

Commercial Courts Report 2022

Portland's 2022 annual Commercial Courts report celebrates 10 years of analysing judgments from the London Commercial Courts to identify notable trends – including the number of cases, what country litigants come from and the attractiveness of the courts globally.

This year's report reviewed the 234 judgments handed down in the London Commercial Courts between April 2021 and March 2022.

Portland's in-house data analysis and polling identified three notable developments, and our panel of specialist legal writers provide expert opinion.

01

A dramatic drop in the number of judgments – a once-off, or a sign of decline?

Twenty per cent fewer judgments were handed down this year and 34% fewer litigants used the courts.

A combination of Brexit, COVID-19 and increased competition from other international courts is likely to be responsible.

02

The end of Russian dominance in the courts?

Russia has dominated the London Commercial Courts for over ten years – and the numbers show last year was no exception.

Portland's exclusive polling confirms, however, that public opinion is firmly against law firms which provide legal services to Russian clients.

03

The UK public think the Courts have an important impact on the country's reputation.

The Courts however face more threats and greater competition than ever before.

But there are opportunities as well – most notably from the rise of remote hearings.

Includes expert opinion from:



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Solicitor at Preiskel & Co and legal commentator

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KEY FINDINGS:

75

COUNTRIES
APPEARED IN THE COURTS - SAME AS PREVIOUS YEAR



234

JUDGMENTS
HANDLED DOWN
20% DECREASE FROM PREVIOUS YEAR



914

LITIGANTS
34% DECREASE FROM PREVIOUS YEAR



46:54

SPLIT
UK V. NON-UK
LITIGANTS



1

A dramatic drop in the number of judgments – a once-off, or a sign of decline?

Twenty per cent fewer judgments were handed down this year and 34% fewer litigants used the courts.

Last year (2020-2021) may have been a record year for the London Commercial Courts, but this was short-lived. From April 2021 to March 2022, the commercial courts handed down **234 judgments**, a **20% decrease** from the previous year.

The decrease in the total number of judgments handed down by the courts, and correlated drop in the number of litigants, is seen most among European, Asian, and American litigants. There was a small increase in Oceanian litigants. South America and Africa were the two regions facing the biggest drop, with 61% and 38% decreases respectively compared to the previous year.

Despite the decline in the number of judgments, London’s reputation as the world’s leading hub for foreign litigants appears to be unharmed, with the number of nationalities remaining at 75 – the fourth consecutive year it has been above 70.

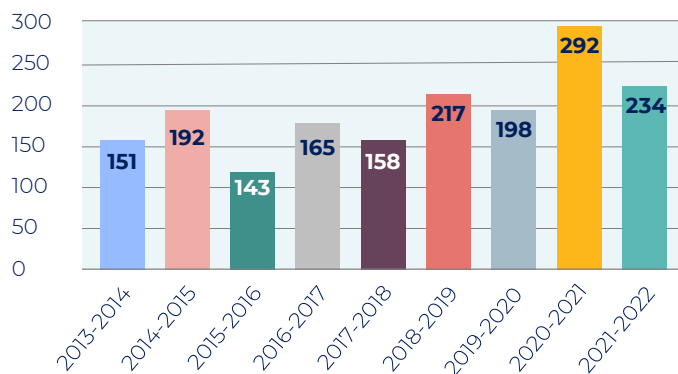
Over the past twelve months, the UK accounted for 46% of the total number of litigants, contrasting with the record 50:50 split of last year. This again underscores the international nature of the courts.

It is not clear whether this drop will become a decline; over the past five years, there has been an upwards trend in the number of judgments. This drop is the most significant since 2016. All previous year-on-year drops were however short-lived, with a significant increase systematically compensating the following year.

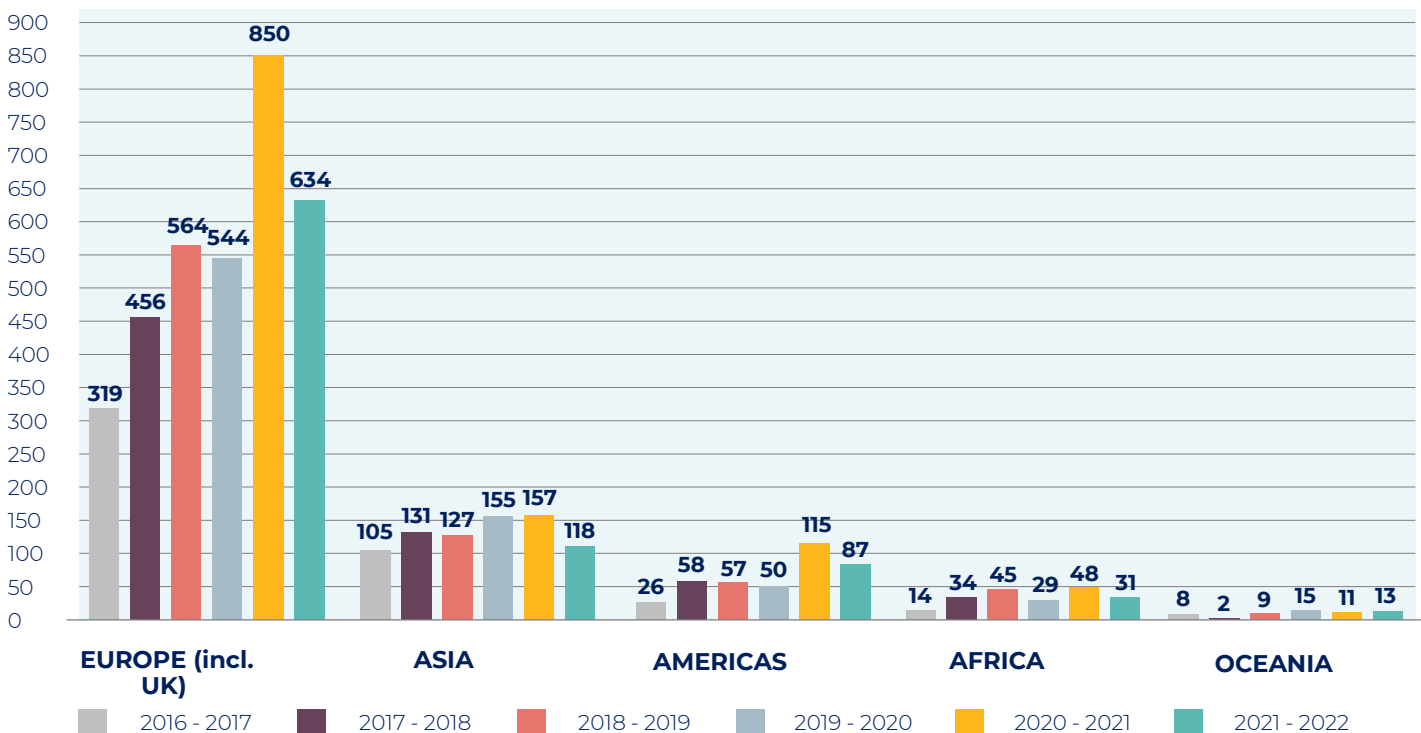
This year’s data may reflect a number of factors: the increased competition that London has been facing from other international courts, and significant pressure from the combined effect of COVID-19 and Brexit.

Only time will tell whether this drop becomes a trend of decline after years of significant growth.

A. Number of judgments handed down by the London Commercial Courts since March 2013



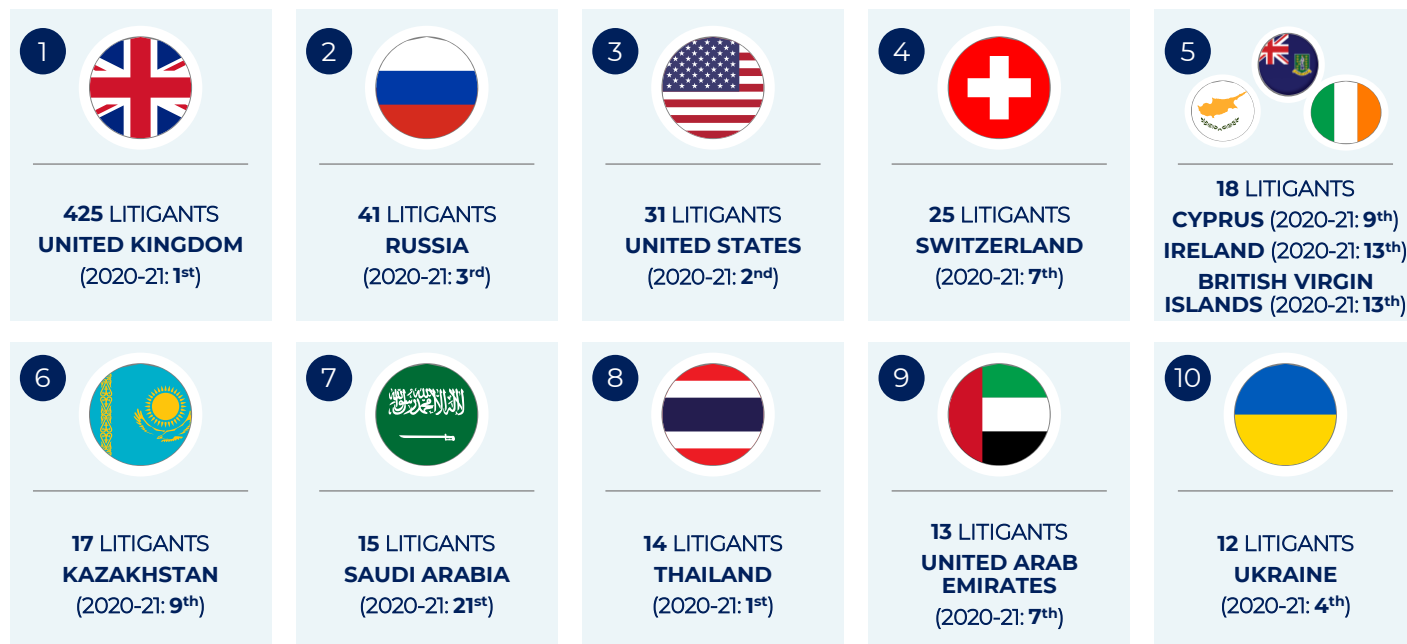
B. Litigants by region*



*of known nationality.

THE COURTS REMAIN ATTRACTIVE TO GLOBAL LITIGANTS

C. Top 10 litigants by nationality

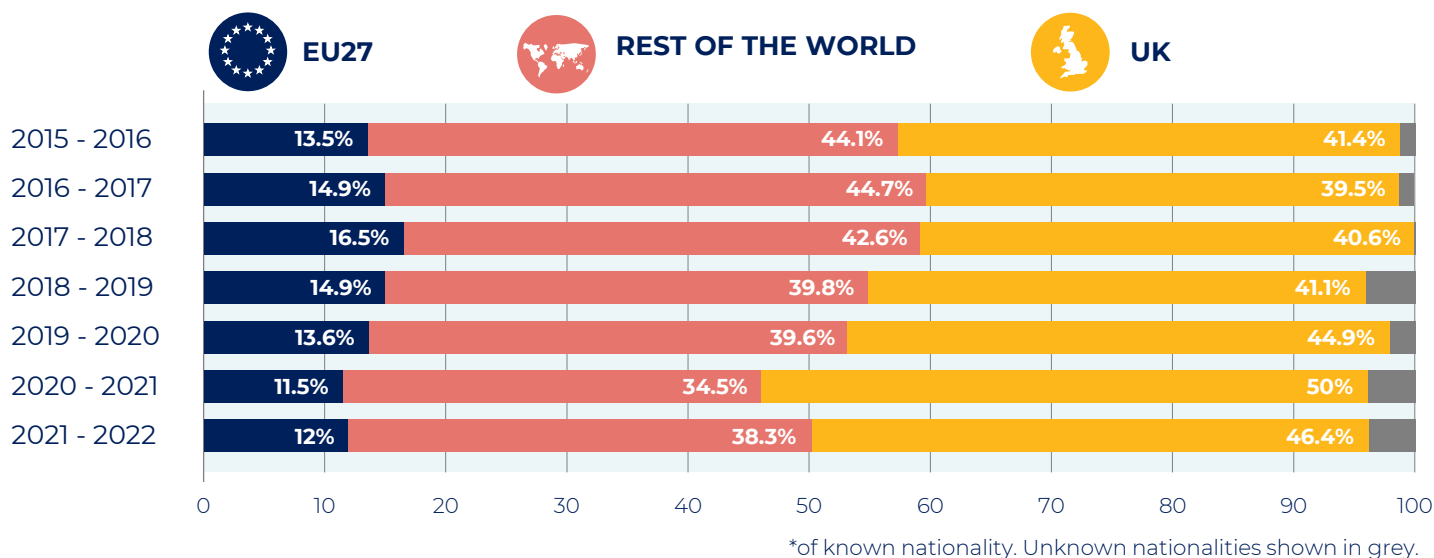


Despite the decrease in the number of judgments handed down, the London Commercial Courts have continued to attract litigants from the same number of jurisdictions – with **75 countries** represented in the last year. This includes **14 new nationalities**, such as Bermuda in 14th position with a total of eight litigants. Additional new nationalities included the Republic of Benin, Iraq, Czech Republic and Congo, among others.

In line with last year’s findings, Russian and US litigants continued to dominate the top three positions alongside the UK. There were several new entries in the top ten litigants by nationality (chart C), with Saudi Arabia (15 litigants), Thailand (14 litigants), and, for the first time in several years, Ireland (18 litigants).

Meanwhile, despite some concerns about the opening of new courts in the region, there has been limited change in the proportion of EU-27 countries represented in the London Commercial Courts (chart D). The EU represented 12% of litigants this year versus 11.5% last year. Furthermore, the proportion of litigants does not tell the full story. This year, there were 16 countries from the EU represented, compared to 15 last year. Only two EU-27 countries appeared in the top ten nationalities: the Republic of Cyprus and Ireland, each with 18 litigants. This year also saw new EU-27 nationalities compared to last year, with the Czech Republic, Estonia and Poland represented. Meanwhile, Austria and Portugal had no litigants using the London Commercial Courts.

D. Proportion of EU27, UK and rest of the world litigants 2015-2022



FACE-OFF: CASES WITH NON-UK LITIGANTS ARE STILL A PROMINENT FEATURE OF THE LONDON COURTS

In a face-off between countries (claimant v defendant), the United Kingdom unsurprisingly continues to be the most represented party – featuring in all the top four combinations.

In the past twelve months, 64 judgments involved UK v UK litigants and eight for Saudi Arabia v. UK. This was followed by Switzerland and the US, who were parties to five and four judgments against UK litigants, respectively.

Commercial claims dominated the type of litigation, with 53% of cases between the UK and UK, 88% of cases between the UK and Saudi Arabia and 83% between the UK and Switzerland.

These findings cement the idea that international parties continue to choose to litigate commercial claims in London, as it remains an attractive judicial system to resolve domestic and international disputes.

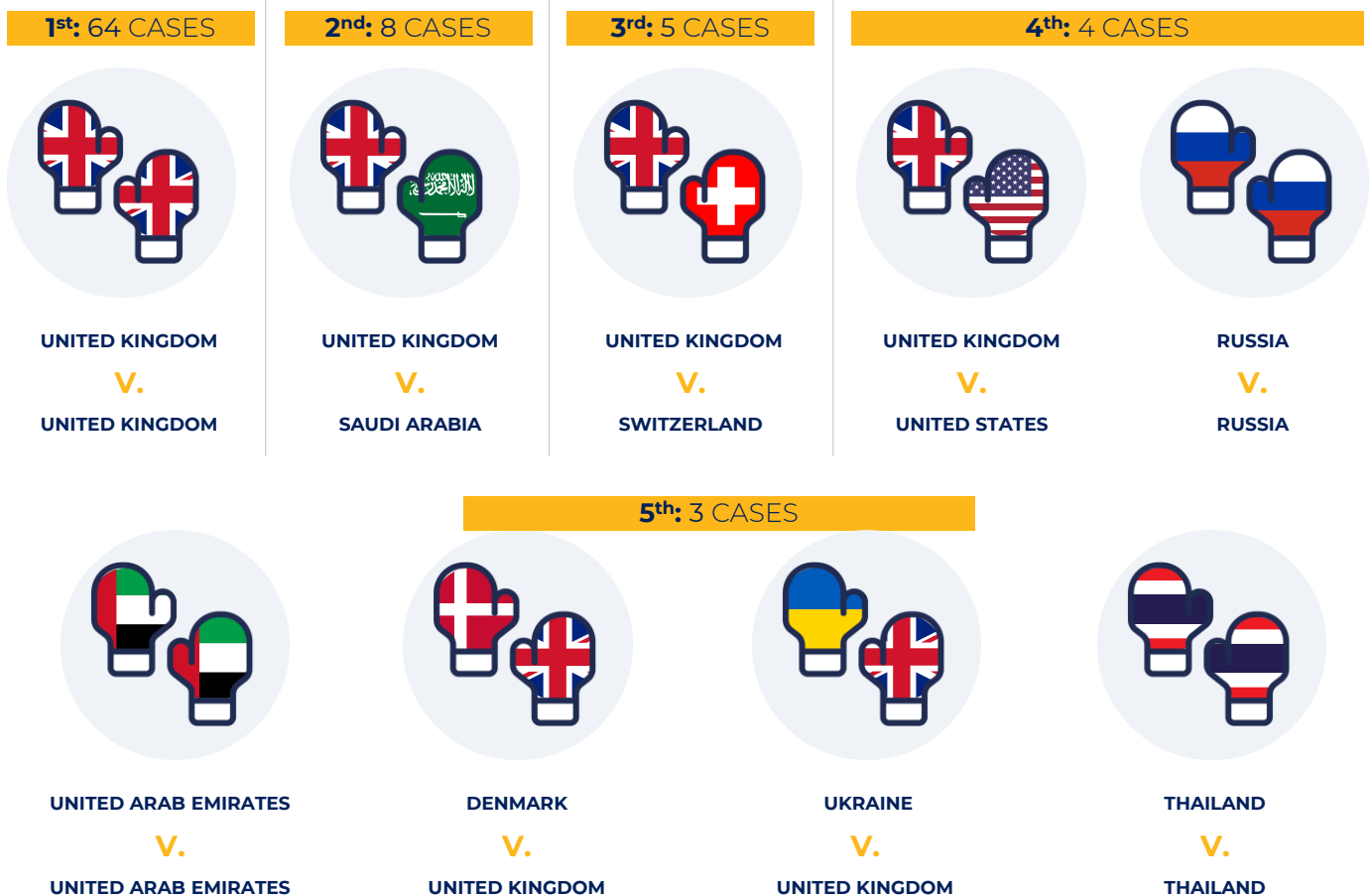
Interestingly, this year several of the top ten country pairings involved opposing litigants of the same nationality. Russia v Russia (four cases) ranked in fourth place as the most recurrent party pairing, and Thailand v. Thailand (three cases) and the UAE v. UAE (three cases) in joint fifth place.

Russians have been among the top six users of London’s Commercial Courts for the past ten years. This year, however, cases specifically between Ukraine and Russia declined; with only two cases litigated between 2021-22, the pairing fell from the second highest in 2020-21, to outside the top five.

Germany also fell outside the top five pairings this year, overtaken by Switzerland as the highest-ranking European member. The UK v Germany pairing ranked third last year, with five judgments compared to only one this year. In contrast, the Switzerland v UK rose from one judgment last year to six this year. As a result, no EU27 countries made the top five pairing this year.

While the overall decline in the number of cases in the courts may be of concern, the UK’s ability to attract international litigants endures. The effects of COVID-19 and Brexit, however, linger on. In particular, the ongoing impact of the war in Ukraine on Russia’s use of the Commercial Courts, will however make next year’s report essential reading.

E. Top Five Party Pairings by Nationality*



*Displayed order of nationalities does not reflect position of a party as claimant or defendant in the case.

This year's commercial courts report is bad news, but it is too early to say the courts are in decline



**David
Allen Green**

Solicitor at Preiskel & Co LLP in the Temple, London, and contributing editor of the Financial Times

Things decline gradually, said one writer, and then suddenly. On the face of it the substantial drop in volume in the English Commercial Courts set out in this report indicates a system that is in a sudden decline. Like the coyote in Roadrunner, the commercial courts in London appear to have been running in mid-air for a few years, and now they are plummeting.



Like the coyote in Roadrunner, the commercial courts in London appear to have been running in mid-air for a few years, and now they are plummeting.



If so, then there is a plausible explanatory narrative. Brexit has meant that judgments obtained in the United Kingdom are not readily enforceable in the European Union. Many financial institutions and businesses are shifting away from London to EU27 centres.

New commercial courts around the world, including in Singapore and Qatar, now offer well-resourced facilities, international-standard judges, and proceedings in English. The use of virtual proceedings during the pandemic made court proceedings far more open to journalists and campaigners, which while good for open justice is bad for reputation management.

The impact of the Russian invasion of Ukraine and the corresponding sanctions, and the withdrawals by London law firms from Russia is also likely to be profound. Money from Russia and other former Soviet states has been significant for all City of London services, not only lawyers. There will now be fewer Russian litigants willing to finance big-ticket litigation.

This report is based on data to March 2022. One wonders how much more dismal the picture would be had the data been for up to May 2022.

Every case before the London Commercial Courts is the result of a sequence of decisions. These decisions can include those about the law and forum of a contract, about whether issuing proceedings instead of compromising will benefit the litigant and the business, and about how well a party will come out of the dispute being played out in public.

The combination of Brexit, Covid and the Ukraine invasion, as well as the concurrent rise of other world-class commercial courts, will probably mean fewer business decisions will be made that result in cases being heard in London commercial courts.

But one should not nod along too much with such a gloomy narrative. Commercial litigation is in part a function of 'choice of law' and 'choice of venue' clauses, and not all disputes occur straight after contracts have been signed. As long as business agreements continue to be under English law and subject to the jurisdiction of the High Court then there will always be disputes that will be heard here.

And English contract law is as flexible and robust as it was this time last year. Most contracts are not intended to be the subject of litigation, but to soundly allocate foreseeable business risks as between the parties. If English commercial law remains practical and is applied practically by London judges, then disputes will continue to come to London. Substantive law matters.

Next year's Commercial Courts report may perhaps set out a sudden upswing. This year's negative report may be a blip. It is too early to say that international commercial litigation in London is in free-fall, however worrying the statistics in this report. But it is also not safe to say that all is well for the London Commercial Courts. We just do not know what is going to happen next to the coyote.



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The state of play for the Commercial Courts and foreign litigants



**Dame
Elizabeth Gloster**

Chair of LegalUK and former Court of Appeal Judge

This year's report¹ suggests that, while the proportion of foreign litigants was greater than UK-ones, there may have been a noticeable reduction in the number of international litigants appearing before the Courts; something which requires appropriate consideration.

To understand the apparent numeric reduction revealed by the Portland Report (with the number of known foreign litigants dropping from 616 last year² to 458 this year), we need to analyse whether international parties are choosing other legal "products" over the English offering or if other factors are at play. Notably, there is still litigants from 75 jurisdictions, which mirrors last year.

The predictable decrease in European litigants since the 2016 referendum may be due to the EU's general desire to reduce dependence on English systems and institutions. This attitude has been seen in financial markets³: the EU is reluctant to allow decisions to be made outside its sphere of influence. The EU's rejection of our accession to the Lugano Convention suggests that this attitude may affect the English legal landscape.

There are alternative explanations for the decrease in the number of foreign litigants. From an economic point of view, it is realistic to expect that the legal market would reflect the general contraction in the UK economy; GDP was 7.8% lower in February 2021 compared to 2020.⁴ It is likely that the impact of COVID-19 has only just started to affect the figures. Delays and backlogs have meant fewer cases have come to judgment in 2022.

Despite the EU's attitude and the creation of would-be competing commercial courts in Europe, many EU litigants are still choosing London. The take up of those foreign courts purporting to offer parallel pop-ups of the Commercial Court is reassuringly small.

In addition, we have seen more jurisdiction challenges in certain areas of the English courts⁵; this shows that, even though there are now enforceability difficulties presented by non-accession to Lugano - actually more perceived than real - claimants are still keen to establish a connection to England and Wales.



Despite the EU's attitude and the creation of would-be competing commercial courts in Europe, many EU litigants are still choosing London.



Going forward, the English Business and Property Courts are well positioned to attract many more foreign litigants in all areas because:

1. Under English law, a contracting party can be sure that the court will honour the written words of its contract and not try and rewrite the provisions in accordance with fuzzy notions of what an opposing party may assert are "good faith" terms.
2. The English court provides powerful remedies for litigants and judges are not afraid of adapting them to fit the changing modern world. This is apparent in the issues surrounding crypto assets: one of England and Wales' most coveted legal products, the worldwide freezing order, was granted to a claimant who had been victim to cryptocurrency fraud, recognising that the landscape had changed.⁶
3. The English court system is adaptable, introducing regular procedural updates and innovations from county to Supreme Court level to ensure it promotes good practice⁷. The technological evolution of the English courts during the pandemic allowed them to perform exceptionally well under pressure: the Business and property courts carried out almost 80% of ordinary business using remote hearings.⁷

Our unique combination of strengths, combining history, reliability and innovation, still makes England and Wales the legal system of choice around the world.

I am grateful to Becky Baker, Trainee Solicitor at RPC, for the assistance which she has given me with this article.

2 The end of Russian dominance in the courts?

There were more Russian litigants in the courts this year, proportionally speaking, than ever. But as public opinion turns against their use of the courts and law firms continue to turn away work, is this the end of an era?

Russian litigants have long been over-represented the London Commercial Courts. This remained the case for 2021-2022.

With 41 individuals listed, **Russia formed the second largest group of litigants in the London Commercial Courts**, behind only the UK.

This continues the trend of Russia's dominating presence. The number of Russian litigants appearing in the courts has doubled since 2017.

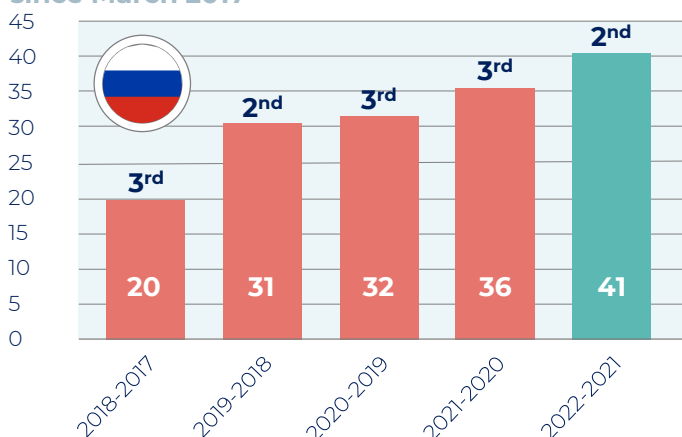
Russia has also ranked in second or third place in the top 10 litigants since 2017. (When ranked third, Russia's place at number two was taken by the US or Kazakhstan).

There were 21 cases involving Russian litigants in the London Commercial Courts in 2021-2022 (the same number as last year). Four were brought about by the Russian state-owned VTB Bank; notably, two of these cases were brought against the Ukrainian businessman Dmytro Firtash. VTB was unsuccessful in three of its claims.

The conflict in Ukraine has however presented many London law firms with a difficult decision. How would the public view a firm that took on Russian litigants?

Portland's exclusive polling reveals the answer: the public would view it very badly indeed.

F. Number of Russian litigants and top 10 ranking since March 2017



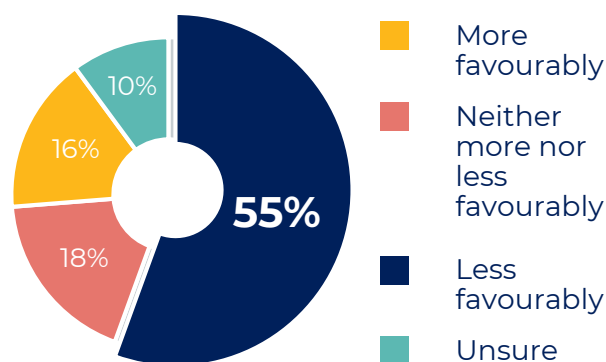
The UK public has an overwhelmingly adverse view of Russian litigants using the Commercial Courts, with 49% viewing it negatively versus just 14% viewing it positively.

Similarly, 55% of the public has a less favourable opinion towards law firms who provide services for Russian clients.

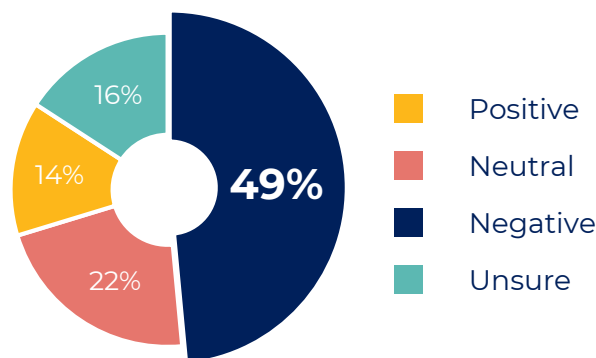
At the other end of the spectrum, nearly 70% of the public has a more favourable view of law firms who had closed their offices in Russia since the beginning of the conflict.

Many firms will be asking: Are we now living in a totally new era? One thing is certain, the coming months and next year's report will see a lot of change.

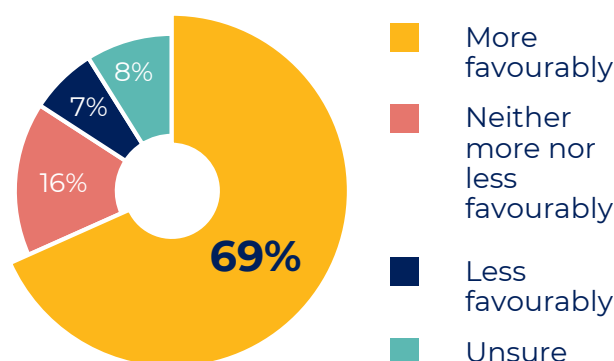
G British public opinion towards law firms who provide legal services to Russian individuals and/or companies?



H. British public opinion towards the English courts being used by Russian litigants?



I. British public opinion towards law firms who decided to close their offices in Russia since the beginning of the conflict in Ukraine?



Russian and Ukrainian litigants face an uncertain future



**Joshua
Rozenberg QC (hon)**

Legal commentator and non-practising solicitor

Litigants from Russia and Ukraine were among the top ten users of the London Commercial Courts during the year 2021/22, even though the number of litigants from Ukraine was less than half the record total a year earlier.

Russia moved up from third to second place in the listings, with 41 litigants appearing before the courts rather than the 36 it had in 2020/21. Ukraine was down from 25 litigants to 12.

However, these statistics take no account of Russia's invasion of Ukraine on 24 February and the war that has followed. Although the figures cover rulings delivered during the year to 31 March, almost all of them must relate to cases heard several months earlier.

Next year's figures are bound to be very different. Ukrainian and Russian litigants are currently facing unprecedented difficulties in accessing the London courts – though for very different reasons.

At the end of March 2022, lawyers for eight Ukrainian defendants asked the business court in London to reschedule a case brought against them by a state-owned Ukrainian bank. A three-month hearing had been due to begin in June 2022. Overruling the bank's objections, Mr Justice Trower adjourned the hearing until June 2023 (*JSC Commercial Bank Privatbank v Kolomoisky and others* [2022] EWHC 775 (Ch)).

A major problem in that case was contact between lawyers in London and clients in Ukraine. By contrast, the problem that Russian litigants face is finding lawyers to act for them in the first place.

Many international law firms closed their Moscow offices within days of the invasion. While not all of them condemned Russia's actions explicitly, almost all the major firms said they were refusing to accept new instructions from Russians. Others said they would also terminate existing mandates.

One lawyer at a middle-market firm that had acted for Russian interests in the past told me he was getting a couple of calls every day from Russians seeking representation.



Will Ukrainians and Russians take their disputes to commercial courts in other countries? That seems unlikely. It's not going to be any easier for lawyers in another part of the world to take instructions.



He turned them down. Another lawyer with a niche practice said he had been asked whether his firm would be willing to act for the Russian government. He said no.

Representing former shareholders in the Yukos oil company who are seeking to enforce an arbitration award against Russia of more than \$50 billion, Jonathan Crow QC told the Commercial Courts on 1 April: "We know White & Case is going to stop acting for the Russian Federation and will do so as soon as practicable. We know that a new firm will take a very considerable amount of time to get up to speed." (*Hulley Enterprises v Russian Federation* [2021] EWHC 894 (Comm))

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Global law firms that have offloaded Russian clients are not going to welcome them simply because they want to litigate in a different jurisdiction. So it looks as if these disputes will be put on hold for a year or two. Some may settle.

The damage done by Russia to Ukrainian businesses is unquantifiable. In the years to come, though, there will have to be some sort of reckoning. If Russia ever agrees to make reparations, courts that are trusted by both sides – such as the London Commercial Courts – may well have a major role in assessing Ukrainian losses.

3 The UK public think the Courts have an important impact on the country's reputation.

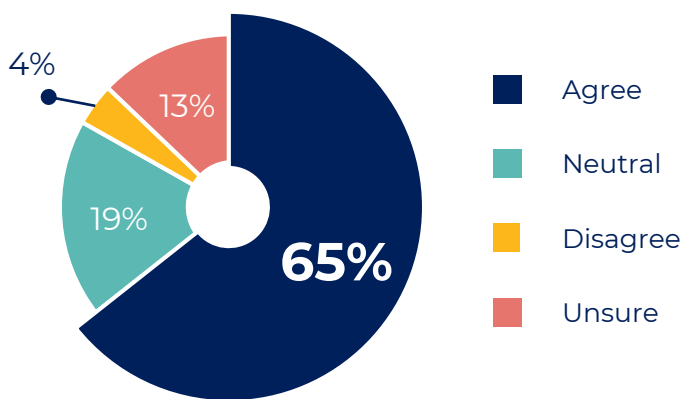
Portland's public opinion polling reveals that 65% of the UK public believe that the English courts and English law have an important impact on the UK's global reputation.

The courts however face more threats and greater competition than ever before.

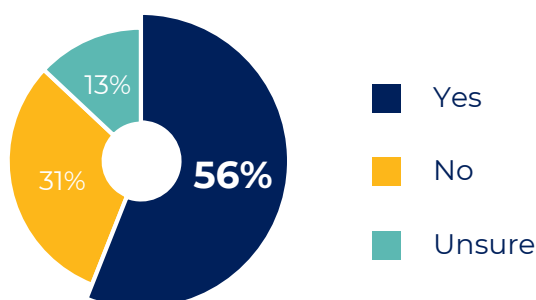
The international litigation landscape continues to rapidly grow and evolve. The Standing International Forum of Commercial Courts (SIFoCC) now has 44 members – a rapidly increasing number from the 38 jurisdictions represented at its 2021 meeting (including the UK)⁸, 36 jurisdictions in 2018⁹ and 28 jurisdictions represented at its first meeting in 2017.¹⁰

Significant competition is likely to come from challengers such as Singapore, China (and its Belt and Road Initiative) and new courts in Europe taking advantage of uncertainty around Brexit.

J. British public opinion towards the English courts and English law having an important impact on the UK's international reputation:



J. British public opinion to whether remote court hearings should continue to be commonly used post-Covid:



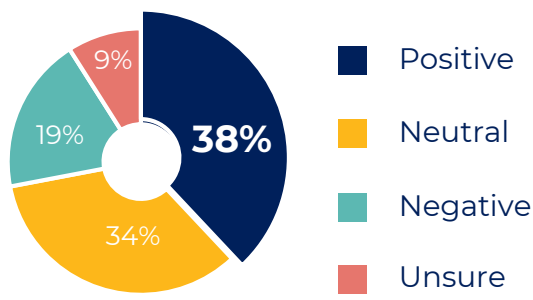
The **Netherlands Commercial Court (NCC)** has in particular adopted an approach driven by the UK's exit from the European Union, most notably by its decision to conduct all of its proceedings in English. This provides a platform for international companies to resolve disputes in an efficient and cost-effective manner. Figures from the Dutch Council estimate that proceedings in London might cost five times more than in Amsterdam, with lawyer's fees constituting a significant proportion. Paired with the position the Netherlands holds as rated third in the world for civil justice, the NCC is a significant emerging challenger.¹¹

The international credibility and authority of English law, meanwhile, is founded on its reputation for consistency and impartiality – but also, arguably, its pragmatism. The rapid, successful and (as Portland's polling reveals) popular adoption of remote hearings is a good example of this. It may also prove to be essential, if the courts are remain competitive.

The **increased use of virtual hearings**, sometimes by default, also has significant implications in increased media scrutiny of proceedings. Propositions to create a reporters' charter across civil and criminal courts for the right to WIFI access, access to listing details, witness statements and documents supporting evidence demonstrates this growing attention.¹²

The ability for journalists to dial in remotely into court hearings from anywhere in the world provides unparalleled access to live legal proceedings, and is likely to increase the proportion of news media reporting on ongoing cases.

K. British public opinion on whether remote court hearings have a positive or negative impact on justice being delivered:



English law: The platform for international business (and competition from other courts)



**Helen
Dodds**

Global Head of Legal, Dispute Resolution at Standard Chartered Bank

While the UK embraces new global trade agreements, we should not forget the business platform that facilitates these and which we in the UK have shared with the world for centuries – the English law itself.

English law, through its adaptability and integrity, provides the infrastructure for the trade, financial and commercial contracts on which international business relies. Its common use lowers transaction costs and provides network effect benefits for international transactions. Its many advantages create significant economic value, both for the UK and more widely as a fundamental platform for international business, as shown in the recent [report](#) by Oxera, commissioned by a group of major industry stakeholders, LegalUK.¹³

Contracting under English law provides clarity, certainty, predictability, and flexibility for all parties. When legal disputes occur, and English law needs to be interpreted and adjudicated on, this can be done from the Commercial Courts in London, but also from other access points all over the world.

It is more straightforward than ever for international businesses to have their English law cases decided in the Commercial Courts in London, particularly as it moves to deploy remote hearings as part of its offer. This year, 54% of litigants in the London Commercial Courts were international, a notable proportional increase since last year 50:50 split, in line with a long-term of trend of non-UK litigants' dominance.

A traditional alternative to litigation is international arbitration. A large proportion of international arbitrations are decided under English law. Businesses can use UK arbitration institutions such as the LCIA and the LMAA, or those with branches in the UK such as the ICC and can now easily do so online and remotely from their home locations.

In the Singapore and Hong Kong International Arbitration Centres, English law is the second most chosen law of arbitrations managed by them.

A newer alternative is to use one of the international commercial courts established abroad with English law as their legal basis (such as the Dubai International Financial Centre Courts) or which adopt English law wholesale (the Abu Dhabi Global Markets Court), or which will hear cases governed by a range of foreign laws (the Singapore International Commercial Court).

International businesses should be alert to the benefits of the seamless provision of English law around the world. We see from the readiness of other countries to take on the administration of English law governed cases, from the Far East to the Gulf that while the Commercial Courts remain the premier venue for hearing English law claims it is not the only one.

International businesses now have a number of options enabling them to enjoy the significant benefits of English law from the comfort of their own locations.



It is more straightforward than ever for international businesses to have their English law cases decided in the Commercial Courts in London, particularly as it moves to deploy remote hearings as part of its offer.



Post-Covid litigation in England and Wales: Turbocharged technology and a new process for financial markets



Dr John Sorabji

Lecturer at UCL Laws and legal adviser to the Independent Review of the Human Rights Act

The Covid-19 pandemic has affected two significant changes to the English and Welsh courts, and particularly the London Commercial Courts.

The first and most obvious change was that it turbo-charged the courts' embrace of digital technology. Digitisation of the courts had until March 2020 been a slow, deliberate process, focused mostly on the introduction of e-filing and management systems. The pandemic could have had a severe adverse impact on the courts' ability to conduct hearings, but did not do so due to the adoption of remote technology (Zoom, Teams, YouTube, as well as the courts' own platform).

The long-term effect of this is that the English and Welsh courts, and the London Commercial Courts will be amongst the forefront worldwide of courts utilising digital technology for hearings and benefiting from the greater flexibility it provides to the court and parties.

Where the London Commercial Courts are concerned we are already seeing the effect of this. Hearings scheduled to last less than half a day are routinely listed for remote hearing. All applications hearings held on Fridays are by default remote hearings.¹⁴ Ease of access, flexibility, and reduced litigation costs flowing from this are particularly likely to increase its competitiveness throughout the 2020s, and access to justice more broadly in England and Wales.

The second significant change focuses specifically on the London Commercial Courts. In 2015, a new form of procedure was introduced, the Financial Markets Test Case procedure, into the rules of court; specifically the Financial List.

It enables parties, who are not yet in a dispute, to apply to the court for an authoritative judgment on an issue of importance to the financial market, which is broadly defined.¹⁵ Until March 2020 this novel and unique procedure had not been used.

The significant impact the pandemic had on the insurance industry changed that. Test proceedings seeking an authoritative decision on issues relating to business interpretation insurance were brought under this procedure (*FCA v Arch [2020] EWHC Comm 2448 and [2021] UKSC 1.*) Having seen its utility, it is likely that parties active in the financial markets will increasingly use this mechanism as a cost-effective way to clarify their obligations, prior to any dispute arising, in order to facilitate market efficiency.

Overall, the pandemic has seen the courts, and particularly the London Commercial Courts, put in place, and utilise effectively, remote technology earlier than they would otherwise have done and has resulted in the first use of an innovative form of process beneficial to the financial markets.

ARBITRATION CHALLENGES STAY STEADY IN A TIME OF TURBULENCE

Nearly fourteen per cent of judgments in the Commercial Courts over the past twelve months related to arbitration challenges – making it the second most common type of litigation. This is consistent with last year's proportion (16%). Of those 27 judgments, seven involved state parties.¹⁶

The popularity and value of arbitration continues to increase, (despite the risk of challenges).

Last year, the Singapore International Arbitration Center (SIAC) had a 125% increase in cases, and the London Court of International Arbitration (LCIA) received a record 444 referrals – an 18% increase from 2019 and a doubling of cases over the last ten years.

Meanwhile, the largest sum in a case before the SIAC reached \$2.4 billion, more than double the highest value for a case in 2020.¹⁷

K. Top three litigation types of judgments handed down by the courts



46.78%
Business Contracts



13.74%
Arbitration Challenges



9.44%
Civil Fraud and Investigations

The justice system and arbitration in the Artificial Intelligence era: Quo vadis homine?



**Professor
Crenguta Leaua**

Professor at the Bucharest University of Economic Studies and The Swiss Institute for Alternative Thinking

The important advancement of the new technologies, particularly digitalisation, artificial intelligence (AI) and smart contracts, has prompted a need to bring an accelerated technological modernisation in the field of the justice system. This is a visible phenomenon, particularly in the United Kingdom.

In September 2021 the UK Government announced the launch of a national AI strategy, including a, “ten-year plan to make Britain a global AI superpower”. Justice is mentioned among the domains in which the Open Innovation Team has already provided innovative projects in the last five years. In the same year, the Civil Justice Council launched the Futures Working Group, whose terms of reference include “to take and encourage a long-term view of the impact of technology on the administration of justice, with emphasis on increasing access to justice and securing the position of the legal system of England and Wales as a global leader”.

The question is: where is the future of arbitration, in facing the intensive incorporation of AI-based technological tools in the state justice system, possibly including automated decision-making. Will arbitration follow the same path or choose a different one?

Normally, arbitration should be the best environment for implementing new modern procedural rules, as well as for using new technologies for various procedural aspects. That is because of two main characteristics of arbitration: first, that it is based on the parties’ autonomy in deciding on the procedure to be applied, hence allowing innovation; second, because each arbitration case may be governed by specific rules, and allow the use of specific technologies, making arbitration a genuine sandbox. If we add to these the adaptation speed of the providers of arbitration services, higher than that of a state justice system, the instinctive tendency in forecasting the further development of arbitration would be to consider that arbitration would also go in the direction of automation and use of AI.

However, at a deeper look, arbitration is not the best suited for the development of AI-based innovative tools precisely because it is shaped

by the needs of each particular case. That is because for this particular technology, arbitration fails to provide enough case law, and even less repetitive case law, for the necessary big data to be collected and processed for relevant results, compared with the courts of law. Also, the use of AI inevitably comes with the standardisation of the procedures, which is against the expectations of the users of arbitration, who seek a tailor-made procedure. That is why it is most likely that arbitration will not be the preferred environment for the extended use of the AI-assisted and even less for the AI-based decision making.



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Where is then the direction of the possible further development of arbitration? If we look at its very premise, of being a dispute resolution mechanism alternative to the state justice system, then the necessary conclusion is that arbitration can only take the opposite direction. That is to eventually become the opt-out from a heavily technological justice system, to be a human-based dispute resolution mechanism.

The human compassion, the human ability to profoundly understand another human being, the answer to the fundamental need of a human being to be considered unique and have their behaviour assessed in the specific circumstances of its unique situation, and not as a part of a social pattern, when about a dispute, will have to be fostered somewhere. That place could be the arbitration, whose very beginning is among similar people, the traders, peers being entrusted with the decisional power by other peers. Arbitration shall most likely return to its core-value, the classical expression, “the arbitration is as good as the arbitrators are”, who will be now seen not through the lens of the limitations it may have, but through the lens of the amplitude of the human value it may bring.

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Methodology and sources

Portland's Commercial Courts Report 2022 analysed data provided by The Lawyer's Litigation Tracker database for the period from March 2013 to March 2022. This ongoing data analysis process is periodically revised to minimise duplication, rectify data omissions and remove anomalies. Research from primary and secondary sources supplemented our litigation analysis.

This report includes exclusive data from Portland's proprietary polling on issues relating to remote hearings, perceptions of the courts and law firms acting for Russian clients. Portland polled a nationally representative sample of 500 adults from the United Kingdom, who were sampled to the UK ONS 2016 census for age and gender.

Portland's online polling offer is accredited by the British Polling Council.

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Please contact Portland's Litigation and Disputes practice at disputes@portland-communications.com for additional data and analysis, or to use the findings in this report.

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