

## Commercial Court User Group Meeting

### November 2022 Meeting Minutes

Remote Meeting via Microsoft Teams Wednesday 30 November at 16:45

#### 1. Introduction from Mr Justice Foxton

Foxton J welcomed attendees to his first CCUG meeting as Judge in Charge of the Commercial Court. On behalf of the CCUG, he extended his gratitude to his predecessor Cockerill J and acknowledged her invaluable contribution.

#### 2. Statistics

Foxton J confirmed that the Commercial Court remains as busy as ever, in spite of a further reduction in claims being issued. The year 2020-2021 saw a fall in claims issued to 802 (from 860 in 2019-2020.) In 2021-2022, 723 claims were issued. This change is offset (in part) by an increase of claims brought in the Circuit Commercial Courts. In addition, there has been an increase of 8% in arbitration applications brought under section 69 of the Arbitration Act 1996, 35% in the number of challenges brought under s.68 of the Arbitration Act 1996 and 37% in the number of challenges brought under s.67 of the Arbitration Act 1996. It is reasonable to treat the movement in these figures as a proxy for developments in the number of arbitrations being held with a seat in England and Wales. In addition, there have 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%).

The pressure on the court therefore remains considerable, particularly when account is taken of the judges' work in other parts of the court estate.

#### 3. Covid Business Interruption Insurance: Mr Justice Butcher and Mr Justice Jacobs

Butcher J confirmed that the court is continuing to actively manage cases on the BII sub-list. For further information and updates please see: <https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/the-work-of-the-commercial-court/dealing-with-the-disputes-of-today-and-tomorrow>. Whilst the FCA test case (*The Financial Conduct Authority v. Arch Insurance (UK) Limited and Others*) resolved many of the most important issues, the court heard 3 cases in June and July 2022 which dealt with "Marsh Resilience" wording. These cases dealt with (1) aggregation and causation and (2) whether the insured needed to give credit for payments received under furlough scheme and business relief. In all 3 cases, judgment was handed down in October 2022 and limited permission to appeal was given in relation to aggregation and furlough. There is another group of cases with common issues relating to premises cover and Jacobs J will be hearing the CMC of *The London International Exhibition Centre Plc v. Royal & Sun Alliance Insurance Plc and others* on 6

December 2022. Any potentially interested parties can attend the hearing for directions in relation to potential preliminary issues and consolidation.

#### **4. Aircraft leasing: Mr Justice Butcher**

This is a tranche of claims on insurance policies brought by foreign-owned aircraft or aircraft parts leased to Russian airlines and which it is said have yet to be released or are trapped as a result of the sanctions on the Russian Federation following the invasion of Ukraine. It is alleged that the crisis brought about the termination of the leases and several claims of significant size have been issued in the court. One claim has been commenced by the biggest lessor of aircraft to the Russian Federation and a CMC is fixed in March 2023. The court is in communication with those acting for parties in other cases and is monitoring whether these will benefit from joint case management. Professional court users are asked to advise the court of further claims by 16 December 2022.

No decisions will be made at this stage but the court needs as much information as possible. This request for interested parties to approach the court [appears on the court's webpages](#) and will be circulated to professional bodies.

#### **5. Listing Update and super court availability: Michael Tame**

##### **a) Lead Times**

Mr Tame confirmed that 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. Lead times are regularly updated on our [webpages](#).

##### **b) Court Rooms**

The Listing Office receives numerous demands for large court rooms in Commercial Court and TCC cases. At the beginning of this term, there were 4 competing requests for a "super court". To assist users, a note which confirms the capacity of courtrooms within the Rolls Building is attached to these minutes.

##### **c) Cameras**

Where remote access is possible, the Listing Office has also had queries about the position of the cameras in court rooms. These are positioned to give an overview of the court room. Whilst the Rolls Building courts do not have as many cameras as the Court of Appeal, this is something which is being looked at and the Court is in discussion with the Ushers Team Leader about this.

d) CE-File

There continue to be issues with documents which have not been filed correctly on CE-File and there has been a high level of rejections. The Listing Office held a meeting with counsels' clerks and the Court is arranging meetings with outdoor clerks to understand the issues which they encounter and to encourage best practice. One point noted was that many counsels clerks/outdoor clerks were not aware that the CCUG minutes are published online. Users Group Members were encouraged to share these with colleagues in other parts of their businesses.

e) Vacation

Users were reminded that there is no Commercial Court judge available during the short vacations (at Christmas or Easter) and this should be borne in mind when making applications. [This year](#), the Michaelmas term ends on 21 December 2022 and Hilary Term starts on 11 January 2023. If an application cannot wait until the following term, parties must make the application to the King's Bench Duty Judge sitting in the Interim Applications Court ('Court 37').

f) Contacting the Court

- Court users receive a notification when their CE- Filed application has been received. Please do not email the court to ask if submissions have been accepted.
- All applications should be sent via CE File and NOT directly to judges' clerks. This can lead to a situation where the same application is considered by two judges. This causes problems and increases the Listing Office workload.
- Please check the [Listing Office section](#) of the website before contacting us. We receive numerous repeated queries on a daily basis and have prepared a list of [FAQ's](#) to assist court uses. Please do not ask your clerks to ring us to whether your Friday application will be live or remote. The default is remote for Friday hearings, but the Listing Office is not able to confirm this finally until the Thursday.

## **6. Financial List Guide: Mr Justice Foxton**

Foxton J confirmed that the Financial List Guide will be revised and work on this will begin in 2023. Laura Feldman of Freshfields has volunteered to assist with this. Please send any suggestions for this to Francesca Giradot: [Francesca.Giradot@justice.gov.uk](mailto:Francesca.Giradot@justice.gov.uk)

## **7. Consequential issues following the trial: Mr Justice Foxton**

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 - Find case law \(nationalarchives.gov.uk\)](#) and [Royal & Sun Alliance](#)

[Insurance Limited and others v Tughans](#). There has been an epidemic of highly delayed consequentials. The scheduling of judicial deployment does not envisage long delays for consequentials, with the increased reading time this entails, and lengthy further submissions. These must be adding an extra cost to the litigation and this delay extends the timeline between the claim and final decision. There will now be an emphasis on determining consequential issues at short one hour hearings, which will often be listed at 9am, between 1-2 weeks after hand down. Considerations of the availability of all members of counsel for such hearings will carry much less weight and there will be a strict page limit on written submissions.

## **8. The Commercial Court website: Mrs Justice Cockerill**

Cockerill J was pleased to share a good news story in that the judiciary website has been completely overhauled. She thanked the Court's users for the considerable help which they had given both in explaining to the Judicial Office what was needed to improve the Court's section of the website and in getting content written. She encouraged all users to look at the content which is located within the [Business and Property Courts](#) pages. This was a difficult and time-consuming project but after a soft launch in September 2022, the site went live in November 2023. Cockerill J reported good feedback to date and the fact that the judiciary website has been well received by a wider audience and won the Knowledge and Information Management (K&IM) Special Interest Group Information Resources Electronic Award for 2022 from the Chartered Institute of Library and Information Professionals. The award judges were impressed by the fact that the site was extremely easy to access, impressively informative, up to date and clear in the descriptions of all aspects of the judiciary.

Cockerill J asked two things of users.

First, to familiarise themselves with the webpages and ensure that clerks, junior solicitors and others who engage with the Court know it is there. She noted that the team had added a couple of sections designed to help them:

- i. A ["How To"](#) section written by junior lawyers for junior lawyers;
- ii. A ["Listing FAQ"](#) which raises most of the questions which are regularly asked of the Listing Office

She emphasised that the website should be the first resource before asking Listing office questions by email or phone.

Second, Cockerill J asked users to identify any problems which were encountered with the website and to keep making suggestions to improve the webpages. She asked users to help the court to make sure that the site continues to be useful and indeed goes from strength to strength. Any feedback should be sent to the Clerk to Cockerill J : [Laura.Hope@justice.gov.uk](mailto:Laura.Hope@justice.gov.uk)

## **9. Disclosure update: Ed Crosse**

Mr Crosse confirmed that the Pilot Disclosure Scheme has been made permanent in Practice Direction: [PD 57AD](#). Simmons and Simmons is hosting an event in association with COMBAR, the LSLA and the Chancery Bar Association in honour of this development on 18 January 2023.

This will be an in-person and online event with a lecture from the Chancellor of the High Court. Members of the CCUG are asked to encourage colleagues to attend.

**10. Any Other Business**

There was no further business. All further suggestions will be placed on the Agenda for the next meeting (date tbc).