



JUDICIARY OF ENGLAND AND WALES

Report of the Commercial Court
and Admiralty Court

2004 - 2005

Commercial Court Report 2005

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Introduction

This Report covers, in the same way as last year, the work of the Commercial Court and Admiralty Court. The same judges sit in both Courts, share a common administration and follow the same procedures. When we refer to ‘the Court’ in this Report, we refer to both the Admiralty Court and the Commercial Court. We are very grateful for the help that the Judicial Communications Office has provided in producing this new format of the Annual Report.

The jurisdiction of the Commercial Court is wide. It extends to any claim relating to the transaction of trade and commerce (including commercial agreements, import and export, carriage of goods by sea, land and air, banking and financial services, insurance and reinsurance, markets and exchanges, commodities, the construction of ships, agency, arbitration and competition matters). The Admiralty Court has *exclusive* jurisdiction over certain maritime claims (including the arrest of ships, collisions and salvage), but many actions relating to disputes under bills of lading are brought in the Commercial Court as are almost all charterparty disputes.

Once again, the Court has experienced a very busy year in terms of the overall volume and complexity of the cases it has handled. However, out-dated technology and very poor accommodation continue to impede the ability of the Court to serve its users in the way in which those users expect and the Court would wish. Whilst we are able to report some progress with regard to technology, we are unable at present to report any actual improvement with regard to accommodation. However, we fervently hope that matters will change on that front, as we report below.

The Court would not have been able to achieve what it has done without the very hard work and unfailing help of the Court staff. This has always been given unstintingly and without complaint, despite the pressure and difficult circumstances under which the Court staff have had to work. Extra pressure has been put on staff whilst new IT systems have been tested. The staff have been of the utmost help in this as in all else.

During the year Court staff and judges have been involved in three particular projects. The first is the Commercial Court IT Project. The second was a work survey which was conducted in February 2005 at the request of Lord Justice May, the Vice President of the Queen’s Bench Division. The third was the resuscitated proposals for a building to house the Commercial Court and other Courts. All of these are referred to in more detail below.

The work of the Commercial Court

During the year, the work of the Court has been dominated by a number of long trials. Throughout the period of this report, one judge was continuously occupied with the trial of the action brought by creditors of the Bank of Credit and Commerce International, known as *Three Rivers District Council & Others v The Governor & Company Of Bank of England*. This case started on 12 January 2004. (It was discontinued in October 2005).

Another judge was involved, for almost the whole period, in the case brought by the Equitable Life Assurance Society against its previous auditors and directors: *The Equitable Life Assurance Society v Ernst & Young (a firm) and another*. This started on 11 April 2005 and was settled during November 2005.

The trial of a third case, *Man Nutzfahrzeuge Aktiengesellschaft v Freightliner Limited*, began on 11 January 2005 and continued for 18 weeks. There were other long cases as well.

The subject matter of cases handled by the Court remains varied. Although international insurance and reinsurance disputes provide a significant volume of work for the Court, it is also much concerned with shipping disputes, banking disputes and very large commercial contract disputes. There has been a significant growth in the number of disputes concerning the sale and purchase of shareholdings in companies, particularly those based in Eastern Europe and Russia, where contracts contain English jurisdiction clauses.

The nature of the Commercial Court's work has, therefore, covered a broad spectrum. Trials vary much in length. As can be seen from *figure 1* below, there has been an increase in the number of short trials and also very long trials over the course of the last three years.

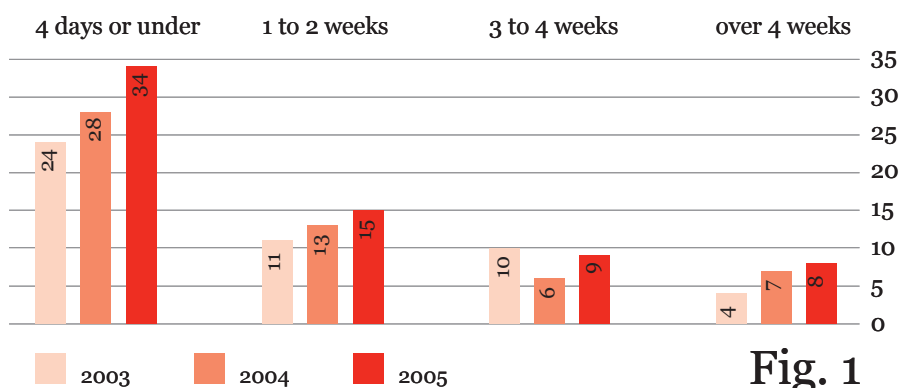


Fig. 1

The Commercial Court aims to accommodate very urgent cases when the need arises. In the last year it has been able to offer expedited dates for trial. Some of these matters have occupied Court time for several weeks.

Reports of material decisions of the Commercial and Admiralty Courts are published on-line in the following sites:

HMCS Judgments Homepage

www.hmccourts-service.gov.uk/HMCSJudgments/Search.do

This is for reported cases and is free.

BAILII (the British and Irish Legal Information Institute)

www.bailii.org

This is for unreported cases and is free.

Casetrack

www.casetrack.com/index.html

This is for viewing the full texts of judgments; keeping abreast of recent judgments in this specialist practice area and checking whether judgment has been given. This service is by subscription.

All the above are updated frequently.

The work of the Admiralty Court

The exercise of the Court's jurisdiction has been as broad as always. However, the number of claims issued has reduced from last year (94 as against 155). The Court maintains its reputation for ease of access, speed and flexibility in the arrest, release and sale of vessels. The Court acknowledges the role played by solicitors in this and the Admiralty Marshal has been greatly assisted by early notification of claimants' intention to arrest vessels.

The volume and sources of the business of the Commercial Court

The number of claim forms issued has fallen from 1,104 in 2004 to 973 in 2005:

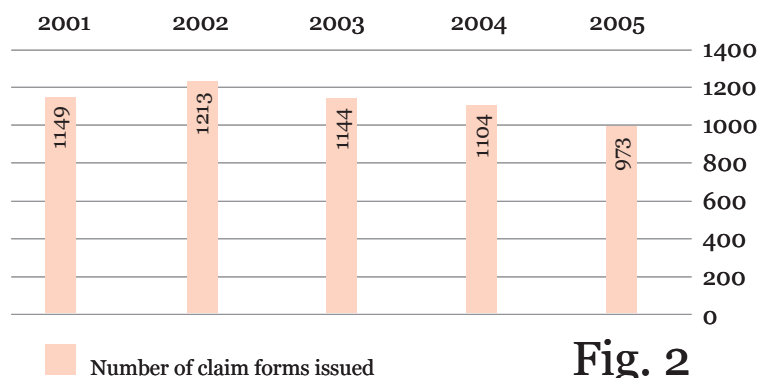


Fig. 2

The number of cases given trial dates has, however, risen from 222 in 2004 (255 in 2003), to 277 in 2005. The number of trials which have settled or have been adjourned at the request of the parties has increased from 164 in 2004 (174 in 2003) to 180 in 2005. Therefore during this period, the settlement rate has been about 65 per cent of cases where trial dates are given.

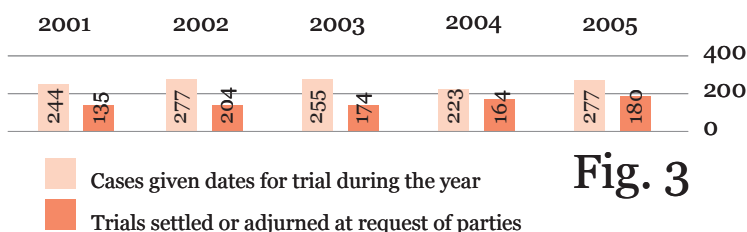


Fig. 3

The Court believes that the promotion of settlements is a very important part of its function. This is assisted by the process of defining the issues at an early stage, before the first Case Management Conference, and then by an evaluation of the parties' positions in the light of discovery and the exchange of witness statements and experts' reports. The fact that trial dates can be fixed with very reasonable lead times means that the parties and their lawyers must concentrate on whether or not an impending trial should actually be fought.

In the year ending 31 July 2005, the Commercial Court heard 97 trials. This compares with 58 trials in 2004. As the Annual Report for last year commented, the number of the trials that the Court hears each year fluctuates. The number of trials is not, in itself, an accurate indicator of the volume of business in the Commercial Court. However, it should be noted that in this last year, there was a significant increase in the total number of trials, whilst, at the same time, the Commercial Court also dealt with three particularly long trials, as is indicated above.

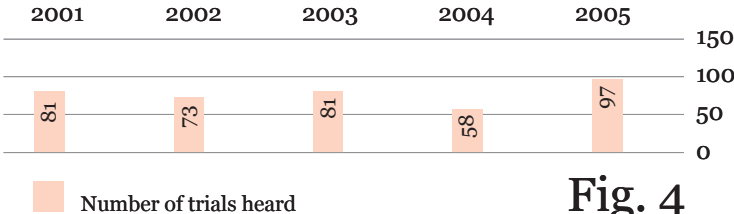


Fig. 4

The number of applications issued increased from 1,663 in 2004 (1,759 in 2003) to 1,841 in 2005. However, the number of applications that were actually heard fell from 1114 in 2004 (1,136 in 2003) to 997 in 2005. On the other hand, the number of without-notice applications rose from 76 in 2004 (91 in 2003) to 85 in 2005.

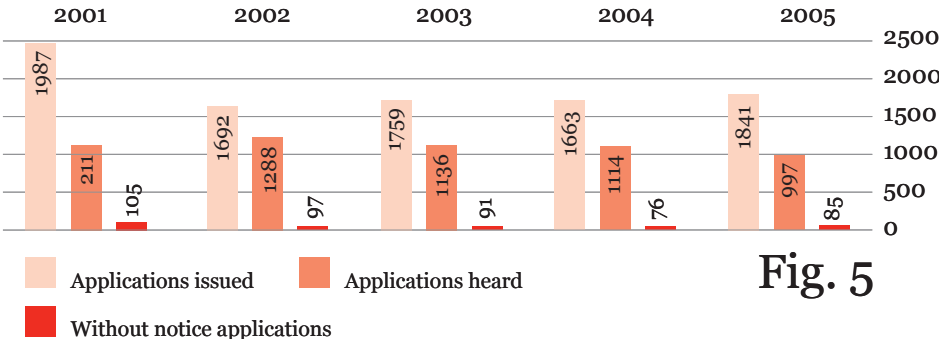


Fig. 5

From time to time surveys have been made to ascertain the proportion of the Commercial Courts' work which emanates from businesses outside the UK. The surveys in 2004/5 indicate that the number of claims where at least one claimant and one defendant originates from outside the UK constitute about 50% of all claims issued in the Commercial Court. The number of claims where at least one claimant or one defendant emanates from outside the jurisdiction constitutes about 80% of all claims issued in the Commercial

Court. These percentages have not altered much over recent years. It indicates that the Commercial Court remains predominantly an international court. Parties choose the Court to resolve their disputes either because they have specifically provided in their contracts for English law or for the English courts to resolve their disputes; alternatively because they regard the Court as the most suitable one in which to bring claims. The judges and the staff of the Court are conscious of the need to maintain their ability to handle efficiently and effectively the large number of claims that come to the Court from outside the jurisdiction and, effectively, at the choice of the parties involved.

No specific statistics are kept concerning the amounts involved in claims. However it is clear from the Commercial Court work survey conducted during February 2005 that the vast majority of cases brought in the Commercial Court concern claims for sums well in excess of £1 million. The largest noted was a claim for £1 billion. Many claims are made in United States dollars, which predominates as the currency of international trade.

The volume of business of the Admiralty Court

The number of claims issued to 31 July 2005 was 94, compared with 155 in 2003/4. (The figures do not include claims issued out of District Registers of the High Court).

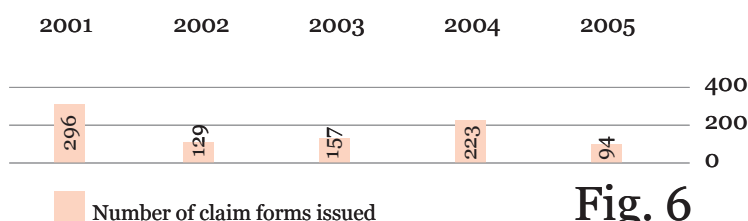


Fig. 6

Five trials were heard during the year out of a total of 17 cases that were given dates for trial during the year. Therefore approximately 70% of cases listed for trial settled before hearing.

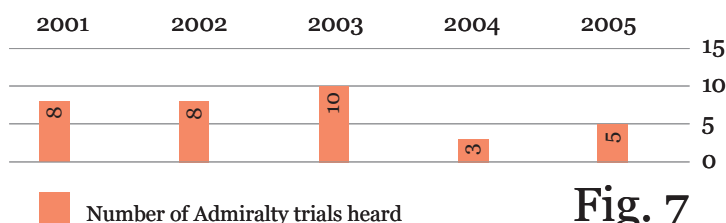


Fig. 7

The number of applications issued was down this year at 50, compared with 83 in 2003/4 (69 in 2002/3). However all but one of those applications were actually heard.

Case Management

Case management is a most important part in the work of the Court. In all cases the Case Management Conference (“CMC”) is conducted by a Commercial Judge and the parties have to be ready to deal with all aspects of case management and the issues in the case at a CMC. For most cases it is the practice of the Court to set a timetable down to trial at the first Case Management Conference. In such cases, the parties are required to fix, within a few days of the CMC, a date for trial on, or very soon after, a date which is identified and specified at the CMC. In very large cases it is not always possible to set a timetable right down to the trial date. However, it is the practice of the Court to set a detailed timetable for as much of the pre-trial period as possible, and to fix future CMCs so that the Court can monitor progress carefully.

The Court encourages parties to engage in Alternative Dispute Resolution (“ADR”) procedures. Pre-trial timetables will always allow for this if parties request it. However, fixed dates for court procedures are always given so that proceedings will continue if ADR fails and so there is always a timetable to the trial date. In some cases, the parties have difficulty in agreeing on a mediator who will conduct the ADR process. Many parties agree to a paragraph in an ADR Order which permits them to submit a shortlist of potential mediators to the judge who has conducted the CMC, on the understanding that the parties will abide by the judge’s choice of mediator from the agreed shortlist.

The Court attaches importance to the ‘progress monitoring date’ which is set when the parties attend a CMC. The PMD is the date by which the parties must report their compliance with the pre-trial timetable and preparation for the trial. The Court reviews these reports from the parties and, where necessary, can take active steps to ensure that cases are ready for trial on the date that has been fixed. However, in the vast majority of cases, the professionalism of the Court users means that no such steps are needed.

Case Management Conferences without a hearing

Since November 2002 it has been possible for parties to agree directions in straightforward cases so that the Court can dispense an oral hearing at a Case Management Conference. Because the cost of oral hearings is high, more parties are applying to the Court to dispense with oral hearings for CMCs in cases where there are agreed directions. The Court wishes to encourage this practice whilst adhering to the guidelines that have been set out. However, if this procedure is to be adopted, it is imperative that the Court has the proposed directions, together with the parties’ information sheets, Case Memorandum and List of Issues as well as the draft Order in very good time. In all cases, of course, it is for the Court to decide whether it approves the proposed draft Order. At present all such applications are dealt with by the Judge in Charge of the Court.

Lead times

It is vital to the financial, trading and business community in the City of London and internationally that the Court can provide rapid and efficient dispute resolution procedures. The Court aims to keep “lead times” (ie. the time between the date when a hearing is fixed and the date when the hearing will actually take place) within certain targets. The present targets for applications and trials are as follows:

Target lead times:	Duration of application / trial	Lead time
	30 minutes	1 to 2 months
	1 hour	1 to 2 months
	1½ to 2 hours	1 to 2 months
	½ day	2 to 3 months
	1 to 2 days	4 to 5 months
	1 week	7 months
	2 to 3 weeks	9 to 10 months
	4+ weeks	11 months

Fig. 7

The Judges of the Court

A total of 14 Queen’s Bench judges are nominated to sit in the Commercial and Admiralty Courts. Other judicial business takes some of these judges away from the Commercial Court on a regular basis. However, the workload of the Court has required eight or nine judges to sit for most of the period of the last year. In 2004/5 the total judge days available for use was 1,718 days (1,495 in 2004). All of that time was used. Of that period 1,115 days was used for trials, including preparation for hearings and judgment writing time. That figure for trials is higher than for any of the previous five years. 595 days were used for dealing with applications. Again this figure includes preparation and judgment writing time.

Commercial cases are frequently complex and heavily documented. In the majority of cases the judge will have to read much material which will have been identified in a “pre-reading list” which has to be agreed and supplied by the advocates. Advocates assume (rightly) that, by the start of a trial or application, a judge will have read the written Outline Arguments and the documents that have been previously identified.

Because of the heavy cost involved in all court hearings, time spent in dealing in court on evidence from witnesses and with oral submissions is kept to a minimum. The consequence of this regime is that Commercial Judges spend much of their time out of Court either preparing for a hearing or preparing a judgment after the conclusion of argument. “Judgment writing time” is built into the Court timetable in order that judgments can be written within a reasonable time of the hearing, if at all possible. Judges of the Court also deal with a large quantity of paper applications out of court. These applications include permission to serve proceedings out of the jurisdiction, leave to appeal to bring arbitration appeals under section 69 of the Arbitration Act 1996,

permission to vary pre-trial timetables and other interlocutory matters. Two judges act as “duty papers applications” judges during each week of term on a set rota. In addition, the Judge in Charge of the Commercial Court deals with applications to transfer in and out of the Commercial Court, together with matters concerning listing and correspondence from solicitors as is necessary.

Use of Deputy Judges in the Commercial Court

A small number of Circuit Judges who have had experience in the Commercial Court and Queen’s Counsel who practice regularly in the Commercial Court are authorised to sit as Deputy Judges in the Commercial Court. Deputies are used for both applications and trials in order to ensure that the targets for lead times can be maintained. The Judge in Charge of the Commercial Court assesses which applications and which trials are suitable to be tried by Deputies. Last year, Deputies (both Circuit Judge and QCs) sat on trials for a total of 87 days and on applications for a total of 40 days. (This compares with 32 days for trials and 58 days for applications in the previous year).

Long Vacation sittings

Judges of the Commercial Court sit regularly during the Long Vacation in August and September. They deal with both urgent business and also regular business, in particular paper applications. The aim is to ensure that there is always a judge available to deal with commercial matters if required during this period.

The Registry and the Listing Office

The Court is dependent upon the very close working relationship it enjoys with the Registry and the Listing Office. Together, they operate under the overall management of Keith Houghton. A list of current staff is at Appendix 1, together with a “family tree”.

The Registry, under the leadership of Rod Morgan, continues to provide essential assistance to the Court and the profession in relation to the Rules, the Commercial Court Guide and the official forms that are used. The Registry manages the numerous paper applications made to the Court and the ever increasing amount of correspondence with parties, solicitors and counsel, particularly correspondence by e-mail.

The Registry also deals with the vital function of managing the numerous paper applications in relation to case management, checking on whether parties have complied with the timetable set by the Court at the Case Management Conference, and ensuring that cases have been prepared and are ready for trial. The Case Management Unit also administers applications under the Arbitration Act 1996.

The operation of the Listing Office is fundamental to the smooth operation of the Court and the disposal of its work efficiently. It has continued to operate with conspicuous success under Angela Hodgson, her deputy Laura Donnell and the listing support officers.

Competition Law

During the year it was agreed that Part 30.8 of the Civil Procedure Rules (CPR) should be amended to ensure that cases which come within the definition of commercial cases (ie. within CPR Pt 58.1) which raise issues of competition law, particularly those under Articles 81 and 82 of the Treaty and the EU Competition Regulation will remain in the Commercial Court. Previously all such cases had to be transferred to the Chancery Division. The amended Pt 30.8 also provides that cases raising competition law issues which are within the definition of a Commercial case (ie. within Pt 58.1) can be transferred into the Commercial Court.

The Commercial Court Users' Committees and the Admiralty Court Users' Committee

The Commercial and Admiralty Courts are there to provide services for their users who are lawyers, members of other professions and businessmen from around the world. The Commercial Court Users' Committee in particular reflects the worldwide connections with the Court. Both Users' Committees have remained very supportive of their respective Courts and continue to provide an invaluable forum to discuss issues relating to the works of the Courts. The list of the members of the Commercial Court Users' Committee is set out at Appendix 2 and the list of the Admiralty Court Users' Committee is set out at Appendix 3.

Within the last year the Commercial Court Users' Committee has been involved in five particular projects. First, a working party under Mr Justice Christopher Clarke considered how to standardise and extend the use of e-mail communication between the Court and its users. The Report was accepted by the Users' Committee and it is intended to start a pilot scheme as soon as Phase 1 of the Commercial Court IT project is in place. (see pg 11). The second working party, under the chairmanship of Mr Justice Colman, is considering what amendments need to be made to the Commercial Court Guide. Once this working party reports, a draft of proposed changes will be prepared by a small drafting committee headed by the Judge in Charge of the Court.

A third working group, under the chairmanship of Mr Bruce Harris, is considering the Arbitration Act 1996 and how it has worked in practice since it was brought into force. As stated in last year's report, there is some concern as to whether the strict requirements imposed under the Arbitration Act for leave to appeal to the Commercial Court are impeding the development of the law, particularly in the field of shipping, insurance and reinsurance. This and other aspects of the Act are being considered by the working party, which is taking the opinion of as many users as possible.

A further working group is considering the draft Hague Convention on choice of law clauses in contracts.

Lastly although it is contemplated that the recommendation of the consultation paper on "Judicial Resources" will be adopted, so that the work of the Commercial Court and its administration should be left as it is, a working party will comment as necessary on the consultation paper so far as it affects the Commercial Court.

Commercial Court Work Survey: February 2005

As part of the review of the use of Judicial Resources, Lord Justice May, the Vice President of the Queen's Bench Division, requested the Commercial and Admiralty Courts to carry out a survey of their work during February 2005. During this period, records were kept of all the cases that were dealt with. This provided a complete breakdown of the work planned and the actual work undertaken during this period. In his report on this survey, Lord Justice May concluded that:

- (i) The large majority of the work of the Commercial Court is, because of its size and importance, suitable only for a High Court Judge. The international nature of the work reinforced this conclusion;
- (ii) The current lead times, which are based on the use of nine High Court Judges, are satisfactory. However, if the number of Judges was reduced, then lead times, particularly for longer trials would increase to an unsatisfactory level; and
- (iii) A case could be made that the Court needs ten judges, but less than nine judges would be "*plainly too few*". He therefore assessed that, with the current workload, nine Commercial Court judges were needed.

The survey involved a very considerable amount of extra work for the Listing staff, in particular Angela Hodgson and Laura Donnell. All judges sitting at the time also had to keep careful records of the time spent doing each particular piece of work. However, the survey did demonstrate, clearly, the continued need for nine specialist High Court Judges to do Commercial and Admiralty Court work.

Judge Arbitrators

Under section 93 of the Arbitration Act 1996, judges of the Commercial Court may, if in all the circumstances the judge thinks it fit, accept appointment as a sole arbitrator, or umpire. However, a judge cannot accept appointment unless the Lord Chief Justice has informed him that, "*having regard to the state of business in the High Court and the Crown Court, he can be made available*". In recent years the facility to appoint judge-arbitrators has been very little used, usually because the demands on the time of judges of the Commercial Court are such that the Lord Chief Justice has not been able to give his consent to release a judge to sit as an arbitrator.

It is hoped that this facility of providing Commercial Judges as judge-arbitrators can be used more in the future, if the work-load of the Commercial Court permits it. Users of the Court who are considering the appointment of a Commercial Judge in accordance with section 93 of the 1996 Act should, in the first place, send enquiries to the Judge in Charge of the Commercial Court.

Of course, all fees payable for the services of a Judge of the Commercial Court who is appointed as an arbitrator or umpire "*shall be taken in the High Court*" (s.93(4)), **not** by the judge himself.

The Commercial Court IT Project

As has been reported in previous years, the Commercial Court IT Project will deliver an integrated case management system producing an e-file, an e-diary and e-listing. The scope of this first phase of the project does not extend to the filing of documents by the parties straight into an e-file, nor does it include a provision for enabling parties to start proceedings on-line. However, both those aspects remain clear and urgent aims for the future.

The project suffered setbacks over the summer of 2005. The first phase will not now be ready to “go live” until March/April 2006. The Court is grateful for the interest that the Lord Chancellor has shown in this project and his help in keeping up its momentum.

The staff in the Commercial Court Registry, in particular Angela Hodgson and Rod Morgan, have worked extremely hard to ensure that the proposed integrated case management system will fulfill the requirements of the Commercial Court. The judges are extremely grateful to them for this considerable assistance.

The Commercial Court Building Project

The Commercial Court Annual Reports have stated for many years that there is a pressing need for new accommodation so that the Court can provide the services that the business community both needs and expects of a modern international dispute resolution centre. In last year’s Report it was stated that a detailed study was being undertaken to finance new accommodation within the Royal Courts of Justice complex. That study has been completed and the proposals set out in that study will not be taken further. However alternatives are now being actively considered. This work is being done by Her Majesty’s Court Service in the context of a need to review the use of all the Court buildings which are owned or controlled by HMCS within London. As always, the key question will be whether funds can be made available. Every possibility is being considered.

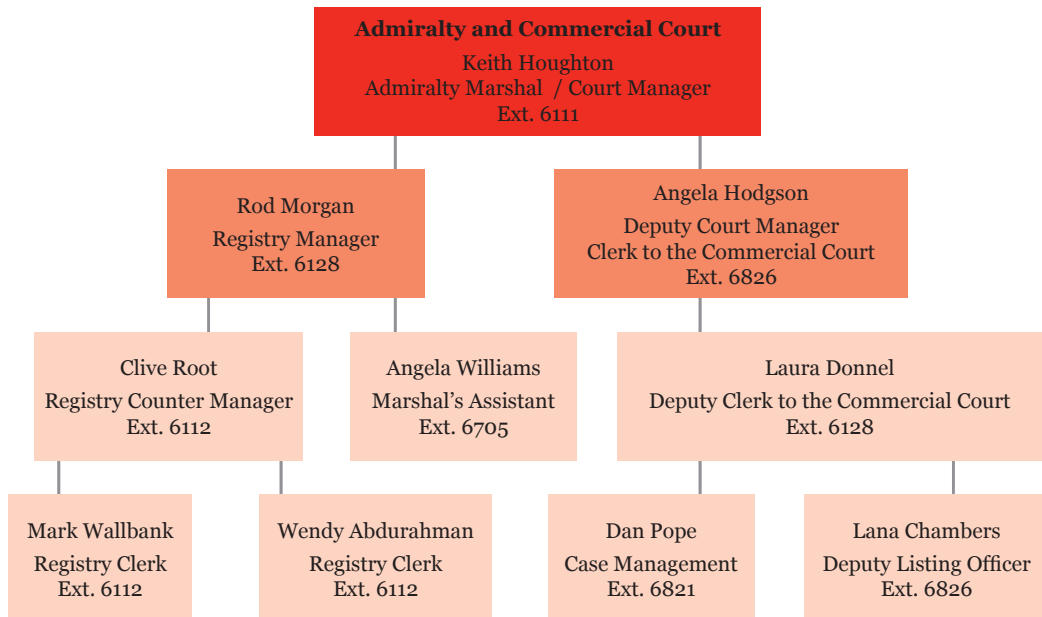
Work with Courts in other countries, International Liaison and Visitors to the Commercial Court

During the year the Court received a large number of visitors, including judges from Uganda, Saudi Arabia, China, Guyana and Dubai. Judges and administrators from a number of countries frequently enquire about the set-up and work of the Commercial Court because they wish to establish one in their own jurisdiction.

Two judges of the Commercial Court, Mr Justice Aikens and Mrs Justice Gloster, are involved with the workshops organised by the European Commission for the preparation of a Common Frame of Reference on aspects of civil and commercial law.

At the request of the Foreign and Commonwealth Office, Mr Justice Colman has organised a series of seminars for judges of the Czech Republic on issues of commercial and EU law. Judges of the Commercial Court will lead these seminars which are taking place during Autumn to Spring 2005/6.

Appendix 1: Commercial and Admiralty Court Office staff



Appendix 2: Members of the Commercial Court Users' Committee

The Judges of the Commercial Court:

The Hon Mr Justice Aikens (Judge in charge of the Commercial Court)

The Hon Mr Justice Cresswell

The Hon Mr Justice Colman

The Hon Mr Justice Morison

The Hon Mr Justice Langley

The Hon Mr Justice Toulson

The Hon Mr Justice David Steel

The Hon Mr Justice Tomlinson

The Hon Mr Justice Andrew Smith

The Hon Mr Justice Gross

The Hon Mr Justice Cooke

The Hon Mrs Justice Gloster

The Hon Mr Justice Clarke

The Judges of the Court of Appeal and the Lords of Appeal in Ordinary who have been Judges of the Commercial Court:

The Lord Chief Justice

The Master of the Rolls

The Rt Hon Lord Mustill

The Rt Hon Lord Saville of Newdigate

The Rt Hon Lord Mance

The Rt Hon Lord Justice Waller

The Rt Hon Lord Justice Tuckey

The Rt Hon Lord Justice Clarke

The Rt Hon Lord Justice Rix

The Rt Hon Lord Justice Longmore

The Rt Hon Lord Justice Thomas

The Rt Hon Lord Justice Moore-Bick

Sir Christopher Staughton

Mr Paul Arditti, Ince and Co

Mr William Blair QC (succeeded by Mr Robin Knowles QC in July 2005)

Mr Alastair Clegg, Director, Supreme Court Group, the Court Service

His Honour Anthony Diamond QC

Mr Nigel Durham, The Sugar Association and Refined Sugar Association

Mr Peter Farthing, Clyde and Co

Mr Julian Flaux QC

Mr Jonathan Gaisman QC

Mr David Gold, Herbert Smith

Mr Robert Goldspink, Morgan Lewis and Bockius

Mr Graham Huntley, President of the London Solicitors Litigation Association

Mr Mark Hamsher, London Maritime Arbitrators Association

Mr Bruce Harris, London Maritime Arbitrators Association

Mr Arthur Harverd, Carter Backer Winter

Mr Ian Hunter QC

Mr J Jarvis QC

Mr Geoffrey Johnson, Group Chief Legal Advisor, Lloyds TSB plc

Ms Veronica Kendall, COMBAR

Dr Jost Kienzle. CMS Hasche Sigle, Hamburg

Mrs P Kirby Johnson, Director General, GAFTA

Ms Janet Lambert, Barlow Lyde and Gilbert

Mr Stuart Logan, FOSFA

Mr David Lucas, Middleton Potts

HHJ Mackie QC, Mercantile Court

Mr Stephen Males QC

Mr Peregrine T. E. Massey, Thos R Miller

Mr Stelios Niotis, Chairman, BIMCO Documentary Committee

Mr Neil Palmer, Senior Clerk, 20 Essex Street

Ms Betty Pedrini, Norton Rose

Mr Alastair G Schaff QC, 7 King's Bench Walk

Mr Ian Taylor, Freshfields

Mr Martin Thomas, Financial Markets Law Committee

Mr V. V. Veeder QC

Mr Peter Vipond, Insurance Market Liaison Panel, ABI

Mr Andrew Whittaker, General Counsel, The Financial Services Authority

Secretary:

Mrs Angela Hodgson, Clerk to the Commercial Court

Appendix 3: Members of the Admiralty Court Users' Committee

Mr Justice David Steel

Mr Registrar Miller

Mr Keith Houghton, Admiralty Marshal

Mr C Hume, The Shipowners' Protection Ltd

Mr Nigel Meeson QC

Mr RC Hough, Tindall, Riley (Marine) Ltd

Mr RJ Sayer, Ince and Co

Mr N Teare QC

Mr M Telford, WK Webster and Co

Mr N Greensmith, Clyde and Co

Mr WA Bishop, Holman Fenwick and Willan

Ms Sara Burgess, Gard (UK) Ltd

Mr TD Brenton QC

Mr J Hulmes, Hill Dickinson

