

A New TCC Court Settlement Process for Technology Disputes ¹

Introduction

The specialist judges of the Technology and Construction Court have particular expertise in the evaluation of the disputes which are dealt with in that Court. It has been suggested that the judges might use this expertise to assist the parties to proceedings to achieve settlements as part of their role of case management under the Civil Procedure Rules. As a result, the following process has been produced for those situations where a case managing judge feels, either of his own volition or following a request from the parties, that the parties should be able to achieve an amicable settlement and that the judge is particularly able to assist in achieving that settlement.

In those circumstances, the judge would be at liberty, as part of the Court procedure, to offer a Court Settlement Process to the parties and, if accepted by all relevant parties to the case, the Judge would make a Court Settlement Order embodying the parties' agreement and fixing a date for a Court Settlement Conference proportionate in time to the issues in the case but not normally lasting more than one day. The judge, who would normally have been the case management judge, would then conduct the Court Settlement Process in accordance with that Court Settlement Order. If a settlement were not reached then the case would be taken over by another case management judge.

Implementation Scheme

If this proposed procedure is approved in principle, it is suggested that there should be consultation with Teubar, TeCSA and Court Users followed by a pilot scheme by London TCC judges.² Subject to that consultation process and pilot scheme, the procedure would then be formally incorporated into the TCC Guide.

Court Settlement Order

Court Settlement

- 1. The Court Settlement Process under this Order is a confidential, voluntary and non-binding dispute resolution process in which the Settlement Judge assists the Parties in cases before the Court to reach an amicable settlement at a Court Settlement Conference.*
- 2. This Order provides for the process by which the Court assists in the resolution of the disputes in the Proceedings. This Order is made by consent of the Parties with a view to achieving the amicable settlement of such disputes. It is agreed that the Settlement Judge may vary this Order at any time.*
- 3. The following definitions shall apply:*
 - (1) The Parties shall be [names]*
 - (2) The Proceedings are [identify]*
 - (3) The Settlement Judge is [name]*

The Court Settlement Process

- 4. The Settlement Judge may conduct the Court Settlement Process in such manner, as the Judge considers appropriate, taking into account the circumstances of the case, the wishes of the Parties and the overriding objective in Part 1 of the Civil Procedure Rules.*
- 5. Unless the Parties otherwise agree, during the Court Settlement Conference the Settlement Judge may communicate with the Parties together or with any Party separately, including private meetings at which the Settlement Judge may express views on the disputes. Each Party shall cooperate with the Settlement Judge. A Party may request a private meeting with the Settlement Judge at any time during the Court Settlement Conference. The Parties shall give full assistance to enable the Court Settlement Conference to proceed and be concluded within the time stipulated by the Settlement Judge.*
- 6. In advance of the Court Settlement Conference, each Party shall notify the Settlement Judge and the other Party or Parties of the names and the role of all persons involved in the Court Settlement Conference. Each Party shall nominate a person having full authority to settle the disputes.*
- 7. No offers or promises or agreements shall have any legal effect unless and until they are included in a written agreement signed by representatives of all Parties (the "Settlement Agreement").*
- 8. If the Court Settlement Conference does not lead to a Settlement Agreement, the Settlement Judge may send the Parties an Assessment setting out his views on the disputes, including, without limitation, his views on prospects of success on individual issues, the likely outcome of the case and what would be an appropriate settlement. Such Assessment shall be confidential to the parties and may not be used or referred to in any subsequent proceedings.*

¹ This is a reprint of the HMCS announcement at www.hmcourts-service.gov.uk/docs/tcc_court_settlement_process.pdf

² See A.Thornton, **You be the judge**. Building, 9th June 2006. p48. The pilot Scheme will run till 31st July 2007.

Termination of the Settlement Process

9. The Court Settlement Process shall come to end upon the signing of a Settlement Agreement by the Parties in respect of the disputes or when the Settlement Judge so directs or upon written notification by any Party at any time to the Settlement Judge and the other Party or Parties that the Court Settlement Process is terminated.

Confidentiality

10. The Court Settlement Process is private and confidential. Every document, communication or other form of information disclosed, made or produced by any Party specifically for the purpose of the Court Settlement Process shall be treated as being disclosed on a privileged and without prejudice basis and no privilege or confidentiality shall be waived by such disclosure.

11. Nothing said or done during the course of the Court Settlement Process is intended to or shall in any way affect the rights or prejudice the position of the Parties to the dispute in the Proceedings or any subsequent arbitration, adjudication or litigation. If the Settlement Judge is told by a Party that information is being provided to the Settlement Judge in confidence, the Settlement Judge will not disclose that information to any other Party.

Costs

12. Unless otherwise agreed, each Party shall bear its own costs and shall share equally the Court costs of the Court Settlement Process.

Settlement Judge's Role in Subsequent Proceedings

13. The Settlement Judge shall from the date of this Order not take any further part in the Proceedings nor in any subsequent proceedings arising out of the Court Settlement Process and no party shall be entitled to call the Settlement Judge as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of or connected with the Court Settlement Process.

Exclusion of Liability

14. For the avoidance of doubt, the Parties agree that the Settlement Judge shall have the same immunity from suit in relation to a Court Settlement Process as the Settlement Judge would have if acting otherwise as a Judge in the Proceedings.

Particular Directions

15. A Court Settlement Conference shall take place on [date] at [place] commencing at [time].

16. If by [date] the Parties have not concluded a settlement agreement, the matter shall be listed on the first available date before an appropriate judge who shall be allocated for the future management and trial of the Proceedings.

17. The Court Settlement Process shall proceed on the basis of the documents filed in the Proceedings, without further documents; provided that the Settlement Judge may direct that any Party should provide further documents.