



JUDICIARY OF
ENGLAND AND WALES

Annual Report of the
Technology and
Construction Court

2006 - 2007

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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 2006 to 30 September 2007.

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.

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 located at St Dunstan’s House 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 (Salford). There are full time TCC judges at Birmingham, Manchester and Liverpool and authorised TCC judges at the other 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 Work of the TCC during the Year

The London TCC

Judiciary

The main High Court centre (“the London TCC”) operates from St Dunstan’s House. There were two High Court judges and five senior circuit judges sitting there during the year.

The High Court judges sitting were Mr Justice Rupert Jackson, who sat full-time and was Judge in Charge of the TCC until 31 August 2007 and Mr Justice Vivian Ramsey who sat part-time in the TCC until he took over as Judge in Charge from 1 September 2007. The High Court workload has increased. The need for additional TCC High Court judges to deal with this workload has been recognised by the appointment of Mr Justice Robert Akenhead with effect from 2 October 2007 and the subsequent appointment of Mr Justice Peter Coulson in January 2008.

The senior circuit judges were His Honour Judge Richard Havery QC (who retired 2 February 2007), His Honour Judge Anthony Thornton QC, His Honour Judge David Wilcox, His Honour Judge John Toulmin CMG QC and His Honour Judge Peter Coulson QC. In addition His Honour Judge David Mackie CBE QC, the mercantile judge based at St Dunstan's House, was sometimes also available to sit in the TCC.

Until his appointment as Judge in Charge, Mr Justice Ramsey was assigned to the TCC on the basis that he would, if possible, sit in other courts for half of each term. This has meant that, like other Queen's Bench judges, Mr Justice Ramsey has been able to sit on circuit or in the Royal Courts of Justice on other cases for part of his time, on the understanding that he only does 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.

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 have been nominated for the panel are Mr Justice Burton, Mr Justice Elias, Mr Justice Field, Mr Justice Ouseley, Mr Justice Simon, Mr Justice Christopher Clarke and Mr Justice Teare. By special arrangement with the Vice-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. During the year Mr Justice Burton, Mr Justice Christopher Clarke and Mr Justice Teare have sat in the TCC under this arrangement.

Claims

During the year there were 407 new claims brought in the London TCC. This compares with 392 new cases in 2005-2006 and 364 in 2004-2005 and shows a continuing substantial caseload with a modest increase this year.

Trials

There were 38 contested trials at the London TCC during the year. Some of these were substantial. The longest trial was 20 days. A number of other trials started but were settled before judgment. These are not treated as trials in the figures.

Applications

During the year 838 applications (including case management conferences, pre-trial reviews and specific applications) were dealt with. 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 exceeds the hearing time and enables the applications to be dealt with more rapidly.

The TCC encourages the use of paper applications as this saves costs and time, provided that parties are not prejudiced by the lack of oral argument.

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 generally allows the parties at the first Case Management Conference to know the timetable for all steps of the proceedings up to and including the trial date. At this case management conference, the bundle provided to the court includes the papers produced 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 also sat in the Queen's Bench Division, Chancery Division, Family Division, Administrative Court, the Crown Court and on the Parole Board.

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 at the end of this report. The court staff often have to work under pressure and have to deal with urgent communications and court hearings as well as routine paperwork. We are most grateful to them all for their hard work.

On 10 September 2007 Carolyn Bowstead who was the London TCC Court Manager was promoted and Wilf Lusty was appointed to replace her. We are very grateful to Carolyn for her hard work and wish her well in her new post. The handover to Wilf has been smooth and he has quickly adapted to this important role.

Sarah Landau who was judges' clerks' manager and clerk to Judge Havery QC and Kim Andrews the clerk to Judge Toulmin CMG QC left the TCC during the year. We are grateful for all their hard work and wish them well in their new activities.

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 William Gard of Burges Salmon (William.Gard@burges-salmon.com)

Overseas Visitors

In addition 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 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. His Honour Judge Brian Knight QC is the principal TCC judge at Central London.

During the year there were 53 new TCC cases in this court. These cases were either issued in the court or transferred from another TCC court centre or transferred to the TCC list within the court because of the nature of the issues.

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, 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 2006 are shown in brackets.

Birmingham

The TCC court is based in the Birmingham Civil Justice Centre where the principal TCC Judge is Her Honour Judge Kirkham.

The total number of new TCC cases during the year was 213 (108). There were 163 (86) cases issued in the Birmingham TCC and 50 (22) cases transferred into that court.

The specialist judges in Birmingham (TCC, Mercantile and Chancery) are authorised to sit in all jurisdictions which permits them to cover for one another when necessary. Since the judges of the three specialist jurisdictions and all relevant court staff are based in the same building, transfers between the three specialist courts are easily effected.

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 18, of which one was transferred in. Judgment was entered in 2 cases, two cases settled, one case was withdrawn and one case was transferred out. The other cases are still proceeding.

Cardiff

His Honour Judge Gary Hickinbottom is the principal TCC judge based at the Cardiff Civil Justice Centre.

The total number of new TCC cases during the year was 37 (32). Of those 37 cases, 15 are still proceeding, 17 have settled, 1 has been discontinued, 2 have been stayed and 2 have resulted in judgment.

Exeter

His Honour Judge Jeremy Griggs is the TCC Judge in Exeter. There were 3 cases which were specifically identified. One settled, one was transferred out and the other case is still proceeding.

Leeds

The principal TCC Judge at Leeds is His Honour Judge John Cockcroft based at Leeds Combined Court Centre.

A total of 44 new TCC cases were issued during the year, including those issued in the Leeds TCC and those transferred in. This includes 8 County Court cases. One Leeds Chancery case was also transferred to the London TCC.

There were 35 TCC cases listed for trial during the year. This led to 10 trials, 13 settlements and 12 cases being adjourned. Mr Justice Jackson heard a 4 week trial in the Leeds TCC during the year. With the increase in TCC High Court Judges it is hoped that TCC High Court Judges can be made available more frequently to sit at TCC regional centres to hear appropriate cases.

Liverpool

His Honour Judge David Mackay is the full time TCC Judge at the Liverpool Combined Court Centre.

At the commencement of the year there were 120 TCC cases pending, 64 in the High Court and 56 in the County Court. By the end of the year there were 65 TCC cases pending, 15 in the High Court and 49 in the County Court. Although there is not a complete set of statistics, the available information shows a consistent pattern of cases being issued both in the High Court and County Court and being disposed of by a trial, settlement or transfer.

Manchester (Salford)

Until the move to the new Civil Justice Centre in Manchester, the TCC judges sit in Salford. His Honour Judge David Gilliland QC and His Honour Philip Raynor QC both sit as full-time TCC Judges. Judge Gilliland retired on 30 September 2007 and a new TCC judge, His Honour Judge Stephen Davies was subsequently appointed in October 2007 as a full-time TCC judge at this court.

The total number of new TCC cases during the year was 147 (127) comprising 115 (94) cases issued in the Salford TCC and 32 (33) cases transferred into that court.

There were 74 TCC cases disposed of during the year. Of these 17 proceeded to a judgment, 55 were settled, 1 was transferred out and 1 was withdrawn.

Newcastle

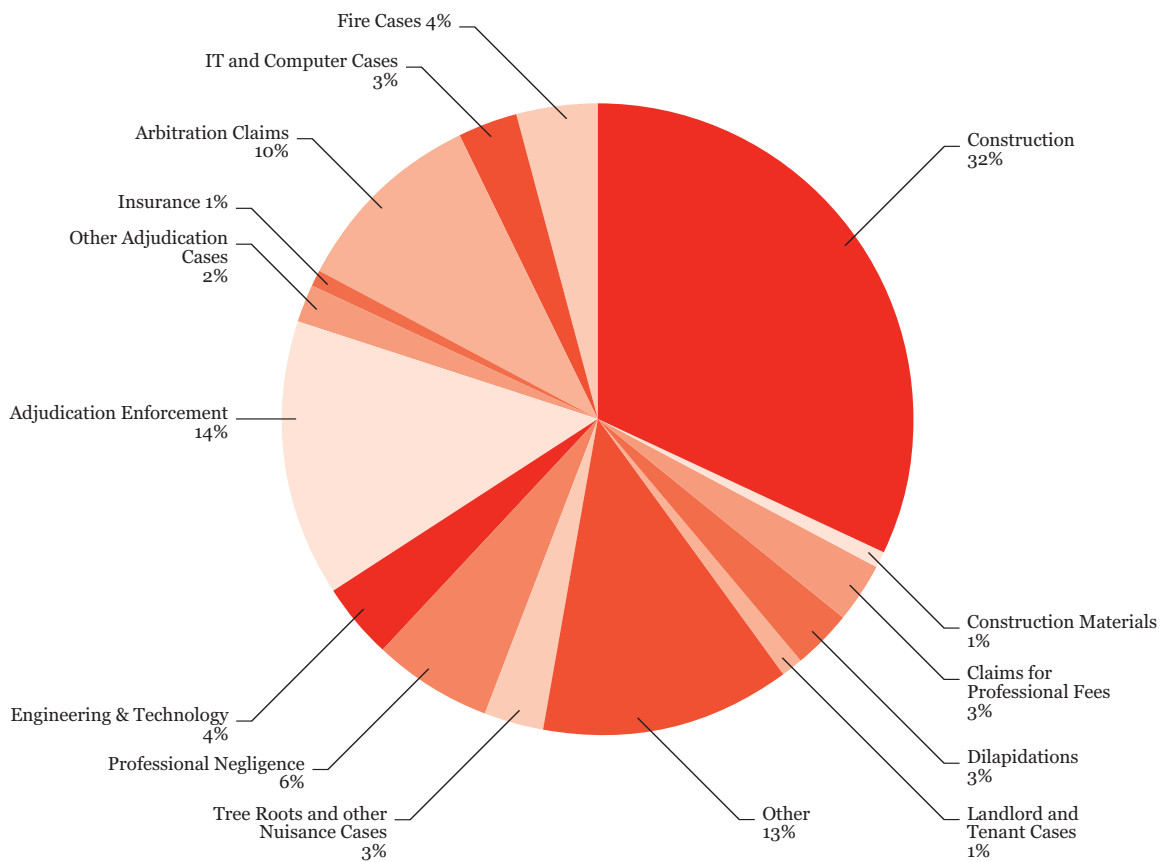
TCC Judges sit at the Newcastle upon Tyne Combined Court Centre.

During 2007 there were 16 (30) new cases issued in the Newcastle TCC. In the same period 14 trials have been listed of which 7 settled, 3 were tried and 4 were adjourned.

Nottingham

TCC Judges sit at Nottingham County Court. The total number of new TCC cases in Nottingham during the year was 7 (6).

Overall Division of Cases



This analysis has been carried out for those 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

Judge in Charge

On 31 August 2007 Mr Justice Jackson relinquished his post as Judge in Charge of the TCC after his three year tenure. His dedication and hard work has seen a transformation in the work of the TCC. This has led, for the first time, to the London TCC being recognised as a High Court jurisdiction which requires judges with full High Court status to deal with the complex, high value cases which arise from the construction, technology and IT industries. These industries form a central part of the commercial activity both within this jurisdiction and overseas and Mr Justice Jackson has worked tirelessly to achieve this goal and to enhance

the reputation of the TCC. I am in a particular position to appreciate the work he has done as I take over the post for the next three years.

Position of the Judge in Charge

The Lord Chief Justice's power to nominate circuit judges, deputy circuit judges or recorders to deal with "official referees' business" in the TCC has been delegated to me, as it was to Mr Justice Jackson. I am required to consult with the Lord Chancellor and the senior judiciary before exercising that authority.

Second Edition of the TCC Guide

The second edition of the TCC Guide which came into force in October 2005 has been widely appreciated by those who practise in or use this specialist court. As a result of feedback, there needed to be some minor revisions to the text and a first revision has been published, coming into effect on 1 October 2007. If practitioners or users consider that there are any further changes which could usefully be made then I would be pleased to hear from them. It is intended that a second revision should be published to take effect in 2009.

Review of the Pre-Action Protocol

As reported in last year's Annual Report, a working party produced its final report in June 2006, which proposed a number of amendments to the Protocol. These were approved by the Civil Procedure Rule Committee and came into effect on 6 April 2007.

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 to settle or narrow their disputes. Obviously there are and will continue to be cases where the parties are not able to resolve their dispute without the decision of the court but many cases are resolved effectively through ADR.

ADR survey

There has been a lack of statistical, as opposed to anecdotal, information about the comparative effectiveness of mediation in TCC cases. Starting in June 2006 King's College, London has been carrying out a survey of ADR in TCC cases. The survey will continue until the summer of 2008. This research seeks to reveal in what circumstances mediation is a real alternative to litigation; to assist the court to determine whether and at what stage it should encourage mediation and to identify which mediation techniques are particularly successful.

An Interim Report was produced in June 2007 and is available at http://www.fenwickelliott.co.uk/pdfs/TCC_SUV_REP1_25_02_07v2pdf_final.pdf

In that report the results showed that about one-third of the cases had settled as a result of mediation whilst the vast majority of the others had settled by negotiation. The rate of settlement was highest at pleading stage and shortly

before trial. Whilst these figures are only provisional, they show the benefit of this research. The TCC encourages parties to complete the forms which are circulated after cases settle and which provide the data needed for accurate research. It is hoped that when completed the results will be of benefit both to practitioners and judges in handling future cases.

Court settlement process

Following research into mediation by judges carried out by Judge Toulmin CMG QC followed by consultation, a pilot scheme Court Settlement Process commenced in June 2006. This scheme enables, in an appropriate case, a London TCC judge to provide a form of mediation if the parties so desire and agree. Each London TCC judge has undergone training in mediation to enable this to happen. The pilot scheme was to have been concluded in July 2007 but because there were few cases initially, the period was extended to the end of 2007. A report will then be produced on the future of the scheme but the present signs are encouraging.

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, the Judge in charge tries to attend user committee meetings both in London and the regions. The TCC is grateful to the chairpersons and members of all TCC user committees for the support which they provide to the court.

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.

Consultations affecting the TCC

During the year there were two particular consultations on which the TCC expressed views. First, on 26 April 2007 the London TCC judges responded to a consultation paper received from the sub-committee of the Civil Justice Council which was considering whether a consolidated pre-action protocol should be produced. Whilst there was no objection to a consolidated document which left the flexibility of the individual protocols, concern was expressed that a drive for uniformity should not be to the detriment of court users by removing the particular advantages of the TCC Pre-Action Protocol for Construction and Engineering Disputes.

The second response related to consultation paper CP 5/07, Civil Court Fees, published by the Department of Constitutional Affairs in April 2007. This paper

dealt with many matters which were not of concern to the TCC but included a proposal to pilot daily hearing fees in 2008 in one or more of the courts which deal with large commercial cases, including the TCC. This proposal was objected to. It had not previously been raised with the TCC and necessarily raised concerns both for TCC court users and for the TCC. In addition the introduction of such a pilot scheme could have a negative impact on the choice of the specialist courts for the issue or transfer of cases.

Appointments

On 31 January 2007 His Honour Judge Stephen Davies was appointed as a part-time TCC judge in Birmingham. In addition there have been a number of further Circuit judges and recorders who have been nominated to manage and try TCC cases. A full list of those currently nominated is attached as Appendix 1.

Retirements

There have been a number of retirements during the year. As mentioned above, on 2 February 2007 His Honour Judge Richard Havery QC, a London TCC Judge, retired. In a valedictory attended by the Lord Chief Justice, the President and Vice-President of the Queen's Bench Division, judges, bar, solicitors, family and friends, the court recalled the work of Richard Havery from 1993 first as an Official Referee and then as a judge of the TCC. We wish him well in his retirement in which he will return to university to study nuclear physics!

On 28 September 2007 His Honour Judge Gilliland QC, the senior TCC judge at Manchester (Salford) retired. For 15 years on the circuit bench David Gilliland has been instrumental in building up the reputation of what is now one of the major centres for TCC work. On 20 February 2007 His Honour Judge Robert Mayor QC retired from the circuit bench on the Midland Circuit where he had also sat as a TCC judge. We wish them both well in their retirement.

Vivian Ramsey
Judge in charge of the Technology and Construction Court

December 2007

Appendix 1

The Technology & Construction Court as at 30 September 2007

London TCC

Mr Justice Rupert Jackson (Judge in Charge of the TCC until 31 August 2007)
Mr Justice Vivian Ramsey (Judge in charge of the TCC from 1 September 2007)
His Honour Judge Richard Havery QC (Retired 2 February 2007)
His Honour Judge Anthony Thornton QC
His Honour Judge David Wilcox
His Honour Judge John Toulmin CMG QC
His Honour Judge Peter Coulson QC

Mr Justice Burton
Mr Justice Elias
Mr Justice Field
Mr Justice Ouseley
Mr Justice Simon
Mr Justice Christopher Clarke
Mr Justice Teare

His Honour Judge David Mackie CBE QC
Her Honour Judge Anna Guggenheim QC

Birmingham

Her Honour Judge Frances Kirkham (Full time TCC Judge)
His Honour Judge Stephen Davies (Part time TCC Judge)
His Honour Judge Simon Brown QC
Her Honour Judge Caroline Alton
His Honour Judge Alistair Norris QC
His Honour Judge Charles Purle QC
His Honour Judge Alistair MacDuff QC

Bristol

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

Cardiff and Mold

His Honour Judge Gary Hickinbottom (Principal TCC Judge)
His Honour Judge Nicholas Chambers QC

Central London

His Honour Judge Brian Knight QC (Principal TCC Judge)
His Honour Judge Paul Collins CBE
His Honour Judge Edward Bailey

Chester

His Honour Judge Derek Halbert

Exeter

His Honour Judge Jeremy Griggs

Leeds

His Honour Judge John Cockroft (Principal TCC Judge)

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 TD QC

Leicester

His Honour Judge David Brunning

Liverpool

His Honour Judge David Mackay (Full time TCC Judge)

His Honour Judge Stephen Stewart QC

His Honour Judge Graham Platts

Manchester (Salford)

His Honour Judge David Gilliland QC (Full time TCC Judge)

His Honour Judge Philip Raynor QC (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 Q.C

Recorders

Ms Geraldine Andrews QC
District Judge Ian Atherton
Mr Andrew Bartlett QC
Mr Michael J Black QC
Mr David Blunt QC
Mr Martin Bowdery QC
Mr Antony Edwards-Stuart QC
Mr Richard Fernyhough QC
Mr Stephen Furst QC
Mr Robert Gaitskell QC
Mr Michael Harvey QC
Mr John Milwyn Jarman QC
Mr Michel Kallipetis QC
Mr Andrew Keyser QC
Mr John Marrin QC
Mr Stephen Morris QC
Mr Robert Moxon-Browne QC
Mr Colin Reese QC
Mr John Slater 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
Mr Adrian Williamson 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 2

The Staff of the London TCC as at September 2007

Carolyn Bowstead:	Court Manager (until 10 September 2007)
Wilf Lusty:	Court Manager (from 10 September 2007)
Stephen Gibbon:	Manager of Case Administration Unit and of TCC Registry
Olivia Jay:	Clerk to Mr Justice Jackson
David Hamilton:	Clerk to Mr Justice Ramsey
Anne Farrelly:	Clerk to Judge Thornton QC
Pam Gilham:	Clerk to Judge Wilcox
Stephen Jones:	Clerk to Judge Coulson QC
Richard Brown:	Registry administration clerk
Mark Hughes:	Registry administration clerk
Jean White:	Messenger

