

# CONTENTS

<i>Forewords</i>	ix
<i>Preface</i>	xiii
<i>Table of cases</i>	xv
<i>Table of legislation</i>	xix
<b>CHAPTER 1 INTRODUCTION TO LITIGATION IN THE TCC</b>	1
What is the TCC?	1
Dispute resolution	2
Arbitration v litigation	2
The TCC Guide	5
<b>CHAPTER 2 AN OVERVIEW OF A CLAIM IN THE TCC</b>	7
Pre-action phase	7
Commencement of the proceedings	9
Pleadings	10
The first Case Management Conference	12
Disclosure	15
Witness statements	17
Expert evidence	18
The Pre-Trial Review	21
The trial	21
Judgment	23
Appeal	24
<b>CHAPTER 3 EVIDENCE</b>	25
Introduction	25
Witness statements	25
Number of witnesses	25
'Expert' factual witnesses	26
Taking and structuring witness statements	27
Sequence of calling witnesses	30
Expert reports and joint statements	30
Do you need an independent expert?	30
Choosing an expert	32



# CONTENTS

Preparing your expert	32
Reports	33
Joint statements and expert meetings	34
Evidence at trial	35
Documentary evidence	36
Case Management Conference	36
Applications	36
Trial	37
Electronic trial bundles	38
Appeal bundles	40
Administrative matters	40
<b>CHAPTER 4 DELAY CLAIMS</b>	<b>43</b>
Introduction	43
Legal requirements in relation to claiming delay	43
Extension of time clauses	43
Prevention principle	45
Float	46
Pleading requirements – delay	47
Civil Procedure Rules	47
Authorities as to pleading requirements	47
Burden of proof	48
Making or defending a delay claim in practice	49
Introduction	49
Step 1: Prospective or retrospective	51
Step 2: Identifying the total period of delay on the project and when the delay occurred	54
Step 3: Identifying the delay events	57
Step 4: Identify the critical path	58
Step 5: Identify how the delay event caused delay to the completion date	60
Step 6: Conclusion	65
Difficulties and complexities	66
Complex/multiple critical paths	66
Relevance of as-planned critical path or near-critical paths at particular points during the project	66
Frequent mistakes in practice	67
Introduction	67
Focus on liability only	67
Focus on delay caused to immediately affected activity only	67
Focus on the last event which delayed completion	67
Ignoring contractual notice provisions	68
Evidence at trial	69
Factual witness evidence	69
Expert evidence	71
Electronic programme-based analysis	71



<b>CHAPTER 5 DELAY AND DISRUPTION MONEY CLAIMS</b>	<b>75</b>
Introduction	75
Contractor's delay-related money claims under the contract	75
Introduction	75
Different tests for time and money	75
Relevance of contractual provisions to valuation	76
Relevance of tender pricing	76
Notice	76
Contractor's critical delay-related claims	77
Introduction	77
Preliminaries/prolongation cost claims	77
Overheads claims	79
Loss of profit claims	80
Increased costs resulting from inflation	80
Disruption claims	80
Introduction	80
Authorities	81
Practicalities	83
'Thickening' costs	84
Subcontractor claims	84
Acceleration claims	84
Employer's claims for delay	87
<b>CHAPTER 6 DEFECTS CLAIMS</b>	<b>89</b>
General nature of a defects claim	89
Prosecuting a defects claim	90
Structure of the statement of case	90
Defending the case	93
Liability defences	93
Quantum defences	93
Limitation	94
Controlling, policing and challenging the presentation of defects claims	95
Instructing appropriate expertise	96
Appointment of experts	96
Investigations	97
Independence of experts and quality of expert evidence	98
<b>CHAPTER 7 PUBLIC PROCUREMENT LITIGATION IN THE TCC</b>	<b>99</b>
Introduction	99
Applications to lift the automatic suspension	100
Disclosure	104
Introductory matters	104
The approach of the TCC to early disclosure in procurement litigation	105
Tactical considerations	107
Handling confidential information	108



# CONTENTS

CHAPTER 8 COSTS BUDGETING IN THE TCC	113
Introduction	113
Presentation of costs budgets	114
Timing of costs budgets	117
The TCC's approach to consideration of costs budgets	117
Costs budgets and interim payments	119
Practical considerations	119
CHAPTER 9 THE TCC AND ADJUDICATION	121
Introduction	121
Before the adjudication	121
During the adjudication	122
After the adjudication	124
Stays of execution	128
CHAPTER 10 THE TCC AND ADR	131
Introduction	131
What is ADR?	131
Enforcement of contractual ADR schemes	132
Jurisdiction, adjournment or stay?	134
ADR and the Pre-Action Protocol	136
ADR and general case management	137
Cost sanctions	138
The TCC and early neutral evaluation	140
The TCC and mediation	140
CHAPTER 11 THE TCC AND ARBITRATION	141
Stay of proceedings	141
Jurisdiction of the arbitrator	143
Extension of time limits for the referral of disputes	143
Powers of the TCC in relation to procedural aspects of arbitration	144
Appeal	146
Appendix 1 <i>The Technology and Construction Court Guide</i>	149
Appendix 2 <i>Pre-Action Protocol for Construction and Engineering Disputes, 2nd edition</i>	235
Appendix 3 <i>TCC Guidance Note on Procedures for Public Procurement Cases</i>	241
Index	257