



JUDICIARY OF
ENGLAND AND WALES

Annual Report of the Technology and Construction Court

August 2012

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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 2010 to 30 September 2011.

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, 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.

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. Thus claims for personal injury arising from earthmoving operations and claims arising from public procurement are two examples of this broader jurisdiction.

A further expansion has occurred over the last two years with a considerable number of public procurement cases being dealt with.

Robert Akenhead

Judge in charge of the Technology and Construction Court

April 2011

The TCC is a specialist court which deals primarily with litigation of disputes arising in the field of technology and construction.

The organisation of the TCC

TCC cases are managed and heard by specialist judges in London and at centres throughout England and Wales. The cases are allocated either to High Court Judges, Senior Circuit Judges, Circuit Judges or Recorders both in London and at regional centres outside London.

The main High Court centre of the TCC is now (as from 4 October 2011) 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 also regional TCC centres at courts or civil justice centres in Birmingham, Bristol, Cardiff, Chester, Exeter/Plymouth, Leeds, Liverpool, Newcastle, Nottingham and Manchester. There are full time TCC judges at Birmingham and Manchester and authorised TCC judges at the other

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centres. Judges authorised to deal with TCC business are also available at Leicester, Sheffield and Winchester.

In London there is also the Central London Civil Justice Centre which deals with all London county court TCC cases. County court claims can also be issued at the regional TCC centres.

The London TCC

Judiciary

The main High Court centre (“the London TCC”) since early October 2011 operates from the Rolls Building although for the year of this report it continued to operate from St Dunstan’s House also in Fetter Lane. There were four High Court judges and two senior circuit judges sitting in the London TCC during the year.

The High Court judges sitting were Mr Justice Vivian Ramsey, who was Judge in Charge of the TCC until 31 August 2010, Mr Justice Robert Akenhead who became Judge in Charge of the TCC on 1 September 2010, Mr Justice Peter Coulson and Mr Justice Antony Edwards-Stuart. Mr Justice Ramsey sat full time in the TCC whilst Judge in Charge whilst Mr Justice Akenhead, Mr Justice Coulson and Mr Justice Edwards-Stuart sat for the majority of their time in the TCC but also undertook general work as Queen’s Bench Judges in London and on circuit when commitments allowed. In the competition for appointment of High Court judges, it was indicated that one of the appointments would be for a further High Court judge to sit in the TCC. It is therefore anticipated that a further appointment of a TCC High Court judge will be made in 2011 to 2013 to bring the number of TCC High Court judges to five. This increase in the number of High Court judges reflects the substantial High Court workload within the TCC.

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 senior Circuit judges sitting during the year were His Honour Judge David Wilcox and His Honour Judge John Toulmin CMG QC. Experience has shown that cases which are assigned to Senior Circuit judges settle more frequently than those assigned to High Court judges and this has meant that the TCC senior Circuit judges have also been able to deal with TCC cases outside London or cases in the Queen’s Bench Division or other Divisions of the High Court in London. His Honour Judge John Toulmin CMG QC retired on 11 February 2011 after over 13 years as first an Official Referee and then as a TCC judge.

In addition, a panel of High Court judges was established in 2004 to increase the capacity of High Court judges in the TCC pending further TCC High Court appointments. The High Court judges who were nominated for the panel as at 30 September 2010 were Mr Justice Burton, Mr Justice Field, Mr Justice Ouseley, Mr Justice Simon, Mr Justice Christopher Clarke, Mr Justice Teare and Mr Justice Foskett. By special arrangement with the President of the Queen’s Bench Division these judges may be made available to sit in the TCC when the need arises. The court is grateful for this additional facility although with further appointments of High Court judges, the need for this facility is expected to reduce over the coming years.

In addition, the TCC is able to call upon a number of deputy High Court judges who are authorised under s.9(1) 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.

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. Also, with the underlying policy of encouraging settlement whenever appropriate,

there is always uncertainty of whether and when cases will settle. This means that TCC judges have to be available for trials which are sometimes ineffective at short notice.

Claims

During the relevant period from October 2010 to September 2011 there were 512 new claims brought in the London TCC. This compares with 502 claims in 2009 to 2010, 516 new cases in 2008-2009, 366 in 2007-2008, 407 in 2006-2007, 392 in 2005-2006 and 364 in 2004-2005. This shows a sustained high workload over the past three years.

Trials

There were 51 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 settled shortly, sometimes very shortly, before trial.

Applications

During the year 497 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.

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.

Case management

The comparative figures for the numbers of claims issued and the number of trials shows that the 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.

Case management in the TCC allows the parties at the first Case Management Conference to know the timetable for all steps of the proceedings up to an including the trial date. 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. 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.

Judicial deployment

The need for judicial resources elsewhere means that for periods of time the London TCC judges spend some of their time in other courts. This occurs both by advance planning and also when cases settle at a late stage. During the year the London TCC judges

have also sat in the Queen's Bench Division, the Administrative Court, the Court of Appeal Criminal Division, the Chancery Division, the Family Division and the Crown Court.

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

The London TCC was chosen as one of the jurisdictions taking part in Electronic Working. The TCC joined the pilot scheme and started electronic working on 20 July 2009 and since that date all cases issued in the TCC have been either issued electronically or have been scanned on so that there is an electronic case file. It is hoped that electronic working will become a standard method of working, although this is still work in progress.

One of the main advantages of electronic working is that parties will be able to issue a claim form and then take all further steps by issuing or filing documents on-line. There has been great enthusiasm for the scheme in the TCC. Where the claimant issues a claim form in hard copy, the TCC Registry then scans the document and provides the claimant with an electronic link which enables all the parties to continue those proceedings by electronic working as if the claim form had been issued on-line.

Marshalling scheme

We have continued the arrangement with the TCC Solicitors Association (TeCSA) and 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 a one week period. 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 Serena Cheng of Atkin Chambers who administers the scheme on behalf of the Technology and Construction Bar Association (TECBAR). We are also grateful to Sam Taylor, the clerk to Mr Justice Akenhead, 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
- Serena Cheng (SCheng@atkinchambers.com).

One of the main advantages of electronic working is that parties will be able to issue a claim form and then take all further steps by issuing or filing documents online.

Other marshalling arrangements, subject to security considerations) can be made with Sam Taylor. This year there have been undergraduates, people doing the law conversion courses, AS and A level school pupils, 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 and experience to deal with international work, having practised internationally before coming to the bench. It is understood that 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.

In addition TCC judges have been invited to and have given lectures in a number of other European countries and overseas in North and South 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.

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, although new TCC ticketed judges are now in place. HHJ Brian Knight QC and HHJ Paul Collins CBE retired during the year.

During the year there were 58 (103) new TCC cases in this court. These included seven cases issued in the court, four cases transferred in from the High Court and 50 cases transferred from another court centre or transferred to the TCC list within the court because of the nature of the issues.

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.

The Regional 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, 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. Figures for 2009-2010 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. Her Honour Judge Kirkham retired during the year.

The total number of new TCC cases was 82(136). There were 49(102) cases issued in the Birmingham TCC and 33(34) cases transferred into that court. Between January and October 2010 there were 44 (35) trials listed of which 7(5) proceeded to trial.

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 26(14), of which five were County Court claims.

Cardiff

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

The total number of new TCC cases during the year was 19(20), being 7 High Court and 12 County Court claims. Of those 19 cases, 9 are still proceeding, 6 have settled, three have proceeded to trial and the other 1 was dismissed.

Exeter

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

There were four (six) new cases issued which were identified as being TCC cases. Pending the appointment of Judge Cotter QC three TCC cases were transferred to Bristol TCC and one case is still proceeding. Two cases have been identified as TCC cases which will be heard in 2010 to 2011.

Leeds

The principal TCC judge at Leeds is from July 2011 His Honour Judge Andrew Keyser QC who is based at Leeds Combined Court Centre. He succeeded His Honour Judge John Cockroft.

A total of 33(43) new TCC cases were issued during the year, including both those issued in the Leeds TCC and those transferred in. There were 15 County Court cases and 28 High Court cases.

There were 13(21) TCC cases listed for trial during the year. This led to two (seven) trials, seven (nine) settlements and four (five) cases being adjourned. Now that HHJ Keyser QC is full-time, cases can be

listed at any time and no longer in the TCC “fortnights” approach previously adopted.

Liverpool

His Honour Judge Graham Platts is the Principal TCC judge at Liverpool Combined Court Centre.

The available statistics for January 2011 to October 2010 show that there were 20 (23) new TCC cases issued during the year. Of those cases, nine (seven) were High Court cases and 11 (16) were County Court cases. There were (10) 10 settlements, one trial and one (three) was transferred out.

Manchester

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

The total number of new TCC cases during the year was 105(117) consisting of 73 (81) cases issued in the Manchester TCC and 32(36) cases transferred into that court.

There were 63 (89) TCC cases disposed of during the year. Of these seven (14) proceeded to a judgment, 45(61) were settled, none (five) were transferred out and 11 (9) were withdrawn.

Newcastle

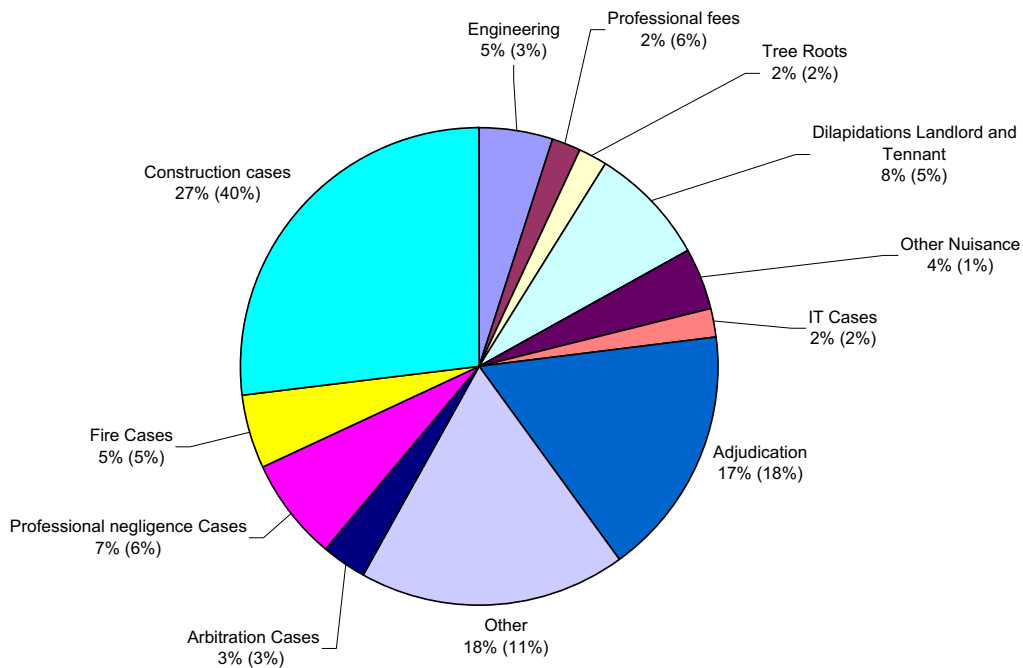
His Honour Judge Christopher Walton sits at the Newcastle upon Tyne Combined Court Centre.

During the year there were 14(14) new cases issued in or transferred into the Newcastle TCC. Of these cases there were two trials, Other cases remain outstanding.

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.



Engineering	5%	Professional fees	2%
Tree roots	2%	Dilapidations Landlord and Tenant	8%
Other nuisance	4%	IT cases	2%
Adjudication	18%	Other	19%
Arbitration cases	3%	Professional negligence cases	7%
Fire cases	5%	Construction cases	28%

The TCC during the year

Appointment of Judges and Recorders as TCC Judges

No new deputy High Court judges were authorised to sit in the TCC this year.

In addition, 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 was delegated to Mr Justice Ramsey and is now delegated to me, as Judge in Charge. I am required to consult with the Lord Chancellor and the senior judiciary before exercising that authority. During the year there was one appointment: His Honour Judge Andrew Keyser QC.

The statutory provisions still refer to official referees' business although under the Civil Procedure Rules the court is referred to the TCC. It is hoped that, in due course, the statutory provisions can 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 2010 the following new Queen's Counsel were called in the TCC:

- Adam Constable QC
- Simon Hughes QC
- Vincent Moran QC
- Fiona Parkin QC
- Andrew Rigney QC

- Sean Wilken QC

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

The TCC Guide

The second edition of the TCC Guide which came into force in October 2005 was the subject of a First Revision which came into effect on 1 October 2007. Following a request from Lord Justice Jackson, it was decided that the Second Revision should incorporate amendments which would arise out of his final report on Costs in Civil Litigation published in January 2010.

As a result, a draft revision to the TCC Guide was produced in July 2010 taking into account changes in practice, procedure and the law since October 2007 as well as amendments suggested in Lord Justice Jackson's report and comments received from TECBAR, TeCSa and a number of other practitioners.

After further comments from TCC judges, TECBAR, TeCSA and the Society of Construction Law, the Second Revision to the Second Edition of the TCC Guide received the necessary approval and was

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The main changes are set out in Appendix H to the Second Revision.

TCC Judges' Conference

After a successful TCC judges' conference in July 2010 attended by full time and part time judges, another one is being fixed for 6 July 2012 in 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 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 Second Revision to the Second Edition of the TCC Guide.

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

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Costs and "Hot-Tubbing" Pilots

These were introduced in 2010 and the pilots took place in Birmingham and Manchester respectively.

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. So far as other commitments allow, the Judge in charge tries to attend user committee meetings both in London and at Regional Centres. 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.

Retirements

During the year there were retirements of His Honour Judge David Mackay who had been the full-time TCC judge in Liverpool TCC and His Honour Judge Jeremy Griggs who was the TCC judge in Exeter. Judge Mackay provided dedicated

service to the users of Liverpool TCC over many years and we are grateful to him for his role at this important TCC centre.

Judge Griggs ensured that TCC cases issued in Devon and Cornwall could be dealt with by a TCC judge, as part of his wider responsibilities as Designated Civil Judge.

The availability of TCC judges at courts around England and Wales is an important part of the TCC and we are very grateful to Judge Griggs for providing this service in the West Country. We wish both of them well in their retirement.

The availability of TCC judges at courts around England and Wales is an important part of the TCC

Appendix one

The Technology & Construction Court as at 1 October 2010

London TCC

Mr Justice Robert Akenhead (Judge in charge of the TCC for three years from 1 September 2010)

Mr Justice Vivian Ramsey

Mr Justice Peter Coulson

Mr Justice Antony Edwards-Stuart

His Honour Judge David Wilcox

His Honour Judge John Toulmin CMG QC

Mr Justice Burton

Mr Justice Field

Mr Justice Ouseley

Mr Justice Simon

Mr Justice Christopher Clarke

Mr Justice Teare

Mr Justice Foskett

His Honour Judge Anthony Thornton QC

His Honour Judge David Mackie QC

Her Honour Judge Anna Guggenheim QC

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

Bristol

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

His Honour Judge Patrick McCahill QC

Cardiff and Mold

His Honour Judge Milwyn Jarman QC (Principal TCC Judge)

His Honour Judge Nicholas Chambers QC

His Honour Judge Anthony Seys Llewellyn QC

Central London

His Honour Judge Edward Bailey

Chester

His Honour Judge Derek Halbert

Exeter

His Honour Judge Barry Cotter QC

Leeds

His Honour Judge Andrew Keyser QC(Principal TCC Judge)

His Honour Judge John Cockroft

His Honour Judge John Behrens

His Honour Judge Peter Langan QC

His Honour Judge Simon Grenfell

His Honour Judge Simon Hawkesworth QC

His Honour Judge Roger Kaye QC

Leicester

His Honour Judge David Brunning

Liverpool

His Honour Judge Graham Platts (Principal TCC Judge)

His Honour Judge Stephen Stewart QC

His Honour Judge Allan Gore QC

Manchester

His Honour Judge Philip Raynor QC (Full time

TCC Judge)

His Honour Judge Stephen Davies (Full time TCC Judge)

His Honour Judge Brendan Hegarty QC

His Honour Judge David Hodge QC

His Honour Judge Mark Pelling QC

His Honour Judge David Waksman QC

Newcastle

His Honour Judge Christopher Walton

District Judge Atherton

Nottingham

His Honour Judge Richard Inglis

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 Adrian Williamson QC

Recorders

Ms Geraldine Andrews QC

District Judge Ian Atherton

Mr Michael J Black QC

Mr David Blunt QC

Mr Martin Bowdery QC

Mr Robert Gaitskell QC

Mr Michael Harvey QC

Mr Michel Kallipetis QC

Mr Andrew Keyser QC

Mr John Marrin QC

Mr Stephen Morris QC

Mr Robert Moxon-Browne QC

Mr David Phillips QC

Mr Colin Reese QC

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

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 two

The Staff of the London TCC as at 1 October 2011

Wilf Lusty:	Court Manager
Stephen Gibbon:	TCC Registry Manager
Sam Taylor:	Clerk to Mr Justice Akenhead
David Hamilton:	Clerk to Mr Justice Ramsey
Sarah Cox:	Clerk to Mr Justice Coulson
Claire Thomas:	Clerk to Mr Justice Edwards-Stuart
Anne Farrelly:	Registry administration clerk
Richard Brown:	Registry administration clerk
Jean White:	Messenger
Pat Harivel:	Messenger