



THE TECHNOLOGY AND CONSTRUCTION COURT

ANNUAL REPORT FOR THE YEAR ENDING
30TH SEPTEMBER 2006

**TECHNOLOGY AND CONSTRUCTION COURT REPORT FOR
THE YEAR 1st OCTOBER 2005 TO 30th SEPTEMBER 2006**
(tccsecondannualreport6)

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1. INTRODUCTION

1.1 The Technology and Construction Court (“TCC”) is a specialist court which deals primarily with litigation arising in the field of technology and construction.

1.2 The full range of TCC work is set out in paragraph 2 of the Practice Direction supplementing CPR Part 60. It includes traditional “building” cases, adjudication enforcement, engineering disputes, professional negligence claims, 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.

2. THE ORGANISATION OF THE TCC

(i) In London

2.1 The London TCC. The TCC at St Dunstan’s House (which is situated about 100 yards from the Royal Courts of Justice) deals with all High Court

TCC claims which are brought in London. The phrase “the London TCC” will be used as a shorthand for the TCC operating at St Dunstan’s House.

2.2 London TCC judges. The London TCC comprises two High Court judges and five senior circuit judges, namely:

Mr Justice Rupert Jackson

Mr Justice Vivian Ramsey (appointed 1st November 2005)

HH Judge Richard Havery QC

HH Judge Anthony Thornton QC

HH Judge David Wilcox

HH Judge John Toulmin CMG QC

HH Judge Peter Coulson QC

It should also be noted that HH Judge David Mackie, a mercantile judge based at St Dunstan’s House, is sometimes available to sit in the TCC. He is clerked by Ms Sarah Landau.

2.3 Mr Justice Ramsey has been assigned to the TCC on the basis that he will, if possible, sit in other courts for half of each term. However, this arrangement is flexible. For example, both this term and next term Mr Justice Ramsey has been booked to go out on circuit for the second half of term, on the understanding that he will only do so if the lengthy TCC cases in his list settle. Flexible listing arrangements for TCC judges are essential, in view of the uncertainty as to which cases will settle and when they will settle.

2.4 The panel of five reserve High Court judges. A panel of five “reserve” judges, who have been nominated to sit in the TCC, was established by the Lord Chief Justice last year. They are Mr Justice Elias, Mr Justice Field, Mr Justice Ouseley, Mr Justice Simon and Mr Justice Christopher Clarke. These judges may be made available to sit in the TCC to hear “HCJ” cases, when the need arises and by special arrangement with the Vice-President of the Queen’s Bench Division.

2.5 Central London Civil Justice Centre. The Central London Civil Justice Centre (formerly the Central London County Court) deals with all county court TCC claims which are brought in London. HH Judge Brian Knight QC is the principal TCC judge at Central London.

(ii) Outside London

2.6 Court centres outside London. The court centres outside London at which the TCC principally operates are: Birmingham, Bristol, Cardiff, Chester, Exeter/Plymouth, Leeds, Liverpool, Newcastle, Nottingham and Salford (Manchester). At each of these court centres both High Court and county court TCC cases may be issued, managed and tried.

2.7 There are full time TCC judges at Birmingham (HH Judge Kirkham), Salford (HH Judge Gilliland QC and HH Judge Raynor QC) and Liverpool (HH Judge Mackay). “Full time” in this context means that those judges are principally TCC judges, and only do other work when the TCC list permits. At all TCC court centres outside London there are part time TCC judges. “Part time” in this context means that those judges have been authorised to sit in the TCC (pursuant to section 68 of the Supreme Court Act 1981), but much of their judicial time is devoted to non-TCC work.

2.8 Judges authorised to deal with TCC business are also available at Leicester, Sheffield and Winchester. However, county court TCC claims cannot be issued at these court centres: see paragraph 3.4 of the Practice Direction supplementing CPR Part 60.

2.9 Retirement and appointment. On 31st March 2006 HH Judge Overend (TCC judge at Exeter/Plymouth) retired. HH Judge Griggs, the Designated Civil Judge at Exeter, has become the TCC judge for that region and has taken over the current TCC cases in Judge Overend’s list. The court is grateful to Judge Overend for his work over many years and welcomes the arrival of Judge Griggs.

3. THE WORK OF THE LONDON TCC DURING THE YEAR

3.1 Number of cases begun. During the year ended 30th September 2006 there were 392 new claims brought in the London TCC. Of these, 338 claims were issued in the London TCC and 54 claims were issued in other courts and transferred into the London TCC.

3.2 Breakdown of new cases begun. The 392 new cases fall into the following categories:

<u>Category</u>	<u>Number of cases</u>
Construction	143
Construction materials	5
Adjudication enforcement	74
Other adjudication cases	9
Professional negligence	28
Claims for professional fees	9
Dilapidations	25
Other landlord and tenant cases	1
Tree roots	6
Other nuisance cases	13
Party wall	0
Fire cases	14
Engineering	9
Technology	3
Insurance	2
IT and computer cases	10
Arbitration claims under CPR Part 62	15
Other	<u>26</u>
	<u>392</u>

3.3 For ease of cross-reference, the same categories have been used as in last year's report. The above analysis has been carried out solely by reference to the claim and not by reference to the subsequent proceedings. Thus, some of the claims for professional fees will have triggered counterclaims for professional negligence, but this is not shown in the table. There is also a subjective element in the above classification, since some cases lie on the borderline between categories or, more commonly, fall into more than one category.

3.4 Many construction cases also include claims against certain parties for professional negligence. These cases have been classified as "construction" rather than "professional negligence".

3.5 Many construction claims relate to, or include, civil engineering, structural engineering or M & E works. These cases have been classified as "construction" rather than "engineering", because those two categories are difficult to compartmentalise. Indeed construction disputes commonly involve both builders' work and civil, structural or M & E elements.

3.6 The only cases classified as “engineering” in the above table are those which relate to engines, machinery, mechanical equipment etc.

3.7 Most cases classified as “nuisance” relate to flooding, removal of support and similar misfortunes, allegedly resulting from construction activities on nearby property. These cases are usually pleaded in a variety of ways, of which nuisance is merely one formulation.

3.8 Trials. There were 48 contested trials at the London TCC during the year. Many of these were substantial. The longest trial was 31 days. A number of other trials started but were settled before judgment. These are not included in the figure of 48 trials.

3.9 Applications. During the year 1066 applications (including case management conferences, pre-trial reviews and numerous specific applications) were dealt with. Some of these were dealt with in court or by telephone. Such hearings varied in length from a matter of minutes to more than one day. Some applications were dealt with on paper. The TCC encourages the use of paper applications where (a) costs will be saved but (b) no party will be prejudiced by the lack of oral argument (see section 4.4 of the TCC Guide).

3.10 Case management. It can be seen from the figures that the great majority of all TCC cases settle at some point between commencement and the date fixed for trial. This is as it should be. TCC judges case manage all litigation with the twin objectives of:

- facilitating settlement where this is possible (either by negotiation or ADR);
- preparing for trial that minority of cases where the litigants (perfectly reasonably) wish the court to decide the issues between them.

Thus in the majority of actions case management is the principal service which the TCC provides to court users. It is against this background that the figures set out above must be considered.

3.11 Judicial Statistics 2005. The “Judicial Statistics 2005” (HMSO, published earlier this year) and the “Judicial Statistics 2005 (revised)” (HMSO, published August 2006) deal with the London TCC on page 42. The figures on that page, relating to the calendar year 2005, are unfortunately erroneous. It is understood that a corrected version of this page will appear on the DCA website.

3.12 Other work done by London TCC judges. The London TCC judges sit in other courts when their services are not required in the TCC (e.g. because of settlements). During the year 1st October 2005 to 30th September 2006 the London TCC judges sat in the following courts, when TCC business permitted:

Queen's Bench Division

Chancery Division

Family Division

Administrative Court

Birmingham, Sheffield and Wood Green Crown Courts

Parole Board

3.13 Court staff. The London TCC is serviced by experienced court staff, some of whom have been with us for many years. A list of court staff at the London TCC and their functions is set out in the appendix. It will be noted that the workload of the London TCC has increased this year, but the number of court staff has reduced. I am extremely grateful to the court staff for their hard work.

3.14 Marshalling scheme. By arrangement with the TCC Solicitors Association (TeCSA) London TCC judges take trainee solicitors and newly qualified solicitors as marshals for one week periods. Marshals read the papers, sit in court next to the judge and discuss the case with the judge out of court. The marshal must not come from a firm of solicitors which has a connection with the case in hand. Everything which the marshal reads and hears out of court is strictly confidential. This marshalling scheme is intended for trainees and solicitors who are planning to practise in the field of technology and construction litigation. This scheme is administered by John Wright of Lane & Partners LLP (email address john.wright@lane.co.uk).

3.15 Central London Civil Justice Centre. As stated in paragraph 2.5 above, all TCC county court cases in London are handled by the Central London Civil Justice Centre ("CLCJC"). During the year 1st October 2005 – 30th September 2006, there were 94 new TCC cases in the CLCJC. These cases were either (a) issued in the CLCJC or (b) transferred to the CLCJC from some other TCC court centre or (c) transferred from the county court list within the CLCJC to the TCC list (because of the nature of the issues).

3.16 Combined figures. The details set out in paragraphs 3.1 to 3.11 above relate entirely to the High Court TCC at St Dunstan's House. The figures set out in paragraph 3.15 relate entirely to the county court TCC. The total number of TCC cases commenced in London during the year 1st October 2005 to 30th September 2006 was 483, calculated as follows:

St Dunstan's House	392
Central London Civil Justice Centre	<u>94</u>
Sub-total	486
Deduct transfers between CLCJC and St Dunstan's House	<u>3</u>
Total number of new TCC cases in London	<u>483</u>

4. THE WORK OF THE TCC AT OTHER COURT CENTRES DURING THE YEAR

4.1 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, have no separate TCC figures at all. 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.

4.2 In a number of court centres outside London a TCC liaison district judge has been appointed. The functions of TCC liaison district judge are set out in paragraph 1.3.4 of the TCC Guide. It is hoped that these appointments will lead to the transfer of appropriate cases into the TCC at an earlier stage than into the past. This should promote continuity of case management and earlier trial dates.

(i) Birmingham

4.3 New cases. The total number of new TCC cases during the year was 108. These comprised 86 cases issued in the Birmingham TCC and 22 cases transferred into that court. Of the 108 new cases 86 are High Court TCC and 20 are county court TCC. The breakdown of these cases is as follows:

<u>Category</u>	<u>Number of cases</u>
Construction	44
Adjudication enforcement	17
Professional negligence	14
Dilapidations	1
Tree roots	7
Party wall	2
Nuisance	5
Engineering	1
IT and computer cases	5
Arbitration claims	2
Other	<u>10</u>
	<u>108</u>

The ten “other” cases comprised 6 concerning damage to underground cables, 1 claim under the Telecommunications Act 1984, 1 claim concerning crop damage and 1 claim concerning asbestos contamination and 1 claim concerning the outbreak of foot and mouth disease.

4.4 Trials and applications. Judge Kirkham conducted 14 TCC trials during the year (in addition to 6 non-TCC trials). There were also a large number of applications, but these have not been counted.

4.5 The specialist judges in Birmingham (TCC, Mercantile and Chancery) are “cross-ticketed” and cover for one another when necessary. Since the three judges and all relevant court staff are based in the same building (the Birmingham Civil Justice Centre) transfers between the three specialist courts are easily effected.

4.6 TCC liaison district judge. District Judge Anthony Cleary has been appointed TCC liaison district judge for Birmingham.

(ii) Cardiff

4.7 New cases. The total number of new TCC cases during the year was 32. These comprised 1 case issued in the Cardiff TCC and 31 cases transferred into that court.

4.8 Disposals. Of those 32 cases, 23 remain live, 5 have settled, 2 have been discontinued, 1 has been stayed and 1 has resulted in judgment for the

claimant.

4.9 TCC liaison district judge. District Judge Richard Hendicott has been appointed TCC liaison district judge for Wales.

(iii) Leeds

4.10 New cases. The total number of new TCC cases during the year was 53. These comprised both claims issued in the Leeds TCC and claims transferred into that court. Of the 53 new cases 44 are High Court TCC and 9 are county court TCC. The breakdown of these cases is as follows:

<u>Category</u>	<u>Number of cases</u>
Construction	19
Construction materials	6
Adjudication enforcement	7
Professional negligence	10
Tree roots	2
Engineering	5
Technology and IT	2
Other	<u>2</u>
	<u>53</u>

4.11 Trials. There were 9 trials in the Leeds TCC during the year. There were 14 further TCC trials during the year, which settled either at the door of the court or very shortly before the start of trial. One Leeds case was transferred to the Birmingham TCC for trial.

4.12 Most TCC trials in Leeds are listed to take place during “TCC fortnights”, of which there are three in each year. TCC trials may be heard outside these periods, if individual circumstances so require or if the time estimate is longer than 10 days.

4.13 TCC liaison district judge. District Judge Robert Jordan has been appointed TCC liaison district judge for Leeds.

(iv) Liverpool

4.14 New cases. The total number of new TCC cases during the year was 42 (some issued in the TCC and others transferred in).

4.15 Disposals. During the year 11 TCC cases were disposed of after trial and 4 TCC cases settled before trial.

4.16 TCC liaison district judge. District Judge Nicola Harrison continues in the role of TCC liaison district judge for the Liverpool area.

(v) Newcastle

4.17 New cases. Precise figures for the reporting year are not available. However, during 2005 there were 8 new cases in the Newcastle TCC. In the nine months January to September 2006 there 23 new cases in the Newcastle TCC. Some of the new cases were issued in the Newcastle TCC, whereas others were transferred into that court.

4.18 TCC liaison district judge. District Judge Ian Atherton has been appointed TCC liaison district judge for Newcastle.

(vi) Nottingham

4.19 New cases. The total number of new TCC cases in Nottingham during the year was 6. The breakdown of these cases is as follows:

<u>Category</u>	<u>Number of cases</u>
Construction	2
Adjudication enforcement	2
Dilapidations	1
Tree roots	<u>1</u>
	<u>6</u>

(vii) Salford (Manchester)

4.20 New cases. The total number of new TCC cases during the year was 127. These comprised 94 cases issued in the Salford TCC and 33 cases transferred into that court.

4.21 Disposals. There were 86 TCC cases disposed of during the year. These comprised:

Cases which proceeded to judgment 15

Cases the subject of a consent order	61
Cases withdrawn	8
Cases transferred out	<u>2</u>
	<u>86</u>

4.22 The breakdown of those cases is as follows:

<u>Category</u>	<u>Number of cases</u>
Construction	27
Construction materials	3
Adjudication enforcement	15
Other adjudication claims	1
Professional negligence	9
Claims for professional fees	2
Landlord and tenant	1
Nuisance	11
Engineering	11
Technology	3
IT and computers	1
Other	<u>2</u>
	<u>86</u>

5. EVENTS DURING THE YEAR

5.1 Constitutional reforms. Under the Constitutional Reform Act 2005 the Lord Chancellor’s power to nominate circuit judges, deputy circuit judges or recorders to deal with “official referees’ business” in the TCC passed to the Lord Chief Justice. By a written delegation dated 25th April 2006 the Lord Chief Justice delegated that authority to the judge in charge of the TCC. The judge in charge of the TCC is required to consult with the Lord Chancellor and the senior judiciary before exercising that authority. Since the implementation of those constitutional reforms TCC authorisations have been given to two circuit judges and ten recorders.

5.2 Second edition of the TCC Guide. The second edition of the TCC Guide (which had been in gestation for a year and the subject of wide consultation) came into force on 3rd October 2005. Feedback from court users and the profession about the Guide has generally been positive. Inevitably a small

number of glitches and infelicities have come to light, which will need attention. However, constant rule changes are confusing for practitioners and can cause more trouble than they are worth. My colleagues and I intend to leave the Guide exactly as it is for another year. In October 2007 we intend to introduce a “first revision” of the second edition of the TCC Guide. This will not make any substantial changes. However, it will update the contact details set out in appendix D and iron out glitches or infelicities.

5.3 Seminars on the Guide. On the 16th October 2005 TeCSA and TECBAR held a joint seminar on the TCC Guide, at which a number of practitioners and TCC judges from London and Birmingham presented papers. On the 11th January 2006 a similar event was held in Birmingham, at which Mr Justice Ramsey, Judge Kirkham and seven practitioners presented papers on the Guide. Similar events were held in Exeter on 3rd July 2006 and in Bristol on 4th July 2006, at both of which Judge Kirkham and Judge Havelock-Allen presented papers on the Guide. I am grateful to the organisers and speakers at all these events, which have greatly assisted in familiarising the profession with the provisions of the new edition of the Guide.

5.4 Review of the Pre-Action Protocol. During the consultation exercise on the TCC Guide (2004-2005) certain concerns were expressed about the Pre-Action Protocol for Construction and Engineering Disputes (“the Protocol”). In the light of those concerns a working party was set up in October 2005, to consider whether any changes were required to the Protocol. The working party comprised Mr Justice Vivian Ramsey (chairman), Judge Richard Havery QC, Caroline Cummins (chairwoman of TeCSA), Allen Dyer (TECBAR representative) and Philip Morris (industry representative). The working party produced an interim report, which went out to consultation in January 2006. Valuable comments were received from many quarters during the consultation period. The working party produced its final report on 29th June 2006, which proposed a number of amendments to the Protocol. These were approved (subject to minor revisions) by the Civil Procedure Rule Committee at its meeting on 6th October 2006. It is anticipated that the amendments to the Protocol will come into effect in April 2007.

5.5 The final version of the amendments to the Protocol is likely to appear on the “What’s new” page of the Civil Procedure Rules website on 5th January 2007, thus giving court users three months notice before implementation.

5.6 Alternative Dispute Resolution. Alternative dispute resolution (“ADR”) has been the subject of much debate 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 encourage parties to consider mediation in appropriate cases. Nevertheless the parties are perfectly entitled to say, and in a minority of cases they do say, that they desire the court’s decision on the issues and they do not wish to spend time and money on mediation.

5.7 ADR survey. It is believed that it would be helpful to gain some statistical information (as opposed to anecdotal evidence) about when mediation “works” in TCC cases and when it does not. This involves looking at the types of cases in which mediation most commonly leads to settlement and the stage in the action at which mediation is most effective. If a mediation starts too early, it may fail for lack of information about each side’s case. If a mediation starts too late, substantial costs may be wasted, or the parties may become too entrenched. In order to gain more insight into these matters King’s College, London is carrying out a survey of ADR in TCC cases. Whenever a case is concluded, the solicitors are invited (if they see fit and if their clients consent) to fill in a one sheet questionnaire, which will indicate whether ADR was attempted, whether it was beneficial or the reverse, etc. The questionnaires are returned to King’s College, which will in due course publish statistical data and analysis based upon the responses. It is hoped that this information will be of benefit both to practitioners and judges in handling future cases.

5.8 Court settlement process. Over the last year and a half Judge Toulmin CMG QC has done much research into mediation by judges. He has produced papers on the subject, which have generated much interest. Judge Toulmin presented a paper on the subject of mediation by judges to the TeCSA/TECBAR conference in October 2005. In December 2005 Judge Toulmin presented a paper on the same subject to TCC judges at a meeting attended by the Lord Chief Justice. The matter went out to consultation in January 2006. The upshot is that a pilot study is now running from 1st June 2006 to 31st July 2007, whereby in an appropriate case a London TCC judge may provide a form of mediation service if the parties so desire and agree. Each London TCC judge has undergone three evening training sessions in mediation.

5.9 It should be noted that, as judge in charge, I will not be available to undertake any mediations. Owing to constraints of time it would not be possible to build up the requisite skill and experience in this specialist area.

5.10 TCC user committees. TCC user committees function at Birmingham, Bristol, Cardiff, Leeds, Liverpool, London, Newcastle and Salford (Manchester). These committees make a valuable contribution to the work of the court. For example, user committee members provided detailed feedback and comments during the two consultation exercises this year. So far as other commitments allow, I attend user committee meetings both in London and the regions and am grateful to the chairpersons and members of all TCC user committees for the support which they provide to the court.

Rupert Jackson

23rd October 2006

Judge in charge of the Technology and Construction Court

APPENDIX

List of staff at the London Technology & Construction Court

Carolyn Bowstead: Court manager

Stephen Gibbon: Manager of Case Administration Unit and of TCC Registry

Sarah Landau: Judges' clerks manager and clerk to Judge Havery QC

Anne Farrelly: Clerk to Judge Thornton QC

Pam Gilham: Clerk to Judge Wilcox

Kim Andrews: Clerk to Judge Toulmin CMG QC

Stephen Jones: Clerk to Judge Coulson QC

Amy Hall: Registry administration clerk

Jean White: Messenger

NOTE

The names and contact details for TCC court staff at court centres out of London are given in appendix D to the TCC Guide.