



New Guidelines on the Technology and Construction Court

The Technology and Construction Court (TCC) brought out a second edition to their Guide with effect from 3 October 2005.

This Guide sets out how Construction claims are to be run not only when proceedings have been issued but also during the Pre-Action Protocol stage.

The Guide states that all claims which can be issued in the TCC must follow the Pre-Action Protocol for construction and engineering disputes. It also states that where a dispute involves a claim against architects, engineers or quantity surveyors then this Protocol is to be followed rather than the professional negligence Pre-Action Protocol.

The Protocol is designed to encourage the frank and early exchange of information about the potential claim and any defence that there may be. It is also to try and enable parties to avoid litigation by agreeing a settlement before commencement of proceedings. There is however a warning that the Protocol is not to be used as a “tactical device to secure advantage for one party or to generate unnecessary costs”.

It is not necessary to go through the Protocol process if the claim is to enforce an adjudicator’s decision, is an application for an injunction, or will be the subject of an application for Summary Judgment. Also if the same or substantially the same issues have also been the subject of a recent adjudication or other form of alternative dispute resolution procedure then it is also not necessary to follow the Protocol.

The Guide reflects recent case law which states that if the Pre-Action Protocol process results in a claim being settled then the costs of that process cannot be recovered from the paying party unless it has been specifically agreed that costs would be paid. However if settlement is not reached and proceedings are issued, the courts have made it very clear that the costs of the Pre Action Protocol process cannot be claimed as costs unless it can be shown that some of these costs could be considered to be “incidental to” the proceedings and as such could be recoverable. However this will be a developing area of the law and there will no doubt be further clarification on this point in the future.

The Guide set out in detail the way cases will be dealt with in the TCC but one new reform is the way cases are classified when either issued or transferred to the TCC in London. If a case is classified as “HCJ” it will be managed and tried by either the Judge in charge or by another High Court Judge. If cases are classified as “SCJ” they will be managed and tried by one of the senior circuit Judges who is a full time TCC Judge in London.

When classifying a case as either HCJ or SCJ, the following matters will be taken into account as well as the circumstances of the case namely:-

1. the size and complexity of the case
2. the nature and importance of any points of law arising from that case
3. the monetary amount of the claim
4. whether the case is one of public importance



5. whether the case has an international element or involves overseas parties
6. the limited number of High Court judges and the needs of other court users

It is considered that most of the TCC cases in London will be classified as “SCJ”.

This guidance should lead to a more streamlined use of the courts and as a specialist court, the judges there reflect the specialist nature of the work in that court.

Author: Sarah Shemmings

Date: December 2005

Email: sas@shemmingsllp.co.uk