The Commercial Court: Past, Present, and Future

Annual Combar Lecture 2020 (delivered virtually)

Lord Hamblen, Justice of The Supreme Court

13 October 2020

Introduction

It is both a pleasure and a privilege to be asked to give the COMBAR lecture in the 125th anniversary year of the Commercial Court. The topic of this lecture has been chosen to mark that important milestone.

Covid-19 means that these are unprecedented times, and this is the first COMBAR lecture to be given remotely. I considered that it was important that the lecture should nevertheless go ahead, not only because of the Commercial Court's anniversary, but also to reflect the fact that the Court and its practitioners have always striven to ensure 'business as usual', whatever the challenges, as they have successfully done throughout the period of Covid-19 restrictions.

We can always learn from the past and a central theme of this lecture is how similar have been both the key challenges facing the Commercial Court and the mainstays of the Commercial Court's approach in dealing with them – in the past, in the present and, most likely, in the future as well.

Past

I start then with the past, with the origins of the Commercial Court, the issues which led to its creation and the steps which it took to address them, many of which remain central features of the Commercial Court's practice to this day.

In relation to the history of the Court I am much indebted to the masterly account which can be found on the website www.commercialcourt.london.

The story of the Commercial Court begins in the nineteenth century. The reforming zeal of the Victorians led to changes in many areas of society and the courts were no exception. The most significant judicial reform of the period was, of course, the Judicature Acts in the 1870s. These were passed in order to reform a hugely complex and somewhat chaotic court system that was still structured according to the courts' historical development from various sources of authority. The court system was plagued by arcane procedure and rivalries between the courts over jurisdiction, of which the competition for commercial work was but one example.

The Supreme Court of Judicature Act of 1873 consolidated most of the many existing courts into one Supreme Court of Judicature in England.[1] This Supreme Court was then split into two permanent parts: Her Majesty's High Court of Justice and Her Majesty's Court of Appeal.[2] The High Court was vested with the jurisdiction of the Court of Queen's Bench and a number of other courts, and originally divided into five divisions: the Chancery Division, the Probate, Divorce, and Admiralty Division, the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division.[3] Once the presidents of the Exchequer and Common Pleas died in 1880, these two divisions were abolished after over 600 years of existence, leaving the Queen's Bench Division as the victor in the jurisdictional fights over commercial matters.

However, despite the significant reforms made to simplify and improve the courts, the Queen's Bench Division of the new High Court was losing out to arbitration when it came to commercial cases. In an anonymous letter to *The Times*, a Lord Justice of the Court of Appeal, Lord Justice Bowen lamented in 1892 that the "*mercantile public… prefer even the hazardous and mysterious chances of arbitration in which some arbitrator, who knows about as much of law as he does of theology, by the application of*

[1] S.3, 1873 Act.
[2] (s.4 1873 Act).
[3] S.16, 31 1873 Act

a rough-and-ready moral consciousness, or upon the affable principle of dividing the victory equally between both sides, decides intricate questions of law and fact with equal ease."[4]

There were three main reasons for the mercantile public to favour arbitration. The first was the increase in interlocutory squabbles, which became commonplace after the Judicature Acts. By unifying and reforming procedure, the Acts had also given rise to a large amount of satellite litigation on procedural points. The Common Law Procedure Act of 1854 had also imported Chancery procedural tools into the common law courts, such as disclosure by affidavit, and the Chancery practice of "ordinary-language" pleadings, which tended to result in long, rambling documents. Lord Justice Bowen complained that "*[t]he ancient severity of the common law pleading was replaced by lengthy statements on behalf of plaintiff and of defendant, from which the points could only be extracted by painful and (generally speaking) useless industry. Expense was doubled and simplicity was not promoted.*"[5] – wise words then and now.

The second reason was the lack of expertise among the judges. This was exemplified in the notoriously delayed and widely denigrated judgment of Mr Justice Lawrence in the general average case, *Rose v Bank of Australasia*.[6] So bad was this case for the reputation of the Queen's Bench, a later Commercial Court judge, Lord Justice Scrutton described Mr Justice Lawrance, who was known as "Long John Lawrance", as the "true begetter of the English Commercial Court".[7] "Long" was apparently a reference not just to his height but also to the time taken for his judgments.

The third reason that commerce favoured arbitration was the excessive time and costs of commercial litigation and the uncertainty that prevailed around both. As Lord Justice Bowen explained:

---

[4] 'A Member of the Bench' (Bowen LJ), *The Times*, August 1892 reproduced in (1892) 27 LJ 570, 573.
[5] 'A Member of the Bench' (Bowen LJ), *The Times*, August 1892 reproduced in (1892) 27 LJ 570.
[6] Ibid 21; V V Veeder, 'Mr Justice Lawrence: The 'True Begetter of the English Commercial Court', (1994) 110 LQR 292.
[7] Ibid 294.

"The bulk of the disputes of the commercial world seldom in these modern days finds its way into the Courts. Merchants are shy of litigation. No solicitor can tell his client beforehand, even with a moderate degree of certainty, what is the limit of cost to which a man may be put, either in prosecuting or in defending his just rights. Statements of claim and statements of defence, affidavits of documents, and copies of correspondence, interrogatories, and further interrogatories - all may furnish materials for learned arguments before master and judge, before Divisional Court and Court of Appeal. And when at last the exhausted belligerents arrive at the verdict of a jury or the decision of a High Court judge, a year's law is given even then to the defeated party, during which he may appeal to the Court of Appeal, and one more year within which to begin his luxurious march towards the House of Lords."

He concluded by emphasising two matters which remain as relevant today as they were then:

"*Two considerations are important to men of business when contemplating the possibilities of litigation. The first is - money. 'How much is it likely at most to cost?' The second is - time. 'How soon at the latest will the thing be over?' They want to close their books at the end of the current year, to write off bad and hopeless debts, to know upon what lines next year to deal with similar questions should they arise.'*[8]

There were a number of abortive attempts to rectify the situation, including the suggested creation of a commercial list, but this was opposed by the Lord Chief Justice, Lord Coleridge. Opposition to the idea of a commercial list was generally based on two considerations. The first was a commitment to generalism among judges. The idea of creating commercial specialists was anathema to the proponents of judicial generalism, who worried that it would "*narrow and dwarf*

[8] *The Times, August 9th & 10th 1892,* reproduced in *(1892) 27 LJ 570 & 582.*

the minds of the Judges."[9] The second was that the creation of a commercial list would be a regressive step that went against the unifying grain of the Judicature Acts, aimed as they had been at combining the diversity of ancient courts. The reality was, however, that the three divisions of the High Court were to an extent distinct entities, with their own practitioners and expertise.

It was not until Lord Coleridge died and was replaced as Lord Chief Justice by Lord Russell in 1894 that the commercial list finally came into being. Lord Russell, himself a former commercial practitioner, was a strong supporter of the creation of a specialist list and initially tried to implement it through an amendment to the Rules of the Supreme Court. However, when the glacial speed of the Rules Committee became apparent, Lord Russell decided to bypass it. Instead, he summoned a meeting of the judges of the Queen's Bench Division to discuss, among other matters, a commercial list. This led to the issuance of a notice on the back of the cause list for the Queen's Bench Division for 6 February 1895. With it the Commercial Court was born.

The Notice provided that:

"The Judges of the Queen's Bench Division desire to make, in accordance with the existing rules and orders, further provision for the dispatch of commercial business as herein provided: -

Twelve provisions were then set out. They included the following, of particular relevance to modern practice:

3 – "With respect to town commercial causes it is considered desirable, with a view to dispatch and the saving of expense, that all applications shall be made direct to the Judge charged with commercial business…."

[9] *The Times*, 24 February 1897.

This was the start of the practice, continued to this day, of all interlocutory applications being made to the Commercial Court judge rather than to Masters. Within the Queen's Bench and Chancery Divisions, this was a feature unique to the Commercial Court, until it was adopted by the recently created Financial List. It enables judges to have control and direction over proceedings from the outset, the desirability of which was a theme of the changes made by the introduction of the Civil Procedural Rules and is reflected in the now widespread practice of Case Management Conferences or CMCs.

"6 - Application may be made to such Judge under the provisions of the Judicature Act 1894, and the rules thereunder, or by consent, to dispense with the technical rules of evidence for the avoidance of expense and delay which might arise from commissions to take evidence and otherwise.

7. Application may also be made to such Judge, after writ or originating summons, for his judgment on any point of law.

8. Such Judge may at any time after appearance and without pleadings make such order as he thinks fit for the speedy determination, in accordance with existing rules, of the questions really in controversy between the parties."…

10. Application may be made to such Judge in urgent cases to fix an early date for the hearing of any cause or matter."

These reflect the desirability of flexible procedure, which can be adapted to meet the requirements of the particular case before the court and to minimise, so far as possible, delay and expense. This has been a constant theme of many of the procedural initiatives introduced by the Court over the years.

The response of the *Law Times* was one of approval. It reported that *"The published 'Notice' with respect to commercial causes pretty well gives the go-by to the White Book. The Judge is to get seisin of his causes at*

the outset, may decide points of law straight away, may dispense with technical rules of evidence, and go without pleadings direct to the question in controversy between the parties, who may agree to accept his decision as final. This, we know, is the beginning of a great change."[10]

Many of the Court's most significant innovations were in fact brought about almost single-handedly by the court's first judge, Sir James Mathew. His appointment was widely supported by the legal profession; it was said by the *Law Journal* in 1895 that "*[a] better choice would be impossible... If the dry-rot which seems to have set in on the common law side can be arrested, Mr Justice Mathew is the man to do it.*"[11]

As essentially the only full-time judge of the Court in the first two years of its existence, Mathew J had almost complete control over its procedure for that period. His pace during his tenure as the Commercial Court judge was remarkable. He completed the majority of the hearings, including trials, reported in Volume One of the Commercial Cases reports in a single day. His judgments were concise, often half a page and rarely longer than five pages. As it was rather poetically put in his obituary in *The Times*, "*he abhorred the dust cart judgments into which are shovelled all handy or contiguous rubbish*."[12]

The first hearings of the Commercial Court began at ten thirty in the morning of Friday 1 March 1895 before Mathew J. On Fridays, Mathew J would hear the summons for directions. The issue of such a summons was necessary for the matter to proceed in the Commercial list and it gave the judge control of those proceedings. Judge led summons for directions remained a key feature of Commercial Court practice thereafter and are the precursor to the now widely followed CMC procedure. This also began the practice, which has continued to this day, that trials do not take place on Fridays and are instead devoted to interlocutory applications.

[10] (1894-95) 98 Law Times, 342.
[11] (1895) 30 LJ 39 & 59.
[12] *The Times*.

At these Friday summons for directions, Mathew J would determine what the key issues in the case were and consider whether full evidence was required. If he could dispose a case on a point of law, he would, relying on existing rules to direct that the point be decided before any evidence was exchanged, or a trial took place. Parties were also encouraged to apply for the determination of a preliminary point of law. In cases that proceeded to the evidential stage, Mathew J would encourage the parties to produce concise points of claim and points of defence, which seem to rarely have been longer than one page.[13] At the summons for directions, Mathew J would also fix a trial date and set the mode of trial. His use of fixed trial dates was a novelty at the time and until recently remained a distinct practice of the Commercial Court. Only recently have the Queen's Bench Division and the Chancery Division adopted a similar practice.

After the first year of the court's operation, the number of settlements reached by parties who then failed to inform the court precipitated another innovation, with the Court requiring the parties to inform the judge's clerk a week before the trial date that the case was ready to go to trial (failing which the trial would be vacated). This was the precursor to the modern progress monitoring date and pre-trial checklist.

Through these changes, the Commercial Court began to establish its own unique procedural mechanisms, albeit within the existing rules. One QC commented in 1897 that an action in the Commercial Court "*assumes a unique character. No Master gets hold of it; it does not wander about; it is rarely fettered or assisted by pleadings; it is moulded by the Judge who is to try it, and in fact, becomes quite unrecognisable as an ordinary action at law.*"[14]

Though the Court lost an important influence upon Mathew J's departure to the Court of Appeal in 1901, in the following years many outstanding judges were appointed to, and often swiftly elevated from, the Commercial Court. Indeed, the Court came to exert so strong a hold

[13] Theo Mathew, *The Practice of the Commercial Court* (1902), Appendix B (sample precedents).
[14] F O Crump QC, 'A Modern Action At Law' (1897) 103 Law Times 4, quoted in Eaton 59.

on judicial appointments that in 1913 the *Law Journal* remarked that while "*[m]embers of the Bar who practice in the Commercial Court bring, no doubt, a very valuable experience to the judicial work of the King's Bench Division, … [but] recent appointments will not, it may be hoped, encourage the notion that they constitute the only section of the Common Law Bar from which competent Judges can be chosen*."[15]

Two of the most illustrious names in the early 20th century were John Hamilton, later Lord Sumner, and Thomas Scrutton. These two men were almost exact contemporaries, being of a similar age, and between them came to dominate the Commercial Bar. Having appeared as junior counsel opposite one another in the appeal of the *Rose v Bank of Australasia* debacle, after they were both appointed as KC in 1901, they became the pre-eminent advocates at the Commercial Bar, with a fierce professional rivalry. In Scrutton's obituary many years later, *The Times* had said that "*[e]xcept in both being of outstanding ability, no two advocates could have been less alike*", describing Hamilton as "*scholarly, precise, cynical, with much the more attractive address*" and, perhaps rather uncharitably for his own obituary, that Scrutton was "*without elegance, but with great force*."[16]

The judicial careers of the two men started at almost the same time, with Hamilton appointed to the King's Bench in 1909 and Scrutton in 1910. However, Hamilton's subsequent rise proved to be spectacular. He was appointed to the Court of Appeal in 1912, and after a year he was appointed to the House of Lords as Lord Sumner in 1913. Lord Sumner's long career in the Lords was remarkable; he sat on almost 300 appeals and over 200 times in the Privy Council. The quality of his speeches was such that *The Solicitors' Journal* declared him a "*legal and a literary genius*".[17] Scrutton was appointed a Lord Justice of Appeal in 1916. Through his work in the Court of Appeal, as well as the success of his treatise on charterparties and bills of lading, which is now in its 24th edition, Lord Justice Scrutton built a reputation as one of the most outstanding

[15] (1913) 38 LJ 322.
[16] *The Times*, obituary of T E Scrutton, 21 August 1934.
[17] (1934) SJ 373.

English judges of modern times. On his death in 1934, obituaries proclaimed him as "*a very great Judge*" and the "*most learned [and] strongest*" in the Court of Appeal.[18]

Over the years a great many of our most distinguished judges have served on the bench of the Commercial Court. James Atkin, once Scrutton's pupil, was appointed to the King's Bench in 1913 and then went on to sit on the Court of Appeal alongside his old pupil-master, before leapfrogging him to the Lords in 1928. Other illustrious names well-known to modern lawyers need little elaboration, such as Lord Devlin, Lord Diplock, Lord Goff, Lord Mustill, Lord Bingham, the last senior law lord, and Lord Phillips, the first President of the Supreme Court.

The Commercial Court continued to adapt to the needs of its users during the twentieth century, building on its foundational principles. In 1962, the Commercial Court Users' Conference Report recommended that pleadings be avoided where possible and agreed statements of fact should be used.[19] A few years later, Order 72 of the Rules of the Supreme Court was introduced for "Commercial Actions" and allowed claims to be issued in the Commercial List. In 1970, the Administration of Justice Act of that year formally raised the list to the status of a court.[20] The Guide to the Commercial Court Guide was first introduced in September 1986 and is now in its tenth edition. It introduced significant developments in procedure, including pre-trial exchange of witness statements, skeleton arguments, chronologies and *dramatis personae*.

The work of the Court has also changed over its history. Notable changes have been its increasing internationalisation, the expanding breadth of its work, and its growing volume. In the 1950's and 1960's there was only one Commercial Court judge. At that time its core work was shipping, international trade and insurance, particularly marine insurance. In his autobiography, *Taken at the Flood*, Lord Devlin described the diet of work as follows:

[18] 1934) 78 SJ 589.
[19] (1962 Cmnd. 1616)
[20] Administration of Justice Act 1970, s.3.

"For the most part the list was made up of cases which were concerned with trade by sea ..This involved the charterparty, the bill of lading and cif ..and fob...contracts. This resulted in a great deal of nautical jargon but if you kept firmly in mind the fundamental principles of contract law, "dejargonisation" was quite easy."

By the end of the 1970's there were five Commercial Court judges and now there are generally eight Commercial Court judges sitting at any one time. Its work covers a far broader spectrum, including financial services, banking, energy and commercial fraud. This is reflected in the broad range of the work of COMBAR's members. As to its internationalisation, disputes between purely domestic parties are now rare. By the 1990s, three-quarters of the cases issued in the Court involved at least one foreign party,[21] a situation that remains roughly the same today.[22]Each year litigants from more than 70 different countries around the world used the Commercial Court.

Present

Turning to the present, in the twenty-first century many recent initiatives have been undertaken to improve and maintain the Court's operation and procedures. Though these are often novel, they nevertheless reflect the same themes that underlay the establishment of the Court and its operation through its history.

The Report and Recommendations of the Commercial Court Long Trials Working Party that was published in 2007 arose out the BCCI and Equitable Life Insurance Company cases that effectively collapsed after years of pre-trial procedures and months of trial.[23] Its recommendations echoed Mr Justice Mathew's efficient approach, recommending a limit for statements of case and creating a judicially settled List of Issues, which would become a court

[21] CC125, 5.
[22] The Commercial Court Report 2018-2019, 10.
[23] The Report and Recommendations of the Commercial Court Long Trials Working Party (December 2007) para 22.

document.[24] Mr Justice Mathew might, however, have been aghast at the 13-week maximum for two-party trials.[25]

At the other end of the scale, the Shorter Trials Scheme that came into effect in 2018 aims to shorten trials for relatively simple commercial matters that do not involve fraud or dishonesty, or multiple parties or issues. It seeks to limit disclosure and witness evidence and to deliver judgment following trials of no more than 4 days within 8 months of the CMC.[26] The Flexible Trials Scheme has also been introduced to allow parties to adapt trial procedure to suit their specific case, particularly with regard to disclosure and witness evidence.[27]

The vast increase in the use of electronic communication and documentation has required the development of procedures to deal with electronic disclosure. The Disclosure Pilot Scheme has been running since January last year and aims at radically changing the culture regarding disclosure among practitioners by introducing Initial Disclosure coupled with optional models for Extended Disclosure focussing on specific Lists of Issues for Disclosure.[28] Though they apply to cases which have grown considerably more complex and document-heavy than those that came before Mathew J, the new measures nevertheless aim to achieve much the same objectives that he had in mind when he attempted to limit evidence to only what was necessary to decide the case.

We have also seen the establishment of the Financial List, the specialist list set up as a joint initiative involving the Commercial Court and the Chancery Division, to handle claims related to the financial markets valued at over £50 million.[29] This measure almost exactly mirrors the need for judicial expertise in commercial matters that led to the foundation of the Court. Financial

[24] Ibid para 5.
[25] Ibid para 16.
[26] CPR PD 57AB.
[27] Ibid.
[28] CPR PD 51U.
[29] Guide to the Financial List (2015), paras 1.1-1.2.

work is an area of particular complexity, which requires specific knowledge and understanding of how the relevant markets operate. Financial list judges are chosen from the pool of Chancery Division and Commercial Court judges on the basis of specialist knowledge and case experience, and are provided with continuous training.[30]

One area that has seen a shift over the history of the Commercial Court is its relationship with arbitration. As I have explained, one of the original motivations for its creation was to counter the threat to the courts posed by the rise in arbitrations for commercial matters. Now, the Court exists alongside its alternative cousin much more harmoniously. The relationship between the two has been governed by statute since the Arbitration Act 1889 and the supervisory role of the court has grown in recent years to account for between 25 and 30% of the Court's work.[31] Lord Thomas CJ has explained the relationship between the two as "*Maximum support. Minimum interference*",[32] which I think is an excellent summary.

The success of the Commercial Court has also led to many international equivalents being established around the world. Indeed the Commercial Court has been at the forefront of encouraging and fostering these developments through the establishment of the Standing International Forum of Commercial Courts (SIFoCC).[33] SIFoCC was initiated in 2016 by the former Chief Justice Lord Thomas and had its inaugural meeting in 2017 with senior judges from 25 jurisdictions in attendance, including many of the major commercial centres of the words, from New York to Dubai. SIFoCC was established on the basis of three principles. The first is very much in keeping with the history of the Commercial Court, namely, that the sharing of best practice will allow courts to better serve their users. The second is that the commercial courts

[30] Lord Justice Hamblen, 'Litigating Financial Disputes in London and the Financial List' [9]-[10], available at https://www.judiciary.uk/announcements/speech-by-the-rt-hon-sir-nicholas-hamblen-litigating-financial-disputes-in-london-and-the-financial-list/ accessed on 7 July 2020.
[31] https://www.commercialcourt.london/arbitration
[32] Lord Thomas CJ, *Commercial Dispute Resolution: Courts and Arbitration*, (6 April 2017, Beijing)at [25] available at https://www.judiciary.gov.uk/wp-content/uploads/2017/04/lcj-speech-national-judges-college-beijing-april2017.pdf accessed on 7 July 2020.
[33] https://sifocc.org/about-us/

spread around the globe can make a stronger contribution to the rule of law acting in concert than they would separately. The third is to contribute to the development of emerging countries by offering effective means for the resolution of commercial disputes.

Future

Looking to the future, growing competition for international work as a result of the various commercial courts established around the world is likely. Brexit has accelerated this process and we have seen a number of European countries establishing English language commercial courts in order to lure such work and to take advantage of what are said to be juridical downsides for the UK of leaving the EU, such as in relation to the ease of enforcement of judgments.

In order to retain its popularity among the international commercial community, it is important that the Court should continue to be sensitive to changing needs, and always to be ready to adapt and to innovate. It must lead rather than be led. That means being true to its history.

In 1896, *The Law Journal* remarked upon the success of the then one-year-old Commercial Court, claiming that the Court "*proves that commercial men prefer to bring their disputes into the Courts where a rapid system of procedure is provided for them, and where they can rely upon having their cases decided by an able judge who is familiar with their transactions*."[34]

These three, considerations – judicial expertise, tailored and effective procedure, and relative speed – have remained guiding principles throughout the history of the Commercial Court and will remain so into the future.

In relation to judicial expertise, the maintenance of high calibre judges is absolutely essential to the Court's future. The quality of the Commercial Bar is one of the greatest assets that the legal

[34] (1896) 31 LJ 41.

industry possesses. Attracting those outstanding practitioners to the bench remains of huge importance. The financial rewards may not be the same, but the interest, variety and challenge of the work more than compensates.

In relation to tailored procedure, I am sure that the Commercial Court will remain at the forefront of procedural innovation and it is important that it does so. Continuous improvement and innovation in all areas is important. The Court must always look to improve the service offered to its users. One significant aspect of this is the need to seek feedback and ideas from court users. The regular meetings of Users Committees, another Commercial Court initiative, which encourage feedback from practitioners and all the different users of the court, are extremely valuable, and will continue to be so in the future.

Technology is likely to become more and more central to Commercial Court practice. The Court has led from the front in this area. It was, for example, early in the adoption of video-link evidence. It was the first court to have trials with electronic documents and was an early adopter of electronic filing. The move to the modern purpose designed courts in the Rolls Building in 2011 has facilitated technological innovation in and out of court.

Using and keeping up to date with technological developments is only going to increase in importance, and it will be vital to continue to innovate and incorporate technology into the Court's operation. The technological adaptability of the court has been vividly illustrated by its successful response to Covid-19. On 18 March 2020 all hearings in the Court were in a physical courtroom. On 20 March 2020 the Court heard its full Friday list entirely remotely. Since then nearly 100% of listed cases have been heard. The success of remote hearings is likely to lead to changes in practice. Remote hearings cannot fully replicate live hearings, particularly for trials, but there are hearings or parts of hearings which can be carried out entirely satisfactorily remotely, with potentially significant costs savings. At a recent Commercial Court seminar there was strong support for some hearings, or parts of hearings, being conducted remotely. AI is

another important development which is likely to lead to change, especially if it is deployed to save time and cost. AI may not replace judges, but it will be an increasingly important tool in legal research and preparation of argument.

In relation to speed, this is and will remain a central consideration. The success of cases tried under the shorter trial procedure is an example of this. A recent example of the speed with which the Court can act is the case of *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38, which concerned how to determine the governing law of arbitration agreements and whether the principles governing the grant of anti-suit injunctions should be affected by whether the arbitration agreement is governed by English law or a foreign law. The Supreme Court heard an expedited appeal in this case at the end of July, giving judgment last week. Its path through the Commercial Court was commendably quick. An expedited trial was ordered on 15 October 2019; the trial took place on 11-12 December 2019 and the judgment was delivered on 20 December 2019.

Another striking example of expedition is the recent business interruption insurance test case, *The Financial Conduct Authority v Arch Insurance (UK) Ltd and others* [2020] EWCA (Comm) 2448. Although this was issued in the Financial List, it was case managed and heard by present and former Commercial Court judges. It was heard between 20 and 30 July 2020 with a 160-page judgment addressing numerous complex legal issues of global significance being handed down on 15 September 2020. The procedure adopted was the Financial List test case procedure. In terms of subject matter, the *FCA* case was more of a Commercial Court case than a Financial List case, but the Financial List was used as it is currently the only court in which the test case procedure is available. It is a procedure that could usefully be adopted in the Commercial Court for issues of importance to particular markets.

The saving of expense was another consideration underlying the foundation of the Court and the practice of Mathew J. This remains a challenge. In this regard parties should give more thought

to the use of the flexible trial procedure. Proper use of that procedure would enable parties to take advantage of many of the initiatives set out in the 1895 Notice and pioneered by Mathew J, such as trials with limited pleadings and evidence or, as in arbitration fast track procedures, trials conducted largely or indeed wholly in writing. Whilst the flexible trial procedure requires agreement, it provides sensible commercial parties with the ability to adopt a procedure suited to their particular case and can achieve huge costs savings.

The continued good reputation of the Commercial Court is very important to COMBAR and to the UK legal services sector more generally. You, the members of COMBAR, have played an important part in maintaining that reputation and will continue to do so. The quality of judicial decision making is heavily influenced by the quality of the argument before the court, and the standards set by COMBAR are of the highest. By continuing to provide first class written and oral advocacy you can help maintain the high standards of the Court. By continuing to put yourselves forward for judicial office you can directly do so. The successful future of the Commercial Court is closely linked to that of COMBAR. Confidence in the continued success of COMBAR is an important reason for being confident in the continued success of the Commercial Court. Let us hope that both will continue to flourish for at least another 125 years.