

Interpretation of Contract Documents-The Quantity Surveyor's Contribution

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Contract Documents and Documentation

Contract documentation embraces the whole of the written project information including the contract documents. The contract documents on the other hand are the specific documents upon which the legal contract¹ is formed. This is a necessary distinction, primarily, because the contract documents are the only ones that have significance in the legal sense, with regard to the bargain struck. However, it must be appreciated that contract documentation will frequently be submitted as evidence to establish a point in dispute and which may be governed either expressly or by implication in the contract documents, or alternatively to prove the existence of a collateral agreement².

Project information cannot impose any obligation beyond those contained within the contract conditions. Nevertheless, it is frequently issued in order that the works may be executed. It becomes a question of fact whether such information actually imposes an obligation beyond those upon which the contract is formed.

The identification of contract documents is frequently contained within the printed contract conditions of the various standard forms of contract³. Obviously where this is not so, it is prudent to reference which parts of the documentation are intended to be incorporated into the form of contract documents and the extent⁴ to which they are to govern the contractual positions of the parties and further to determine the relationship of one contract document to another⁵.

With regard to the relationship of documents, an area of particular interest to the quantity surveyor is the preliminaries section of the Bills of Quantities. For it is here that the quantity surveyor frequently inserts clauses in an attempt to govern certain matters and in the belief that the contractor will be legally bound by such clauses by virtue of the Bills becoming a contract document. However, the quantity surveyor should be aware of standard conditions that have the effect of denying



This article is concerned with the independent quantity surveyor's contribution with regard to the interpretation of contract documents. However, before one can consider his role in the interpretation of such documents, it is necessary to establish the difference between contract documentation and contract documents as this distinction may be fundamental.

the Bills of Quantities clause any legal force. This situation may occur where a preliminary item "... overrides, modifies or affects in any way whatsoever, the application and interpretation of that which is contained within the contract conditions"⁶. An example of this may be where the Bill states that Dayworks will not be accepted, unless the Architect agrees to this method of valuation prior to commencement of the work. In the interpretation of contracts, the written word would generally be given greater significance than the printed word, however this is not likely to be the case where the printed form includes a clause that clearly states that the printed conditions will prevail⁷. Therefore, if specific preliminary clauses need to be included which have the affects as previously referred to, it is necessary to amend the printed conditions accordingly.

One further point with regard to the relationship of documents worth mentioning is that of attempting to determine the respective priority of documents and in so

doing create the very problem one is trying to prevent⁸.

Quantity Surveyor's Interpretations

Having established the contract documents for a particular project it is now worth considering whether the quantity surveyor has any role in the interpretation of them.

Certainly, in practice, the quantity surveyor frequently, and often freely, gives advice on the legal effect of a contract condition or on an item contained within the Bills of Quantities. This situation begs two major questions; firstly, is there any obligation upon him to do so and secondly, regardless of any obligation, if he does, is he liable to whomsoever he proffered the advice.

Obligations

The quantity surveyors' obligations will be determined by the contractual arrangement governing the project and his conditions of engagement.

Once again, it is necessary to consider a distinction; the distinction between what duties the contract documents impose upon a quantity surveyor and what duties his own conditions of engagement impose. Contract conditions impose upon the appointed quantity surveyor specific duties, possibly to measure and value variations and ascertain fluctuations. They may also contain matters upon which the architect/supervising officers can instruct the quantity surveyor to perform other functions. These will vary from contract to contract. The significance of the duties so imposed is that no one else can exercise the function⁹. It is therefore incumbent upon the quantity surveyor to act impartially in the exercise of these duties. The specific functions imposed by the contract conditions, upon the quantity surveyor, are generally much narrower than one might believe either necessary or desirable but the 1980 JCT Standard Forms give examples of the widening nature of these duties.¹⁰ The quantity surveyor's conditions of engagement frequently require him to carry out duties much greater than those specifically referred to above, some of which impinge directly upon the operation of the contract conditions, for example, the preparation of an interim valuation. The ultimate decision, however, is frequently outside the control of the quantity surveyor, nevertheless, he should carry out his duties with impartiality, notwithstanding the fact that the decision he presents may be overridden. In these circumstances there is a contractual duty to the employer and a duty of care to the architect.

Quantity surveyors should endeavour to

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members cannot then re-quote, thus starting a barter. The fee scales are still there as a guide.

This is not the first time the Institute has "gone it alone". It succeeded in "taming" the contractors' surveyors and allowing them to become professionals with an accepted qualification. It is hardly likely to allow its members in private practice to "run amok in the market place" to the detriment of the public interest or the standing of the profession.

be objective but to what extent is his interpretation of situations affected by conflict between the desire to be fair (whatever that may be) and the need to propitiate an architect or employer is questionable. There is some evidence to suggest that they are so conditioned that they unconsciously lean away from the contractor. This is particularly so in those matters where he has no duty under the contract conditions, for example, when consulted upon a delay.

It may therefore be suggested that it would be unwise for the quantity surveyors' obligations, with regard to interpretation, to be extended any further than is absolutely necessary, but is he any less suited than anyone else? The answer probably lies in the method of appointment and nature of design team rather than the credentials of the individual professions.

Nevertheless, the quantity surveyor frequently offers advice upon situations for which he has not been contracted, this advice is often followed and leads one to consider the second question.

Liability

Liability for advice can arise in two distinct ways.

- (i) Under a contract;
- (ii) Under the law of tort by virtue of a negligent act against someone to whom there is a duty of care.

It is one thing to be paid under a contract for advice given, this is a responsibility which generally is knowingly accepted. It is another matter altogether to give advice on issues for which no payment is to be made. Liability can still arise regardless of payment¹¹ and it is therefore, perhaps, not prudent to go beyond that which you have contracted to do. It may be said that this is a naive view as there are the matters of goodwill and expedience to consider. This cannot be denied but it does not detract from the fact that one should take every care in reducing the chances of creating liability unwittingly.

The area of law concerning negligence is indeed complex and its development and apparent widening nature¹² has caused many professionals to reconsider what advice they will give and in what form it should be given.

Conclusions

Quantity surveyors have an inclination to see matters in black and white and this is extended by them to fields of knowledge, such as law, where the profession concerned seldom, if ever, is prepared to give such categorical replies to questions posed. The quantity surveyor's willingness to do this may flow from under the fact that he is endeavouring to establish a role for himself but one fears that this is a spontaneous reaction to an empirical situation rather than one that is based upon a clearly defined philosophy. One must advocate a greater awareness of the responsibilities which may be inadvertently acquired and this awareness should be nurtured in all quantity surveyors. Further, to develop a greater understanding of matters which

affect legal interpretation of contract documents and to become aware that things are often different from what they appear to be. conclusion, the following points are offered as worthy of consideration; the quantity surveyor should:

- (i) Establish precisely the terms of his engagement.
- (ii) Establish the exact nature of his duties imposed by the building contract conditions and determine to whom he owes a duty of care.
- (iii) Give fuller attention to the preparation of preliminary terms.
- (iv) Define the contract documents.
- (v) Ensure that all advice is based upon sound considerations and avoid "off the cuff" answers and, where appropriate, use qualifying terms in any advice that is given.
- (vi) Avoid giving opinions on matters outside one's expertise.
- (vii) Carry adequate and appropriate professional indemnity insurance - should all other precautions fail.

References

1. The term legal contract is used to avoid confusion with word contract when used to mean project.
2. *De Lassalle v Guildford* (1901) and *Esso Petroleum Co. Ltd v Mardon* (1976).
3. JCT SFBC 1963 Edition, Clause 1(1). ICE 5th Edition, Clause 1(1)(e).
4. *Moore v Shawcross* (1954) and *Davis Contractors Ltd v Fareham UDC* (1956).
5. ICE 5th Edition 1973, Clause 5. JCT SFBC 1963 Edition, Clause 12(1).
6. *Ibid* Clause 12(1).
7. *English Industrial Estates v Wimpey (George) Co Ltd* (1973).
8. JCT SFBC Without Quants 1963 Edition, Clause 12(2).
9. See Articles of Agreement 4(B) of JCT SFBC Without Quants for situations whereby the Quantity Surveying function is ascribed to another.
10. eg. Clauses 30.1.2 and 30.6.1.2. JCT SFBC 1980 Edition LA with Quantities.
11. *Hedley Byrne and Co Ltd v Heller and Partners Ltd* (1964).
12. eg. *Midland Bank Trust Co v Hett, Stubbs and Kemp* (1978); *Anns v London Borough of Merton* (1977).

Institute of Building

Raymond Pettitt, MSc, MIOB, FRICS, responsible for property maintenance at the Peterborough Development Corporation, describes, in the Maintenance Information Service Paper *Computer aids to housing maintenance management* the work he initiated and carried out to substantiate his view that the use of computers could aid the better management of building maintenance. The design, development and operation of the computer system are described and examples are given to show the depth of analysis of expenditure and defects that can be carried out.

It is shown that the system provides a more detailed feedback to designers and assists in the preparation of planned preventative maintenance programmes, resulting in more effective, efficient and economic housing maintenance management.

In conclusion Mr. Pettitt notes "Without the computer it is not practicable to analyse every item of repair, but this depth of analysis of

expenditure and defects is essential if a greater insight into maintenance problems, their causes, remedies and costs is to be achieved and if housing maintenance expenditure is to be greatly reduced".

Copies of the paper are available first copy free to members of the Institute of Building and price £1.25, plus 25p postage to non-members from the Sales Office, The Institute of Building, Englemere, Kings Ride, Ascot, Berkshire, SL5 8BJ.

Trada

"*Structural Use of Hardwoods*" is the latest title in the series of free Wood Information Sheets from the Timber Research and Development Association.

Running to 12 pages, the publication suggests that hardwood, which is available in long uniform lengths free from structural defects, can be used with advantage in load bearing situations where steel and concrete often take over from softwood. Its combination of high strength with good appearance also makes it useful when design considerations call for load bearing members which are exposed to view. Hardwood's extra density also gives superior fire resistance. The publication contains design information and span tables.

Copies of "Structural Use of Hardwoods" are available from: Publications Dept, TRADA, Hughenden Valley, High Wycombe, Bucks HP14 4ND.

Bygg-reis deg

In the period 18th to 28th September, 1980 the 8th Nordic Building Materials Exhibition BYGG-REIS DEG will be held at the Sjolyst Centre in Oslo. Bygg-reis deg is a combined trade fair and public exhibition, the biggest of its kind in Norway. The organiser is the Association of Building Material Distributors.

This fair will present a complete review of all the products and services available to the building trade. Its aim is to provide specialists and buyers connected with the building trade with information about building materials and methods and about possibilities for technical and economic rationalisation in the building and construction trades. Moreover, Bygg-reis deg will present to the general public a wide range of equipment and facilities for private homes, and ideas for alternative solutions to building problems, both indoors and outdoors.

The theme for this year's exhibition is energy saving. The current energy situation demands the greatest attention, and intensive efforts are being made to develop materials and structures which can reduce energy consumption in the home. Total energy consumption in Norway represents about 15,000 million kroner per annum. Of this, nearly one-third is for dwellings. Spread over the total population this represents an average expenditure per family of 3-4,000 kroner per annum. The exhibition especially aims to demonstrate new machines and resource-conserving equipment which can help to reduce consumption. Also, a seminar will be held to examine current problems in this field.

In collaboration with the craftsmen's organisations, apprentice competitions will be held in connection with the exhibition, participants in each trade competing for Bygg-reis deg's challenge trophies.

The previous Bygg-reis deg was held in 1977. On that occasion there were 285 participants at the fair, representing 750 manufacturers from 22 nations. The total number of visitors was 130,000, 48,000 of whom were trade specialists.