Ministry
of Justice

# Factors Influencing International Litigants' Decisions to Bring Commercial Claims to the London Based Courts

**Eva Lein, Robert McCorquodale, Lawrence McNamara, Hayk Kupelyants, José del Rio**

**British Institute of International and Comparative Law**

Ministry of Justice Analytical Series
2015

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First published 2015



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This publication is available for download at http://www.justice.gov.uk/publications/research-and-analysis/moj

ISBN 978-1-84099-673-9

## Acknowledgements

The British Institute of International and Comparative Law (BIICL) would like to thank the legal community in the UK and abroad for its collaboration in this study; the Rolls Building court staff for their assistance with court statistics; Khawar Qureshi QC and the Office of the Lord Chief Justice for providing a copy of Mr Qureshi's report on the Commercial Court; and the speakers and participants at the project event held on 31 March 2014. Lastly, our thanks go to our project interns, in particular to Clémence Grenier.

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# 1. Summary

## Aims and Context of the Project

This project was undertaken to improve the Ministry of Justice's understanding of drivers behind the decisions of litigants to initiate commercial litigation, and where to litigate (London or elsewhere). The aim of the project was to gain an understanding of litigants' and legal professionals' experience of litigating commercial disputes through the English civil justice system and to develop an evidence base of the factors that influence decisions to seek redress in the London-based courts under English law.

The project was commissioned alongside the Ministry of Justice's consultation *Court Fees: Proposals for Reform.* The consultation document proposed reforms that would increase court fees, based on the principle that those who can afford it should contribute more to the costs of the courts. This project considered in more detail the perspectives of those involved in high-value commercial litigation regarding the proposed court fee changes. It sought views from a variety of stakeholders, including: international litigants; law firms; barristers' chambers; the judiciary; legal organisations/associations; and academics with the aim of improving the understanding of the drivers behind decisions of litigants to choose to initiate commercial litigation in the English courts and the competition that English courts are facing in the globalised market of legal services.

## Participants and Data

Data regarding the various areas of interest were collected via three methods:

The primary method was interviews with individuals active in the field of international commercial litigation. Approximately 200 contacts with highly relevant expertise and experience were invited to participate. There were 54 interviews conducted. They explored views on the factors influencing decisions to litigate in England, and to what extent they felt a change to the current court fee structure might impact on those decisions. Interviewees included judges, barristers, solicitors and in-house counsel with substantial experience in international commercial litigation and arbitration.

Secondly, a web-based survey was conducted. To capture those legal practitioners with the most relevant expertise and experience, the survey was sent to several thousand contacts through a combination of direct emailing to the BIICL database and distribution through legal subscription databases held by other organisations. Within this group, the targeted contacts were legal practitioners, companies and organisations, based in the UK and abroad, involved in international litigation and arbitration. Members of the judiciary and academics with

expertise in international litigation were also invited to participate. There were 161 respondents.

Thirdly, individuals were brought together at an event run by BIICL to debate the various issues relevant to this project. This event, entitled “Litigating in the UK, Why or Why Not?”, was attended by 60 participants.

This report reflects the views of the 215 individuals with relevant expertise and experience who agreed to participate in this study (questionnaire and interview respondents) as well as those from event participants, some of whom had also responded to the questionnaire and/or participated in an in-depth interview.

It is not possible to draw conclusions about how representative these views are of the wider legal community. The study does not express the views of BIICL or of its project team. Where appropriate, the report has been supplemented with findings of other published studies, reports and official court statistics.

## Scope of the Project

The respondents were asked to reflect upon the following areas:

- experience with, and views on, London as a litigation centre;
- potential impact of increased court fees on the litigation market;
- competing jurisdictions;
- potential consequences of increased court fees for arbitration; and
- services offered by the Rolls Building.

## Key Findings

### Experience with and views on London as a litigation centre

London was considered to be a popular and natural jurisdiction for the litigation of high value cross-border disputes. Reasons for this included:

- First and foremost, the reputation and experience of English judges; alongside
- English law, which was described as the prevalent choice of applicable law in international commercial transactions due to its quality, certainty and efficiency in commercial disputes. The combination of choice of court clauses with choice of law clauses in favour of English law was reported to be very popular, due to both the strong reputation of the courts and the quality of the law.

Other drivers for London-based litigation included:

- The well-established reputation of the English courts across a range of business sectors

- Efficient remedies
- Procedural effectiveness; and
- Forum neutrality

However, respondents sensed increasing competition in the international dispute resolution market with other jurisdictions marketing themselves to attract disputes traditionally adjudicated in London.

### Potential impact of increased court fees on the litigation market

The current level of English court fees was viewed by most respondents as a "non-factor" for decisions about where to litigate commercial cases and of little relevance in the decision to agree upon or recommend the English courts, with many (over half of those responding) unaware of the precise fee levels. Other studies show that the current court fees are low compared to the overall costs of litigation and to fees charged by other litigation centres ; C. Hodges et al., *The Costs and Funding of Civil Litigation*, Hart, 2009).[1]

Just over one quarter (41 respondents, 26 %) of those who commented on this point (158 respondents) did not expect this position to change for high value commercial cases if court fees were increased, stating that under the MoJ's proposals, court fees would remain a small proportion of the overall average costs of litigation. These respondents considered that the high quality of litigation work in the English courts would remain the primary reason for bringing international commercial disputes to London. Similarly, these respondents felt that the perceived quality and impartiality of English judges outweighs the costs associated with litigating in the English courts and would still continue to do so if court fees were increased to the suggested level.

Twenty (13 %) of the respondents did not know whether or not increased court fees would affect the decision to litigate in England.

In contrast, almost two-thirds of respondents (61 %, or 97 of 158 respondents) anticipated adverse consequences of increased court fees on London as a litigation centre; 53 thought it likely there would be an impact and 44 felt such an impact was very likely. Reasons for this view included:

- Potential for reduction in the attractiveness of the English courts for the litigation of cross-border commercial disputes: litigants might switch their preferences to foreign courts and arbitration, also potentially based abroad, triggering a potential decrease in litigation work in England.
- The proposed fee rises being too high in light of the current market climate,

- Fee rises beyond full cost-recovery risked being perceived by litigants as an unjustifiable “tax-like” payment, possibly threatening the competitive position currently occupied by the English courts.
- High upfront court fees could be a disincentive in the case of lower value claims and were perceived to be inappropriate considering the frequency of settlements.
- English law could be selected less often as the governing law in international commercial transactions. This could reduce the demand for local transactional work (with the concern that transactional work would then go to law firms based in other jurisdictions) and affect related support services.
- A decrease in international cases could, over time, negatively affect the incremental development and updating of English commercial law.

Respondents advocated a precautionary approach to reform, to protect the legal market.

As to the type of court fee structure to be adopted, the preferred option was to keep upfront court fees low so as not to discourage strategic commercial litigation and to simplify in-court settlements. A combination of a fixed issue fee with variable hearing fees was most favoured.

### Competing jurisdictions

Jurisdictions considered by respondents as being major competitors to the English courts and thus those that might profit most following a court fees increase were New York, Singapore and other EU Member States. Respondents highlighted that New York already provides cheaper court services and may become a strategic venue for cases that are likely to settle, avoiding the higher future upfront court fees in London. In comparison to New York, for example, court fees would be significantly higher if the suggested changes to the current fees structure were implemented. Respondents also thought that Singapore was likely to become a serious competitor once it establishes its Commercial Court. Advantages given by respondents for litigating on the European continent included: more cost-efficient litigation; the inquisitorial systems of EU Member States’ jurisdictions; and quicker results.

### Potential consequence of increased court fees for arbitration

Despite the costs of arbitration as a dispute resolution method, more than half of respondents expected that more litigants may switch to (not necessarily London-based) arbitration if English court fees rose significantly, although fees were not presently a key factor in the decision-making process.

### Services offered by the Rolls Building

The respondents with experience of litigating in the Rolls Building were generally satisfied with the service provided, although some felt there was room for improvement, for example, in the quality of IT services available.

# 2. Introduction

## 2.1 Aims

This project was undertaken to improve the Ministry of Justice's understanding of drivers behind the decisions of litigants to initiate commercial litigation, and where to litigate (London or elsewhere). The aim of the project was to gain an understanding of litigants' and legal professionals' experience of litigating commercial disputes through the English civil justice system and to develop an evidence base of the factors that influence decisions to seek redress in the London-based courts under English law.[2]

## 2.2 Context

In December 2013, the Ministry of Justice published the consultation document *Court Fees: Proposals for Reform.*[3] This document, which followed earlier initiatives,[4] stated that the civil and family courts have, when evaluated together, been operating at less than full cost recovery.[5] The consultation document proposed reforms that would increase court fees, based on the principle that those who can afford it should contribute more to the costs of the courts (details of the proposed fee increases are detailed in Annex A).

[6]

The present project was commissioned to assess why parties litigate commercial claims in England and considered the extent to which proposed court fee changes might impact the litigation market. The Ministry of Justice commissioned or undertook several earlier research projects to generate evidence as to the possible impact of court fee reforms in the context of the court fees consultation. These include:

- *Potential impact of changes to court fees on volume of cases brought to the civil and family courts*.[7] The study found that the impact of court fee increases could be minimal on the volume of cases that solicitors and their clients bring to the civil and family courts. This was because litigation was seen as a last resort, court fees were considered to be a small proportion of the overall cost of going to court and decisions to take cases to court were influenced more by other factors.
- *Public attitudes to civil and family court fees.*[8] The study found that the majority of people agreed with the principle that individuals and businesses who use civil and family court services should contribute towards the cost of these if they could afford to. However, the extent to which people felt court users should pay a fee

varied by the type of court case, court users' income and perceived ability to pay, as well as fee levels.

- *The role of court fees in affecting users' decisions to bring cases to the civil and family courts.*[9] This qualitative study of claimants and applicants concluded that participants bringing civil and family cases to court typically felt that court fees were affordable, and they would not have been deterred from starting court proceedings if court fees had been set at higher levels.
- *Competitiveness of fees charged for Commercial Court Services: An overview of selected jurisdictions.*[10] This study analysed court fees charged and services offered in a number of commercial dispute centres such as Singapore, New York, Delaware, Australia and Dubai. According to this report it is substantially less costly to bring a dispute in England under the current cost regime than in a comparable court in Singapore, Australia or Dubai, while court fees charged in New York and Delaware are lower than in England.

The consultation was accompanied by two impact assessments. The *impact assessment on court fees and cost recovery*[11] identified the costs and benefits of raising fees in the civil and family courts to full cost levels as full cost recovery is not currently achieved in these courts. In 2012/13 the deficit was over £100 million. The *enhanced court fees impact assessment*[12] proposed that in specified circumstances fees could be set at a level to recover more than the full costs of the courts. The Government believed that it was preferable that those who could afford to pay should contribute more to the costs of the courts so that access to justice was preserved and the cost to the taxpayer was reduced.

Further studies have been completed independently, which compare civil justice systems in Europe and litigation costs across a range of jurisdictions, such as S Vogenauer, *Civil Justice Systems in Europe: Implications for Choice of Forum and Choice of Contract Law. A Business Survey – Final Results*, 2008; C Hodges et al., *The Costs and Funding of Civil Litigation*, Hart (2009). These studies show that English courts are a 'natural' and popular forum for the litigation of international commercial cases.[13] Various factors are cited as justifying the popularity of English courts and among those, the most prevalent are the quality of judges and courts, fairness of the outcomes and absence of corruption.

That said, commercial litigation in the English courts is not inexpensive. The overall costs of litigation (lawyers' fees and court fees) in commercial matters are one of the highest, if not the highest, both for the claimant and the defendant, in the sample of approximately 30 judicial systems selected in the Hodges study.[14] By contrast, the current court fees in

England & Wales in a commercial case are, in and of themselves, among the lowest in the same selection.[15] This ostensible discrepancy is due to the fact that lawyers' fees are the major component of overall litigation costs in the English courts.

The interrelation between court fees and lawyers' fees is somewhat reversed in other jurisdictions. This is the case, for instance, in Central and Eastern European jurisdictions where court fees seem to be comparatively higher than the current fees in England & Wales. In contrast, the lawyers' fees in those jurisdictions are considerably lower.[16]
This contrast might be partially due to the different philosophies regarding the role of the judiciary in the determination of commercial disputes. With the adversarial system in England & Wales, the burden in court is on the parties' counsel to establish and prove the case, and, hence, the lawyers' fees inevitably tend to be on the higher side. On the contrary, in jurisdictions with the inquisitorial judicial system (continental legal system) courts traditionally have a bigger role in the resolution of the case, which affects the relative proportionality between the court costs and lawyers' fees.

Under the Proposals made by the Ministry of Justice in its consultation "Court Fees: Proposals for Reform", court fees in England and Wales could rise up to £15,000-20,000. This would move them to an intermediary position in Hodges comparative analysis of court fees in commercial matters in various jurisdictions. Using a high-value comparative commercial case scenario presented there (pp. 134-156, case study 7, referring to a 2,000,000 Euro case) as a basis from which to draw a comparison with the post-reform English court fees, they would be lower in comparable cases than those charged in Austria, Bulgaria, China, Czech Republic, Estonia, Germany, Greece, and Romania; in the same range as those of Denmark, Japan, Poland, and Switzerland; and would exceed, sometimes to a high degree, the court fees in Belgium, Finland, Hungary, Latvia, Lithuania, Norway, Portugal, Russia, Spain, and Sweden.

If the circle of comparison is constrained to the international financial centres of the world (New York, Singapore, Hong Kong, Delaware, Australia, Dubai, see Centre for Commercial Law Studies School of International Arbitration, Queen Mary University, *Competitiveness of fees charged for Commercial Court Services: An overview of selected jurisdictions*, p. 3), the increase in court fees as suggested in the Reform Proposals will make English courts the most expensive courts among those jurisdictions, and the variance between the jurisdictions can be very large (for instance, the court fees in New York courts will be under £1000 for commercial cases exceeding £500,000).

# 3. Methodology

This project draws on data gathered from a variety of stakeholders, including: international litigants; law firms; barristers' chambers; the judiciary; legal organisations/associations; and academics. Data was collected via three methods.

The primary method was semi-structured interviews, with individuals active in the field of international commercial litigation. Just over 200 contacts with highly relevant expertise and experience were invited to participate. There were 54 interviews conducted. Interviewees included judges, barristers, solicitors, in-house counsel with substantial experience of international commercial litigation in the English courts and arbitration as well as representatives of companies or organisations drafting standard form contracts in different sectors. The interviews explored views on the factors influencing decisions to litigate in England or elsewhere, and to what extent they felt a change to the current court fee structure might impact on those decisions. The interviews were conducted between early February and mid-April 2014.

Secondly, a web-based survey was conducted. To capture those legal practitioners with the most relevant expertise and experience, the survey was sent to several thousand contacts through a combination of direct emailing to the BIICL database and distribution through legal subscription databases held by other organisations. Within this group, the targeted contacts were legal practitioners, companies and organisations, based in the UK and abroad, involved in international litigation and arbitration. Members of the judiciary and academics with expertise in international litigation were also invited to participate. There were 161 respondents.

Thirdly, individuals with relevant expertise and experience were brought together to debate their views. This was undertaken at a forum entitled "Litigating Commercial Claims in the UK – Why or Why Not?" run by BIICL on 31 March 2014 and attended by around 60 people.

This report reflects the views of the 215 individuals with relevant expertise and experience who agreed to participate in this study (questionnaire and interview respondents) as well as those from event participants, some of whom had also responded to the questionnaire and/or participated in an in-depth interview.

It is not possible to draw conclusions about how representative these views are of the wider legal community. The study does not express the views of BIICL or of its project team. Where appropriate, the report has been supplemented with findings of other published studies, reports and official court statistics.

All data gathered for this report has been anonymised. A detailed methodology is included in Annex B.

## 3.1 Questionnaire[17]

### Questionnaire respondents

There were 161 responses received to the questionnaire. (Full details of the questionnaire contact groups and methodology are shown in Annex B).[18] As table 1 shows, most of those who chose to participate were international commercial lawyers (solicitors) based in the UK and abroad. Barristers and academics were the next largest categories of respondents, followed by international companies. Other participants included members of the judiciary and arbitrators. Please note that some participants indicated several functions.

**Table 3.1: Questionnaire respondents by profession (organisation)[19]**

| What type of organisation do you work in? | Number of respondents | Percentage of respondents |
|---|---|---|
| Law Firm | 68 | 43% |
| Chambers | 39 | 24% |
| Academia | 39 | 24% |
| Companies | 11 | 7% |
| Judiciary | 2 | 1% |
| Other | 10 | 6% |

Geographically, the majority of questionnaire respondents (51%) were from the UK, followed by respondents from other EU Member States (32% across Germany, Italy, Spain, The Netherlands, Sweden, Austria, Finland, Greece, Belgium, Czech Republic, France, Hungary, Lithuania, Malta, Slovakia). The remaining respondents were based in non-EU countries (United States, Albania, Canada, India, Russia, Peru, Australia, Bolivia, Brazil, Colombia, Dominican Republic, Hong Kong, Mauritius, Mexico, Saudi Arabia, Switzerland, Turkey, Uruguay).

As to the representation of different business sectors, most respondents were lawyers and barristers with clients from a variety of business sectors. A minority of questionnaire respondents indicated that they were active in specific sectors, such as financial markets, telecommunications, energy, retail, transport or manufacturing. Several respondents were academics specialising in international litigation.

Nearly all questionnaire respondents answered the questions based on their individual professional experience (90%), while the remainder responded on behalf of their

organisation (e.g. a global law firm), or a department within their organisation (e.g. the London litigation department of a global law firm).

The levels of litigation experience differed. One-third of questionnaire respondents reported they regularly litigate in English courts, another third had brought one or more claims to the English courts in the last 5 years. The remainder had not litigated a commercial claim in the English courts in the last 5 years.

The vast majority of respondents (about 88%) were involved in commercial claims as a solicitor/attorney or barrister. Other respondents stated they were involved as decision-makers (i.e. judges or arbitrators), legal experts or representatives of companies.

Questionnaire respondents were most often involved in high value commercial claims. More than half of respondents litigating claims exceeding £1,000,000 were involved in such claims in more than 60% of their cases. While about half of the participants also indicated that they deal with claims having a value of up to £300,000, these formed a smaller part (0 – 30%) of their caseload.

Half of respondents stated that more than 60% of their cases in the last five years were cross-border claims, with a quarter nearly exclusively doing cross-border work (90-100%).

The fact that these proportions of respondents were regularly working in high-value and cross-border commercial claims suggests that a well-informed and appropriate group responded to the survey.

## 3.2 Interviews[20]

### Interviewees

There were just over 200 individuals targeted as potential interviewees. They were selected on the basis that they have highly relevant expertise and experience. A total of 54 respondents participated in face-to-face or telephone interviews.[21] The majority (42 interviewees) were international commercial lawyers and barristers based in the UK, other EU Member States and non-EU States, such as the US or Latin American countries. The remainder of the sample included members of the judiciary (5 interviewees), academia and international companies.

**Table 3.2: Interviewees per profession (organisation)**

| What type of organisation do you work in? | Number of respondents | Percentage of respondents |
|---|---|---|
| Law Firms | 29 | 54% |
| Chambers | 13 | 24% |
| Judiciary | 5 | 9% |
| Companies | 3 | 6% |
| Academia | 2 | 4% |
| Other | 2 | 4% |
| Number of respondents | 54 | |

Geographically, 45 interviewees were based in the UK, 6 were based in other EU Member States (Austria, Germany, Ireland, Spain, Greece) and 4 in non-EU States/ regions (United States, Russia, Latin American countries).

The vast majority were lawyers active in a variety of business sectors; a minority indicated that they were active in the shipping, manufacturing and financial sectors.

About 80% of interviewees answered the questions based on their individual professional experience while the remaining participants responded on behalf of their organisation or a department within their organisation.

Nearly all interviewees were actively involved in commercial litigation in the English courts (80% regularly), the majority as a solicitor/attorney or barrister, and several participants as judges.

Almost all interview participants involved in commercial litigation had been involved in commercial claims exceeding £1,000,000, with claims often amounting to hundreds of millions; a few interviewees were also dealing with lower value claims between £50,000 and £300,000 or between £300,000 and £1,000,000.

While many interviewees found it difficult to estimate the percentage of cross-border transactions they or their organisation carry out, nearly all who actively litigate confirmed that they had been regularly involved in cross-border claims in the last five years. Of those who gave estimates, 90% indicated that cross-border work covered more than 60% of their cases. 54% estimated that cross-border work covered more than 90-100% of their cases.

## 3.3 Event[22]

### Contact group

Invitations were sent to all BIICL contacts active in international litigation and arbitration, including: law firms; chambers; law association contacts from the UK and abroad; members of the judiciary and of the government; legal departments of businesses based in the UK; and academics. The event was also publicised on the BIICL website.

### Attendees

Around 60 people attended the event. Speakers included solicitors and barristers specialised in international litigation and competing jurisdictions, both in the EU and elsewhere (e.g. Dubai, Singapore). Attendees included international commercial lawyers (solicitors and barristers) based in the UK, in other EU Member States and in non-EU Member States; members of the judiciary; representatives of arbitration institutions; law associations; academics; and, in an observational capacity, the Ministry of Justice.

## 3.4 Analysis

The analysis was based on the views of 161 questionnaire respondents, 54 interviewees and 60 event participants. It does not express the views of BIICL or of its project team but summarises the collected views of the legal community involved in this project.

## 3.5 Terminology

### Respondents

This report has been based on combined data from both questionnaires and interviews. Therefore, the term “respondents” encompasses both people who replied to the questionnaire and those who were interviewed. At times a distinction has been drawn and reference made to a specific category of respondents (e.g. interviewees), or to a specific group of respondents within that category (e.g. law firms, chambers or judiciary) for the purpose of clarification. Event findings are referred to separately.

The report refers to London as a dispute resolution centre but also uses the terminology “English courts” or “litigation in the UK”. Effectively, the relevant marketplace for international commercial litigation is London and this is what respondents were referring to.

### Multiple responses and non-responses in the questionnaire

It was possible to give multiple answers to most questions. As such, the number of participants might differ from the total number of answers given to each question.

Not all project participants replied to all questions. The report highlights questions with a significant non-response rate. There may be several reasons why certain questions were not answered. Firstly, not all of the questions were intended to be answered by all groups as some were tailored to solicitors but not judges, or aimed at specific categories of solicitors such as transaction lawyers, or at practitioners rather than academics. Secondly, they may not have replied because they had no views regarding the issue at stake; insufficient experience (e.g. academic respondents could not comment on the quality of services offered by the Rolls Building courts); or could not indicate precise percentages where these were required. The number of replies to each question therefore needs to be seen in this context. Non-replies should not be viewed as detracting from the quality of the data.

# 4. Results

## 4.1 Views on the London litigation market at present

Respondents uniformly asserted that London was a popular jurisdiction for litigating high value cross-border disputes. They described London as a forum often chosen by parties from Commonwealth legal cultures and as a neutral forum for parties domiciled in foreign countries lacking strong rule of law principles, for example jurisdictions with a judiciary and/or legal framework perceived as unreliable. It was generally confirmed that London was a very popular jurisdiction for foreign litigants, with the exception of those based in the Americas where disputes were mostly litigated in the US courts. Alongside the key attractions of the quality, certainty and efficiency of English law and the reputation and experience of its judges, several other factors were described as contributing to the attraction of London including: its position as an international trading centre, its legal infrastructure and independence of its legal profession, and the role of the English language as a *lingua franca* of international commerce.

It is difficult to make precise statements about the value of commercial claims brought to the English courts and the extent to which they involve foreign parties, as data is not routinely collected. However, the Rolls Building courts were able to provide some indicative data.[23] The most comprehensive available data on foreign litigants comes from the Admiralty and Commercial Courts. This suggested that since 2010, around 80% of all Commercial Court cases each year have involved at least one foreign party.[24] In almost 50% of all cases, all parties are foreign.[25] No reliable similar data exists for the Chancery or Technology and Construction Court (TCC).

As to the value of the claims, the available data suggested:

- Commercial Court: 60% of cases have a claim value over £300,000 (the figure may often be unspecified beyond that) and a further 16% of cases have a claim value over £1,000,000. (The data available do not allow very high value claims (e.g. in excess of £10million) to be separated out).
- Technology and Construction Court: 65% of all cases have a claim value over £300,000.
- Chancery: 28% of all cases have a claim value over £350,000.

Although the data is only indicative, it clearly suggests that London is a centre for high value commercial litigation and that foreign parties are frequent litigants.

The responses to the questionnaire and the interviews paint a picture consistent with those two propositions. Law firms and barristers who participated in this study were predominantly engaged in very high value claims across a variety of sectors, both in litigation and arbitration. Claims were rarely below £1 million and regularly amounted to hundreds of millions of pounds. The same held true for participating companies/institutions.[26] Most transactions that respondents dealt with had a cross-border element and some respondents worked nearly exclusively on cross-border work.[27]

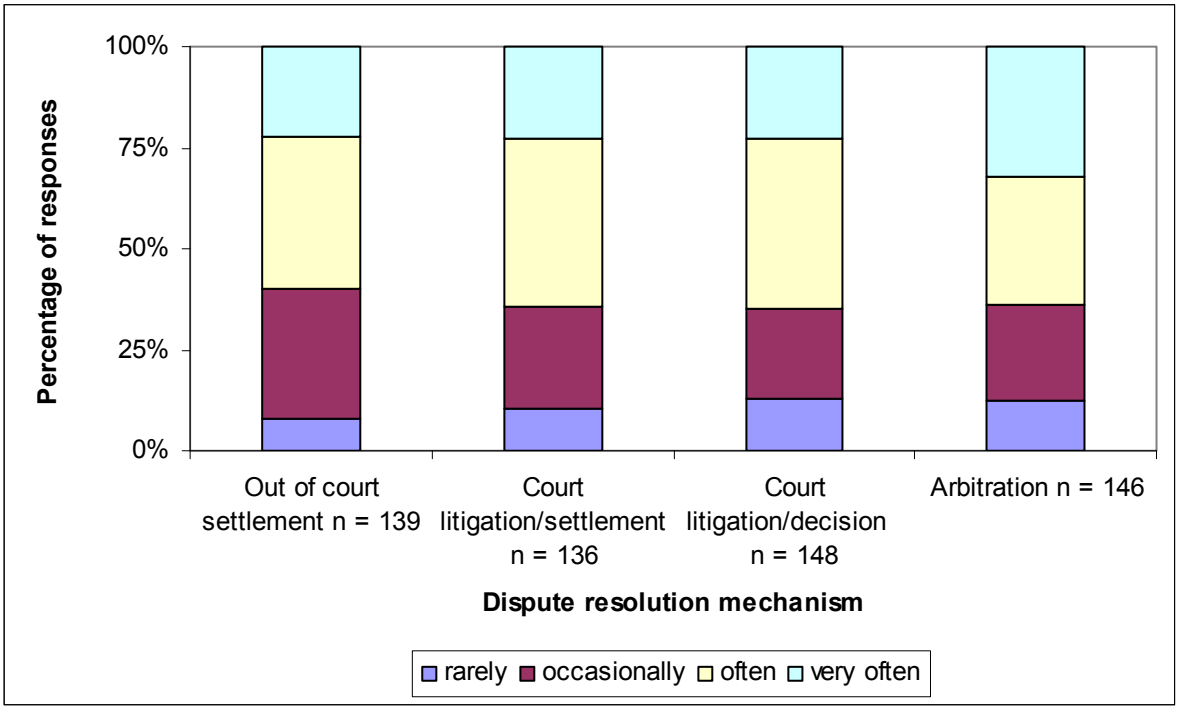
Respondents considered litigation in the English courts as one of the most popular choices for cases involving foreign litigants. Agreements to litigate in England were reported to be particularly frequent in the banking and finance sector, for shareholder agreements, insurance and re-insurance and to some extent in the shipping business. A further consideration for litigants – regardless of the sector – was whether assets were located in the UK. Respondents felt that the financial world heavily relies on London as a litigation centre, especially in the EU derivatives market, and the preference for English courts was considered to be particularly strong in the case of foreign litigants from jurisdictions considered to have a weak or partial judiciary, provided that the UK is a suitable forum from a geographical viewpoint.

Consistent with findings from the questionnaire and the interviews, event participants confirmed that London was an attractive venue for litigation for a number of reasons:

- its position as an international trading centre;
- its well-developed legal infrastructure and an independent legal profession;
- openness to foreign litigants;
- neutral venue for many parties;
- responsiveness of English law to the requirements of modern commercial transactions; and
- English language as *lingua franca* of international commerce.

However, it was also noted that there is increasing competition in the international dispute resolution market, with other jurisdictions heavily marketing themselves to attract business traditionally adjudicated in London.

**Figure 4.1: Choice of dispute resolution mechanisms**




Not all transactions result in disputes. Around half of respondents estimated that only up to a third of their transactions would eventually give rise to a dispute.[28] When a dispute arose to be litigated in England, UK-based legal representatives were regularly instructed to present the case.[29] Disputes were not necessarily resolved through a full trial; respondents indicated that it was often more economical and practical to settle the claims amicably through out-of-court or in-court settlements (i.e. cases settle once the parties attend a hearing). Around 60-65% of respondents said they often or very often settled claims out-of-court or in-court (see figure 4.1).

Whilst Figure 4.1 highlights that court litigation was frequent, arbitration also was a popular choice. The choice between arbitration and litigation was often driven by the sector, firm or type of agreement in dispute. Natural resources (e.g. oil & gas, mining, minerals), energy and aerospace were sectors where matters were often referred to arbitration. The choice of the seat of arbitration – the jurisdiction where arbitration is conducted – was not uniform; it varied across sectors. Respondents also pointed to recent trends such as arbitration in regional arbitration centres across different jurisdictions and P.R.I.M.E. Finance[30] arbitration in the Hague. In addition, some respondents considered mediation to be a practical dispute resolution mechanism.[31]

## 4.2 Factors advocating in favour of a choice of English law

English law was considered to be among the most popular choices of applicable law in commercial disputes, and that is consistent with the literature.[32] Litigation in England under a

foreign law was considered rare and needed to be justified by specific factual circumstances. Depending on the sector, English law was also viewed as a frequent choice in combination with arbitration, either at the London Court of International Arbitration (LCIA) or abroad.

Three issues related to this were explored in the survey and interviews: how often was a choice of English law recommended or agreed upon, who was influential in making that choice, and what were the reasons that influenced the choice.

## Choice of law clauses in favour of English law

When asked whether they had agreed upon or recommended a choice of English law in the last five years, respondents (excluding "non applicable" answers) had mainly done so on a case-by-case basis (62%), followed by a choice for the overall business (20%), or for a specific business sector (12%).[33] Respondents commented that business sectors where English law was frequently used included marine insurance, shipping, finance, trade, construction, energy, employment, banking, shares & debts issues and pensions. For other business sectors, foreign laws can be a popular option (e.g. Swiss law for commodity contracts).

Of the 123 respondents who had chosen an English law clause in the last five years, 96 estimated how frequently there was a choice of English law.[34] Just over half said a choice of English law clause was used in 60–100% of their work. A third said that they would choose/recommend English law in less than a third of their transactions. Those who would less frequently recommend or agree on a choice of English law were mostly parties based outside the UK.

## Responsibility for choosing English law

Choice of law clauses in favour of English law were most often recommended by lawyers, though they were also requested by parties based both within and outside the UK and through the use of standard form agreements that contained a choice of English law as a default option.[35]

## Factors influencing a choice of English law

On the motivations for choice, English law reportedly offered advantages for international transactions due to its quality, certainty, clarity and predictability as well as its efficiency in commercial disputes.[36]

Furthermore, comments highlighted substantive aspects of the law including the unequivocal recognition of the freedom to contract, the availability of commercially-oriented remedies, and

the reluctance of courts to re-write commercial contracts, as serving to facilitate the choice of English law.

Other important factors were standard market practice; and the possibility to combine a choice of English law clause with an English litigation clause to benefit from the advantages of London as a venue for litigating commercial disputes (discussed further below).

Some interview respondents also identified UK-based counsel and English language as supporting the choice of English law.

## 4.3 Factors advocating in favour of litigation in England

As with choice of law, three themes were examined with regard to choice of court: how often was a choice of English courts recommended or agreed upon, who was influential in making that choice, and what were the reasons that influenced the choice.[37]

### Choice of English courts

88% of the respondents (excluding "not applicable" answers) had in the last five years agreed upon or recommended a choice of English courts. The most common approach was to decide on a choice of English courts on a case-by-case basis taking into account the circumstances of the case at hand (82 respondents).[38] Nineteen respondents said they had done so for a specific business sector and 14 for the overall business. Respondents' comments confirmed that the English courts had an established reputation in specific business sectors, such as insurance, technology and construction, finance and corporate transactions, international shipping, and constituted the default choice for the transactions involving these sectors.

Of the 115 respondents who had agreed upon or recommended a choice of English court in the last five years, 95 provided an estimate of the frequency of choice: 41 said a choice of English court was made in 60-100% of their cases, 18 estimated that a choice of English court was made in 30-60% of their cases; 36 chose the English courts in up to one third of their cases.[39]

### Responsibility for choosing English courts

Choice of court clauses in favour of English courts were most often recommended by lawyers, then, in decreasing order, by parties based in the UK, through the use of standard form agreements incorporating a choice of court agreement in favour of English courts, and by parties based outside the UK.[40]

### Factors influencing a choice of English courts

Exploring the drivers of decisions to agree upon or recommend a choice of English court revealed a combination of influencing factors.[41]

The top two factors cited by respondents were:

- reputation/experience of judges; and
- the combination of choice of court clauses with choice of law clauses in favour of English law.

They were followed closely by:

- efficient remedies;
- procedural effectiveness;
- neutrality of the forum;
- market practice;
- English language;
- effective UK-based counsel;
- speed; and
- enforceability of judgments in foreign jurisdictions.

Supplementary factors included:

- quick interim relief (world-wide freezing orders, injunctions, equitable remedies etc.);
- neutrality, fairness and transparency of the judicial system;
- disclosure regime (although the benefits of disclosure and its scope received mixed reactions);
- great infrastructure and professional support services;
- absence of jury trials;
- absence of punitive damages;
- support for international arbitration from the Commercial Court.

A factor often stressed by respondents was that English courts had successfully established themselves as the default jurisdiction for parties that had unsatisfactory judicial and/or legal systems in their home jurisdictions or where, in the view of both parties, the choice of English courts was the acceptable compromise solution.

In many cases the decision on where to litigate would be made on a case-by-case basis. Numerous factors would be weighed, most notably: the location of assets, the applicable law, the enforceability of the judgment as against the assets of the counterparty, procedural considerations, and convenience. In contrast to positive factors that draw litigants to London, respondents also outlined a number of factors that might serve to discourage the litigation of

commercial claims in London courts. Chief among these were the overall costs of litigation[42] perceived to be driven by:

- high costs of solicitors and barristers;
- the cumbersome nature of the adversarial system (including the intensity of fact-finding which could protract the length of judicial hearings);
- costs of disclosure; and
- judicial proceedings not always being streamlined.

The adverse cost rule[43] was perceived by some as a disadvantage. English litigation was perceived to be often unpredictable in respect of its total costs, partly because of the risk of it being protracted.

Nevertheless most respondents still considered that the quality of English judgments outweighed the costs associated with them, especially where their national judicial systems were perceived to be unreliable. In the words of one practitioner, parties who want a 'Rolls Royce service' have to accept – and will accept – that they must pay the 'Rolls Royce price'. The balance was, however, thought to be a delicate one.[44]

It was also made clear by respondents that court fees *at their current level* were considered a "non-factor" in evaluating the overall costs of litigation in the English courts. Of all factors asked about, the lowest proportion of respondents reported that current court fees played a decisive role in the decision to agree upon or recommend the English courts. The majority (70%) of the 108 who indicated a view on factors influencing choice of court agreements said, that the current court fees were of very little or no relevance.

## 4.4 Potential impact of increased court fees on litigation in London

### Awareness of the current fee structure

Of the 155 respondents who provided a response about awareness of the current fee levels in commercial matters, 73 said they were aware of them. To the remainder (more than half, 82 respondents), details about the exact court fees were not known and court fees tended to be seen as rather insignificant compared to the total legal costs.[45]

### Current relevance of court fees for the decision-making process

Respondents were first asked to assess whether court fees at their current level affect decisions to bring proceedings before the English courts, once a dispute arises: 65 of the 141 respondents who expressed a view on this point reported court fees as currently having no role in this decision.[46] Thirty-seven respondents considered them 'a factor to take into account',

while only 8 said they were 'very much' a factor in decision-making.[47] While court fees are included in cost budgets, respondents indicated that they were rarely discussed with clients, except for lower value claims where there is a general pressure on fees. This was also highlighted during discussions at the event.

**Table 4.1: – Relevance of current court fees for the decision making process**

| When a dispute arises, have court fees affected the decision whether or not to bring proceedings before the English courts? | Number of responses |
|---|---|
| Not at all | 65 |
| Yes, they were a factor to take into account | 37 |
| Yes, very much | 8 |
| Not applicable | 31 |
| *No response provided* | *74* |
| *Total* | *215* |

While currently irrelevant for many, approximately two-thirds of respondents believed that this picture could change if higher fees are charged (see below).

## Awareness of the proposal on enhanced fees

When asked whether they were aware of the Ministry of Justice's proposals for increased court fees for commercial proceedings 140 respondents provided a response, with approximately 60% of these stating they were aware of the proposed fee rises (although only about half were able to provide the correct details).[48] To enable all participants to give their views on the planned fee rises, respondents were referred to the document *Court Fees: Proposal for Reform*. It was made available to the questionnaire respondents and its main proposals were discussed in the interviews.

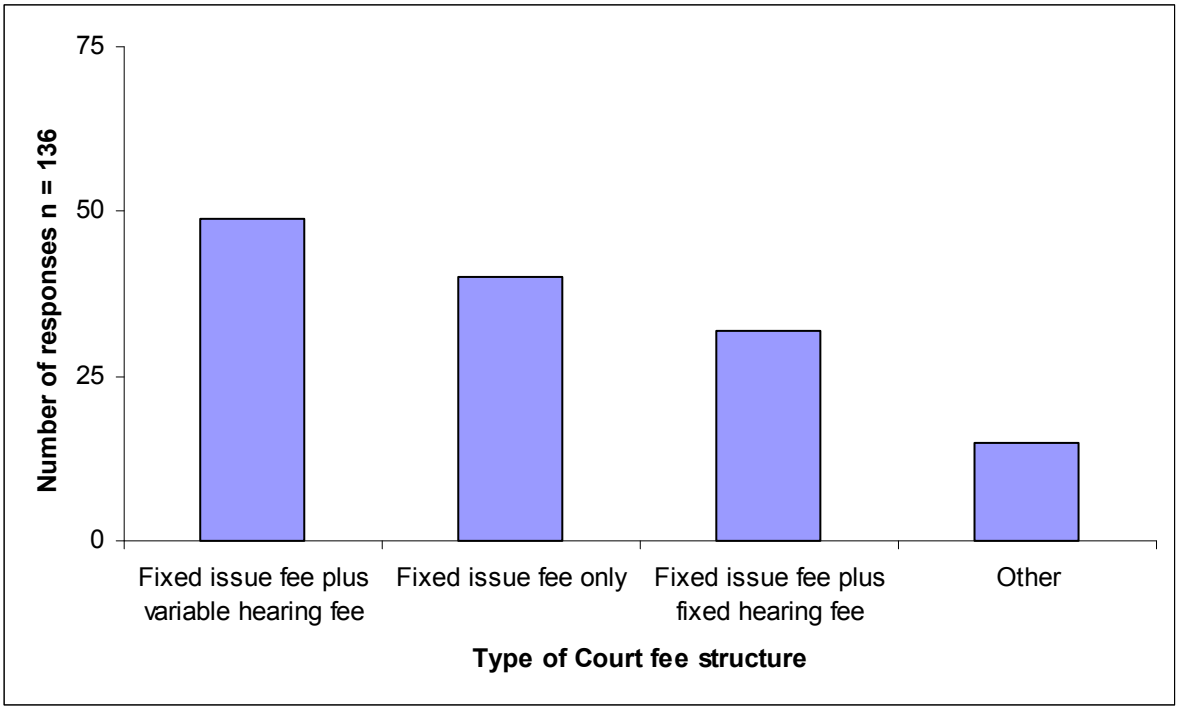
## Assessment of the proposed court fee structure

### Preferred fees structure - generally

Respondents were first asked to comment on their preferred court fees structure *generally*, without reference to the concrete sums suggested by the Ministry of Justice for commercial cases. Approximately two-thirds of all 136 respondents commented[49] and responses were divided between preferring a fixed issue fee plus a variable hearing fee (49 respondents); a fixed issue fee only (40 respondents); or a fixed issue fee plus a fixed hearing fee (32 respondents). The reasons cited for preferring a fixed fee model were certainty and predictability of costs. Reasons given for the combination of a fixed issue fee with a variable hearing fee were to stagger the costs according to the effective use of court time. Several respondents thought that the upfront issue fee should be low, given the large number of

settlements. Several respondents indicated a preference for retaining the current fee structure (included in the 'other' grouping in figure 4.2).

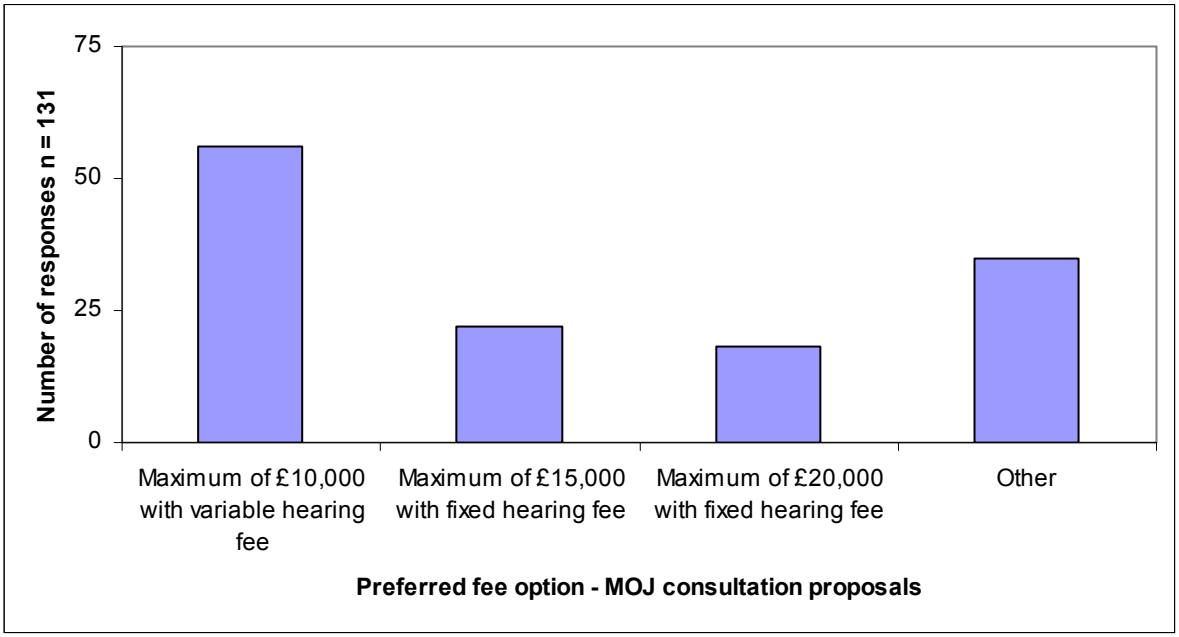
**Figure 4.2: Preferred fee structure for commercial cases**[50]




### Preferred fees option – MoJ Proposal

When the participants were shown the specific fee options as proposed by the Ministry of Justice, the most favoured option was a fixed issue fee of up to £10,000 combined with a variable hearing fee. The capped-options of a £15,000 or £20,000 issue fee combined with a fixed hearing fee were less popular. A number of respondents did not agree with any of the options.

**Figure 4.3: Preferred fee options – MoJ Proposal[51]**




The issue of court fees provoked much debate, from which several key themes and concerns emerged.

### Levels of proposed fees

It was often mentioned by respondents that the suggested value-dependent issue fees (5% of the value of the claim, but capped) would be too high. Even the lowest proposed figure, a maximum issue fee of £10,000, was considered by many as unrealistic in light of the current competitive market climate. This view was held especially strongly in relation to (but not limited to) lower value claims. Many respondents preferred to see "no change" to the current fee levels, expressing concern at the size of the proposed change. At most, minor changes to the current fee levels were considered justifiable, given the increasing competition with other litigation centres world-wide.

### Upfront fees

Another concern of respondents related to the proposals for upfront issue fees; three main reasons were provided.

Firstly, it was pointed out that higher fees would need to be discussed with the parties more often than is currently the case when addressing legal costs. The majority of those who commented were concerned that higher fees would create a negative perception amongst the litigating parties and court fees could be converted from a "non-factor" to a "negative factor" in the decision-making process of whether to litigate or arbitrate and where to do so. Many expressed concern that court fees may act as a disincentive in cases of lower value claims. Even for high value cases, where fees are small in comparison both to the total

amounts at stake and to legal fees, a bill of thousands of pounds was felt likely to "optically" make a difference. The view was that this could adversely influence the often delicate balance between the high total litigation costs in England and the high quality of legal services. Some stated that this is especially true when higher fees are considered in combination with the adverse cost rule.

Secondly, cases frequently settle during trial, with proceedings often started just to "make the other party move" (i.e. to put pressure on the party to perform their obligations under a commercial contract) or to prevent parallel proceedings elsewhere. Many respondents therefore expressed concerns that high upfront fees charged might encourage parties to strategically choose other courts or opt for arbitration instead of litigating in England.[52]

Thirdly, observations were made that high upfront fees may present a risk for the claimant to start proceedings in situations where it is uncertain if the other party has any recoverable assets.

### Rationales and justifications

The consultation proposed that fees for commercial cases are not only intended to cover the costs of the Commercial Court but also to cross-subsidise other courts. Many respondents could not find any justification as to why users of the Commercial Court should finance the shortfall of, for example, the English family courts, through enhanced fees. It was frequently said that it would be perceived as a "bad signal to the world" if fees were raised beyond being cost-covering. Enhanced fees were characterised by some as a "tax-like" payment, rather than being a realistic charge for the use of the courts.

The view was also expressed that "justice is a fundamental obligation of the State, a public service necessary for a stable society, and should not be a profit-making enterprise". It was felt that measuring justice on a profit basis "missed the point". In so far as other areas of governmental activities could be cross-subsidised by the litigating parties, the court fees proposal was considered by some respondents as a violation of the fundamental right of access to a functioning justice system.

### Alternatives proposed by respondents

A frequent suggestion was that a low issue fee combined with variable hearing fees (spread and gradually rising over the duration of the trial) would potentially be better received, as the latter depends on the use of court time. Variable hearing fees might also encourage shorter trials and settlements. However, a problem was seen by some respondents regarding the calculation of hearing fees if charged in "ranges of days". When asked to suggest an issue

fee they would find more acceptable, many respondents offered an amount somewhere near to the current fees.

Some respondents preferred a fixed issue fee only model, as fees related to the duration of the process would be difficult for the parties to estimate. Some suggested that it might be possible to increase the “top end figures” but that the band idea (value span) needs to be kept. “If there were to be increased fees there should be a sliding scale, which had a shallower curve and a longer tail. That is that the peak of the fees would be for larger value claims.” In lower value claims, higher fees were felt to constitute a barrier to justice. It was emphasised that the issue fee should be limited through caps.

### Other comments

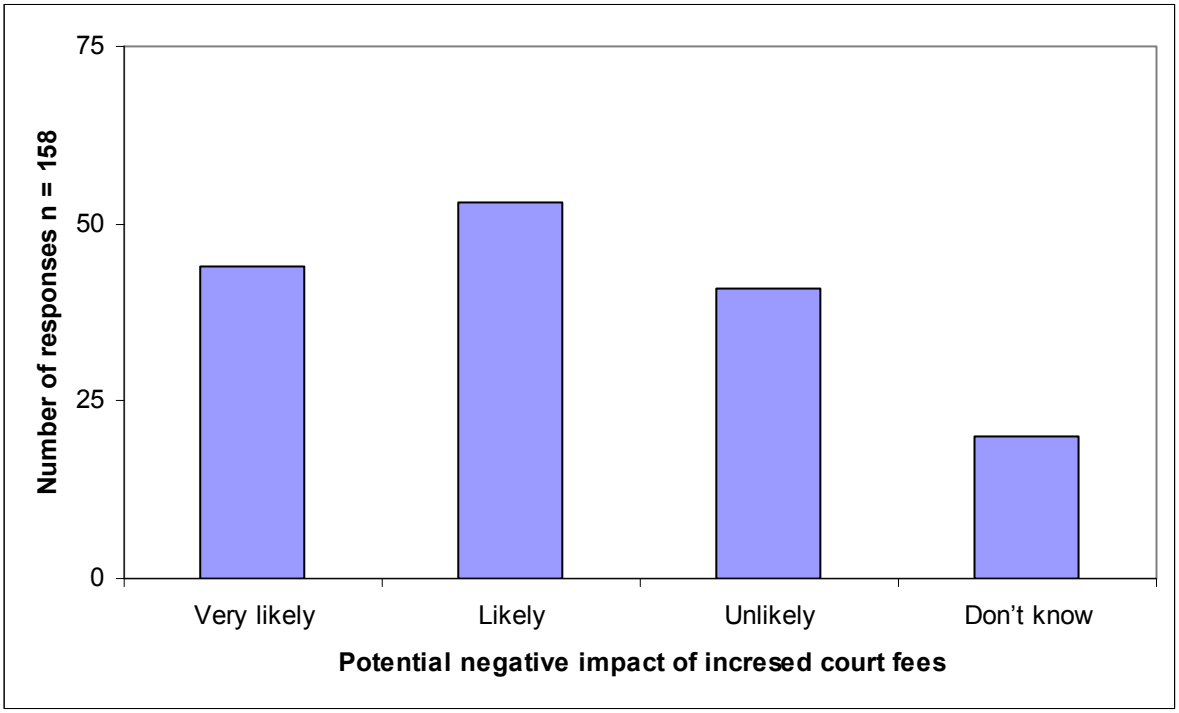
Some respondents suggested that higher court fees presuppose better court services: a proportionate increase of fees could therefore only be justified if services were improved (in particular, but not limited to, information technology).[53]

A number of comments were made regarding specific types of claims, such as non-money claims, declaratory judgments, injunctions or claims with an unspecified amount, with a few respondents foreseeing a risk that, to avoid paying higher court fees, parties could claim declaratory statements instead of bringing a money claim. Declaratory statements of liability may attract a lower court fee than money claims and therefore a party may be inclined to use this route instead.

## Potential impact of court fee rises on the competitiveness of English courts

Potential consequences of increased court fees on the competitiveness of the English courts were raised in the interviews and open field comments in the questionnaire.

**Figure 4.4: Potential for negative impact of increased court fees on the competitiveness of the English courts[54]**




Just over one quarter (26 %) of the 158 respondents who responded felt that increased fees would be unlikely to have a negative effect on the litigation market. This opinion was supported with references to the high quality of legal services/judgments and/or explained by the high value of claims litigated in England, in light of which higher court fees were expected to remain a non-factor. In light of the high overall litigation costs, these respondents felt that the suggested fee changes would not affect the decision to litigate in England. This group of respondents typically litigates claims worth tens or hundreds of millions of pounds. As respondent put it, "in the type of cases [we] are involved in, court fees do not play any role". While being confident that high value claims would still be litigated in England, many respondents thought there was a risk that some competing jurisdictions might benefit from fees increases (see below).

Twenty respondents (approximately 13% of the 158 who responded) said they did not know if increased fees would have an adverse effect on the English commercial litigation market.

In contrast, a total of 97 respondents (61%) thought increased fees were either very likely (44 respondents, 28 %) or likely (53 respondents, 34 %) to have an adverse effect on the English commercial litigation market. These respondents suggested the proposed court fee rises would make English courts less attractive for international commercial disputes - the following key themes emerged from their views and are discussed in detail below:

- potential to generate a negative perception of the English courts;

- a change in the balance between court-based litigation in England and alternatives;
- potential for impact on the wider economy;
- potential for a change in standing and reputation of the English courts and law; and a
- need for a precautionary approach.

### Negative Perception

The perception that enhanced court fees would act as a negative "catalyst" was repeatedly stressed by respondents. They felt England might be perceived as no longer being a welcoming place by litigants and many anticipated that any negative perceptions of the English courts could be exacerbated by negative headlines and marketing from competing jurisdictions. They expected competing jurisdictions to present themselves as a cheaper, but high-quality, alternative. For example, one respondent stated that "a significant increase in fees will make the level of court fees a subject that lawyers will feel they should discuss with international clients, will not encourage parties to litigate in England and will offer a marketing opportunity to England's competitors." It was also mentioned by some respondents in this context that litigants might develop a negative impression of English courts if they had to pay fees beyond the cost recovery margin without benefitting from any improved court services.

### Alternatives to litigation in England

Respondents expressing concerns as to the impact of the suggested fee rises felt that these could upset a delicate balance in favour of litigation in the English courts. They feared that parties might opt for other jurisdictions if this were sensible from a geographical viewpoint, as competing litigation centres make every effort to improve the quality, ease and speed of their proceedings and offer litigation under English law. Litigation was perceived to be an increasingly competitive market which follows the "basic economic rule: if prices go up, demand drops". In the view of many respondents, the proposed fee rises risked negatively affecting choice of court agreements in favour of the English courts. Parties might be more likely to prefer an alternative jurisdiction or might more frequently include non-exclusive or hybrid clauses into their contracts to guarantee flexibility (as these allow opting for other fora or arbitration) in case of further fee increases in the future. Parties might also consider arbitration more seriously as an alternative from the outset, which might not necessarily be London based. For example: "…at present levels, [court fees] are not determinative of whether or not to bring proceedings before the English courts. They may, however, become so for parties that have the choice whether to arbitrate or litigate and where to do so, if the increases in fees are implemented."

Equally, where parties do not choose a competent court in their contract but have different fora available once a dispute arises, they might take an *ad hoc* decision in favour of an alternative forum. As discussed, respondents perceived a particular risk that parties could opt for alternative jurisdictions (or arbitration) to avoid high upfront fees where settlement may be an option or where it is uncertain whether the other party has any assets. One factor influencing litigants' decisions was the chance of recovery of the debt; substantially increased court fees would increase the debt and may render a recovery less likely.

Even respondents who were not opposed to higher court fees *per se* saw a risk that cases would be brought in competing jurisdictions with lower fees.

> "Increased court fees are unlikely to affect the UK's competitiveness in relation to the very high value commercial disputes on which we advise because the perceived benefits of litigating before the English courts (particularly given the sums at stake) would in our view outweigh the disadvantage of increased court fees. For the same reason, in our view the increase in court fees is unlikely on its own to encourage parties to opt for arbitration in high value disputes. Having said that, where the sums at stake in a dispute are lower, our view is that a significant increase in the fees could be a disincentive for the parties. Further, we agree […] that increasing fees to a level far in excess of the costs involved in order to subsidise unrelated parts of the justice system does not send a message that the courts of England and Wales welcome international business and that loading additional costs on to businesses in order to meet social costs unrelated to those businesses cannot be justified."

### Potential impact on the economy

A frequently expressed concern was that the potential profit from court fee rises could not be considered "on the micro level of costs alone" but needed to be seen in relation to the overall contribution of the legal market to the UK economy. If high value cases were no longer brought in England, this loss was expected by respondents to outweigh any benefits that fee rises might generate. Respondents highlighted that it was not only the litigation work at risk if parties are less inclined to litigate in England, but also the transactional work which constitutes a vast amount of Legal London's business, and the related support services: if parties litigated abroad, it was suggested they might also be less likely to choose English law. Taken together, any impact to the market of an increase in fees was considered to represent a risk of significant losses, which could outweigh the additional income expected through enhanced fees.

### Potential impact on the standing of English courts and English law

Respondents flagged that a decrease in international cases risks negatively affecting the present standing of the English courts as fewer cases may also lead to a less developed

body of English law. Respondents felt that England needed to remain the “motherplace” of litigation as the current quality and reputation of English commercial law could only be maintained if there was sufficient litigation to guarantee that case law was kept up-to-date.

Respondents indicated that the negative impact of court fee rises they anticipated may not immediately be felt. If parties chose to litigate elsewhere in their contracts, and if organisations changed standard forms in favour of litigation elsewhere or used arbitration, it would likely take a few years before a dispute arose/court proceedings began. By then, any change in the choices of court/law of the litigants may have triggered long-lasting adverse effects on litigation and transactional work in England.

### A precautionary approach

During the interviews, supplemented comments in the questionnaire and at the event, it was generally considered that it would be unfortunate for the government to take any action that could have an adverse effect on the English litigation market and it was suggested that a precautionary approach should be taken; “In a highly competitive legal market place, perception is very important, so a prudential approach of the Ministry of Justice would be much better.” From this it can be concluded that respondents either preferred no changes or only minor / justified changes to the current fees structure.

## 4.5 Competing jurisdictions

While London is considered by respondents as a natural forum for international commercial cases (especially for litigants from common law and Commonwealth States, Russia, and Asia), international litigation is increasingly perceived as a competitive market where litigation centres promote themselves through intensive marketing and improved quality and speed of their court services.

Respondents were asked to reflect on whether they would – currently – consider bringing a case under English law to another jurisdiction. Excluding “not applicable” answers, fewer than a third of the respondents who expressed a view (130 respondents) considered it likely (28 respondents) or very likely (8 respondents) that they would.[55] By contrast, almost three-quarters 72 % of the respondents thought it not very likely or unlikely that they would – currently – bring English law-governed cases to foreign jurisdictions, although they highlighted that this decision would depend on; geographical considerations; strategic advantages of other jurisdictions in the concrete case; the location of assets; and enforceability. However, respondents also expressed a view that, in future, there might be a shift towards more litigation abroad, given the concerns of many that the proposed court fees

rises might be likely or very likely to have a negative effect on the attractiveness of English courts.

Respondents who reported they currently would consider bringing a case under English law to another jurisdiction were asked which other jurisdictions they would consider using. The picture is relatively varied, but with some preferences for certain litigation centres, as shown in Table 4, (respondents were able to provide multiple responses). Some respondents reflected that these jurisdictions might become future competitors to the English courts.

**Table 4.2: Competing Jurisdictions**[56]

| Jurisdiction | Number of responses |
|---|---|
| New York | 61 |
| Singapore | 61 |
| Other EU Member State | 55 |
| Hong Kong | 41 |
| Other | 28 |
| Dubai | 25 |
| Australia | 20 |
| Other US Jurisdiction | 14 |
| Delaware | 11 |
| India | 8 |

## Key Competitors

### Other EU Member States

Respondents generally thought it cheaper to litigate in continental Europe than in the UK. Other perceived advantages were the use of inquisitorial systems, better cost control, and quicker results. When confronted, however, with a choice between litigation in the courts of another EU Member State and the English courts (e.g. where the claimant has an option to litigate in courts of two different Member States under Art. 2 and 5(1) Brussels I Regulation[57]), more respondents (most based in the UK) would currently "always" or "often" litigate in the English courts and only occasionally in EU Member State courts, if this was appropriate in the circumstances of the case.[58] Some respondents raised doubts as to whether these jurisdictions currently were serious competitors to England for contracts not involving any parties from continental Europe. However, if court fees rose in England as proposed, they expressed a concern that this picture could change in favour of other EU Member States.

The most seriously competing European jurisdictions were said to be Germany and the Netherlands, and it was noted that both have improved their marketing.[59] Respondents further remarked that in Germany lawyers' fees were more predictable, cheaper and the average duration of trials shorter.[60] They also pointed to recent initiatives to introduce English as an alternative trial language in international commercial cases. Some German courts have already initiated pilot projects allowing hearings to be held in English (although the initiative remains to date rather constrained in scope). The Dutch courts were perceived by respondents as efficient in hearing complex high value claims and as providing for convenient collective settlement mechanisms. Sweden was also mentioned as an alternative to England as a court venue. In Europe, but outside the EU, Switzerland was also a jurisdiction favoured by several respondents.

### New York and other US jurisdictions

Respondents perceived New York as a major competitor to the English courts. This is especially true for cases involving Latin American parties, parties from the Pacific area, or cases with assets located in the US. Beyond that, respondents highlighted a general advantage of litigating in New York: it is cheaper.[61] In the event that English court fees rise, New York might, in the respondents' view, become a strategic forum if cases were likely to settle, in order to circumvent high upfront fees.

New York was also considered to have good case management and it has increased its marketing to attract more London-based litigation work, especially in the financial sector.[62] Respondents also highlighted the creation of a special arbitration court, which simplifies proceedings supporting arbitration. This might attract more arbitration work and related court proceedings to New York, to the disadvantage of London. Among the downsides of litigating in New York, respondents mentioned jury trials (the case is resolved by a jury of people selected from the public which is perceived as presenting an increased uncertainty for litigants), onerous pre-trial discovery and the possibility to award punitive damages.

Several respondents also considered Delaware or other US jurisdictions as competitors, depending on the location of the parties and the type of claim at stake.

### Singapore

Respondents identified Singapore as a very ambitious litigation centre. It was said that Singapore has observed the developments of the London litigation market closely in an attempt to attract London's litigation business. It markets itself intensively and is likely to continue to do so. The location of Singapore was considered to be favourable for cases involving parties from India, Indonesia and Australia. There was a feeling that cases from these jurisdictions might go to Singapore rather than London if court fees rise.

There were mixed views as to the quality of the Singaporean court system. Some respondents had concerns as to its neutrality and the expertise of the judges, while in contrast others highlighted that Singapore was already now regarded as “good enough” by parties located in Asia.

Respondents felt the interest in litigating in Singapore may increase in the near future as Singapore plans to establish a specialised Commercial Court, a project that is well supported and promoted by its government and its Lord Chief Justice. Respondents reported that the ambition of the Commercial Court Project is to replicate the high quality of English courts and lawyers by employing former English judges and by granting extended rights of representation to qualified foreign barristers in cases involving foreign parties. Provided that the services of the Commercial Court in Singapore does achieve the high quality promised, respondents considered that Singapore could indeed be a serious alternative to England, at least for parties with links to Asia, and especially India or Indonesia. Singapore has already shown its capability as an arbitration centre. It evolved as a serious global competitor within 3-5 years due to good facilities and the quality of its arbitrators. While clients might at first be reluctant to act as “testers of new jurisdictions”, many respondents felt strongly that, over time, similar trust and competence could also be built up in the area of litigation. Another factor potentially advocating in favour of Singapore is support provided by the new Singaporean Commercial Court for arbitration proceedings in the Singapore International Arbitration Centre (SIAC). Direct competition between the English and Singaporean Commercial Court depends on Singapore being able to deliver the same quality of law, lawyers, judges and judgments as London, but for a lower price, and if the Singaporean Commercial Court judgments were enforceable in the country in which enforcement is sought, respondents see a risk that parties will move away from litigation in London.

### Dubai

Several respondents mentioned Dubai as an alternative venue following considerable government investment in the litigation market. The Dubai International Financial Centre works with judges from common law jurisdictions and aims to replicate the quality of English courts and lawyers. Dubai is geographically well located for businesses in the Middle East, in particular those in the UAE. Respondents and event participants suggested that Dubai might become increasingly competitive in the future, particularly for financial claims and maritime cases. However many stated that as a litigation centre, Dubai’s growth had not been as rapid as expected.

### Hong Kong

Some respondents saw Hong Kong as a competitor. It is perceived as a quite active, albeit small litigation centre. Although in principle free of political influence, a few respondents raised concerns due to its link with China.

### Other competing fora

Several respondents considered Qatar as a competing jurisdiction. Qatar has engaged high quality English judges to deal with cases under English law and is seeking to replicate the quality of UK courts and lawyers.

Australia and, to a lesser extent, India were also identified as competing jurisdictions by several respondents.

## 4.6 Impact on arbitration

### Comments on the choice of arbitration at present

Respondents were asked which dispute resolution mechanisms they preferred, for which reasons and to what extent they agreed to, or recommended, arbitration.

### Frequency of arbitration

When asked about the frequency of arbitration, more than 80% (once the 'not applicable' category was excluded) of respondents had agreed to or recommended arbitration. Of these, most (88 respondents) recommended it on a case-by-case basis, rather than it being dependent on a specific business sector (9 respondents), or for overall business (10 respondents).[63] Half of those who had agreed to or recommended arbitration gave estimates of frequency. About half opted for arbitration in 0-30% of their cases about one-third chose arbitration in 30-60% of their cases, and the remainder used arbitration in 60% or more of their cases.[64]

### Factors influencing the choice of arbitration or litigation

The choice between litigation and arbitration was felt to depend on various factors. Two major factors, closely related, were the enforceability of a decision and the location of the defendant. In many cases involving emerging markets, the enforceability of judgments was not guaranteed while arbitral awards were enforceable under the New York Convention.[65] The choice was, as reported by respondents, also "matter"-specific. If a dispute was very technical, it might not be suitable for arbitration. Likewise, in shareholder disputes, only courts might be able to apply efficient remedies. Furthermore, the choice of arbitration or litigation was said to often be "sector"-specific. In terms of sector, court litigation reportedly prevails in banking and is also frequently used in the shipping business, depending on the parties and types of contracts in dispute. In cases involving natural resources (e.g. oil and gas) or energy, arbitration is more common.

Besides such structural/technical reasons, respondents listed further factors advocating in favour of arbitration: less extensive disclosure; the informality and flexibility of arbitration; confidentiality; better control over the arbitration process; the possibility of choosing the arbitrators; the perceived finality of awards (as appeals are rare due to the 1996 Arbitration Act, as opposed to court litigation); and the fact that arbitration was completely "mobile".

Despite the cited advantages of arbitration many respondents pointed out that the prevalence of either litigation or arbitration could change in phases. According to some respondents, an increase in arbitration was triggered by better marketing of the LCIA as well as the International Chamber of Commerce (ICC) or other arbitration centres such as the Singapore International Arbitration Centre (SIAC).

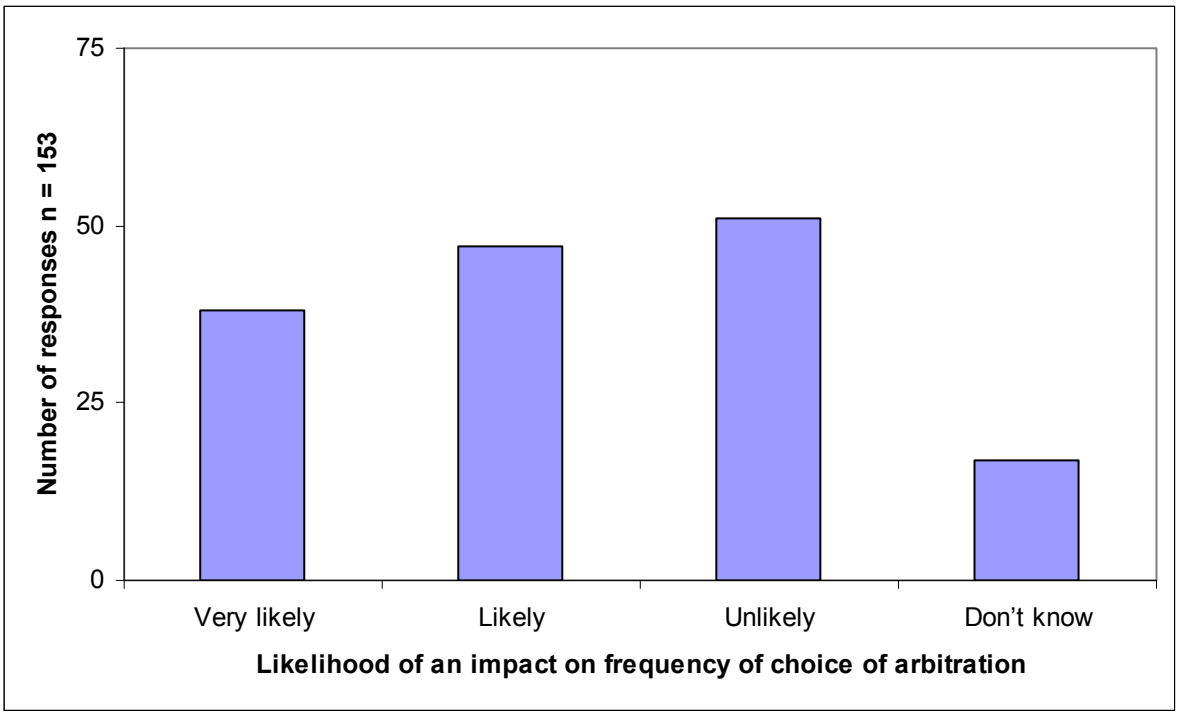
Respondents noted a current trend towards litigation, at least in certain sectors. This was thought to be driven by a disillusion with quality and costs of arbitration and problems of lengthy procedures due to the unavailability of arbitrators. Parties can get a highly specialised judge within a short timeframe but might have to wait a long time for a highly qualified arbitrator. The total costs for arbitration were high, unless a mere notice of arbitration would suffice to settle the case.

It was also noted that there is not only competition between litigation and arbitration but also competition between arbitration centres, notably the LCIA and those based in Geneva, Paris, Stockholm and Singapore. Several respondents also thought that new arbitration bodies for specific sectors (e.g. P.R.I.M.E. Finance arbitration in The Hague) might come to be favoured over both court litigation and LCIA arbitration in future.

### Potential impact of court fee rises for the parties' choice of arbitration

Respondents were asked to reflect on the consequences that court fee increases might have on the balance of choice between litigation and arbitration. Despite the costs of arbitration, just over half of those who responded considered it likely or very likely that parties would opt more frequently for arbitration if court fees rose.[66]

**Figure 4.5: Likelihood of increased court fees encouraging parties to opt for arbitration more frequently**




Several reasons were given for these estimates. Where litigation is initiated to encourage the other party to fulfil their obligations and where cases are likely to settle, respondents thought that arbitration might become a cheaper way to achieve this effect. In lower value claims, where the proposed fees increases may be considered disproportionately high, arbitration was also expected to become more popular.

The flexibility offered by arbitration was considered to rise to the fore in the face of increased court fees: "if court fees rise significantly, more parties will opt for arbitration where they have greater freedom in the choice of decision maker and procedure and greater confidentiality, thereby reducing income to the court system." Moreover "the fact that English courts currently charge relatively reasonable amounts is an important selling factor as against arbitration. This differentiator would be lost if fees were increased to this level and if daily hearing fees were introduced."

A further argument made that increased arbitration may have a negative impact on the development of English law was that important cases would be decided "confidentially" and would not be in the public domain for the benefit of the legal community. The international commercial importance of a case was, in the view of respondents, not dictated by the value of the claim but by the legal issues involved. Claims often contain important legal questions that could increasingly be decided out of court and respondents felt that if they were no longer litigated, the development of English law could be restricted, thus potentially threatening one of its key competitive strengths.

More than one-third of the respondents expressed doubts as to the likelihood of a pro-arbitration effect of enhanced court fees. In their view, a rise in court fees alone was not a reason to opt for arbitration. They stated that arbitration was costly and that "in the decision to litigate/arbitrate the question of court fees plays a very minor role". Parties would take "many factors into account when deciding whether to litigate in England or elsewhere or to arbitrate their disputes. If fees are increased significantly, this may be a factor which parties consider, particularly for lower value disputes, but it will be part of a wider balancing of the relative merits of proceeding in different fora".

In a subsequent question, respondents were asked if court fee rises might affect the role that English courts play as a forum supporting arbitration.[67] Of those who expressed a view just under half of the respondents thought such a result likely (41 respondents) or very likely (19 respondents) while the remaining respondents considered it to be unlikely or did not know.

## 4.7 Services offered by the Rolls Building

Respondents were asked to consider whether, and in what ways, the services provided by the Rolls Building Courts (the Chancery Division, the Admiralty and Commercial Court, and the Technology and Construction Court) could be improved. Whilst there was general satisfaction with court services, about two-fifths of the respondents (excluding those that have not used the building) believed that there was room for improvement in various areas.[68]

### 'E-justice' and Information Technology

A majority of the comments suggested improvements relating to information technology. Respondents strongly encouraged the introduction of a system of 'e-justice', to include electronic filing, easier electronic forms, electronic databases, an electronic timetable etc. The need for a safe way to make payments online was also mentioned.

Other comments concerned limited mobile 'phone reception in the Rolls Building, as well as a limited internet connection and videoconferencing facilities.

### Effective administration and case management

Comments about administration and case management included suggestions to improve lead times to disputes, to increase the availability of judges, to make the allocation of hearing dates and rooms quicker and easier and to improve communication with court officers.

Several respondents indicated that the management of cases needed to become more efficient through streamlined procedures, rigorous case management and timetables set up in advance for the whole trial, to ensure that cases do not exceed one year. On the other hand, some more flexibility was requested as to timetables and deadlines.

Many suggested rethinking the current system of disclosure, arguing that the scope of disclosure was vast, disproportionate, time-consuming and too costly. Full disclosure generates vast amounts of documents, many of which are not decisive for the trial. Event participants also raised concerns about the benefits of full disclosure. It was suggested that a more flexible approach be adopted to give parties either the option of full disclosure or permit them to identify the key issues of the case first and limit disclosure to those.

It was also stated that during trial, consecutive translation should be preferred over simultaneous translation.

### Court structure and the Rolls Building

A few respondents described the current court structure as “anachronistic”. It was said that it was not sensible or comprehensible for foreign parties that commercial cases could be started in the Commercial Court or the Chancery Division or the Queen’s Bench Division.

It has also been suggested to change the name from “Rolls Building” to “Commercial Court” as the current name would confuse international litigants.

Some participants complained that the courtrooms in the Rolls Building are too small and better air conditioning is needed.

### Support for arbitration

It was suggested by some respondents that a specialised court chamber for arbitration cases should be established and the interaction of English judges with the arbitration community should be further strengthened. In their view both could be a strong future selling point for Legal London.

# 5. Key Findings

The following key findings are based on the views of 54 interviewees, 161 respondents to the questionnaire and 60 event participants. All participants had relevant expertise and experience.

- London was considered to be a popular jurisdiction for the litigation of high value cross-border disputes. English courts were perceived as a 'natural forum' for the litigation of international commercial disputes. The popularity of English courts mostly draws on the reputation and experience of judges, and the combination of choice of court clauses with choice of law clauses in favour of English law, which is the prevalent choice of applicable law in international commercial transactions due to its quality, certainty and efficiency in commercial disputes.
- Most respondents sensed increasing competition on the international dispute resolution market with other jurisdictions heavily marketing themselves to attract disputes traditionally adjudicated in London.
- The current English court fee levels were viewed by most respondents as rather insignificant, generally and in light of the overall litigation costs and the value of the claims. They are mainly considered to be a "non-factor" for decisions about where to litigate, with many respondents unaware of the precise fee levels.
- While 20 (13 %) of the 158 respondents who commented on this point did not know whether increased court fees would impact on the decision to litigate in England, just over a quarter (41) of the respondents did not expect any change to the current attractiveness of the English courts if court fees were increased. They considered the level of fees to be of minor significance in light of the value of commercial claims litigated in England and to be outweighed by the advantages of London as a litigation centre, notably the high quality of legal services/ judgments. English courts were perceived as one of the most popular fora for the litigation of international disputes and respondents felt that they would remain as popular.
- In contrast, 97 (61%) of the 158 respondents who commented on this point had a different view and suggested that an increase in court fees (as proposed by the Ministry of Justice in its consultation "Court Fees: Proposals for Reform") could have a detrimental impact on the English litigation market. Of these respondents, 53 believed it was likely that the proposed increases in court fees may affect the attractiveness of English courts for the litigation of cross-border commercial

disputes. A further 44 felt it was highly likely that they would do so. Concerns were expressed among these respondents that the proposed increase might lead to foreign litigants switching their preferences to foreign courts and arbitration, potentially based abroad.

- Those who held the view that an increase in fees could adversely affect the current situation, gave a number of reasons for their view:
  - Respondents were concerned that the proposed fee levels were too high and unrealistic in light of the current market climate.
  - According to them, litigants might perceive fees rises beyond the cost-covering margin as a “tax-like” payment, which could not be justified.
  - England might no longer be considered a welcoming place for international commercial litigation. Respondents were concerned that this could be beneficial for competing jurisdictions, which have started to increase marketing to attract more litigants.
  - Respondents considered that high upfront court fees could be a disincentive in cases of lower value claims and might be inappropriate considering the frequency of settlements.
  - Enhanced fees may also not easily be reconcilable with the general principle that justice is a fundamental obligation of the State, necessary for a stable society.
  - Respondents also felt that the justice system should not be a profit-making enterprise.
- The potential consequences anticipated from increasing court fees included:
  - A decrease in litigation work in England.
  - Possible wider consequences for the economy. Respondents highlighted that if foreign litigants did turn away from litigation in the English courts, it would not only be litigation work that would decrease. The decision to litigate in foreign jurisdictions could also mean that English law is selected on a less frequent basis with an associated switching among litigants to law firms based in other jurisdictions rather than the UK. As a result there was concern that, local transactional work could decrease, also affecting related support services.
  - A detrimental effect on the incremental development and updating of English commercial law.

- In light of the risk implicit in the increase of court fees, the general perception among respondents was that a precautionary approach should be adopted to protect the legal market and either no changes or only minor/ justified changes should be made to the current court fee structure.
- As to the type of court fee structure to be adopted, a widespread suggestion made by respondents was to keep upfront court fees low so as not to discourage strategic commercial litigation and to simplify settlements. A combination of a fixed issue fee with variable hearing fees was a favoured option.
- Jurisdictions that were considered by the respondents to be major competitors to the English courts were New York, Singapore and other EU Member States.
  - Respondents highlighted that New York provided cheaper court services and it might become a strategic venue for cases that were likely to settle, avoiding high future upfront fees in London.
  - Respondents felt that Singapore may become an increasingly successful litigation centre. The successful establishment of the Commercial Court in Singapore, and the employment of former English judges, could transform Singapore into a serious competitor in the near future.
  - According to the respondents' views, the most serious competitors to London in Europe would be Germany and the Netherlands. Advantages given by respondents for litigating on the European continent included more cost-efficient litigation; the inquisitorial systems of EU Member States jurisdictions; and quicker results.
- In respect of arbitration, just over half of the respondents thought that litigants could more frequently switch to arbitration if English court fees rose significantly, although fees were not presently a key factor in the decision-making process. These respondents expect parties to not necessarily opt for London-based arbitration, possibly preferring arbitration based abroad. The remaining respondents however, either did not know whether increased court fees have a pro-arbitration effect, or did not expect litigants to choose arbitration more frequently as decisions in favour of arbitration depend on factors other than costs.
- The respondents who used the Rolls Building were generally satisfied with its services, although some felt there was room for improvement, in particular regarding IT.

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# Annex A – Consultation proposals for changes to commercial court fees (Court Fees: a proposal for reform, December 2013 – Annex B)

| Claim value | Fees as of December 2013 + fixed hearing fee £1,090 | Proposed fee (cost recovery uplift - April 2014) + fixed £1,090 hearing fee | Proposed £10,000 maximum fee + variable hearing fee | Proposed £15,000 maximum fee + fixed hearing fee £1,090 | Proposed£20,000 maximum fee + fixed hearing fee £1,090 |
|---|---|---|---|---|---|
| Up to £300 | £35 | £35 | £35 | £35 | £35 |
| Greater than £300 but no more than £500 | £50 | £50 | £50 | £50 | £50 |
| Greater than £500 but no more than £1,000 | £70 | £70 | £70 | £70 | £70 |
| Greater than £1,000 but no more than £1,500 | £80 | £80 | £80 | £80 | £80 |
| Greater than £1,500 but no more than £3,000 | £95 | £110 | £110 | £110 | £110 |
| Greater than £3,000 but no more than £5,000 | £120 | £200 | £200 | £200 | £200 |
| Greater than £5,000 but no more than £15,000 | £245 | £445 | N/A | N/A | N/A |
| *Greater than £5,000 but no more than £10,000* | N/A | N/A | £445 | £445 | £445 |
| *Greater than £10,000 but no more than £15,000* | N/A | N/A | 5% of the value of the claim | 5% of the value of the claim | 5% of the value of the claim |
| Greater than £15,000 but no more than £50,000 | £395 | £595 | | | |
| Greater than £50,000 but no more than £100,000 | £685 | £885 | | | |
| Greater than £100,000 but no more than £150,000 | £885 | £1,085 | | | |
| Greater than £150,000 but no more than £200,000 | £1,80 | £1,280 | | | |
| Greater than £200,000 but no more than £250,000 | £1,275 | £1,475 | £10,000 | | |
| Greater than £250,000 but no more than £300,000 | £1,475 | £1,675 | £10,000 | | |
| Greater than £300,000 but no more than £400,000 | £1,670 | £1,870 | £10,000 | £15,000 | |
| Greater than £400,000 | £1,670 | £1,870 | £10,000 | £15,000 | £20,000 |

Examples of comparative fees for commercial proceedings assuming claim of greater than £400,000

| | | One Day Trial | Five Day Trial | Ten Day Trial |
|---|---|---|---|---|
| Fee as of December 2013 + fixed hearing fee (position at time of research) | Issue fee | £1,670 | £1,670 | £1,670 |
| | Hearing fee | £1,090 | £1,090 | £1,090 |
| | Total | £2,860 | £2,860 | £2,860 |
| Consultation proposed fee (cost recovery - April 2014) + fixed hearing fee | Issue fee | £1,870 | £1,870 | £1,870 |
| | Hearing fee | £1,090 | £1,090 | £1,090 |
| | Total | £2,960 | £2,960 | £2,960 |
| Proposed £10,000 maximum fee + variable hearing fee | Issue fee | £10,000 | £10,000 | £10,000 |
| | Hearing fee | £1,000 | £5,000 | £10,000 |
| | Total | £11,000 | £15,000 | £20,000 |
| Proposed £15,000 maximum fee + fixed hearing fee | Issue fee | £15,000 | £15,000 | £15,000 |
| | Hearing fee | £1,090 | £1,090 | £1,090 |
| | Total | £16,090 | £16,090 | £16,090 |
| Proposed £20,000 maximum fee + fixed hearing fee | Issue fee | £20,000 | £20,000 | £20,000 |
| | Hearing fee | £1,090 | £1,090 | £1,090 |
| | Total | £21,090 | £21,090 | £21,090 |

# Annex B - Methodology

### Interviews

The primary method was to conduct interviews with individuals active in the field of international commercial litigation in the London based courts and elsewhere. 54 interviews were conducted between early February and mid-April 2014, both face-to-face and by telephone with legal practitioners, companies and representatives of organisations in the UK and abroad. Interviewees included judges, barristers, solicitors and in-house counsel with substantial experience in international commercial litigation and arbitration. The interviews were designed and structured similarly to the questionnaire to enable questionnaire and interview findings to be brought together and analysed collectively for this report. Interviews ran for between 20 and 80 minutes.

In the interviews, a particular focus was placed on exploring in detail the participants' views on:

- the reasons for and against the choice of English courts and the application of English law in international commercial cases; and
- the potential risks created by enhanced court fees, especially in light of competition from other litigation centres challenging London's position in the international commercial litigation market.

Where interviewees had also completed a survey based on their personal experience, the questionnaire response was reviewed and supplemented by the comments made during the interview. The response was then counted as an interview only, to avoid duplication. However, where respondents replied to the online survey on behalf of a department or firm but gave their personal view during the interview, then these responses were viewed separately, the former being counted as a questionnaire response and the latter as an interview.

### Questionnaire

Secondly, a web-based survey was conducted. The questionnaire was established online through the programme *Surveymonkey*.[69] It contained multiple choice questions and offered the opportunity for comments where appropriate. The questionnaire was divided into three parts.

Part one of the survey collected general information about the survey participants:

- type of business;
- geographical location;
- business sector;

- experience with commercial claims brought in London;
- information about the value and cross-border character of these claims;
- types of dispute resolution mechanisms used; and
- preferences as to choice of jurisdiction and choice of law.

Part two explored the drivers behind choice of court and choice of law agreements:

- factors advocating in favour and against the use of English courts and English law;
- competing jurisdictions; and
- factors advocating in favour of arbitration as opposed to litigation.

Part three addressed court fees:

- awareness of current fee levels;
- significance of fees for the decision to litigate in England;
- comments on the suggested fee rises;
- preferred fee structures; and
- an evaluation of the risk that enhanced court fees might present for the litigation market in England.

The questionnaire concluded with a request for comments on the current services offered in the Rolls Building (being the courts where most international commercial litigation is conducted in England) and suggestions for improvement.

### Event

Thirdly, individuals with relevant expertise and experience were brought together to debate their views at a forum entitled “Litigating Commercial Claims in the UK – Why or Why Not?” run by BIICL on 31 March 2014 and attended by around 60 people with substantial experience in the field. The event supplemented and tested the findings from the questionnaires and interviews.[70]

Issues of interest were raised and discussed over three hours in two plenary sessions. Six speakers with long experience in international commercial litigation and arbitration presented different perspectives on the advantages and disadvantages of litigation in England and elsewhere and, in particular, the potential impact of enhanced court fees. The delegates participated in an open debate moderated by a member of the research team, with contributions and questions also being sought from the audience. The event was run under

the Chatham House Rule with no attribution of comments to any participant. The comments from the event have confirmed the analysis of the questionnaire and interview data, and are also explicitly referred to at times in this report.

### Contact groups

Invitations to complete the questionnaire online using *Surveymonkey* were distributed widely. To capture legal practitioners with the most relevant expertise and experience, the survey was sent through a combination of emailing to the BIICL database and distribution through legal subscription databases held by other organisations. The targeted contacts were legal practitioners, companies and organisations involved in international litigation and arbitration, based in the UK and abroad, and academics with expertise in international litigation.

- BIICL contacts active in the area of international litigation and arbitration both in the UK and abroad (amongst approximately 1,700 contacts, via automatically generated emails and personal emails);
- 85 Law Associations around the world, inviting them to participate in the project and asking them to circulate the invitation to their members active in the area of commercial litigation; and
- subscribers to Kluwer Arbitration and OGEMID – Transnational Dispute Management (in total approx. 5000 subscribers).
- The link to the questionnaire was also publicised through the BIICL website.

In late January 2014, the invitation to participate was sent to the contact groups. A reminder was sent in late February 2014. The questionnaire was also made available at the project event held at BIICL. 161 respondents participated in the survey, excluding blank questionnaires and questionnaires followed by a personal interview (see above “interviews”).

Interviewees were contacted via personal emails to approximately 200 law firms, chambers, the judiciary and companies in various EU countries (in particular the UK, Germany, France and Spain), in the Americas and Asia selected on the basis of their experience and expertise in international litigation and arbitration in the UK and elsewhere. One hundred and sixty-one respondents participated in the survey, excluding blank questionnaires and duplicates.

Event participants were invited from amongst BIICL contacts active in the area of international litigation and arbitration both in the UK and abroad (approximately 1,700 contacts, invited via automatically generated emails and personal emails).

# Annex C - Questionnaire & Cross-Analysis (Questionnaire and Interview Data)

Please note:

The Annex contains the combined answers of all 215 respondents (interviews and questionnaire). The original questionnaire, which was designed by BIICL and electronically evaluated via Surveymonkey, has been reproduced by the Ministry of Justice in reformatted version below without any figures and graphs.

**Introduction and Guidance Notes**

This Questionnaire has been prepared by the British Institute of International and Comparative Law (BIICL) for circulation to representatives of businesses and the legal profession concerning their expectations, experiences and outcome in bringing a commercial claim before English Courts.

BIICL has been appointed by the Ministry of Justice to conduct a study into the factors which influence litigants to bring a commercial dispute to the London based courts. The outcome of the questionnaire will be used to assess both the drivers behind decisions where to seek redress and the international competitiveness of the UK legal services.

The questionnaire should not take longer than 10 minutes to complete. You can answer on behalf of your organisation, on behalf of a department within your organisation or share your individual professional experience. But please make sure that ALL answers given to the questionnaire coherently relate to either the organisation as a whole, to the department or to your own professional experience. If you answer on behalf of an organisation which is active in more than one business sector which adopts different policies for each sector, please provide the answers in respect of your most extensive business sector. If you are a member of the judiciary or an academic, please answer the questions as far as possible.

PART 1. YOUR BUSINESS/INSTITUTION

Q1 What type of organisation do you work in?

| Answer choices | Number of responses |
|---|---|
| Law firm | 97 |
| Chambers | 52 |
| Judiciary | 7 |
| Civil service | 3 |
| Company | 14 |
| Academia | 41 |
| Other | 9 |
| *Total* | *223 (214 respondents)* |
| *No response provided* | *1* |

Q2 In which region are you based?

| Answer choices | Number of responses |
|---|---|
| UK | 126 |
| Other EU Member state | 56 |
| Non EU Member State | 34 |
| *No response provided* | *3* |

Q3 In which sector(s) are you active?

| Answer choices | Number of responses |
|---|---|
| Legal services | 185 |
| Finance | 9 |
| Retail | 5 |
| Manufacturing | 5 |
| Energy | 6 |
| Telecom | 6 |
| Engineering | 4 |
| Other (please specify) | 27 |
| *No response provided* | *4* |

Q4 What is your position within the organisation?

| Answer choices | Number of responses |
|---|---|
| Solicitor/Attorney (Law firm) | 96 |
| Solicitor/Attorney (In House counsel) | 11 |
| Barrister | 57 |
| Member of the judiciary | 8 |
| Civil Servant | 1 |
| Academic | 41 |
| Non Lawyer | 3 |
| Other (please specify) | 16 |
| *No response provided* | *3* |

Q5 Are you answering this survey?

| Answer choices | Number of responses |
|---|---|
| On behalf of your organisation | 19 |
| On behalf of a department within your organisation | 8 |
| Based on your individual professional experience | 184 |
| *No response provided* | *4* |

Q6 Have you/has your department/your organisation been involved in one or more commercial claims brought to the UK in the last five years?

| Answer choices | Number of responses |
|---|---|
| Yes, one | 12 |
| Yes, 2-5 | 27 |
| Yes, 5-10 | 6 |
| Yes, over 10 | 12 |
| Yes, regularly | 96 |
| No | 55 |
| *No response provided* | *7* |

Q7 In which capacity or capacities have you been involved in commercial claims) (choose all that apply)?

| Answer choices | Number of responses |
|---|---|
| As a party (claimant) | 24 |
| As a party (defendant) | 17 |
| As a solicitor/attorney | 88 |
| As a barrister | 53 |
| As a judge/decision maker | 15 |
| *No response provided* | *56* |

Q8 What was the value of the claim(s) you have been involved in in the last five years (choose all that apply)?

| Answer choices | 0 - 30% | 30 - 60% | 60 - 90% | 90 - 100% | Total responses |
|---|---|---|---|---|---|
| Did not exceed £50,00 | 24 | 9 | 4 | 4 | 38 |
| Exceeded £50,00 but not £100,000 | 23 | 9 | 2 | 3 | 37 |
| Exceeded £100,00 but not £300,000 | 28 | 9 | 9 | 5 | 50 |
| Exceeded £300,00 but not £1,000,000 | 22 | 16 | 6 | 6 | 50 |
| Exceeded £1,000,000 | 20 | 15 | 24 | 87 | 145 |
| *No response provided* | | | | | *40* |

Q9 What was the approximate percentage of transactions involving a cross-border element in your institution/department in the last five years?

| Answer choices | Number of responses |
|---|---|
| 0% - 30% | 36 |
| 30% - 60% | 34 |
| 60% - 90% | 47 |
| 90% - 100% | 54 |
| *No response provided* | *44* |

Q10 What percentage of these transactions have give rise to a dispute?

| Answer choices | Number of responses |
|---|---|
| 0% - 30% | 70 |
| 30% - 60% | 13 |
| 60% - 90% | 11 |
| 90% - 100% | 42 |
| *No response provided* | *79* |

Q11 What dispute resolution mechanism have been used?

| Answer choices | Rarely | Occasionally | Often | Very Often | Total responses |
|---|---|---|---|---|---|
| Out of court settlement | 11 | 45 | 52 | 31 | 139 |
| Court litigation/settlement | 14 | 35 | 57 | 31 | 136 |
| Court litigation/decision | 19 | 33 | 62 | 34 | 148 |
| Arbitration | 18 | 35 | 47 | 47 | 146 |
| *No response provided* | | | | | *41* |

Q12 In the last five years, have you agreed upon/recommended a choice of court agreement in favour of English courts? (Please note: questions about choice of law clauses will follow)

| Answer choices | Number of responses |
|---|---|
| Not applicable | 58 |
| No for overall business | 25 |
| Yes for overall business | 14 |
| Yes on a case-by-case basis | 82 |
| Yes for a specific business sector | 19 |
| *No response provided* | *26* |

Q13 if yes, in which approximate percentage?

| Answer choices | Number of responses |
|---|---|
| 0% - 30% | 36 |
| 30% - 60% | 18 |
| 60% - 90% | 24 |
| 90% - 100% | 17 |
| *No response provided* | *120* |

Q14 If you are a member of the judiciary, how many commercial cases in the last five years involved a choice of court agreement in Favour of English courts? (Note a few respondents who answered this question are arbitrators or barristers sitting as a deputy judge)

| Answer choices | Number of responses |
|---|---|
| 0% - 30% | 9 |
| 30% - 60% | 2 |
| 60% - 90% | 1 |
| 90% - 100% | 0 |
| Don’t know | 6 |
| *No response provided* | *197* |

Q15 In the last five years, have you agreed upon /recommended a choice of law clause in favour of English law?

| Answer choices | Number of responses |
|---|---|
| Not applicable | 53 |
| No for overall business | 16 |
| Yes for overall business | 26 |
| Yes on a case-by-case basis | 81 |
| Yes for a specific business sector | 16 |
| *No response provided* | *32* |

Q16 If yes, in which approximate percentage?

| Answer choices | Number of responses |
|---|---|
| 0% - 30% | 33 |
| 30% - 60% | 12 |
| 60% - 90% | 33 |
| 90% - 100% | 18 |
| *No response provided* | *119* |

Q17 If you are a member of the judiciary, how many commercial cases in the last five years involved a choice of law clause in favour of English Law? (Note a few respondents who answered this question are arbitrators or barristers sitting as a deputy judge)

| Answer choices | Number of responses |
|---|---|
| 0% - 30% | 9 |
| 30% - 60% | 0 |
| 60% - 90% | 2 |
| 90% - 100% | 0 |
| Don’t know | 6 |
| *No response provided* | *198* |

Q18 Have you agreed to/recommended arbitration in the UK?

| Answer choices | Number of responses |
|---|---|
| Not applicable | 50 |
| No for overall business | 25 |
| Yes for overall business | 10 |
| Yes on a case-by-case basis | 88 |
| Yes for a specific business sector | 9 |
| *No response provided* | *33* |

Q19 If yes, in which approximate percentage?

| Answer choices | Number of responses |
|---|---|
| 0% - 30% | 46 |
| 30% - 60% | 28 |
| 60% - 90% | 11 |
| 90% - 100% | 8 |
| *No response provided* | *122* |

Q20 Have you engaged UK-based legal representatives to prepare/bring a claim?

| Answer choices | Number of responses |
|---|---|
| Yes | 48 |
| No | 36 |
| Not applicable | 57 |
| *No response provided* | *74* |

PART II. CHOICE OF COURT AGREEMENTS AND CHOICE OF LAW CLAUSES

Q21 Who encouraged a choice of court agreement in favour of English courts?

| Answer choices | Number of responses |
|---|---|
| Party based in the UK | 60 |
| Party based outside the UK | 42 |
| Lawyers | 87 |
| Used standard form agreement which provided for jurisdiction of English courts | 37 |
| Don't know | 4 |
| Not applicable | 32 |
| Other | 3 |
| *No response provided* | *59* |

Q22 Which factors have driven the choice of court agreement in favour of English courts?

| Answer choices | Not relevant at all | Little relevant | Relevant | Very relevant | Decisive | Number of responses |
|---|---|---|---|---|---|---|
| Reputation/experience of judges | 5 | 5 | 25 | 53 | 55 | 143 |
| Combination with choice of English law | 4 | 10 | 28 | 49 | 39 | 130 |
| Neutrality of the forum | 7 | 12 | 32 | 39 | 43 | 133 |
| Efficient remedies including interim relief | 6 | 10 | 27 | 49 | 20 | 112 |
| Procedural effectiveness | 3 | 14 | 27 | 49 | 16 | 109 |
| Effective UK-based legal counsel/legal services | 5 | 14 | 39 | 39 | 26 | 123 |
| Market practice including standard form agreements | 9 | 14 | 28 | 40 | 17 | 108 |
| Language | 5 | 15 | 39 | 41 | 13 | 113 |
| Speed | 8 | 14 | 47 | 29 | 12 | 110 |
| Enforceability in foreign countries | 11 | 14 | 40 | 23 | 17 | 105 |
| Chance to shift the legal costs through insurance and 'loser' pays principle | 11 | 34 | 38 | 12 | 2 | 97 |
| Overall costs of litigation | 16 | 37 | 30 | 10 | 8 | 101 |
| Court fees | 36 | 41 | 19 | 10 | 2 | 108 |
| Other | 11 | 2 | 3 | 2 | 7 | 25 |
| *No response provided* | *61* | | | | | |

Q23 When making a decision as to a choice of court agreement in favour of English courts/an English court, at what time did you become aware of the court fees?

| Answer choices | Number of responses |
|---|---|
| Before agreeing on the clause | 52 |
| After agreeing on the clause | 8 |
| When the claim was brought before the court | 17 |
| Never | 13 |
| Cannot recall | 16 |
| Other | 9 |
| *No response provided* | *100* |

Q24 Who encouraged a choice of law clause in favour of English law?

| Answer choices | Number of responses |
|---|---|
| Party based in the UK | 62 |
| Party based outside the UK | 40 |
| Lawyers | 87 |
| Used standard form agreement which provided for choice of English law | 40 |
| Don’t know | 7 |
| Not applicable | 19 |
| Other | 4 |
| *No response provided* | *73* |

Q25 Which factors have driven your decision to agree on a choice of English law?

| Answer choices | Not relevant at all | Little relevant | Relevant | Very relevant | Decisive | Number of responses |
|---|---|---|---|---|---|---|
| Language | 7 | 11 | 50 | 28 | 14 | 110 |
| Quality/certainty of the law | 4 | 7 | 19 | 47 | 57 | 134 |
| Efficiency of English law in commercial disputes | 4 | 7 | 23 | 48 | 43 | 125 |
| Market practice including standard form agreements | 8 | 9 | 31 | 45 | 14 | 107 |
| Effective UK-based legal counsel/legal services | 8 | 17 | 27 | 41 | 16 | 109 |
| Combination with choice of court | 7 | 9 | 34 | 42 | 30 | 122 |
| Other | 9 | 4 | 0 | 3 | 5 | 21 |
| *No response provided* | | | | | | *68* |

Q26 if, e.g. by virtue of art. 2 and 5 Regulation 44/2001, you can decide whether to bring a claim before UK courts or the courts of another EU member State would you choose?

| Answer choices | Always | Often | Occasionally | Never | Total respondents |
|---|---|---|---|---|---|
| UK Courts | 46 | 54 | 27 | 2 | 127 |
| Courts of another EU Member state | 6 | 23 | 65 | 15 | 108 |
| *No response provided* | | | | | *75* |

Q27 Would you consider bringing a case under English law to another jurisdiction?

| Answer choices | Number of responses |
|---|---|
| Very likely | 8 |
| Likely | 28 |
| Not very likely | 48 |
| Unlikely | 46 |
| Not applicable | 13 |
| *No response provided* | *72* |

Q28 If yes, to which jurisdiction?

| Answer choices | Number of responses |
|---|---|
| Other EU Member state | 55 |
| New York | 61 |
| Delaware | 11 |
| Other US Jurisdiction | 14 |
| India | 8 |
| Singapore | 61 |
| Australia | 20 |
| Hong Kong | 41 |
| Dubai | 25 |
| Other | 28 |
| *No response provided* | *93* |

Q29 If you would consider bringing a claim under English law to another jurisdiction, what are the reasons?

| Answer choices | Not relevant at all | Little relevant | Relevant | Very relevant | Decisive | Total |
|---|---|---|---|---|---|---|
| Enforceability in foreign countries | 4 | 5 | 17 | 27 | 23 | 76 |
| Reputation/experience of judges | 8 | 8 | 18 | 23 | 16 | 73 |
| Neutrality of the forum | 7 | 8 | 21 | 23 | 13 | 72 |
| Overall costs of litigation | 7 | 9 | 31 | 21 | 16 | 84 |
| Procedural effectiveness | 6 | 4 | 3 | 2 | 11 | 26 |
| Efficient remedies including interim relief | 8 | 6 | 21 | 28 | 7 | 70 |
| Market practice including standard form agreements | 7 | 6 | 24 | 29 | 6 | 72 |
| Efficient local legal counsel | 8 | 11 | 22 | 22 | 6 | 69 |
| Language | 8 | 16 | 19 | 23 | 8 | 74 |
| Speed | 11 | 12 | 20 | 18 | 11 | 72 |
| Court fees | 11 | 11 | 22 | 19 | 7 | 70 |
| Other | 9 | 17 | 28 | 10 | 9 | 73 |
| *No response provided* | | | | | | *115* |

PART III. COURT FEES

Q30 Are you aware of the UK court fee levels in commercial matters?

| Answer choices | Number of responses |
|---|---|
| Yes | 73 |
| No | 82 |
| *No response provided* | *60* |

Q31 When a dispute arises, have court fees affected the decision whether or not to bring proceedings before the English courts?

| Answer choices | Number of responses |
|---|---|
| Yes, very much | 8 |
| Yes, they were a factor to take into account | 37 |
| Not at all | 65 |
| Not applicable | 31 |
| *No response provided* | *74* |

Q32 When you have entered into a choice of court agreement in favour of English courts, were you aware of the fees charged by English courts?

| Answer choices | Number of responses |
|---|---|
| Yes | 59 |
| No | 39 |
| Not applicable | 34 |
| *No response provided* | *83* |

Q33 What court fees structure is preferred for commercial cases?

| Answer choices | Number of responses |
|---|---|
| Fixed issue fee only | 40 |
| Fixed issue fee plus fixed hearing fee | 32 |
| Fixed issue fee plus variable hearing fee | 49 |
| Other | 15 |
| *No response provided* | *79* |

Q34 Are you aware of the proposed fee rises in commercial litigation in the English courts (increased issue fee up to a maximum of £10,000 with variable hearing fee or up to a maximum of £15,000 or £20,000 with fixed hearing fee: for further information see: https://consult.justice.gov.uk/digital-communications/court-fees-propsals-for -reform)?

| Answer choices | Number of responses |
|---|---|
| Yes | 39 |
| Yes, but not in detail | 44 |
| No | 57 |
| *No response provided* | *75* |

Q35 Which of the fees options proposed by the Ministry of Justice in its consultation (see 34 above) is preferable to you?

| Answer choices | Number of responses |
|---|---|
| Maximum of £10,000 with variable hearing fee | 56 |
| Maximum of £15,000 with constant hearing fee | 22 |
| Maximum of £20,000 with constant hearing fee | 18 |
| Other | 35 |
| *No response provided* | *85* |

Q36 Do you think that increased court fees (see question 34 above) will negatively affect the UK's competitiveness in commercial disputes?

| Answer choices | Number of responses |
|---|---|
| Very likely | 44 |
| Likely | 53 |
| Unlikely | 41 |
| Don't know | 20 |
| *No response provided* | *57* |

Q37 Do you think increased court fees (see question 34 above) will encourage parties to opt for arbitration more frequently?

| Answer choices | Number of responses |
|---|---|
| Very likely | 38 |
| Likely | 47 |
| Not very likely | 51 |
| Don't know | 17 |
| *No response provided* | *62* |

Q38 Do you think that increased court fees will affect the role of UK courts as a forum supporting arbitration?

| Answer choices | Number of responses |
|---|---|
| Very likely | 19 |
| Likely | 41 |
| Unlikely | 56 |
| Don't know | 19 |
| *No response provided* | *80* |

Q39 Are there any aspects of the service provided by the Rolls Building (the Chancery Division, the Admiralty and Commercial Court and the Technology and Construction Court) which could be improved?

| Answer choices | Number of responses |
|---|---|
| Yes | 32 |
| No | 14 |
| Don't know | 37 |
| Have not used the Rolls Building | 27 |
| *No response provided* | *105* |

Q40 If you would like to (not obligatory), you can provide us with the name of your organisation/your name.

Q41 Would you be willing to participate in a research interview conducted by BIICL at a time and place convenient to you (or via telephone)? This will allow you to express your views in more depth and us to better understand the user perspective. Your views will remain anonymous. If you agree to be contacted, please indicate your contact details below.

# End Notes

[1] C Hodges et al., The Costs and Funding of Civil Litigation, Hart (2009), pp. 57, 134-156, 172-175.

[2] The report also refers to the "English" courts. Effectively, however, international commercial claims are litigated in London.

[3] Ministry of Justice, *Court Fees: Proposals for Reform* [Cm 8751/2013]; https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform.

[4] There have been a number of earlier public consultations which set out the principle of full-cost recovery through fees: 'Civil Court Fees 2008' [CP31/08]; 'Civil and Family Court Fee Increases' [CP(L)24/05]; 'Civil Court Fees' [CP5/07]; 'Public Law Family Fees Consultation Paper' [CP32/07]; 'Civil Court Fees' [CP10/04] and 'Fees in the High Court and Court of Appeal Civil Division' [CP15/2011] (superseded by the proposals set out in *Court Fees: Proposals for Reform*).

[5] Above, note 3, p. 6, n. 3.

[6] Above, note 3, p. 6, n. 5.

[7] Ministry of Justice Analytical Services Insight Paper, *Potential impact of changes to court fees on volume of cases brought to the civil and family courts*, (2013) .

[8] R Franklyn, *Analytical Summary: Public Attitudes to Civil and Family Court Fees*, MoJ, Dec 2013.

[9] I Pereira, P Harvey, W. Dawes, H. Greevy, *The role of court fees in affecting users' decisions to bring cases to the civil and family courts: a qualitative study of claimants and applicants,* MoJ, 2014.

[10] Centre for Commercial Law Studies School of International Arbitration, Queen Mary, University of London, *Competitiveness of fees charged for Commercial Court Services: An overview of selected jurisdictions*. The MoJ earlier reviewed evidence on how decisions are made on whether to pursue commercial legal disputes, and where to do so from surveys of corporations (*"Corporate Choices in International Arbitration: Industry Perspectives"*, 2013, and "*2010 International Arbitration Survey: Choices in International Arbitration*", both Queen Mary University School of International Arbitration).

[11] *Court Fees. Cost Recovery: Impact Assessment*, IA No MoJ221, Ministry of Justice, 2 December 2013.

[12] *Enhanced Court Fees: Impact Assessment* IA No MoJ222, Ministry of Justice, 2 December 2013,. Also see the critical remarks of the Regulatory Policy Committee on this Impact Assessment, 'Opinion: Impact Assessment – Enhanced Court Fees', RPC reference PRC-13-MOJ-1958..

[13] S Vogenauer, "Civil Justice Systems in Europe: Implications for Choice of Forum and Choice of Contract Law. A Business Survey – Final Results", 2008, pp. 26-27.

[14] C Hodges et al., The Costs and Funding of Civil Litigation, Hart (2009), pp. 57, 172-175.

[15] Ibid., p. 58.

[16] Ibid., p.70.

[17] The data in section 2.1 relates to questionnaire respondents only and excludes data relating to interviewees, which is contained in section 2.2. Please also note that the tables and figures in this section are not reproduced in the Annex, which contains combined data of all 215 project participants.

[18] This number excludes (a) "blank" questionnaires:BIICL received 15 replies by respondents who submitted the questionnaire without providing any answers to it, i.e. they have clicked through the questionnaire without participating in the study; and (b) questionnaires filled in by respondents in their personal capacity, where these were also participating in an interview, based on their personal experience. These responses were counted as an interview only.

[19] Multiple answers were possible.

[20] Data in section 2.2 refers to interviewees only and excludes data relating to questionnaire respondents, which is contained in 2.1. The tables and figures in this section are not reproduced in the Annex, which contains combined data of all 215 project participants.

[21] Where respondents filled in the questionnaire and have subsequently been interviewed, it was ensured that their responses were identified, supplemented by the comments made during the interview and counted as an interview only, except where respondents replied to the online survey on behalf of a department or firm but gave their personal view during the interview.

[22] For details see http://www.biicl.org/events/view/-/id/828/.

[23] Statistical data was provided on 10 February 2014 and is on file with the authors. Data is incomplete because, for example, parties are not always required to specify the value of a claim, different definitions may be used in different courts, and where information is not provided by parties there will be unknowns or sometimes default values will be recorded.

[24] 'Foreign' in the statistics means outside England & Wales and thus includes Scotland and Northern Ireland, Admiralty and Commercial Courts – Country of Origin Statistics (on file with the authors). There is some information about what countries litigants were from but it is not sufficiently comprehensive to be useful here.

[25] Records of cases with exclusively foreign parties have only been available for 2012 onwards.

[26] See question 8, Annex C.

[27] See question 9, Annex C.

[28] See question 10, Annex C.

[29] See question 20, Annex C. It was mostly lawyers (who are not "engaging" representatives but "engaged as" such) and academics that answered "no" or "not applicable" to this question.

[30] Panel of Recognised International Market Experts in Finance.

[31] See also below, 3.6.

[32] The frequency of a choice of English law was analysed in a variety of studies by academics and practitioners. These include: S Vogenauer, "Civil Justice Systems in Europe: Implications for Choice of Forum and Choice of Contract Law. A Business Survey – Final Results", 2008. For that study, a multinational sample of businesses was recruited from eight focal Member States of the EU (France, Germany, Italy, Netherlands, Poland, Spain, UK and Belgium) and from a minority of businesses from other European countries; English law was chosen in 21% of the cases). An earlier study by S Vogenauer & S Weatherill ("The Harmonisation of European Contract Law", Oxford 2006, p. 123) found that the law most often used for cross-border transaction is English law (26%). That survey included eight countries (France, Germany, Hungary, Italy, The Netherlands, Poland, Spain, UK). According to the White & Case "2012 International Arbitration Survey: Current and Preferred Practices in the Arbitral Process" (http:// arbitration practices. whitecase.com/news/newsdetail. aspx?news=3786), 25% of parties prefer English law. The Clifford Chance Survey of 2005 "Does Business Want an EU contract law?" (http://www.mondaq.com/x/32445/ Inward+Foreign+Investment /Does+Business+Want+an+EU+contract+law+The+Clifford+Chance+Survey), concluded that English law is chosen in 26% of cases. See also Gilles Cuniberti, "The International Market for Contracts: The Most Attractive Contract Laws", University of Luxembourg Law Working Paper Series 2014-02, 15-16, who states that between 2007-2012, an average 11% of contracts contained a choice of law agreement in favour of English law; the highest yearly average of 15.43% was reached in 2012.

[33] See question 15, Annex C.

[34] See question 16, Annex C.

[35] See question 24, Annex C.

[36] See question 25, Annex C.

[37] See also S Vogenauer, Civil Justice Systems in Europe (n 27), The study confirms the popularity of choice of court clauses in international commercial cases in favour of the English courts.

[38] See question 12, Annex C.

[39] See question 13, Annex C.

[40] See question 21, Annex C.

[41] See question 22, Annex C.

[42] For a detailed comparison of litigation costs see C Hodges et al., The Costs and Funding of Civil Litigation, Hart (2009).

[43] The 'adverse costs rule' refers to the procedural rule whereby the party that loses has to pay the legal costs of the successful party.

[44] The recent Jackson reform to costs of litigation (in force from 1 April 2013) seeks to temper the increased costs of litigation in the English courts. The reform has introduced a costs management scheme which will apply to all cases on the multi-track, with the exception of Commercial and Admiralty cases. Nonetheless, the courts have the discretion of applying the costs management scheme to commercial cases. Among other things, the reform imposes the obligation of providing a costs budget to the court. The rationale being that the costs budget will act as a limitation upon the level of costs of litigation. See also R Jackson, Review of Civil Litigation Costs: Final Report, 2010,

[45] See question 23 and 30, Annex. See also C Hodges et al., The Costs and Funding of Civil Litigation, Hart (2009) on the relevance of litigation costs from a comparative perspective.

[46] The question has also been assessed in S Vogenauer, Civil Justice Systems in Europe (n 27).

[47] See question 31, Annex C.

[48] See question 34, Annex C.

[49] See question 33, Annex C.

[50] See also question 33, Annex C. Half of the non-respondents to this question were based outside the UK.

[51] See also question 35, Annex C. Half of the non-respondents to this question were based outside the UK.

[52] See also below, 3.4.5 and 3.6.

[53] See also below, 3.7.

[54] See also question 36, Annex C. Half of the non-respondents to this question were based outside the UK.

[55] See Annex C, question 27.

[56] Respondents who did not answer question 27 or considered the question not applicable to them, did equally not reply to question 28. Respondents were able to select multiple jurisdictions See, as a comparison, also S Vogenauer, "Civil Justice Systems in Europe" (n 27).

[57] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[58] See question 26, Annex C.

[59] See e.g. the report *Law Made in Germany*, edited by Bundesnotarkammer (BNotK), Bundesrechtsanwaltskammer (BRAK), Deutscher Anwaltverein (DAV), Deutscher Notarverein (DNotV), Deutscher Richterbund (DRB), which is specifically tailored to litigants who would consider litigating in England.

[60] Ibid.

[61] See also the study “Competitiveness of fees charged for Commercial Court Services: An overview of selected jurisdictions”, Queen Mary, University of London.

[62] See e.g. the International Swap and Derivatives Association (ISDA) master agreements allowing for litigation in either London or New York.

[63] See question 18, Annex C.

[64] See question 19, Annex C.

[65] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958 (New York Convention).

[66] See also question 37, Annex C. Half of the non-respondents to this question were based outside the UK

[67] See question 38, Annex C.

[68] See question 39, Annex C.

[69] See https://www.surveymonkey.com.

[70] Event and speaker details are available at http://www.biicl.org/events/view/-/id/828/.