

Judge in charge makes her mark

In a wide-ranging interview with *NLJ*, Mrs Justice Cockerill, head of the Commercial Court, describes the new challenges facing the court and how the pandemic allowed it to test new ways of working that will leave a lasting legacy.

And, more personally, she describes her passion for judging—and her determination to encourage other women and ethnic minority students, academics and practitioners to consider a judicial career after a case of ‘imposter syndrome’ nearly stopped her applying



Mrs Justice Cockerill's two-year tenure as ‘judge in charge’ of the Commercial Court began amid the unprecedented challenges posed by the pandemic and will end this August with the court ‘as busy as it has ever been’.

Her enthusiasm for her role is as dynamic and welcoming as her light, modern office in the Rolls Building, with its standing desk, bookshelves full of legal tomes and personal mementos—and plenty of teabags.

It is easy to see why, after initially enjoying the ‘purity’ of remote hearings, she is now ‘thrilled’ to be back to the ‘full experience, the theatre’ of the trial.

And that ‘theatre’ is becoming evermore high octane. With Russian litigants among the biggest international users of the Commercial Court, there will be issues around how the growing list of sanctions on individuals, businesses and state entities will bite on these high stake cases (see box out).

Cockerill J says parties, more generally, are also taking an increasingly ‘high temperature, hard fought’ approach. Another of her bugbears is inaccurate pre-reading and timing estimates, with practitioners trying to shoehorn too much material into too little time—to the extent that counsel have been taking submissions so fast even experienced transcribers cannot keep up.

This is putting judges, already stretched thin by a shortfall across the High Court, under extra pressure. Throw in significant procedural reforms and attempts to improve diversity, and it is easy to see why Cockerill J would like to ‘clone’ herself.

However, being ‘judge in charge’ is the ‘best job ever’, she says, without hesitation. ‘It is very hard work because it comes on top of being in court full time.

‘But it is an enormous privilege to have the opportunity to move what the court is doing in the direction I have wanted it to go; to update the Commercial Court Guide; to do more work on our diversity; to do more events; and to raise the profile of the court.’

From her vantage point, she gets a real sense of what is happening across the court’s business. ‘It is endlessly fascinating,’ she says. ‘I just wish I could clone myself so I could have one of me just working on that the whole time but there we are.’

Lockdown & remote working

In March 2020, the Commercial Court, unlike many other jurisdictions, had the technology in place to go online overnight, holding its first fully virtual trial in the first week of lockdown, with judgment handed down a month later.

Living near the Rolls Building, Cockerill J quickly returned to her office to conduct hearings after a brief stint when both she and her barrister husband were logging in remotely from their flat.

She took over as judge in charge in August 2020, overseeing what she describes as the largest justice sector pilot ever conducted in this country into remote working.

Among its legacies are the Friday list, which will continue to be heard remotely; international witnesses and experts being able to give evidence remotely; and greater flexibility around hearings so a participant who suddenly tests positive for Covid, for example, can join remotely rather than see the case adjourned.

Outside London, the regional commercial courts have been using remote hearings to cover each other if a judge is ill or there is difficulty in finding a hearing date.

As importantly, it allowed the court to ‘get past the difficulties, the wild enthusiasm, and really dig into the day-to-day experience of remote hearings,’ she says. ‘It has also made us really appreciate the things about live hearings that we had taken for granted because they were so normal to us.’

Initially, she found remote hearings less tiring because there wasn’t that ‘information overload’ that comes with being in court—how parties react, the way evidence is given, watching the comings and goings.

‘But I am so thrilled to be back to the full experience, the theatre of the trial,’ she says. She has had two ‘fully live’ six-week trials—and I am loving every second. Seeing people working together, seeing the dynamic of the trial, the jokes which appear even between the parties, is marvellous.’

The biggest concern for her has been the damage remote working has done to the learning experience for junior lawyers. ‘It is in court where you are constantly absorbing information from watching the judge, your team, the other team, the witness,’ she explains. ‘It is going to and from court where you have the liberty to ask the dumb question. It was a huge part of my learning to have those ten or 15 minutes to say to your leader, can I just ask you X.’

However, on a positive note, she says being forced to work remotely actually brought judges closer together, with a weekly online meeting so those on circuit are kept in the loop.

What makes a good judge?

For Mrs Justice Cockerill, the key qualities are 'patience, politeness, a willingness to try to empathise and humility'.

The different areas of judicial practice then call for different qualities in different measures, she says. In the Commercial Court, for instance, 'we are very focused on adoring the law'.

However, rather than break it down into abstract qualities, Cockerill J says: 'When I started sitting as a judge and I wasn't sure what a good judge would do, I would think 'what would Mr Justice Phillips (now Lord Phillips of Worth Matravers) do?'

He was the Commercial Court judge (later the inaugural President of the Supreme Court) before whom she appeared most often as a junior and he is the person who 'sits at my shoulder'.

She recalls her first trial as a very junior barrister. 'I was so stressed I literally could not see what was in front of me on the page.'

'He could see I was basically floundering and said he could do with a five minute break. It was plainly to give me a moment to pull myself together. He was a model of kindness and courtesy and I try always to remember that.'

There is increasingly a focus on wellbeing within the legal profession. 'It is definitely a changed world,' she says, recalling being told to 'burn the midnight oil' to be ready for an expedited trial.

But the demands are higher now, she says, because of the 'sheer deluge' of material that can come in at short notice, particularly for those at the 'bottom of the legal chain'.

There is a danger, she acknowledges, that judges, 'having ridden out so many storms to get to the bench, may feel 'I did it, why shouldn't they?''

But, she continues, 'part of the reason so few of my contemporaries are still in the job is because of those demands. When I started at the Bar, we were 50/50 women to men. When I arrived at silk, I looked around and, while I wasn't quite the only one standing, it was jolly close.'

She believes the message is getting across that judges are not as 'distant and unrealistic' about people's lives as traditionally thought.

'I don't find counsel or their teams are shy about saying 'that is a problem because of X' and we will listen,' she says.

'It was certainly one of the things we learnt in lockdown—that you have to have a sense of what else is going on in people's lives.'



Workload & increased demand

This is important, given the workload. The court sat for more trial days in 2020-21 than in the previous year. Demand for one day hearings is unprecedented, increasing by 32% in three years, with only 30%-40% settling.

This is partly driven, she notes, by parties taking a more contentious approach, taking more points—and fighting them very, very hard.

'One day hearings/longer applications are probably the perfect place to see this phenomenon,' she says, 'because every extra point being argued has such a visible effect on the time available.'

She stresses that this approach is 'far from universal' and, in many cases, the parties work together to triage points out of contention.

But she adds: 'I don't know to what extent it is people coming out of Covid with a sense

of urgency that they have missed things or to what extent it is a paradigm shift in the way litigation is done. 'We have always encouraged a co-operative approach but we are seeing less of that—it is far more general for parties to take a high temperature, hard fought approach.'

She hopes to get a better sense of why this is happening from her regular talks with solicitors. But she warns: 'It is definitely a case of 'watch this space' because of the practical impact it has on us.'

Practitioners should be on notice. When it comes to inaccurate timing estimates, Cockerill J has already made the consequences clear—cases may be stood out of the list, relisted without expedition, and with possible cost consequences.

She is hoping another judge will be recruited to the Commercial Court this year—and she does a good job 'selling' the role.

'The charm of being a Commercial Court judge is you see so many different cases because they arrive beautifully packaged for you—and all you have to do is decide them and write the fiendishly difficult judgments,' she says wryly.

There is also the variety of work. 'You get to sit in the Administrative Court, in the Court of Appeal Criminal Division. You get to be the emergency out of hours judge, where someone might want to stop a deportation flight. You might sit in the Competition Appeal Tribunal or the Media and Communication Court.'

'You are engaging not just with the best commercial work but also in a huge learning curve the like of which you won't have encountered since you were very junior—and that is enormous fun.'

Procedural reforms & changing culture

As judge in charge, she has been driving procedural reforms, including the disclosure pilot; the witness statements practice direction; and the updated Commercial Court Guide.

But changing the culture is a gradual process, she says. She laughs at the suggestion the Bar has a 'visceral hatred' of disclosure. 'Yes!' says the former commercial silk. 'But again, we are starting to see fewer disputes on the disclosure review document so I am hoping, with further guidance, we will get to a happy landing point.'

Diversity & social mobility

Where she remains concerned is over diversity. Cockerill J is just one of two women out of 13 Commercial Court judges, none of whom comes from an ethnic minority background.

'We are doing everything we can to look outside the traditional pool of the Bar,' she says. 'I have made it clear to solicitors that we are keen to offer mentoring and for them to sit with us. We have potential solicitor candidates interested in the Deputy High Court judge route—which is the one I took—who are doing one-to-one sessions with judges.'

She says they are also engaging with academia, which is the other 'natural pool' for people of the right age and skill set.

But changing the pool is a long-term project. The court is working with the charity IntoUniversity, which supports young people from disadvantaged backgrounds.

A group came to the Rolls Building to spend a day with a judge and meet people from different backgrounds within the Bar to see commercial law as a desirable career path.

It proved a 'huge success', she says, pointing to a box of chocolates from one of the group, though she acknowledges this is a 'long burn'.

She also raises the importance of social mobility. 'Commercial law pays a lot of money,' she notes. 'We were able to say to students worried about committing to university that you will have a career which will enable you not just to pay off your debts but to support your children and give them the opportunities you haven't had. I know from their faces that they were thrilled by the idea of an intellectually fulfilling career that takes away that financial worry.'

She is also keen to challenge 'imposter syndrome' in applying for roles—something she admits almost prevented her from applying to become a judge.

Despite her successful career at the commercial bar, and five years as a QC, she had to be encouraged to apply and still didn't think she would be selected, partly because she didn't see many other women in that role — 'that can lead to a sense that you have to be practically a unicorn to get through'.

She is starting to see a change in those appearing before her, with more women QCs leading cases and a slight improvement in the number of minority ethnic leaders.

That has yet to feed through to the bench. 'Having a diverse bench matters in all sorts of ways,' she stresses. It is important for individuals to be able to make the best use of their skills; and to reflect the society the court serves, both domestically and internationally.

So how does diversity impact on decision-making, given judges are making judgments based on the law?

'You are right that, in a sense, at first instance judge level, it is all about the law and getting the answer right,' she accepts. 'We are bound by the Court of Appeal and Supreme Court, so we operate within certain tramlines, though our experience informs the way we approach different sorts of evidence.'

But, where judges are sitting in panels, she says, greater diversity in judicial thinking at the highest levels promotes a more rigorous debate than operating on the same assumptions.

The future

Last year, the Commercial Court celebrated its belated 125th anniversary. So how does Cockerill J view the next phase of its life?

She doesn't see arbitration as a challenge and, on the international front, they share ideas and experiences with judges from all round the world.

'In terms of those international courts specifically held up as targeting

How is the Russian invasion impacting cases?

The Commercial Court is the forum of choice for bitterly fought legal battles between Russian and Ukrainian litigants with billions of pounds and international reputations at stake.

According to the Portland Consultancy's 2021 report, Russia has been dominant in terms of international litigants for the last six years, particularly in civil fraud and investigations cases, and most commonly against Ukrainian litigants (see bit.ly/3kWyCmB).

Mrs Justice Cockerill says the court does not compile statistics by nationality. 'But we certainly do see a lot of Russian and Ukrainian business,' she confirms.

The huge fraud trial involving the Ukrainian Privatbank was recently adjourned for a year because of concerns that a fair trial was impossible.

Cockerill J says: 'We are seeing similar situations—both in terms of Ukrainian litigants affected by the hostilities and Russian litigants who are sanctioned. Each case is carefully considered on its facts and the particular issues which arise. But representation, availability of witnesses, and availability of documents have all featured.'

'So far, in each case which has had a nexus with the sanction situation, it has been interesting hearing the variety of arguments that are coming up.'

Legal commentators have raised concerns that parties may be trying to use the courts to legitimise litigation against people who have fallen out of favour over politics or money and to take advantage of interlocutory reliefs, such as worldwide freezing orders.

'This kind of question is not really one for a judge!' says Cockerill J. 'All I can say is that we are careful to look at each case on its merits.'

'Freezing orders, for example, can only be granted if certain criteria are established—in particular, evidence of an arguable case and solid evidence of real risk of dissipation of assets with the intention or effect of rendering enforcement more difficult or impossible—and then the judge has to be satisfied that the balance of convenience favours the granting of relief. Those really are considerable safeguards and they are always considered closely.'

Russian disputes may in future go elsewhere because of sanctions. However, Cockerill J says the war is likely to generate work around insurance and sanctions-related litigation: 'I know barristers are advising on many issues arising from the conflict, including war risk clauses.'



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our business, there is a big market for commercial litigation,' she says. 'But our sense is we are doing our job well and hope people still want to bring their work here. Our experience, at the moment, suggests they do.'

Her role finishes in August and she will go back to spending half the time in the Commercial Court and half the time on 'other things'. There is no 'co-regency', she says, and her successor won't be announced till the summer.

This will be 'a time to draw breath', she says. 'There are two things I know that I want to do. I am at the stage where I have a sense of what I would like to work on in improving my judgments.'

Having been a full-time judge for only five years, she also wants to broaden her experience, for instance in criminal trials, and sitting in other divisions.

With so much on her plate, how does she relax? 'At the moment it is largely cycling, running, yoga, cooking—and playing with

the cat,' she says.

Her court office bookshelf has copies of her book *Eleanor of Aquitaine*, a re-evaluation of the life of a remarkable woman who became Queen of both France and England.

Having used her forensic skills for one book, has she another in mind? 'Do I sound like I have time?' she laughs.

'I confess that, yes, I have thought about writing a novel, possibly even one based on a classic murder case. But I am far from convinced I have the right skills for that. I certainly will continue to research and write about medieval history—when I have time, which still seems like a bit of a distant prospect.'

But what has become increasingly clear to Cockerill J is that 'I completely love the judging. I am very much enjoying this job and I am still only 53'.

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