

COMMERCIAL COURT REPORT: CROSS-BORDER DISPUTES RESILIENT AS KEY LONDON FORUM TAKES COVID DISRUPTION IN ITS STRIDE

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Legal Briefings

The UK's primary venue for commercial disputes was less impacted by Brexit and the pandemic than many expected

The Commercial Court annual report (2020-2021) was published last week. In her introduction, Mrs Justice Cockerill, the judge in charge of the Commercial Court, notes that while the legal year was dominated by Brexit and the Covid-19 pandemic, in operational terms both had a smaller impact on the court than might have been anticipated. The court, the primary venue for complex business litigation in England and Wales, continued to deal with many significant international disputes, as well as complex disputes arising in a domestic context.

Some highlights from the report are summarised below.

The work of the Commercial Court:

The Commercial Court had a busy year, with a number of very lengthy trials and heavy interlocutory applications, and there was also a notable increase in the number of one-day hearings. Overall there were also more long hearings, and the total number of “days sat” (ie, judge days in court) continued to increase, as did the number of paper applications processed.

The work of the court remained highly international, with cross-border cases accounting for approximately 74% of the court’s business overall (identical to the previous year).

General contractual claims represented the largest single category of claims issued in the Commercial Court, at roughly 27% of new claims. Arbitration-related matters also made up around 25% of the claims issued, reflecting London's continued status as a key centre for international arbitration. Other significant categories included: insurance and/or reinsurance; commercial fraud; shipping cargo; and professional negligence claims.

Of the 128 cases listed for trial in the Commercial Court over the year, 42 were heard, which gives a settlement rate of around 67% for cases that got to that stage. The number of cases for trial was only marginally down on the 142 recorded in the largely pre-Covid 2019/20 period.

Impact of Covid-19:

Mrs Justice Cockerill's introduction notes that, while trials had to be planned around shifting Covid restrictions, business proceeded as usual over the year. Hearings were held in person, remotely or hybrid as the circumstances required: including restrictions in force, length and type of hearing, and personal circumstances of litigants, parties and lawyers.

Some changes introduced in response to the pandemic seem likely to remain in place. For example, hearings of half a day or less will be held remotely for the foreseeable future unless there is a clear reason for them to proceed in person. There has also been a general shift towards "paperless" bundles in many cases, with paper bundles used only where requested by the judge. This is the default position in the new [Commercial Court Guide](#).

For trials and other long hearings, the judge will ultimately make the decision on the mode of hearing, taking into account representations from the parties. In general, such hearings are being held in person unless circumstances require otherwise, although there is an increase in the number of international witnesses giving evidence remotely.

Mrs Justice Cockerill comments: "We continue to value the important features that in-person hearings can bring to the attainment of justice and the resolution of disputes, including live face-to-face cross-examination, the impact of physical presence in court, and the opportunities for parties' interaction in and around court buildings."

Continuing procedural reforms:

The report also noted the sustained drive to improve court procedures, including the introduction during the year of the new Practice Direction 57AC on trial witness statements, with its appended statement of best practice. Mrs Justice Cockerill comments: "The judges of the court hope this will help enable witness evidence to focus on the issues where oral evidence really matters, and contribute to making this jurisdiction an even better and more efficient place to litigate."

Other initiatives include the new Commercial Court Guide (11th edition), which was published in February 2022, and further revisions to the Disclosure Pilot in April and November 2021. With regard to the latter, the report notes that further consultation with the judiciary and other stakeholders has been and will be ongoing, and practitioners and court users are invited to continue to provide feedback to Professor Rachael Mulheron, as official monitor of the pilot, at: r.p.mulheron@qmul.ac.uk.

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