

TeCSA

TECHNOLOGY AND CONSTRUCTION SOLICITORS ASSOCIATION

www.tecsa.org.uk

Chairman's Report 2018

This is the Annual Report of TeCSA covering the 12 months since last year's AGM on 17 November 2017 for the year to 15 November 2018.

Officers and Committee

During this period the Officers and Honorary President of TeCSA have been:

Chairman: William Gard
Secretary: Julia Court
Treasurer: Matthew Smith

Hon. President: Simon Tolson

The Membership Committee and Social Committee have been led by:

Membership Secretary: Caroline Pope
Social Secretary: Dominic Helps

In addition to the above, the Members of the Committee have comprised (alphabetically listed by surname):

Mr Adrian Bell
Ms Sally Davies
Mr Andrew James
Ms Ann Levin
Mr Neal Morris
Ms Suzanne Reeves
Ms Fiona Reilly
Ms Sue Ryan
Ms Stacy Sinclair
Mr Steven Williams

Co-opted members of the Committee for the year, for their valuable in-house experience and associated take on the sectors we serve, from the start of the year have been:

Mitwa Bavisi; and
Tom Marke

TeCSA is very grateful to all members of the Committee for their support throughout the year.

The following members of the Committee have decided to step down from the Committee: Sally Davies, Anne Levin, Suzanne Reeves and Steven Williams. They have all been stalwarts of the Committee and TeCSA is very grateful to all of them for their huge input and commitment over the years and we wish them all the very best in their various new ventures. We hope they will continue to

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Chairman: William Gard, Burges Salmon LLP, One Glass Wharf, Bristol, BS2 0ZX, Tel: 0117 902 7706 Fax: 0117 378 6486;

Secretary: Julia Court, Addleshaw Goddard LLP, Milton Gate, 60 Chiswell Street, London EC1Y 4AG, Tel: 020 7788 5059 Fax: 020 7606 4390;

Treasurer Secretary: Matthew Smith, K&L Gates LLP, One New Change, London EC4M 9AF, Tel: 020 7360 8246 Fax: 020 7648 9001;

Membership Secretary: Caroline Pope, Bryan Cave Leighton Paisner LLP, Adelaide House, London Bridge, London, EC4R 9HA, Tel: 020 3400 4318 Fax: 020 3400 1111;

Social Secretary: Dominic Helps, Corbett & Co, George House, 2 Claremont Road, Teddington, TW11 8DG, Tel: 020 8614 6200 Fax: 020 8614 6222.

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play an active part in TeCSA, not least encouraging the new generation as you will note they have already started.

The resignations, together with the election of two officers from the Committee members, left six vacancies. It was great to have so many fantastic candidates putting themselves forward for the Committee. It was also a testament to those leaving who have shown how rewarding, and fun, an active role within TeCSA can be.

Following a contested election, with effect from the AGM this year, 15 November 2018, we are very pleased to welcome Anthony Albertini, Mark Breslin, Ben Mellors, Robert Stevenson, Jonathan Stone, Stuart Thompson, to the Committee. It is particularly good to see an excellent range of experience and mission statements as well as some younger members joining the Committee, including one of our recently retires TeCSA_10s. TeCSA congratulates and welcomes the new members and thanks all those who put themselves forward.

Secretary

Amongst those not standing again this year is Julia Court, TeCSA's long-standing Secretary. She has served on the Committee for nearly 20 years and at least the last twelve years as Secretary. During all of this time, she has been a partner in a number of our most prestigious construction practices. Special thanks go to Julia for her dedication and input in steering TeCSA through many important developments both in the law and practice in the construction and engineer sector, and also in the evolution of TeCSA as an association. She has been one of our senior statesmen for many years and will be greatly missed, not least helping the Chairmen who come and go.

After an election contested by two well established Committee members, TeCSA is very pleased to announce that Stacy Sinclair was duly elected as TeCSA's new Secretary. Stacy chairs the TeCSA_10s and has been an active member of TeCSA for some years. We are very pleased to welcome her in her new role.

Chairman

Whilst it has been a great honour and privilege (and fun) to have served on the Committee the last thirteen years or so, the last three as Chairman, it is time for me to make way for new blood. I have made many great friends during my time on the Committee and shall miss them all, thank you.

It gives me great pleasure to announce that Caroline Pope has been elected as TeCSA's new, uncontested, Chairman. As with Julia, Caroline has been one of the stalwarts of the Committee serving for as long as I can remember, and even when working overseas. More recently, Caroline has been our very successful Membership secretary and run our much sought after Marshal Scheme. TeCSA is very fortunate to welcome Caroline as its new Chairman. Not only does she have a formidable CV and 30 years' experience in the UK and Middle East, she is approachable and fun. We all wish her all the very best in her new role.

Membership

Our paid up Membership now stands at 243. The last 12 months has seen 27 new TeCSA memberships approved. We have lost 14 members and 4 have deferred until next year giving a net gain of 9 members.

The TeCSA_10's go from strength to strength but we are still keen to increase our membership across the spectrum so please do encourage colleagues to apply.

Caroline Pope has left the role of Membership Secretary vacant and TeCSA is very pleased to confirm the Committee's election of Sue Ryan as the new Membership Secretary.

I now turn to the main business of the year.

The last 12 months have been another busy period for TeCSA in a period of continuing significant economic and political uncertainty but I am pleased to report that TeCSA remains in very good health. The following is a brief summary of our activities.

1 Adjudication

The TeCSA adjudication and nomination service, and its Panel Adjudicators, remain a very significant part of TeCSA's business.

The Adjudication Service

As trailed at last year's Adjudication Conference, and in my 2017 Report, TeCSA launched an amended Adjudication Service and Adjudication Rules, together with new Application and Nomination Forms, in March 2018. The new Service made a number of important changes to the nomination process and Adjudicator undertakings, all of which were designed to ensure a transparent nomination process and minimise the likelihood of conflicts or real or apparent bias.

We are very pleased to confirm the successful implementation of these changes and the continued health of the nomination service. TeCSA is particularly grateful to its Adjudication Panel Members and users of the Service for the smooth transition.

There is no doubt that TeCSA's Adjudication Service and Rules remain an important option for those considering dispute resolution clauses and, indeed, any ad hoc adjudication. The breadth of specialist experience, and quality of our multidisciplinary panel of adjudicators and our appointment processes, continue to improve and we are grateful to Members who continue to incorporate TeCSA's Adjudication Rules in their contracts.

Nominations

The fact that TeCSA's Adjudication Service is going from strength to strength is yet another record number of nominations again this year. TeCSA made 134 nominations up to 1 November this year up from 121 in the year to November 2017. Of the nominations, 53% were Lawyers, 38% were Quantity Surveyors or Lawyer/Quantity Surveyors and 9% Architects and Engineers or dual-qualified Architects/Engineers.

Our continuing overriding objective in relation to the Adjudication Service remains:

"...the promotion of high-quality dispute resolution processes to the construction, engineering and technology industries ..."

Due to the efforts of the Adjudication Sub-Committee and TeCSA's Panel Members, TeCSA is one of, if not the, pre-eminent panels and we urge you to consider the TeCSA Panel and Adjudication Rules in your day-to-day practices where appropriate.

Panel

Underlining the quality point we have two new panel members this year, Her Honour Frances Kirkham CBE and Sir Rupert Jackson. Both will be well known to Members practising in the Technology and Construction Court. Frances sat as a Technology and Construction Court Judge for 11 years before retiring in 2011 and Sir Rupert served as a Judge for some 20 years, latterly in the Court of Appeal, before recently retiring. There is no doubt that they strengthen even further the ranks of eminent lawyers on the Panel and we were particularly pleased to see both at the Annual Conference this year and grateful to Sir Rupert for delivering the Keynote Speech. As one would expect, he is already challenging us to raise the bar yet further.

The Panel now consists of 72 adjudicators, a modest increase on last year. It is multi-disciplinary and comprises 37 lawyers, 22 QS including dual-qualified QS, 9 Chartered Engineers including dual-qualified Engineers, 2 Chartered Architects, one of whom practices at the Bar and 2 Delay specialists. The mix still broadly reflects the range of disputes in relation to which TeCSA is asked to nominate although we do consistently keep this under review.

Adjudication Conference

Our 2018 Annual Adjudication Conference was held this year at the offices of Pinsent Masons LLP. The Conference was as popular as ever and attended by the majority of our Panel Members and a good number of paying TeCSA Members.

We are very grateful to our newest Adjudication Panel Member, Sir Rupert Jackson, for his thought-provoking Keynote Speech. As one would expect, he challenged TeCSA to raise its game yet further for the heaviest of cases and also advocated a wholesale redraft of the legislation governing Statutory Adjudication which still gives rise to confusion even with the help of numerous decisions from the Courts.

Sir Rupert was followed by our usual Panel update on the Adjudication Service and a very helpful Legal Update from Helen Arthur of Gowling WLG and Joanna Thoms of Pinsent Masons LLP focusing on the adjudication process and enforcement, and recent cases about which TeCSA Adjudicators need to know.

After lunch Sue Ryan and Neal Morris fed back to our Panel Adjudicators with their "Top Tips" following the 2018 Adjudicator CPD Assessment. This was followed by Andrew James' "Low Cost" TeCSA Adjudication Service discussion session and, finally, a session on Use of Experts in Adjudication by Simon Tolson and Gary Peters of Blackrock.

We are very grateful for all our speakers and, in particular, Neal Morris for chairing and hosting the Conference and, indeed, the Adjudication Sub-Committee throughout the year.

Other initiatives

Our Annual Conference is always a great opportunity for Panel Adjudicators and Panel users alike to share best practice and, as reported above, this year we used the opportunity to consider and discuss TeCSA's latest initiative: the significant challenge of dealing with low-value adjudications whilst maintaining the overriding objective on quality, and proportionality and speed. It is relatively early to predict the outcome, but it is hoped TeCSA will address the issue in the coming year.

As reported last year, in our push to increase the interest of the Panel to help balance diversity and succession requirements, TeCSA has a healthy waiting list for consideration for appointment to the Panel. The appointment process for panel members is currently still under review. We hope to announce a little more structure and transparency to the process to encourage budding adjudicators, and an increased diversity more generally within the Panel, but these changes will clearly take time.

We shall also be renewing the website to streamline the processes for maintaining panel membership and nominations, including online payment in the relatively near future. See the Website report below.

Finally, we met with BEIS and responded to the BEIS consultation on the relevant legislation and adjudication practices in March 2018. A copy of our response was circulated to Members and the Panel. Whilst the failure of Carillion gave this initiative some positive momentum, Brexit has clearly pushed this back. We are keeping an eye out for any developments on this and will be doing our best to achieve at least some of Sir Rupert's suggestion as regards the clarity of the relevant legislation.

2 Litigation Sub-Committee

TeCSA is very pleased to welcome new Judge in Charge of the Technology and Construction Court, Mr Justice Peter Fraser.

It is fair to say that there has been a lull in interaction between TeCSA and the Court as Mr Justice Fraser has, no doubt, had more important things to think about. I am pleased to say that more recently representatives from TeCSA and TECBAR caught up with the Judge which gave rise to some very useful and important actions. These include:

- twice yearly meetings between the Judge, TeCSA and TECBAR,
- a joint TeCSA/TECBAR working group to consider the next revision of the TCC Guide; and
- a further joint working group to feedback on the Disclosure Pilot which starts in January 2019.

TeCSA is pleased to continue working closely with TECBAR following on from the successful production of the Second Edition Pre-Action Protocol for Construction and Engineering Disputes. The Protocol is now up and running and, by general consensus of the Court and users, working very well.

Finally, I am very pleased to confirm that Sue Ryan will take over the Chair of the Litigation Sub-Committee from Steven Williams who steps down from the Committee this year. We are very grateful to Steven for all his input on this Sub-Committee over the years and to Sue for taking on this role which she is very well-qualified to take forward.

3 Website

The Website sub-committee has now finalised its proposals for the new TeCSA website. This has involved a significant amount of work on the part of the sub-committee and in particular Adrian Bell and Geoff Hamilton and his team at CMS - Cameron McKenna, Nabarro, Olswang LLP, who have coordinated the input of the various interested sub-committees and the liaison with prospective suppliers.

The new website will provide for:

- an online payment facility;
- an online event booking facility;
- a members only area;
- an online adjudicator nomination request facility;
- online membership renewal;
- an online adjudicator renewal facility; and
- a management dashboard.

We believe this will make the administration of TeCSA far smoother with greater automation and also provide a far more useful service for members. As is always the case with these things, the cost estimate has gone up from £20,000 to £33,000 but I am very pleased to confirm that the Committee approved the increased budget and moved to the next phase with the proposed preferred supplier today.

In the meantime, continued special thanks to Stacey Sinclair who keeps the current website up to date and ticking over, including an extremely quick and efficient reaction to a Russian hack this year!

4 TeCSA_10s

I am pleased to report that our TeCSA_10s continue to thrive. I make no apologies for repeating that the TeCSA_10s are full members of TeCSA, but automatically qualify as TeCSA_10s if they have been qualified for 10 years or less. Their objective is all about:

“...promoting, encouraging and supporting the careers of lawyers with less than 10 years post-qualification experience and are committed to practicing Construction and Information Technology Law...”

Only in its second year, the TeCSA_10s continue to feed into the main committee business on important matters such as the opportunities and challenges faced by new technologies in the sector and, of course, social events. Their most recent event, the TeCSA_10s/Junior Tecbar Quiz Night in October was an excellent event and a great opportunity for the more junior members of our respective professions to get together in a friendly environment.

I know our new Chairman has great plans for the future involvement of the TeCSA_10s. This has started with the election of one of the retiring TeCSA_10s to the main committee today and we look forward to seeing the TeCSA_10s evolve further in the coming years.

5 Marshal Scheme

The Technology and Construction Court Marshal Scheme continues to attract strong interest and participation from junior lawyers across the TeCSA membership. By the end of the year, eight placements will have been completed at the TCC by solicitors from six different firms (one an in-house lawyer). This is lower than the number of completed placements last year due to a number of deferred placements as a result vacated lists at the TCC over the summer period. Senior Clerk, Sam Taylor, continues to provide valuable assistance in scheduling the placements and is a great ambassador of scheme within the TCC, for which we are very grateful. There are currently fourteen solicitors awaiting placements with the Court and so we expect continued strong participation in 2019. We always welcome more candidates to ensure that all places are taken.

As ever, we remain hugely grateful to the TCC judges for their continued support of this scheme.

Thank you also to Caroline Pope and James Clarke for another year's smooth running of this service and for helping make it so accessible to Members. As reported above Caroline will be handing over the reins to Sue Ryan so please consider whether any junior members of your teams may benefit from the scheme and get in touch with Sue.

6 Social and sporting

Summer Party

We broke the mould this year by holding the TeCSA Summer Party at the Ace Hotel in Shoreditch on 14 June. The venue proved a great success and was packed with Members, Judges, Members of the Bar and Adjudicators enjoying the “trendy” location. Particular thanks go to Dominic Helps and Sally Davies for their vision, and to Caroline Pope and her team for the administrative support which allowed it all to happen. Thank you also, to all those who attended, and made it such a success.

Cricket

I am very pleased to report that The Hudson Ashes were played for again this year on 7 June at Kew Gardens. No doubt much to TECBAR's chagrin, I am doubly pleased to report that TeCSA regained The Ashes this year.

Annual Dinner

Once again, we have a packed house, and record [225] for the Annual Dinner this year at One Whitehall Place. Whilst a connection with *Strictly Coming Dancing* is not a pre-requisite to the identity of our guest speaker each year it plainly helps. We are honoured to be joined by guest speaker John

Sergeant who needs no introduction but is famous for lasting 10 weeks in the show notwithstanding “not being able to dance” and consistently being voted last by the judges!

On behalf of Members and the Committee, I extend a huge thanks to both Dominic Helps and Sally Davies for all their hard work in planning and organising these events. Sally, of course, steps down from the Committee this year but I am sure that there will be a number of willing volunteers from the new ranks of the Committee to assist Dominic in the coming year.

7 The International and Arbitration Sub-Committee

The International and Arbitration Sub-Committee held a seminar entitled: “*Which is the best forum for construction disputes*” on 4 October. The current Judge in Charge of the Technology and Construction Court, Mr Justice Fraser, and previous Judge in Charge and now practising international Arbitrator, Sir Robert Akenhead, led a lively debate. TeCSA is very grateful to Adrian Bell for hosting and both excellent speakers.

8 Officer and Committee Elections

Rule 11 of the Constitution provides in each Annual General Meeting one third (or as near one third as may be) of the elected members shall retire, but with the right to offer themselves for re-election. The members to retire shall be those who have been longest on the Committee since election or re-election, ties (unless otherwise agreed) to be determined by lot.

On 18 October 2018 notice was given that the Annual General Meeting of TeCSA would be held on 15 November 2018 at One Whitehall Place, Westminster, London, SW1A at 6.30pm. Notice was also given that there will be an election of six members to the Committee and a new Secretary.

Sally Davies, Anne Levin, Suzanne Reeves and Steven Williams all decided to stand down and I (William Gard) and Julia Court both all indicated they would not be standing for re-election for the offices of Chairman and Secretary, respectively.

I am pleased to say that we had eight new candidates standing for election for six places this year, both offering potential for different perspectives to the Committee, so we had a contested election.

The result of the election was that Anthony Albertini, Mark Breslin, Ben Mellors, Robert Stevenson, Jonathan Stone, Stuart Thompson were all duly elected onto the Committee as announced at the AGM and we wish them all a very warm welcome. To those who were not successful this time or interested in the future, please do keep in touch. There may well be other opportunities and elections are held on an annual basis. TeCSA is always looking for new and enthusiastic members for the Committee.

Rule 17 of the Constitution provides that every second year the offices of Chairman, Secretary and Treasurer shall also be elected in like fashion. Caroline Pope and Matthew Smith were elected unopposed as Chairman and Treasurer, respectively. The office of Secretary was contested by two members of the Committee and Stacy Sinclair was duly elected as Secretary for the next two years. We are particularly indebted to Matthew and Julia for their important roles in the finance and administration of TeCSA in 2018.

William Gard
Chairman
15 November 2018