

## Technology and Construction Court Annual Report 2009 – 2010

The Technology and Construction Court (TCC) has published its annual report for the year 1 October 2009 to 30 September 2010. The below is a summary of the work being done in the Court in these straightened times as against past years.

### Background

The TCC is a specialist court whose primary function is hearing disputes related to the construction and technology industries. This not only covers traditional design and/or construct claims and IT claims but due to the court's expertise in dealing with technical and complex claims, adjudication enforcement, professional negligence claims, land development and dilapidations claims, nuisance claims and fire claims are also dealt with. The breakdown of the various types of claims is set out below.

The TCC is located in London but has regional centres in Birmingham, Bristol, Cardiff, Chester, Exeter/Plymouth, Leeds, Liverpool, Manchester, Newcastle and Nottingham.

### New Claims

The below sets out a summary of the number of claims issued in the London TCC and the regions (where figures are available) in 2009-2010 as compared to previous years:

	2009-2010	2008-2009	2007-2008	2006-2007	2005-2006	2004-2005
<b>London</b>	502	516	366	407	392	364
<b>Regions</b>	371	409	329	538	376	N/A
<b>Total</b>	873	925	695	945	768	364

In the last two years the number of claims issued, particularly in London, has been on the same high level and an increase on previous years (with the exception of 2006-2007 which had a high number of claims issued in the regions).

The higher number of claims being issued in London has led to the need for more judges to deal with the workload. At present there are four High Court judges and two senior circuit judges sitting and a further High Court judge is due to be appointed in the next two years.

### Trials and applications

Figures are also available as to the number of trials conducted. In London:

	2009-2010	2008-2009	2007-2008	2006-2007	2005-2006	2004-2005
	54	47	39	38	48	N/A

This shows a steady increase since 2007-2008 but there are two points to note.

Firstly, the data provided by the TCC does not set out how long each matter took from the date of issue to the end of the trial. As such it is not known if the matters that went to trial in the last year were issued in 2009-2010 or 2008-2009 or even before.

Secondly, and tied into the first point, since 2007-2008 the percentage of trials in a year as against new claims issued in that year has remained at around 11%. This indicates that the increased number of claims in the last few years has not altered the likelihood of a matter being pursued to trial and indicates that ADR steps taken post issue remain the more realistic and best method of resolving disputes.

In spite of the increase in new claims issued, the number of applications dealt with in London (at court, on paper and by telephone) has reduced significantly in the years 2008-2009 and 2009-2010 compared to previous years:

	2009-2010	2008-2009	2007-2008	2006-2007	2005-2006	2004-2005
	621	569	992	838	1066	N/A

The reduction in the number of applications is indicative of the pro-active manner in which the TCC manages cases before it, particularly since the Woolf reforms. Such case management includes setting clear directions from the outset and encouraging the parties to try and resolve any issues, such as reasonable amendments to the timetable, without recourse to the court.

This does mean a more cost effective process to resolution/trial by focussing the parties and their legal advisors attentions on meeting court deadlines and co-operating to further the overriding objective of cases being dealt with justly and proportionately and using an appropriate amount of the court's resources.

### Type of cases before the TCC

The report provides a breakdown of the types of cases dealt with by the TCC (as a percentage). However such a breakdown is not a strict representation of the work carried out as many cases cover more than one category. For example, a claim against a contractor and a consultant may be classified as a construction case even though it includes elements of professional negligence and engineering.

	2009-2010	2008-2009	2007-2008	2006-2007	2005-2006	2004-2005
Construction	40	43	N/A	32	36	N/A
Professional negligence	6	5	N/A	6	10	N/A
Professional fees	2	3	N/A	3	2	N/A
Adjudication cases	18	17	N/A	16	19	N/A
Nuisance cases	1	3	N/A	3	4	N/A
IT cases	2	2	N/A	3	3	N/A
Insurance cases	2	1	N/A	1	<1	N/A
Arbitration cases	3	3	N/A	10	3	N/A
Tree roots	2	3	N/A	-	3	N/A
Engineering	3	1	N/A	4	4	N/A
Fire cases	5	5	N/A	4	2	N/A
Dilapidations	5	5	N/A	4	<1	N/A
Other	11	10	N/A	14	13	N/A

These figures do make interesting reading. The number of construction claims has increased as a percentage in recent years whereas arbitration cases and to some extent professional negligence claims have decreased. There could be many factors for this, including litigation rather than arbitration becoming more common in the choice of dispute resolution method in appointments and the issuing of multi-party/multi-discipline disputes, which result in difficulties of categorisation.

A considerable amount of the court's time is spent dealing with disputes arising from adjudications. On the above figures, there were 157 adjudication claims issued in 2009-2010. The number of such claims may be symptomatic of losing parties to an adjudication being prepared to incur further costs in trying to overturn a decision/reduce any sum payable or that parties are unable to meet any award against them so winning parties have to commence proceedings to have the decision enforced.

## Overall

The TCC report highlights that:

- the number of claims issued in 2008-2009 and 2009-2010 is largely the same and remain a marked increase on the numbers for 2007-2008 and 2004-2005 indicating that the economic downturn has not restricted claimants' willingness to revert to the court;
- a considerable proportion of the claims issued are resolved prior to trial, emphasising the important role of pro-active case management by the court in encouraging ADR (including costs penalties for not attempting ADR);
- pro-active case management by the court also is shown in the reduction in the number of applications required; and
- the expertise of the court in dealing with technical and complex matters has led to their jurisdiction widening, however at least 69% of all claims are related to the construction industry (construction, engineering, professional negligence, adjudication, professional fees).

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