



## Shipping steered towards LCCt

*The English Courts are currently trying to persuade parties in less complex commercial cases to commence proceedings in the London Circuit Commercial Court (“LCCt”), rather than the Commercial Court. Further, even where cases are commenced in the Commercial Court, the Court may itself recommend that proceedings be transferred to the LCCt if the value of the claim is less than £5,000,000 and there are no other reasons for it to remain in the Commercial Court. [Debo Fletcher](#), Senior Associate explains.*

CJC regularly handles LCCt matters, all the way through from inception to the court trial and judgment.

Given proceedings in the LCCt are only going to become more common, we set out a brief introduction to this Court below, following a LSLC-YMP seminar in July 2023 aimed at increasing familiarity with the LCCt, including Mr Justice Foxton (Judge in Charge of the Commercial Court) and His Honour Judge Pelling KC (Judge in Charge of the London Circuit Commercial Court) as panellists.

### **What is the London Circuit Commercial Court?**

The London Circuit Commercial Court (the “**LCCt**”) is one of the Business and Property Courts of England and Wales’ specialist courts within the High Court. It decides business, commercial, property and other chancery disputes. The Circuit Commercial Courts, previously known as the Mercantile Courts, deal with business disputes of all kinds apart from those which, due to their size, value or complexity, need to be dealt with by the Commercial Court itself. The LCCt is part of the King’s Bench Division of the High Court rather than the County Court, and as a circuit court, the LCCt has counterparts in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, and Newcastle.

The LCCt is operated by a small number of specialist deputy High Court Judges (currently 13), most of whom are King’s Counsels (KCs). A number of these judges are highly experienced in shipping disputes, and five of them are authorised to sit as Judges of the Commercial Court.

### **What type of cases does the LCCt handle?**

The LCCt handles claims that would be fit for commencement in the Commercial Court by reason of their subject matter, but by virtue of their value or the factual technical or legal issues that arise, do not merit being dealt with by the Commercial Court.

The types of claims that can be brought to the LCCt include commercial contracts; 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; 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 contact; 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. A claim must also merit trial in the High Court, and the factual, technical, or legal issues that arise must require or benefit from the expertise of a Circuit Commercial Judge to resolve.

In practical terms, the plurality of cases handled by the LCCt are categorised as “general commercial contracts and arrangements”, which in 2022 comprised around 33% of cases handled, followed by miscellaneous cases at around 15%. The largest specific case type handled by the LCCt was shipping (specifically cargo disputes), which made up roughly 12% of cases in 2022, followed by carriage of goods by land, air or pipeline at approximately 8% of the cases, with the remaining ~32% of cases divided relatively easily across the other categories.

As one might expect given the data, the LCCt is well-suited for handling shipping law. Perhaps surprisingly, shipping work- excluding admiralty claims- represents only a very small portion (in part due to the prevalence of arbitration as a method of dispute resolution) of the type of cases the Commercial Court currently handles, although at present all but three of the Commercial Court judges have shipping backgrounds.

Parties are encouraged by the courts to commence international road, sea and air cargo claims of a commercial nature which are not suitable for commencement in the Commercial Court due to value or the type of issues involved in the LCCt instead.

### **The benefits of starting cases in LCCt**

Broadly speaking, practitioners have a choice of which court to commence court proceedings in, and the LCCt should be given consideration when it comes to resolving high-value commercial disputes efficiently. The LCCt has committed to delivering timely justice with lead times that prioritise swift dispute resolution, so that the parties involved can expect their cases to progress efficiently to trial, even within 9-12 months of the First Case Management Conference for contested Civil Procedure Rules (“CPR”) Part 7 claims.



The LCCt is also worth considering in respect of less complex arbitration claims, which can be issued in or transferred into the LCCt. For example, an application for leave to appeal under section 69 of the 1996 Arbitration Act will likely be dealt with quicker than in the Commercial Court, and trials under sections 67 and/or 69 are more likely to be listed for earlier dates in the LCCt than in the Commercial Court.

The LCCt operates exclusively electronically in terms of documents (as do all other Circuit Commercial Courts). In addition, the LCCt is acutely aware of the challenges posed by in-person court appearances. To address this, akin to the

Commercial Court, hearings listed as half a day or less in the LCCt are held remotely by default, while the giving of evidence by remote means from witnesses, who would otherwise have to travel significant distances either domestically or internationally, is also actively supported and encouraged by the LCCt. Embracing remoteness not only significantly reduces costs by eliminating travel and waiting time but also guarantees access to justice is unhindered particularly for foreign-based parties. For this reason, the LCCt is receptive to the possibility of establishing remote observation-only links.

Oral applications of up to an hour in length can be listed almost immediately within the LCCt, primarily due to the availability of the Urgent and Short Applications List, which is arranged between Mondays and Thursdays, freeing up Fridays for longer applications and most Case Management Conferences. The ability to list applications immediately is, of course, enormously useful for litigators. Lead times for trials are also usually better than the Commercial Court for the same trial duration, sometimes even up to six months earlier, especially for lengthier trials. Use of the Shorter Trial Scheme (see Practice Direction 57AB) is also actively encouraged by the LCCt, especially for cargo claims and superyacht repair claims.

Similar to the Commercial Court, cases in the LCCt are case managed and tried by a senior judge, and cases are usually managed from start to finish by the LCCt's Judge in Charge. All case management hearings and the trial are done either by that judge, another circuit judge, or a Deputy High Court Judge. This way, case efficiency as well as cost management are highly promoted.

## Comments

In this fast-paced realm of high-value commercial disputes and competitive landscape of commercial litigation, the decision where to initiate legal proceedings can be critical. The LCCt seems to offer an array of compelling benefits for those seeking expedited, efficient, and cost-effective dispute resolution, with expertise and results not too dissimilar from the Commercial Court. It is further anticipated that the progressive use of technology and costs control by the LCCt will be determinant in gradually attracting more court users, making it more appealing to the litigation public. It is worth noting that decisions of the LCCt are treated in the same way as other High Court judgments in terms of precedent, and the routes of appeal are the same.

In terms of procedure, legal practitioners should be aware that where cases are commenced in the LCCt, in addition to the [Commercial Court Guide](#), reference should also be made to the extensive [London Circuit Commercial Court Guide](#) which supplements the Commercial Court Guide and is in a similar layout, as well as CPR 59. Updates to both Guides were published recently in October 2023. There are also specific guidelines on the preparation of electronic bundles contained in Appendix C of the LCCt Guide, including requirements on hyperlinks, bookmarks and pagination. In addition, special court forms with the suffix "LCC" are also used in the LCCt, and this should be considered when commencing LCCt proceedings.

It is worth noting, diverging from the Commercial Court, that where a trial has been fixed, consent order applications to vary the procedural timetable set out in the Case Management Conference Order, must contain the following wording in the draft consent order signed by the parties, otherwise the application is likely to be rejected: *"We are agreed that the variations set out above will not jeopardise the trial date, does not relate to the progress monitoring date or provide for the completion after the progress monitoring date of any step that was previously scheduled to have been completed by that date"*.

Legal practitioners should also note that claims with a value of up to £5,000,000 will likely be transferred out from the Commercial Court to the LCCt unless it is high value/complex, usually between issue and the filing of particulars of claim. Although unpopular, claims with a value of £500,000 or below (excluding interest and costs) will likely be transferred out from the LCCt / Commercial Court to the County Court (except cargo claims) around the same stages, unless retention is justified under the CPR due to financial value, and/or the factual, technical or legal issues involved. We understand that increase of this £500,000 limit is currently under consideration. These measures are primarily to alleviate current strains on the Commercial Court and to prevent the LCCt from being swamped. Generally however, parties will be given a heads-up before a decision is made by a minded-to-transfer Order (MTTO), giving them the opportunity to make submissions to the Court before a final Order is issued to transfer the claim out accordingly.

In respect of cargo claims however, all such claims commenced in or transferred into the LCCt will be retained by the LCCt regardless of financial value and the nature of the factual, technical or legal issues arising, unless it is more appropriate for them to be transferred to the Commercial or Admiralty Court or to another Circuit Commercial Court, by order of the LCCt or an application by any of the parties.

Commercial parties and their legal representatives should therefore give serious consideration to commencing proceedings in the LCCt and familiarising themselves with the rules and procedures governing that court, in the event that they find that their case has been transferred into the LCCt. The LCCt has positioned itself as a viable alternative to the Commercial Court, and whilst there will always be room for improvement and some cases will be unsuitable for handling by the LCCt, lack of awareness should not be a reason why the LCCt is under-utilised by court users.

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