

The Business and Property Courts in Bristol, as seen from the Bar

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To some barristers and solicitors, the creation of a new Court in Bristol from October 2017 means something new to learn, and some change to be adapted to. But to most it represents a significant change in the approach to business and property disputes that has been continuing, on and off, for more than a generation. It also provides us with an opportunity to provide a valuable service to a booming region of the country. It is an opportunity to adopt the principles of efficiency, economy and specialisation that underlie these reforms, and if we can do so then all of the West of England – litigants, lawyers and courts – will benefit, and that cannot be a bad thing.

Although some might quibble, Bristol is the historical second city of England. The city of traders, merchants and engineers; business led, and serving a rich and varied hinterland. In recent years it has grown as a commercial centre, attracting both large financial institutions and dot.com startups, as well as its more traditional trades. It is the regional capital, significant in its own right and different in character and distant from London.

In recent years as litigation in London has been perceived to be too slow, too expensive and just too distant and inconvenient, the regional centres, Bristol amongst them, have acquired progressively greater legal importance as court centres for commercial or business disputes. The High Court has had a district registry of the Queen's Bench Division for many years. The late 1970s brought the first permanent Official Referee, now the Technology and Construction Court. In 1982 Bristol obtained a district registry for the Chancery Division, and a High Court Judge, together with a circuit judge qualified to sit in the High Court, originally shared between Bristol, Cardiff and Birmingham; then with Cardiff alone; until the judge was then solely allocated to Bristol. The Mercantile Court was formed in 1993, directed to try business or financial matters other than those that should be tried in the Chancery Division, or before the Official Referee. All of these developments recognised the growing significance of Bristol as a legal centre, and the convenience and efficiency that would arise when local or regional cases of some technical difficulty were commenced, managed and tried here.

These alterations had expanded the range of cases that courts in Bristol could hear, but the courts themselves were still organised and described on near medieval lines. To most litigants, and some lawyers, the concept of the Queen's Bench Division was quaint and meaningless, whilst the Chancery Division had overtones of Charles Dickens and *Jarndyce v. Jarndyce*. Worse, the practices of the Queen's Bench and Chancery Divisions, and their constituent courts or lists, were often materially different, and those familiar with the practices and foibles of one division would shy away from the other. This caused problems when litigation straddled the boundaries of the divisions, as much business based work did. And business litigants usually took a hard-nosed view to litigation. Where should they issue?

The Business and Property Courts can be seen as a first step towards moving away from these divisional differences. If your case falls within the scope of Business or Property work, then it goes into the Business and Property Courts, to be managed and tried there. There are however specialist lists within the Court into which the Claimant must allocate the case when it is issued, to ensure that the case is handled by the appropriate judiciary with the appropriate expertise. Some of these lists have existed for years (the Commercial Court, for example) whilst others are new (Trust and Probate list, for example). The relevant Practice Direction guides the parties towards the most appropriate list, so theoretically there is less choice in issuing than there used to be, and it will be interesting to see whether the Court enforces this rigorously or not. So that anyone who is interested is aware of it, each 'list' has been allocated an indicator as to whether it relates to the Queen's Bench or the Chancery Divisions, in brackets after the name. The rules relating to each division presently apply to the respective lists. But it will be likely that each 'list' will develop its own practices, and the collection of the various lists under the Business and Property Courts umbrella will lead to a more common practice between the lists as a whole.

If the case is one that is suitable for the County Court, then it will be marked as Business and Property Work either by the claimant on issue, or on allocation. It will then be managed and heard by a specialist judge, in the same way as cases were previously marked 'Chancery Business'.

The Business and Property Courts have their own practice direction, which regulates the listing and management of those Courts' business. One point that should be noted is that the Practice Direction lists a range of cases – for example, Inheritance

Act claims and domestic possession claim, that should not be issued there. The underlying theme is that the only cases that are issued there should be cases of a type that would normally be tried by a judge, not a district judge.

But what about Bristol's own position in this development? Although there are some lists that are highly specialised, the Chancellor of the High Court has stated that the necessary judicial expertise to try them out of London will be made available if it can be. Therefore, almost any case that can be issued in the Business and Property Courts can be managed and tried in the regions. As Lord Justice Briggs noted in the Civil Courts Structure Review, no case should be considered too big for dealing with in a regional centre. The Practice Direction for the Business and Property Courts indicates that this should be so by directing that the case should be issued out of the District Registry with which it has the closest association; and if it is not, it should be transferred to that District Registry. If lawyers play by the rules, the result will be that more cases are issued in the regions, and larger cases are both issued and heard there. In part, the regions are a pressure valve for increasing work in the system, directing more and better work out of London, where it can be dealt with more quickly, and with efficiency, with commensurate saving in time and cost.

But all the rule changes in the world would be no good unless the clients – the people for whom this system exist – want to use it. And they will only want to use it if all of the facilities that they need are provided for them. In this regard, matters appear to be falling into place. There has been real change in Bristol and the West of England that it serves over the past decade. First, we have a new Civil Justice Centre which offers facilities that are both necessary and appropriate to commercial litigation – modern courts and conference facilities, IT facilities, and provision for a centralised court administration. Secondly, those solicitors who have been ever present in Bristol have enlarged, some of them adopting a national presence; boutique and niche solicitors have arrived to serve specialist businesses and needs; and firms based in London have sought to create their own regional presence. There has been an enlargement and professionalization of firms throughout the West, and not simply in Bristol, but in other regional centres south and westwards. Thirdly, the business and property side of the bar – those who hold themselves out as dealing with this sort of work – has grown enormously, both in numbers and depth of experience. The quality, range and professionalism of both solicitors and barristers in Bristol now rivals anything that other centres – including London – can offer. Of course, lawyers will only

flourish where clients exist to instruct them, and the expansion of legal services reflects the development of businesses in Bristol and the West that I have already mentioned.

And fourth, we have and have had the judges who can do the work. We have welcomed Mr. Justice Birss as the newly appointed Supervising Judge for the Business and Property Courts of the Western Circuit; HHJ Paul Matthews, well known for his many academic writings, as our Specialist Chancery Circuit Judge (cross-ticketed for circuit commercial); HHJ Jonathan Russen QC as our Circuit Commercial Court and TCC Judge (cross-ticketed for chancery), and HHJ Barry Cotter QC as our Designated Civil Judge (cross-ticketed for all three).

For lawyers, the new courts are an opportunity. For clients and litigators, they represent a new facility which is there for their benefit, and for the benefit of all people and businesses in the West of England.

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