Council and the Law Society.

19. APPENDIX 1

The Court as at 1 October 2022

19.1 Judges – Commercial Court

Listed in order of seniority:

- Mr Justice Robin Knowles;
- Mr Justice Picken;
- Mr Justice Fraser
- Mr Justice Andrew Baker (Admiralty Judge);
- Mr Justice Bryan;
- Mrs Justice Cockerill;
- Mr Justice Butcher;
- Mr Justice Jacobs;
- Mr Justice Waksman;
- Mr Justice Henshaw;
- Mr Justice Foxton; (Judge in Charge of the Commercial Court);
- Mr Justice Calver;

19.2 London Circuit Commercial Court

His Honour Judge Pelling KC, (Judge in Charge of the London Circuit Commercial Court);

19.3 Admiralty Registrar

Master Richard Davison

20. APPENDIX 2

The Staff of the Court as at 1 October 2021

Court Manager	Wilf Lusty
Senior Listing Officer	Michael Tame
Listing Officer	Daniel Hull
Listing Clerk	Mark Burman
Listing Clerk	Ian Dawson
Listing Clerk	Shafia Chowdhury
Listing Clerk	Talvinder Sehmbi
Master Davison's Clerk	Shirley Sweeney
Admiralty Marshal	Paul Farren
Registry Team Leader	Abdul Musa
Lawyer	Francesca Girardot

Clerk to Andrew Baker J	Carmel Barry
Clerk to Bryan J	Sandra Appiah
Clerk to Butcher J	Sarah Herald
Clerk to Calver J	Michaela Childs
Clerk to Cockerill J	Laura Hope
Clerk to Foxton J	Kaylei Smith
Clerk to Fraser J	Manizja Latifi
Clerk to Henshaw J	Jay Howard
Clerk to Jacobs J	Alice Duddridge
Clerk to Robin Knowles J	Simran Chard
Clerk to Picken J	Grace Knapp
Clerk to Waksman J	Lucius Allen
Clerk to HHJ Pelling KC	Shirley Sweeney

Clerks' contact details can be found here at: <https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/about-the-commercial-court/the-commercial-courts-judges/>





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