



JUDICIARY OF
ENGLAND AND WALES

Annual Report of the Technology and Construction Court

2013 – 2014

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Introduction

This report covers the work of the Technology and Construction Court (“TCC”) in England and Wales for the period from 1 October 2013 to 30 September 2014.

The TCC is a specialist court which deals primarily with litigation of disputes arising in the field of technology and construction. It includes traditional building cases, adjudication enforcement, engineering and technology disputes, claims for professional negligence, claims by or against local authorities concerning the development of land, dilapidations claims, nuisance claims, fire claims, IT disputes (relating to both hardware and software) and challenges to arbitrators’ decisions in respect of any of the above matters. In recent years the court has seen an increasing number of disputes which require technical input or which it is appropriate for the court to deal with because of familiarity with the subject matter. Claims arising from public procurement, which are now commonly brought in the TCC, are an example of this broader jurisdiction. There has also been an increase in cases involving complex electronic technology issues.

The Organisation of the TCC

TCC cases are managed and heard by specialist judges in London and at centres throughout England and Wales. In London the cases are dealt with exclusively by High Court Judges or specialist Queen’s Counsel approved to sit as either Deputy High Court Judges or Recorders in the TCC. Outside London TCC cases are heard by Circuit Judges designated to hear TCC cases.

The main High Court centre of the TCC is located at the Rolls Building in Fetter Lane near the Royal Courts of Justice and deals with all High Court TCC claims which are commenced in or transferred to London. The claims include those which arise anywhere in England and Wales as well those arising in jurisdictions overseas.

There are regional TCC centres at courts or civil justice centres in Birmingham, Bristol, Cardiff, Chester, Exeter/Plymouth, Leeds, Liverpool, Manchester Newcastle and Nottingham. There are specialist TCC judges at Birmingham, Leeds and Manchester, and in the other centres, together with Leicester, Sheffield and Winchester, there are judges authorised to sit on TCC business.

In London there is also the Central London Civil Justice Centre, now located in the Royal Courts of Justice in the Strand, which deals with all London county court TCC cases. County court claims can also be issued at the regional TCC centres.

The Work of the TCC during the Year: The London TCC

Judiciary

In the Rolls Building six High Court Judges sat regularly on TCC business during the year.

The High Court judges sitting during the year were Mr. Justice Vivian Ramsey, who was Judge in Charge of the TCC until 31 August 2010, Mr. Justice Robert Akenhead who was Judge in Charge from 1 September 2010 to 31 August 2013, Mr. Justice Peter Coulson, Mr. Justice Antony Edwards-Stuart, who became Judge in Charge on 1 September 2013, Mr. Justice Jeremy Stuart-Smith and Mrs Justice Sue Carr, who was nominated to sit as a judge of the TCC with effect from 21 October 2013. Apart from Mr. Justice Edwards-Stuart, who sat full-time in the TCC during the year, the other judges sat not only in the TCC but also in the Queen’s Bench Division, the Criminal Division of the Court of Appeal or on circuit.

In addition, the TCC is able to call upon a number of deputy High Court judges who are authorised under section 9(4) of the Senior Courts Act 1981 (formerly the Supreme Court Act 1981) as well as Recorders who are authorised to carry out work as TCC judges under s.68(1)(a) of the Senior Courts Act 1981 (albeit still quaintly described in the legislation as “Official Referees’ business”). At some stage the latter provision is likely to be repealed, so that the TCC will be able to call only on those who are authorised under section 9.

The availability of flexible listing arrangements is a necessity given the substantial workload, including applications arising from adjudications and arbitrations and Part 8 proceedings which must be dealt with urgently. The case management powers exercised by the judges themselves are successfully deployed to ensure resolution of the cases within as short a time as is fair and reasonably practicable.

Case Management

The comparative figures for the numbers of claims issued and the number of trials shows that the large majority of TCC cases settle at some point between commencement and the date fixed for trial. The strong case management by TCC judges is one of the reasons for this.

An important feature of case management in the TCC is that at the first Case Management Conference the date for the trial is fixed, usually at the earliest available date in the court diary for a hearing of the required length. This will usually have a significant impact on the timetable for all the steps in the proceedings up to trial. Occasionally the parties ask the court to fix the trial for a later date owing to the complexity of the case and the nature

of the extent of the steps that have to be taken by way of pre-trial preparation. The court will usually accede to this request unless it considers it inappropriate to do so.

The case management bundle provided to the court for this case management conference includes the documents produced by the parties in complying with the pre-action protocol. This allows the court to review whether there should be an opportunity, by way of stay or timetabling, for the parties to reach a settlement either by negotiation or ADR. Whether or not a stay is granted for this purpose will usually depend on the amount of time available: the court is reluctant to put back a trial date in order to accommodate a stay for ADR. Equally where the dispute between the parties cannot be settled, the case management conference allows the court to consider how a determination of that dispute can be dealt with in the most appropriate way, taking into account the overriding objective of the Civil Procedure Rules.

Unfortunately, the requirement for TCC judges to sit in courts other than the TCC means that the allocated judge cannot always deal with every step of the case. The court seeks to ameliorate the effect of this by ensuring that there is as much consistency in case management as possible.

The introduction of costs management for all cases with a claimed value below £10 million (for cases started after 22 April 2014) means that first case management conferences sometimes take significantly longer than used to be the case. It is hoped that as the regime for costs management beds down there will be a greater degree of agreement between the parties on each other's costs budgets so that the time taken in court on costs management will be reduced. The importance of the parties' solicitors liaising with each other in relation to costs budgets before the first CMC cannot be overemphasised.

Court Staff

The London TCC is served by experienced court staff, some of whom have been with us for many years. A list of the current court staff at the London TCC and their functions is set out at the end of this report. The court staff has to deal with an increasing number of communications by email and fax, as well as documents received by post and handed in to the Registry. This increases the pressure on them and matters often have to be dealt with urgently and court hearings arranged. Electronic Working has placed extra pressure on court staff and we are most grateful to them all for their hard work, particularly in relation to the new working practices.

Electronic Working

Since the unsuccessful attempt to introduce electronic working between 2009 and 2012 a new system has been developed and it is hoped that this will be run on a pilot scheme basis in the TCC during the first half of 2015.

A principal advantage of the new system of electronic working will be that the parties will be able to issue a claim form (and pay the fee) and then take all further steps by issuing or filing documents on-line.

Marshalling scheme

We have continued the arrangement with the TCC Solicitors Association (TeCSA) and the Technology and Construction Bar Association (TECBAR) for London TCC judges to take trainee or newly qualified solicitors and pupil barristers and barristers new to practice who are planning to practise in the field of technology and construction litigation to act as marshals for up to one week. The marshals read the papers, sit in court next to the judge and discuss the case with the judge out of court. Obviously, the marshal must not have any connection with the case being considered and everything which the marshal reads and hears out of court is strictly confidential. This allows the marshal to see the work of the court at first hand, meet the judges and the court staff and generally raise their awareness of practice and procedure in the TCC.

We are very grateful to Richard Adams of Burges Salmon who administers this scheme for TeCSA, to Crispin Winser of Crown Office Chambers who administers the scheme on behalf of TECBAR. We are also grateful to Philip Morris, the Clerk to Mr. Justice Edwards-Stuart, who has made the necessary arrangements over the past year. Those interested in the scheme should contact, as appropriate:

Richard Adams (*Richard.Adams@burges-salmon.com*) or

Crispin Winser (*Winser@crownofficechambers.com*).

Other marshalling arrangements (subject to security considerations) can be made with Philip Morris, the Clerk to Mr. Justice Edwards-Stuart. This year there have been undergraduates, people doing the law conversion courses, company directors, engineers and quantity surveyors.

Overseas Work

The TCC encourages overseas clients to bring their disputes to the TCC for resolution and a significant number of cases now have an overseas party or relate to a project overseas. The TCC judges have the necessary expertise to deal with international cases, having had experience of international work before coming to the bench. A number of overseas contracts now have jurisdiction clauses which expressly refer disputes to the TCC in the High Court in London. This is to be welcomed and reflects the respect in which the practice, procedure and judicial experience of the TCC is held internationally.

The court is often able to arrange for foreign lawyers or judges to sit with a TCC judge when they are visiting London so that they can gain first hand experience of the court and such visits have taken place with success in the past.

In addition TCC judges have been invited to and have given lectures in a number of other European countries and overseas in Europe, North America, the Middle East and Far East. This has led to continued interest in the approach of the TCC particularly in countries which do not have an established specialist court to deal with these disputes.

Claims

During the relevant period from October 2013 to September 2014 there were 460 new claims brought in the London TCC. This compares with 497 new cases in 2012–13, 457 new cases in 2011–12, 512 claims in 2010 to 2011 and 502 new cases in 2009–2010. This shows a sustained high workload over the past five years. The reduction since 2011–12, partly at least, reflects the decision in February 2012 in *West Country Renovations Ltd v McDowell & Anor [2012] EWHC 307 (TCC)* to transfer many types of case having a value of less than £250,000 to the Central London County Court.

Trials

There were 40 (52 for 2012–13) contested trials at the London TCC during the year. Some of these were substantial. A number of other trials started but were settled before judgment. These are not treated as trials in these figures. A feature of the year has been a substantial number of cases which have settled shortly, sometimes very shortly, before or even during trial.

Applications

During the year 416 (485 for 2012–13) applications were dealt with, including case management conferences, pre-trial reviews and specific applications. Some of these were dealt with in court, some by telephone and some in writing. Hearings varied in length. Some were very short and some took more than one day. Often the preparation time by the court in advance of the hearing exceeds the hearing time itself but this preparation enables the applications to be dealt with more rapidly and effectively.

The TCC encourages the use of paper applications as this saves costs and time, provided that the issues can properly be dealt with in this way, without prejudice to the parties by lack of oral argument.

Central London Civil Justice Centre

The Central London Civil Justice Centre deals with all county court TCC claims which are brought in London. His Honour Judge Edward Bailey is the principal TCC judge at Central London. HHJ Marc Dight, HHJ John Hand, HHJ Tim Lamb QC and HHJ Deborah Taylor have been authorised to sit on TCC business there as well.

During the year there were 165 (168) new TCC cases in this court.

Regional TCC Centres

The extent to which statistics for TCC work can be isolated from the general statistics for court work outside London depends upon the administrative arrangements at individual court centres. Some court centres, for perfectly understandable reasons, do not keep figures for TCC work. What follows is a summary of the TCC data provided by certain court centres outside London. It is not possible to present such data in a uniform format. Figures for 2012–2013 are shown in brackets.

Birmingham

The TCC court is based in the Birmingham Civil Justice Centre. His Honour Judge David Grant is the full-time principal TCC judge.

The total number of new TCC cases was 88 (100). There were 55 (66) cases issued in the Birmingham TCC and 33 (34) cases transferred into that court.

The specialist judges in Birmingham (TCC, Mercantile and Chancery) are authorised to sit in all jurisdictions and this permits them to cover for one another when necessary.

Bristol

His Honour Judge Mark Havelock-Allan QC is the principal TCC judge at Bristol.

The total number of new TCC cases during the year was 32 (23) of which 8 (7) were County Court claims and 2 (8) were transfers in.

Cardiff

His Honour Judge Andrew Keyser QC is the principal TCC judge based at the Cardiff Civil Justice Centre.

The total number of new TCC cases during the year was 29 (22). Of those 29 cases, 16 (7) are still proceeding, 7 (7) settled (with one claim dismissed and one stayed), 5 (6) proceeded to trial.

Exeter

His Honour Judge Barry Cotter QC is the principal TCC judge based at Exeter.

There were 2 (7) new cases issued which were identified as being TCC cases.

Leeds

The principal TCC judge at Leeds was His Honour Judge Mark Raeside QC who is based at Leeds Combined Court Centre.

A total of 195 new TCC cases were issued during the year, including both those issued in the Leeds TCC and those transferred in.

Liverpool

His Honour Judge Wood QC is the Principal TCC judge at Liverpool Combined Court Centre.

There were 9 new TCC cases issued during the year.

Manchester

His Honour Judge Philip Raynor QC and His Honour Judge Stephen Davies both sit as specialist TCC Judges in the Civil Justice Centre in Manchester.

The total number of new TCC cases during the year was 133 (111) consisting of 102 (74) cases issued in the Manchester TCC and 31 (37) cases transferred into that court; four cases were transferred out.

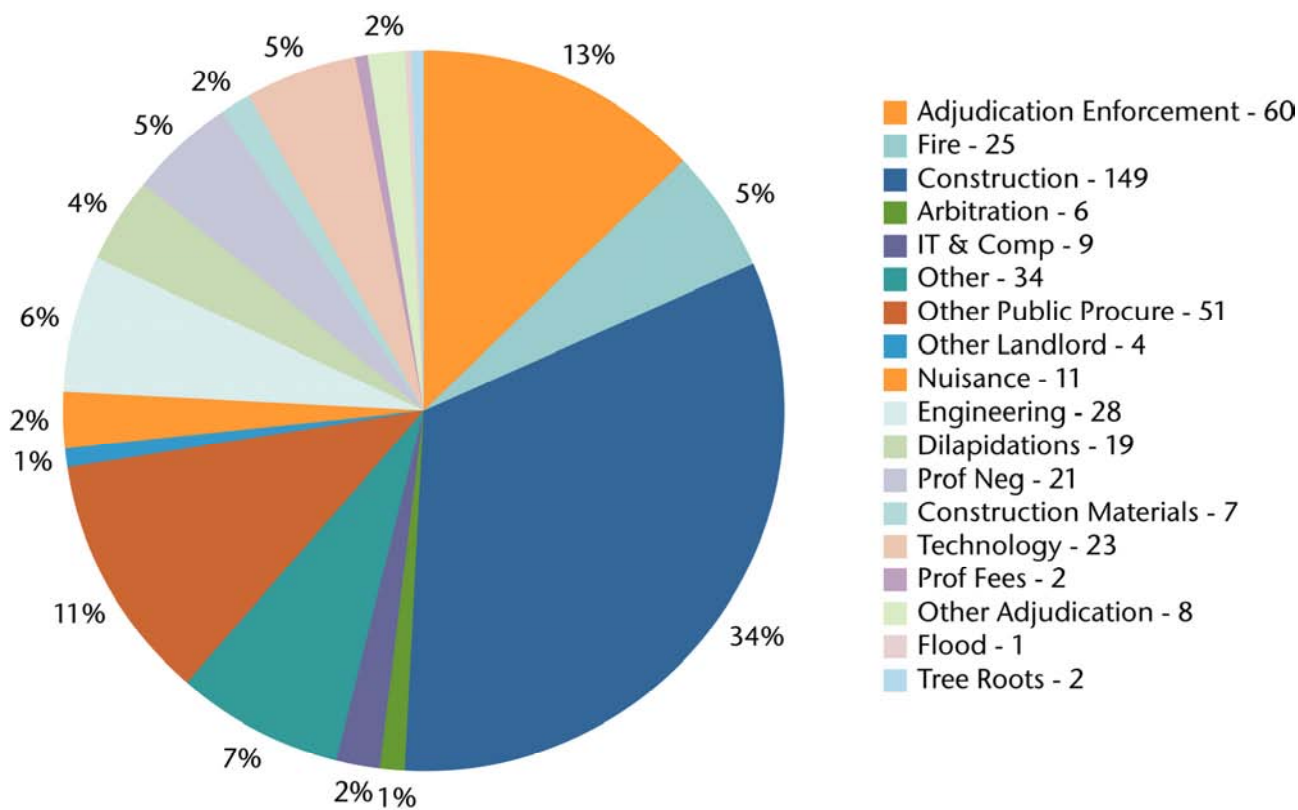
Newcastle

His Honour Judge Christopher Walton sits at the Newcastle upon Tyne Combined Court Centre.

During the previous year there were 19 new cases issued in or transferred into the Newcastle TCC. There are no figures available for the current year.

Overall Division of Cases

As in previous years we include an analysis of the percentages of each type of work carried out in those TCC courts which have provided the relevant information. It has been produced solely by reference to the claim and not by reference to the subsequent proceedings. This means that, for instance, some claims for professional fees will have triggered counterclaims for professional negligence which are not shown as such. There is also a subjective element in the classification, since some cases lie on the borderline between categories or fall into more than one category.



The TCC during the year

Appointment of Judges and Recorders as TCC Judges

The Lord Chief Justice’s power under s.68(1)(a) of the Senior Courts Act 1981 to nominate circuit judges, deputy circuit judges or recorders to deal with “official referees’ business” in the TCC is delegated to the Judge in Charge, who is required to consult with the Lord Chancellor and the senior judiciary before exercising that authority. During the year there were four appointments: Peter Fraser QC, Nerys Jefford QC, Simon Lofthouse QC and Finola O’Farrell QC.

Mr. John Marrin QC resigned as a Recorder with effect from June 2014, after having served more than 20 years in that role. In consequence, he has resigned also as a Deputy High Court Judge authorised to sit in the TCC. The court is very grateful to him for his outstanding service.

As mentioned above, the statutory provisions still refer to “official referees” business although under the Civil Procedure Rules the court is referred to the TCC. It is assumed that in due course these statutory provisions will be brought into line with other specialist court jurisdictions.

A full list of TCC Judges including High Court judges, Circuit judges and Recorders who have been nominated to manage and try TCC cases is attached as Appendix 1.

Queen’s Counsel

In April 2014 the following Queen’s Counsel were appointed who regularly practise in the TCC:

Andrew Miller

Nicholas Fletcher

Alexander Antelme

Justin Mort

Rachel Ansell

James Howells

Ben Quiney

Graham Chapman

We are delighted to welcome these specialist practitioners who practice in this field.

The TCC Guide

A third revision of the second edition of the TCC Guide (which originally came into force in October 2005) was produced in early 2014 and, having received the necessary approval, came into effect from 3 March 2014.

This was prepared following comments from the judges of the TCC, TECBAR, TeCSA and the Society of Construction Law, for whose contributions the court is very grateful.

The TCC Judges' Conference

A very successful TCC Judges' Conference was held in the Rolls Building on 4 July 2014 attended by full time and part time judges with talks and discussions led by some of the TCC Judges in London. A keynote address was given by Lord Justice Jackson, and the court was particularly grateful for an interesting presentation in relation to de-disclosure and document management led by Mr. Justice Stuart Smith with invaluable contributions from Marie-Claire O'Hara, of Nabarro, and Andrew Haslam of Allvision.

The conference was followed by a reception hosted by the TCC Judges on the fifth floor terrace of the Rolls Building.

Alternative Dispute Resolution

Alternative dispute resolution ("ADR") has continued to play a large role in resolving technology and construction disputes during the year. Many cases which are begun in the TCC are resolved by means of ADR, often with the assistance of one of the many highly experienced professional mediators (solicitors, counsel or construction professionals). TCC judges actively encourage parties to consider mediation either to settle or to narrow their disputes. Obviously there are and will continue to be cases where the parties are not able to resolve their disputes without the decision of the court but many cases are resolved effectively through ADR. The TCC also has available ADR processes of Early Neutral Evaluation and the Court Settlement Process to assist parties to resolve disputes. These are now dealt with more fully in the current TCC Guide.

In addition, in appropriate cases, TCC judges can sit as Arbitrators. Further guidance on this aspect is again contained in the TCC Guide.

TCC user committees

TCC user committees function at Birmingham, Bristol, Cardiff, Leeds, Liverpool, London, Newcastle and Manchester. These committees make a valuable contribution to the work of the court. They enable solicitors, barristers, consultants, interest groups and clients to be represented in the development and operation of the TCC. The TCC is grateful to those who chair and participate as members in the TCC user committees. Their support and assistance is much appreciated.

TCC Liaison Judges

There are TCC liaison District Judges at Birmingham, Bristol, Cardiff, Leeds, Liverpool and Newcastle. The function of these judges is to keep other district judges informed about the role and remit of the TCC; to deal with queries from colleagues concerning the TCC or transfer of cases; to deal with any subsidiary matter as directed by a TCC judge and to deal with urgent applications in TCC cases when no TCC judge is available. We are grateful to them for carrying out this important role during the year.

Antony Edwards-Stuart
Judge in charge of the Technology and Construction Court

March 2015

Appendix 1: The Technology & Construction Court as at 1 October 2013

London TCC

Mr. Justice Edwards Stuart (Judge in charge of the TCC for three years from 1 September 2013)

Mr. Justice Ramsey

Mr. Justice Akenhead

Mr. Justice Coulson

Mr. Justice Stuart-Smith

Mrs Justice Carr (with effect from 21 October 2013)

Birmingham

His Honour Judge David Grant (Full time TCC Judge)

His Honour Judge Simon Brown QC

His Honour Judge Charles Purle QC

His Honour Judge David Cooke

His Honour Martin McKenna

His Honour Judge Simon Barker QC

Bristol

His Honour Judge Mark Havelock-Allan QC (Principal TCC Judge)

His Honour Judge Patrick McCahill QC

Cardiff and Mold

His Honour Judge Andrew Keyser QC (Principal TCC Judge)

His Honour Judge Milwyn Jarman QC

His Honour Judge Anthony Seys Llewellyn QC

Central London

His Honour Judge Edward Bailey

His Honour Judge John Hand

His Honour Judge Timothy Lamb QC

Her Honour Judge Deborah Taylor

His Honour Judge Marc Dight

Chester

His Honour Judge Derek Halbert

Exeter

His Honour Judge Barry Cotter QC

Leeds

His Honour Judge Mark Raeside QC (Judge in Charge of TCC in North East Region)

His Honour Judge John Behrens

His Honour Judge Roger Kaye QC

His Honour Judge Andrew Saffman

Liverpool

His Honour Judge Graham Wood QC

Manchester

His Honour Judge Philip Raynor QC (Full time TCC Judge)

His Honour Judge Stephen Davies (Full time TCC Judge)

His Honour Judge David Waksman QC

His Honour Judge Mark Pelling QC

His Honour Judge David Hodge QC

His Honour Judge Nigel Bird QC

His Honour Judge Graham Platts

HHJ Allan Gore QC

Newcastle upon Tyne

His Honour Judge Christopher Walton

District Judge Atherton

Nottingham

His Honour Judge Richard Inglis

His Honour Judge Richard Godsmark

Sheffield

His Honour Judge John Bullimore

Winchester

His Honour Judge Iain Hughes QC

Deputy High Court Judges

Mr. Jonathan Acton Davis QC

Mr. Andrew Bartlett QC

Mr. Richard Fernyhough QC

Mr. Stephen Furst QC

Mr. Roger ter Haar QC

Mr. Adrian Williamson QC

Mr. John Marrin QC (resigned with effect from June 2014)

Recorders

District Judge Ian Atherton

Mr. Michael J Black QC (resigned with effect from December 2013)

Mr. David Blunt QC

Mr. Martin Bowdery QC

Mr. Robert Gaitskell QC

Mr. Michael Harvey QC

Mr. Stephen Morris QC

Mr. Robert Moxon-Browne QC

Mr. Alexander Nissen QC

Mr. David Phillips QC

Mr. Colin Reese QC

Mr. Andrew Singer

Mr. Michael Soole QC

Mr. Michael Stephens

Mr. Jeremy Storey QC

Mr. Roger Stewart QC

Mr. Peter Susman QC

Mr. Andrew Sutcliffe QC

Mr. Christopher Thomas QC

Mr. Peter Fraser QC (with effect from 16 October 2013)

Ms Nerys Jefford QC (with effect from 16 October 2013)

Mr. Simon Lofthouse QC (with effect from 16 October 2013)

Ms Finola O'Farrell QC (with effect from 16 October 2013)

TCC Liaison District Judges

District Judge Ian Atherton (Newcastle)

District Judge Mathu Asokan (Birmingham)

District Judge Nicola Harrison (Liverpool)

District Judge Richard Hendicott (Cardiff)

District Judge Robert Jordan (Leeds)

District Judge Brian Watson (Bristol)

Appendix 2: The Staff of the London TCC as at 1 October 2013

Philip Morris	Clerk to Mr. Justice Edwards-Stuart
David Hamilton	Clerk to Mr. Justice Ramsey
Sam Taylor	Clerk to Mr. Justice Akenhead
Simon Smith	Clerk to Mr. Justice Coulson
Maxine Barfoot	Clerk to Mr. Justice Stuart-Smith
Anne Bateman	Clerk to Mrs Justice Carr
Wilf Lusty	Court Manager
Stephen Gibbon	TCC Listing Manager
Daniel Ward	Administrative Clerk
Michael Rae	Registry Manager
Ann Farrelly	Registry Administrative Clerk
Shirley Sweeney	Registry Administrative Clerk