

Procurement review bodies - *Length, cost and amount of procurement litigation in England & Wales*

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Claims: High Court

Public Contracts Regulations 2015

Enforcement of duties through the Court

Reg. 91.

(1) A breach of the duty owed in accordance with regulation 89 or 90 is actionable by any economic operator which, in consequence, suffers, or risks suffering, loss or damage.

(2) Proceedings for that purpose **must be started in the High Court**, and regulations 92 to 104 apply to such proceedings.

No notification requirement:

See: The Public Supply Contracts Regulations 1995 (Reg.29(4)(a)) [repealed]

A specialist court: TCC

- **Technology and Construction Court (“TCC”)**

‘The TCC is a specialist court within the Queen’s Bench Division of the High Court, and is also part of the Business and Property Court which sits in the Rolls Building. The TCC deals primarily with litigation of disputes arising in the field of technology & construction and also (increasingly) procurement.’ (*Technology and Construction Court annual report 2017-18*)

How many claims?

2017-18 (TCC London alone): 63 procurement claims (ca. 10% of all)

- **30 day limitation period**
- **10-day standstill for automatic suspension claims**

Short limitation periods = greater number of claims issued

But: many cases settle (often with ADR)

TCC (all cases) settled before judgment (procurement likely higher):

- **2017-2018: 73%**
- **2016-2017: 78%**

Timing: case example with expedition and suspension remaining in place

Edenred & another v Her Majesty's Treasury & others

- 29.07.14 Decision to award tax free childcare contract without new competition
- 27.08.14 Claim issued in the High Court (QBD)
- 30.09.14 Expedited trial ordered by High Court judge
- 27.10.14 Injunction equivalent to automatic suspension ordered
- 24.11.14 Expedited 5-day trial
- 22.01.15 High Court Judgment (*permission to appeal refused & granted same day*)
- 11.03.15 2-day appeal hearing in Court of Appeal
- 31.03.15 Judgment in Court of Appeal
(7 May 2015 General Election)
- 13.05.15 2-day appeal hearing in Supreme Court
- 01.07.15 Judgment in Supreme Court and contract entered into shortly after

Timing: case example with automatic suspension being lifted

Deep Tube Procurement (various claimants v London Underground)

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|-----------------|--|
| 15.06.18 | Award letters |
| 13.07.18 | TCC proceedings issued by first claimant bidder |
| 05.09.18 | Application to lift issued by defendant |
| 27.09.18 | Application to expedite issued by claimants |
| 17.10.18 | 2-day hearing of applications to lift/expedite |
| 02.11.18 | Judgment: suspension lifted, no expedition |
| 25.11.19 | 3-week trial of damages claim (liability only) |

(Settled in the week before trial)

Costs

Relatively high compared to most other EU jurisdictions
(*£££*)

But the successful party recovers the majority of its
costs (*££*)

TCC: costs budgeting may apply; Costs Management
Orders may be made at first CMC.

Thank you

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