

TCC Litigation: The Shorter and Flexible Trials Pilot Schemes

Two new pilot schemes have been introduced for claims issued in the Rolls Building Courts in London from 1 October 2015 to 30 September 2017. The Technology and Construction Court (“TCC”) is taking part in this pilot and it is hoped it will bring about quicker and cheaper construction dispute resolution. It is intended to be a mid-point between adjudication and a full blown TCC litigation.

The Schemes are potentially significant changes to litigation, as they could become an important stage on the road to quicker, cheaper and more flexible construction dispute resolution. It is hoped that they will be a success.

The new rules for the Shorter Trials Pilot Scheme (“STS”) and the Flexible Trials Pilot Scheme (“FTS”) are contained in Civil Procedure Rules, Practice Direction 51N. The structure of each will be discussed in turn.

The Shorter Trials Scheme

STS is the main focus of the new rules and contains the most radical proposals which would see judgement within a year of the issue of proceedings. It seems STS will be most suitable for cases which do not require extensive factual witness evidence and where expert evidence is not going to be too contentious. It is quite common in construction disputes that expert evidence can be focused on a limited area and they could therefore radically change how we currently run construction disputes. It should however be noted that STS does not allow for multiple parties.

STS cases will be structured on the scheme as follows:

- Pre-Action Procedure – any other relevant pre-action protocols do not apply. A letter of claim should be sent to the defendant notifying the claim and the intention to adopt STS. The defendant will have 14 days to respond.
- Claim Form and Particulars of Claim – both will be served promptly following the defendant’s response, they must be served together. The Particulars of Claim is limited to 20 pages and accompanied by the bundle of core documents.
- Acknowledgment of Service - must be served within the current 14 days.
- Defence and Counterclaim – to be served 28 days after the Acknowledgement of Service. The defence is limited to 20 pages in length and is to be accompanied by a bundle of core documents.
- CMC – within 12 weeks of the acknowledgement of service. The Claimant’s legal representatives will arrange and produce and file a list of issues which will be updated throughout the matter.
- Disclosure - within 4 weeks of the CMC and will be significantly limited.
- Witness statements – limited and not more than 25 pages in length.
- Expert evidence - by written report and limited to identified issues.

- Trial - within 10 months of the issue of proceedings and the trial length is restricted to 4 days.

All proceedings will be heard by the designated judge and applications will be dealt with on paper.

Interestingly, cost budgeting and management does not apply unless agreed by the parties. The parties are to exchange schedules of costs within 21 days of the conclusion of the trial.

The court will hand down judgment within 6 weeks.

The Flexible Trials Scheme

FTS is far less prominent than STS, it has been specifically drafted to keep disclosure and evidence to a minimum. This should lead to an expedited case management procedure and trial date, thereby reducing costs for the parties.

FTS procedure can be summarised as follows:

- Proceedings - issued as normal, if the parties wish to adopt the FTS it should be agreed in advance of the first CMC and the court informed accordingly.
- Disclosure - restricted to the documents on which the parties rely unless specific disclosure is requested.
- Witness evidence - limited to identified issues or identified witnesses.
- Submissions at trial - in writing with oral submissions and cross examinations subject to a time limit as directed at the CMC or agreed between the parties.

Normal costs budgeting and management appear to apply to the STS.

If implemented as drafted, STS and FTS will offer a relatively quick dispute resolution process which is far less arbitrary and more structured and controlled than adjudication.

Obviously, the expedited trial dates will be dependent on the court having capacity to hear the trial within the one year period.

Construction cases will see the advantages to running on the STS or FTS, if suitable, and both should always be considered when deciding the correct forum for the dispute.