

## THE STATE OF LITIGATION

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### DRAMATIC RISE IN BREACH OF CONTRACT CLAIMS UNDERPINS AN OVERALL INCREASE IN HIGH COURT LITIGATION WHICH LOOKS SET TO CONTINUE

The Ministry of Justice recently published its annual statistics on judicial and court activity during 2011.

The headline news is that the number of claims issued in the High Court in London increased in 2011. This reflects the general trend that the volume of commercial litigation tends to increase during an economic downturn. In that context, the figures for the previous year (2010), which showed a fall in claims issued, can be seen as the exception rather than the rule or, arguably, as a “false dawn” in the economic cycle.

The biggest increase came in the Commercial Court, where the number of claims issued rose from 1060 to 1331, an increase of more than 25 per cent. Numbers of claims issued in the Companies Court and the Technology & Construction Court also rose, but fewer claims were issued in the Chancery and Queens Bench Divisions than in 2010.

The number of breach of contract claims issued rose sharply in both the Chancery Division (from 683 to 982) and the Queen’s Bench Division (from 671 to 1069) despite the overall fall in both those Courts. Breach of contract claims also constituted the greatest percentage of Commercial Court claims. These figures suggest that businesses are struggling to comply with their contractual obligations, or that they are becoming less tolerant of breaches committed by their contractual counterparties, and may be indicative of wider problems in the economy.

The increase in Commercial Court claims suggests that High Court litigation is increasing in value as well as volume. By contrast, the number of claims issued in the county courts fell for the fifth consecutive year. This lends some support to the view, expressed by Lord Justice Jackson in his Review of the Costs of Civil Litigation in England & Wales, that whilst the costs of bringing lower value claims are prohibitively high and are having an adverse impact on access to justice, the costs of “big ticket” litigation in the Commercial Court are more proportionate.

Following the conclusion of his Costs Review, most of Lord Justice Jackson’s reforms are due to be implemented together, as one “interlocking” package in April 2013. This will bring about the biggest change to civil litigation procedure since the introduction of the Woolf Reforms in 1999. Some of the proposals are directed primarily at low value and personal injury litigation, but the Jackson Reforms will have a significant impact on all types of litigation. Importantly, the new rules on costs management will apply to all multi-track cases including those commenced in the Chancery Division and Queen’s Bench Division (but not in the Commercial Court). Under the new rules, parties will be required to produce litigation budgets at the beginning of a dispute and, if they depart from agreed budgets without good reason, will be unable to recover the extra costs even if they are successful in the litigation.

One of the aims of the Woolf Reforms was to encourage parties to view court proceedings as an option of last resort. In this respect the reforms were initially a success and the number of claims issued in the High Court in London fell from 30,912 in 1998 to 9,769 in 2002. Whilst promoting alternative dispute resolution remains an important aspect of public policy, the Jackson Reforms are likely to result in an increase in litigation because the new rules on costs management and greater emphasis on proportionality are designed to make litigation more affordable. The reforms may, at least in the short term, also cause some satellite litigation as there will be scope for disagreement over the meaning and effect of the new rules. It will take a little while for the effect of the Jackson Reforms to be reflected in the court statistics but the introduction of the new rules, combined with the continuing uncertainty over the economy, is likely to mean that the courts are kept busy for the foreseeable future.

FIGURE 1:

ALL HIGH COURT DIVISIONS

Total number of proceedings issued in High Court up on the previous year

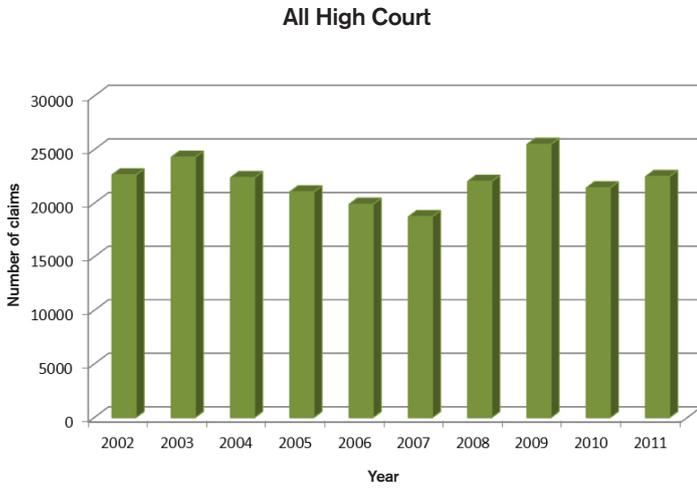


FIGURE 2:

CHANCERY AND QUEEN'S BENCH DIVISIONS (QBD)

Fewer claims issued in Chancery and QBD

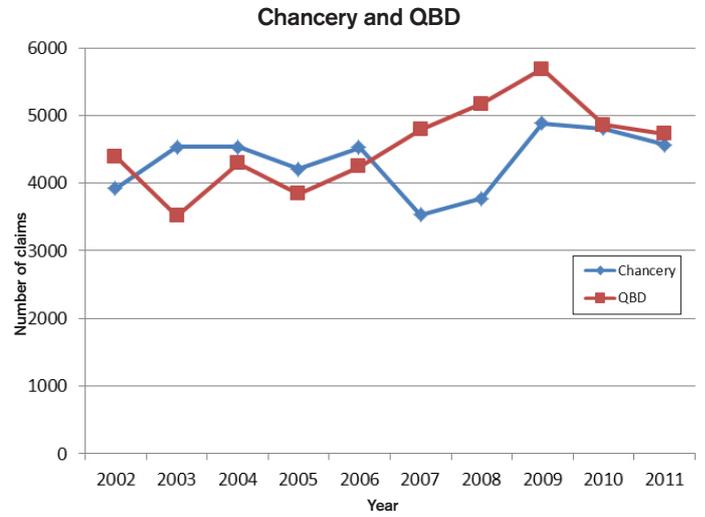


FIGURE 3:

TCC AND COMMERCIAL COURT

Growth in number of claims issued in both specialist courts

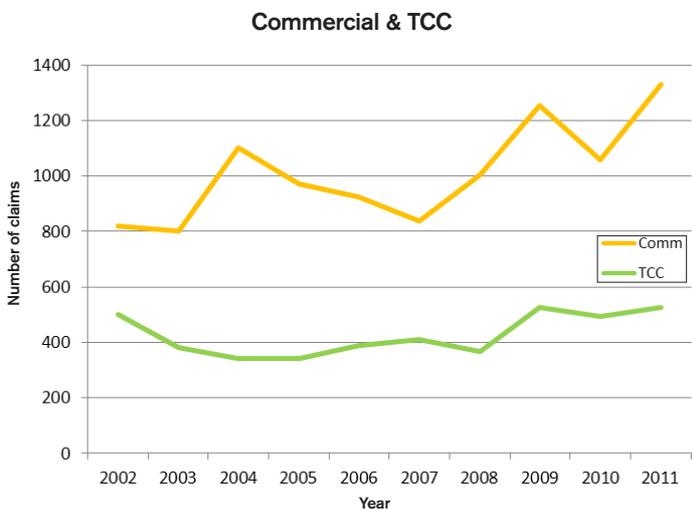


FIGURE 4:

COMPANIES COURT

Increase in proceedings after a fall in the previous year

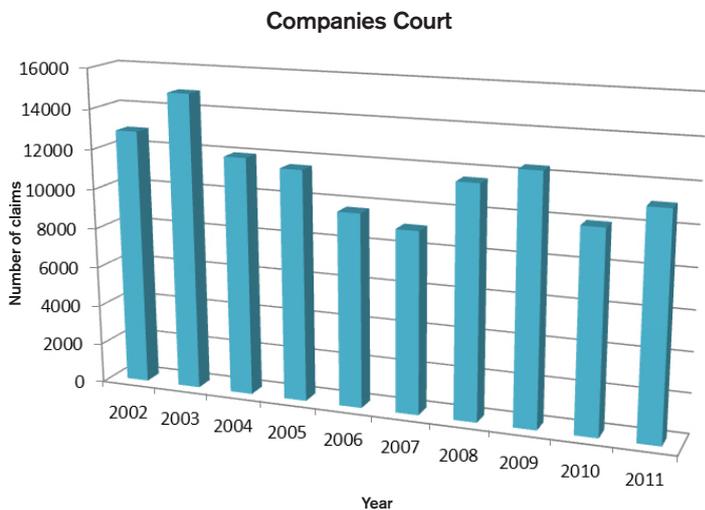
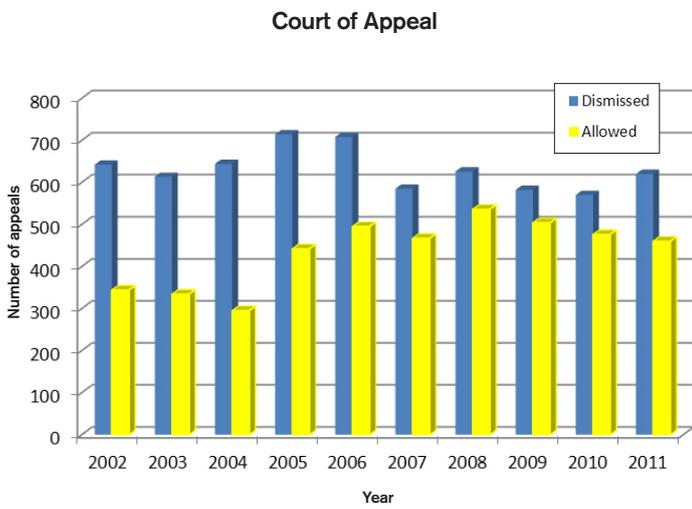


FIGURE 5:

COURT OF APPEAL

Little change in civil appeals\*

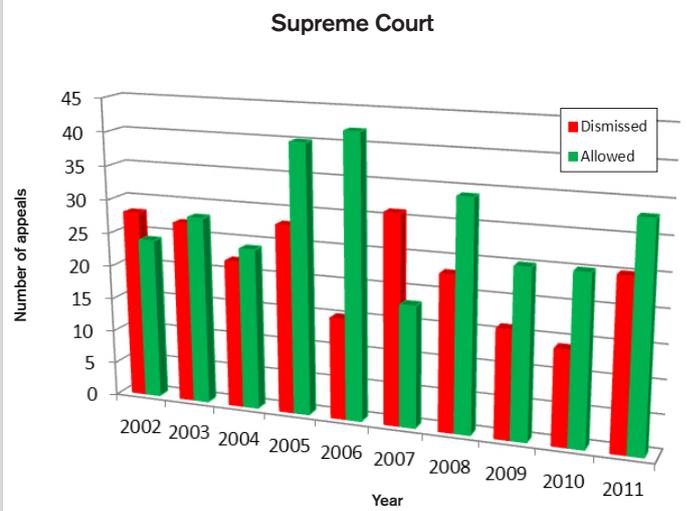


\* Dismissed figures include those dismissed by consent and those struck out

FIGURE 6:

SUPREME COURT

Highest Court in the land continues to allow more appeals than it dismisses\*

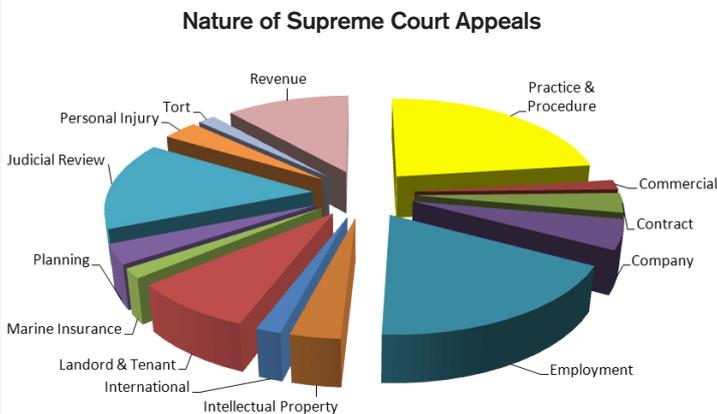


\* Figures include House of Lords appeals until creation of Supreme Court in mid-2009

FIGURE 7:

NATURE OF APPEALS TO THE SUPREME COURT

Sharp rise in employment and practice & procedure appeals\*

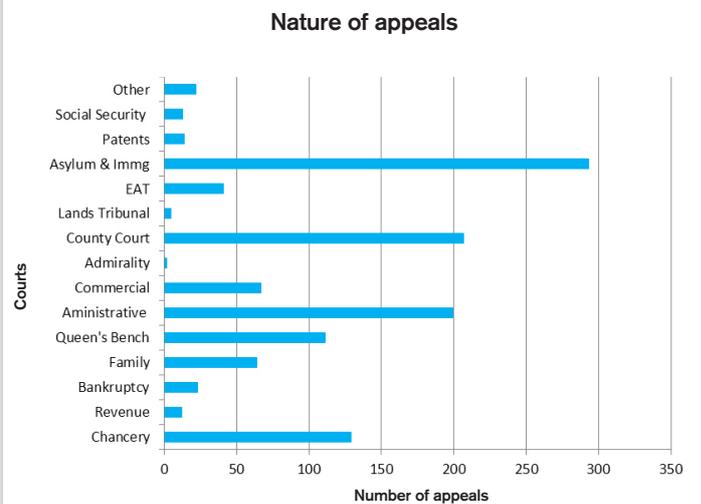


\* Graph does not include human rights, crime, asylum and immigration or family appeals

FIGURE 8:

COURT OF APPEAL SUBJECT MATTER

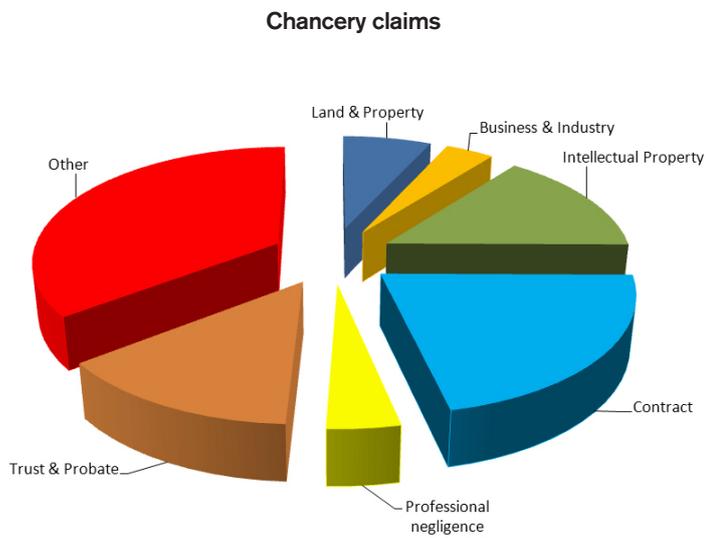
Asylum & immigration continue to dominate Court's time



**FIGURE 9:**

**NATURE OF CHANCERY CLAIMS**

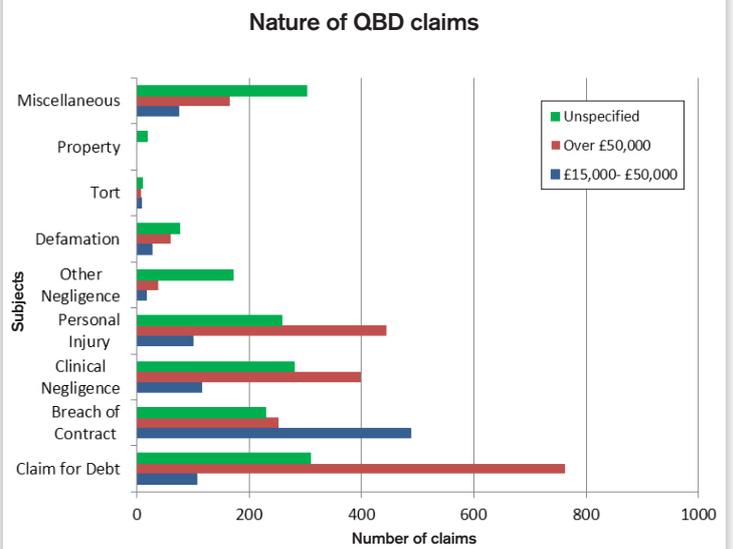
Continued growth of contract claims



**FIGURE 10:**

**SUBJECT MATTER OF QUEENS BENCH CLAIMS**

A significant number of breach of contract and debt claims



**CONTACT DETAILS**

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