

THE TCC & PROCUREMENT

MRS JUSTICE O'FARRELL DBE

THE BUSINESS AND PROPERTY COURTS

- The Business and Property Courts of England and Wales were launched on 4th July 2017 and become operational on 2nd October 2017.
- They have been created as a single umbrella for specialist jurisdictions across England and Wales:
 - the Commercial Court (including the Admiralty Court),
 - the Chancery Division Courts, and
 - the Technology and Construction Court
- The BPC at the Rolls Building is the **largest specialist centre for financial, business and property litigation in the world**

CHANGES

- **Greater flexibility** in cross-deployment of judges with suitable **expertise and experience** to sit on appropriate business and property cases
- More use of the regional centres where **convenient for the parties**
- **International cases** will be allocated a suitable judge and location to meet the needs of the case
- Modern and user-friendly court system

BPC REGIONAL CENTRES

Business and Property Courts have also been established in the five main regional centres:

- Birmingham
- Bristol
- Cardiff
- Leeds
- Manchester.

No case too big to be tried outside London

TCC ROLE

- The TCC will continue to be a specialist court, dealing with technically complex cases
- The TCC list will continue to specialise in construction, engineering and technical disputes
- Separate lists for:
 - Adjudication enforcement and challenges
 - Procurement challenges

TCC PUBLIC PROCUREMENT GUIDE

- From 17 July 2017, the TCC Guidance Note on Procedures for Public Procurement Cases came into force.
- It can be found at Appendix H to the TCC Guide.
- It provides guidance on the management of public procurement claims.

PROCUREMENT CASES

- Proceedings challenging a contract award decision before the contract has been entered into results in **automatic suspension** of the conclusion of the contract with the successful tenderer;
- The claimant needs **disclosure** of material to mount its challenge but the successful tenderer has a vested interest in protecting the **confidential** information in its documents, including the financial detail of its tender;
- The **time limits** on making a challenge are very tight (30 days from knowledge of the facts giving rise to challenge).

PRE-ACTION PROTOCOL

Pre-action protocol period is limited because the standstill period is 10 days from the date of the decision to award the contract and the claimant needs to commence proceedings in order to obtain the automatic suspension:

- Letter before claim – grounds of claim, information required, remedy, any request for extension of standstill period
- Response from Authority – agreement on standstill, provision of information and substantive response
- Reasonable and proportionate – sensible timetable –
confidentiality ring
- Efforts to resolve.

COMMENCING PROCEEDINGS

- **Claim Form and POC** Claim Form and POC must be served within 7 days after date of issue.
- **Confidential** information in pleadings should be redacted – unredacted form served in envelope marked confidential and letter seeking restricted access to file.
- **Judicial Review** – if JR claim and procurement claim, issue in TCC and Admin with note to be heard by TCC judge who is designated judge of admin court.

CASE MANAGEMENT

Court will consider:

- **speedy trial** (urgency);
- **lifting suspension** (balance of convenience);
- **disclosure** (confidentiality ring, legal team, employees, experts);
- **interested parties** (notice should be given to those affected);
- **costs budgeting** (parties can make written applications to the court to change time or avoid need to file cost budgets).

TRIAL

Parties should consider:

- Restricted access to court
- Reporting restrictions
- Confidentiality in respect of the judgment

THANK YOU