

ROLLS BUILDING

FINANCIAL LIST INITIATIVE

CONSULTATION DOCUMENT

1. As the financial markets change, the Courts of England and Wales are committed to continuing to meet the needs of the international financial community. English law as developed by judicial decision provides a combination of flexibility and certainty that has been shown to suit the just resolution of financial disputes. At the same time, and in consultation with users, the Courts are committed to continue to provide methods of dispute resolution that meet changing financial needs.
2. The Rolls Building is the world's largest dedicated business court, housing the Chancery Division, the Commercial Court and the Technology and Construction Court. Opened at the end of 2011, the building has worked well, and the intention is now to draw on the synergies of having experienced business judges in the same place to provide further flexibility in the way that financial disputes are tried. The disputes in question are the more complex and important financial markets cases which are of high value or raise market issues or both.
3. The initiative was announced by the Lord Chief Justice in his Mansion House speech in July 2014 in which he said:

"... We must be sure that we are providing at the Rolls Building what the markets require by way of fast, efficient and economical dispute resolution. We will be looking closely through joint work between the Chancery Division and the Commercial Court of the Queen's Bench Division at what more we can do to meet the needs of court users in financial cases, seeking views from the institutions, the markets and the professions."

4. Following that speech, there has been extensive consultation with a targeted list of consultees with a range of different experiences of financial markets business. We are grateful to all who participated. In the light of their views, in January 2015 a Working Group was formed to develop proposals covering (a) the creation of a new specialist list to deal with the more complex and important financial markets cases; (b) the adoption of appropriate procedures for the case management and trial of such cases and (c) the availability of test case procedures for cases involving issues of market importance.
5. The purpose of this Consultation paper is to summarise the proposals and invite comments.

(a) The Financial List

6. The views expressed to us so far show strong support for the creation of a “Financial List” based on the existing procedures in the Commercial Court Guide. There will be no new “learning process” required, and the operation of the Financial List will be familiar to those who already use the courts.
7. The implementing measures are straightforward and comprise –
 - a. A new Part of the Civil Procedure Rules establishing the Financial List
 - b. A new Practice Direction accompanying it
 - c. A Guide to the Financial List showing amendments to the Commercial Court Guide and Chancery Guide
 - d. New forms available online for Financial List for commencing proceedings in the Chancery Division and the Commercial Court
 - e. A new Practice Direction providing for a pilot scheme for Financial Market “test” cases, designed to give the opportunity where appropriate to resolve market uncertainty issues at an earlier stage than is currently conventional.
8. Drafts of the proposed new CPR Part, the Practice Direction and the Guide to the Financial List are attached.

9. In summary, the proposal is to provide users with added flexibility and access to nominated judges. Parties will be able to commence proceedings in the Financial List in either the Commercial Court or the Chancery Division. Wherever the proceedings are lodged, the case will be dealt with by a docketed judge who will manage the case from inception, through the pre-trial stages, through trial, and through enforcement if necessary.
10. It will be possible to transfer cases into and out of the Financial List either at the request of the parties or on the court's initiative.
11. New Court forms will be available online with the appropriate heading for commencing proceedings in the Chancery Division or the Commercial Court. It is proposed to make available the following forms in e-format:
 - Claim forms for Part 7, Part 8 and Part 20 claims
 - Acknowledgement of Service forms for Part 7, Part 8 and Part 20 claims
 - A general application notice and
 - A standard disclosure notice
12. Subsequent documents such as the statements of case or witness statements drafted by the parties will also refer to the Financial List in the heading.
13. Parties to all Financial List claims, whether commenced in the Commercial Court or the Chancery Division will be expected to complete the current Commercial Court Listing Form, Commercial Court Information Form Pre-trial Checklist and Progress Monitoring Information Sheet.

The Working Group invites any comments on the content of the draft instruments.

(b) Cases eligible to be allocated to the Financial List

14. The proposed definition is as follows :

“Financial List claim” means any claim which:

(a) relates to loans, project finance, banking transactions, derivatives and complex financial products, financial benchmarks, capital or currency controls, bank guarantees, bonds, debt securities, private equity deals, hedge fund disputes, sovereign debt, or clearing and settlement; and is

(i) for more than £50 million or equivalent; or

(ii) is ordered into the list;

or which

(b) requires particular expertise in the financial markets; or

(c) raises issues of general importance to the financial markets.

‘Financial markets’ for these purposes include the fixed income markets (covering repos, bonds, CDs, debt securities and commercial paper generally), the equity markets, the derivatives markets, the FX markets, and the commodities markets. Cases of insurance and re-insurance and professional negligence fall within the list where the case raises points which particularly affect the financial markets.”

The Working Group welcomes comments on this definition.

(c) The allocation of judges to hear Financial List cases

15. As indicated, the Financial List will draw on the judicial resources of both the Chancery Division and the Commercial Court. All Financial List cases will be allocated to a docketed judge who will preside over case management decisions from the commencement of proceedings to the final trial through enforcement if necessary.

16. There is a formidable body of expertise in the two courts, and this is an acknowledged reason for their success in attracting financial disputes. But financial markets change, and the intention is to provide market development seminars for nominated Financial List judges. These will be set up by the Judicial

College in conjunction with the Financial Markets Law Committee¹ (which already has a long established programme for the judiciary).

17. The assignment of a judge to hear a particular case will be the joint responsibility of the Judge in charge of the Commercial List and the Chancellor. The parties can make known their views, if they so wish, as to whether the case is more appropriately allocated to a Commercial Court or a Chancery judge.
18. The current proposal is that four weeks prior to the date fixed for the first Case Management Conference, the Claimant may write to the Chancellor and the Judge in charge of the Commercial List, briefly identifying the key issues in the case and any matters considered relevant to judge allocation. If practicable, this should be a joint letter agreed to by all parties. If not, the other parties should write with their own comments.

The Working Group invites comments on the allocation procedure

(d) The procedure for cases in the Financial List

19. As indicated, all cases in the Financial List will be governed by the same procedure, regardless of whether they are commenced in the Chancery Division or the Commercial Court. The Commercial Court procedure is tried and tested, and designed for the efficient conduct of heavy cases. This means that there will be no new “learning process” for the professionals using the Financial List. Even where a case is started in the Chancery Division, the procedures set out in the Commercial Court Guide, as indicated in the new Financial List Practice Direction and Guide, will be used.
20. For the same reason, the Admiralty & Commercial Registry and the Commercial Court Listing Office will be the contact point for all matters relating to Financial List cases, after the initial claim form has been lodged. The Commercial Court Listing Office will liaise with the Chancery Listing Office in relation to Financial

¹ The FMLC is a not-for-profit organisation established for the purposes of education and the advancement of the understanding of financial markets law.

List cases, particularly those where a Chancery Division Judge is designated to preside over the case.

The Working Group welcomes comments and suggestions.

(e) Market test case procedure

21. The risks inherent in the markets were shown by the GFC, and in response, we propose a new procedure for financial markets issues where immediately relevant authoritative English law guidance is needed. The procedure will enable issues to be brought before the court by interested parties even though an actual dispute is not before the court. There are various safeguards built into the procedure to ensure that the issues are properly ventilated. It is suggested that this be a pilot scheme in the first instance. The key features of this new procedure are

- a. It enables a 'qualifying claim' to be brought to court by parties with opposing interests without the need for there to be an actual dispute between those parties.
- b. A 'qualifying claim' is defined as a claim which raises market issues in relation to which immediately relevant authoritative English law guidance is needed.
- c. In an appropriate case, a relevant trade body or association may join as a party or otherwise be represented.
- d. The general rule is that there will be no order as to costs.

22. The draft of a new Practice Direction setting out the relevant procedure is attached.

The Working Group welcomes comments on the proposed market test case procedure

23. Financial users have a choice of where and how to resolve their disputes. In that spirit, the Financial List, like the financial markets, should be open to innovation over time. Our commitment is to be responsive to the needs of users and provide for the just resolution of disputes as efficiently as possible.

24. Responses to the Consultation Document should be sent to

Ms Vannina Etori
Private Secretary and Legal Adviser to the Chancellor of the High Court
The Rolls Building
7 Rolls Building
Fetter Lane
London EC4A 1NL

Email Vannina.Etori@judiciary.gsi.gov.uk

25. The deadline for comments is **Friday 29 May 2015**.