



## LEGAL BRIEFING

### *Orange Personal Communications Services v Hoare Lea (A firm)*

Mr Justice Akenhead [2008] EWHC 223 (TCC)

#### ***The Facts***

This Judgment arose out of an application by Hoare Lea in the claim, for a stay of the proceedings pending the implementation of the process laid down by the Pre-Action Protocol for Construction and Engineering Disputes ('the Protocol').

Orange had engaged Kier Regional Ltd ('Kier') to carry out the fitting out works to its building, which included the provision of an air conditioning system. Kier sub-contracted amongst other things, the provision of the air conditioning system to Haden Young Ltd ('Haden'). Orange also engaged Hoare Lea to carry out certain professional services in relation to the design of the mechanical and electrical works including the air conditioning system.

A flood occurred which caused damage to Orange's equipment in the building. Orange issued proceedings for damages against Kier and Haden in relation to the flood. Both Kier and Haden denied that they were responsible for any bad workmanship and insofar as Orange suffered loss and damage, they claimed that it was attributable to Orange and its design team.

To avoid limitation issues, Orange issued proceedings against its design team. However, the claim against Hoare Lea was contingent on the failures of Kier and Haden being established.

Hoare Lea applied for a stay on the basis that Orange had not followed the Protocol.

#### ***The Issue***

The issue before Mr Justice Akenhead related to the extent to which it was appropriate for the Court to adopt a pragmatic approach in relation to compliance with the Protocol.

#### ***The Decision***

Given that the two claims were intimately connected, the Judge was reluctant to delay the trial further to enable the Protocol process to take place, as it would be undesirable in terms of cost, time and resource.

It was held that Orange did not comply with proper practice. Although, given the impending limitation difficulty, Orange was excused from commencing the Protocol process before issuing the claim, the Court held that there was no valid excuse why Orange did not tell Hoare Lea about the issue of the claim much earlier. Orange should have also informed the other parties and the Court when agreeing and presenting agreed directions to the Court that there was a probability that a new party would be added.

Although Hoare Lea lost the application, it was Mr Justice Akenhead's view that Hoare Lea had had no choice but to issue the application and it was a reasonable application to bring. As a result, Orange was ordered to pay their own costs of the application and one third of the Hoare Lea's costs occasioned

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by the Claimant's procedural failings.

*Comment*

While the Protocol is recognised as being effective both in settling disputes before they even arrive at Court and narrowing the issues, it is also seen as being costly on occasion and can enable parties to delay matters without taking matters very much forward. Whilst the norm must be that parties to litigation do comply with the Protocol requirements, this case illustrates that the Court will look at non-compliances in a pragmatic and commercially realistic way. Parties should note however that non-compliances will usually be compensated by way of costs orders.

Birgit Blacklaws  
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