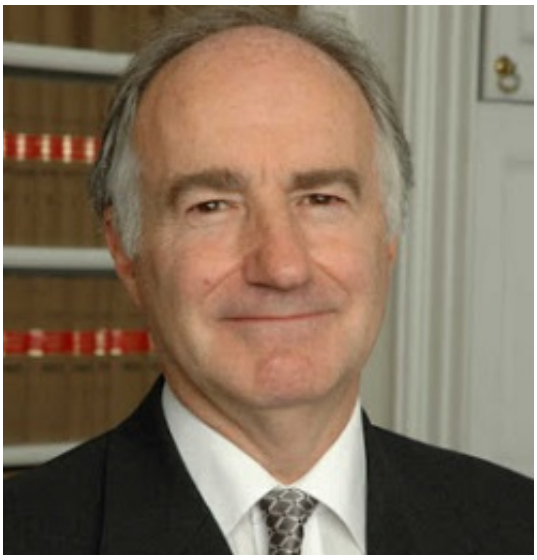
- Litigation Futures - http://www.litigationfutures.com -

E-filing set to become mandatory in Commercial Court

Posted By *Neil Rose* On November 14, 2016 @ 12:01 am In General,News | No Comments



Blair: enabling development

Electronic filing of all documents for the court file is likely to become compulsory in the Commercial Court next year, the judge in charge has revealed.

Mr Justice Blair said there would be consultation on whether skeleton arguments should be filed electronically too.

In a speech in London, Blair J said the electronic CE-file system has been available for Commercial Court users since 2015, but take-up has been slow.

"Last month, the Chancery Division, Commercial Court and TCC introduced a rule that where parties want to file documents electronically, they have to use the system to do so, rather than submit the documents as attachments to emails. Though we did not do it for this reason, it has had the effect that the number of electronic filings doubled.

"There are many advantages to electronic filing, not least that an accessible electronic record in relation to the case is built up from its inception. We have moved forward carefully with this process, because there are inevitably glitches, and court users need to have systems in place that allow for electronic filing.

"Though this has not been announced yet, it is anticipated that from some time probably in the first half of next year, the intention is that hard copy filing will cease to be an option, and that all documents required by the rules to be on the court file will have to be filed electronically."

He said the Rolls Building courts would consult on this, and give proper notice so that everyone has time to prepare.

"However, let me add this. We want this to be an enabling development, and we want to increase, not lose, flexibility. We envisage that the documents that will be required to be filed electronically are those which are required by the CPR or any practice direction to be filed on the court file.

"Normal day-to-day communications with the court, the sending of communications to the judge, including skeleton arguments, can continue to be done just as at present…

"One thing we will want to consult on, however, is whether skeleton arguments should be filed electronically as well as being sent out by email, etc. There may be issues with this, and we have no settled view at present, but it would seem to make sense."

Blair J was also positive about the prospect of paperless trials in time. "But – and it is a big but – we appreciate that the technology remains expensive, and, of course, the parties pay for it. Commercial arbitration and litigation is already expensive enough without adding to it unnecessarily…

"But ultimately, surely we should be looking to see in this field what has happened with most, if not all, other IT – that is, the technology becoming cheaper, as well as more efficient?"

Meanwhile, in another speech on business litigation, this time by Lord Justice Vos – newly appointed Chancellor of the High Court – delegates at the Insolvency Lawyers Association heard that the financial list was playing a role in maintaining the competitive advantage enjoyed by the courts of England and Wales internationally.

Vos LJ said: "So far some 22 cases have been started or transferred into the financial list, and four judgments have been handed down. Four have been resolved in other ways and 14 are still ongoing."

He also welcomed the introduction of insolvency express trials since April 2016, alongside the new form of shorter and more flexible trials scheme.

"The concurrent success of these two schemes along with the success of the financial list has demonstrated that these reforms and new services the judiciary has devised and implemented are indeed responding to a very real need in business litigation, and that the judiciary is active in ensuring users are heard and properly catered to."

Vos LJ was similarly positive about the prospects for the courts continuing to thrive post-Brexit, despite the choices international litigants now have. "Choice is good for us, because it drives continuous improvement and our competitive edge," he said.

"Of course, Brexit presents a challenge, but it is not one that should defeat us. We have to deal with the obvious problems of ensuring that our judgments can be enforced within the EU when we are no longer members of the EU and no longer bound by the Brussels I Regulation.

"We have to deal with the fact that we will no longer be bound by the EU Insolvency Regulation, or the revised version that will come into force next June, so that our insolvency proceedings will no longer be automatically recognised in the EU member states.

"We may wish to consider the applicability of the Rome I and Rome II regulations on applicable law. But these and many other questions can be resolved and while no final determinations have yet been made, you may rest assured that these issues are being given careful and detailed consideration by the judiciary and by the government, who are looking for simple and practical solutions.

"Once those and many other similar problems are solved, the question will still remain whether our law and our courts can cut the mustard. This will only be the case if we maintain the quality of our judges and the quality of our lawyers. We will need to move with the times. But we have a very good position from which to start."

Lady Justice Gloster has been appointed as Vice-President of the Court of Appeal (Civil). She will take over on 7 December when Lord Justice Moore-Bick retires.
