The Application of the 1980 JCT Form of Contract in Practice

The following talk was given by Michael J Raven, FRICS, FCIOB, FIQS, ACIArb at the 1981 Prestige Meeting of the South Yorkshire Branch of the Institute which was held at Sheffield City Polytechnic

The Branch Chairman, Mr Bill Waterworth, introduced the speaker and advised, at Mr Raven's suggestion, that the topic be extended to 'from the Contractor's viewpoint'.

Mr Raven gave a brief outline of the Standard Form's history, from an early quotation which stated that "contracts should be specific and definite in their terms", through the so-called "Builder's Charter" period to the present day form, whose ojectives are that the conditions are standard and fair to both contracting parties. Mr Raven pointed out that although SMM6 and JCT 1980 have very definite links, it is perhaps surprising that SMM6 is based on a consensus of opinions, whereas JCT 1980 is the product of unanimous decisions of the eleven constituent bodies. It is perhaps because of this that revisions to the 1980 form could be expected in July as in previous years.

Mr Raven concluded the first part of his talk by stating that the day of the one-off Form of Contract was virtually over, and that an unwary professional adviser, who altered the Standard Form, was liable to place his Client at risk, with all the possible repercussions. The Standard Form in its present state is a document that is well known and has evolved steadily, and it is also *the* standard, against which other Forms are compared.

The speaker then turned his attention to the 1980 JCT Standard Form of Building Contract. The Form is divided into four parts, these being the Articles of Agreements, the General Conditions, Nomination provisions and the application of escalation and re-evaluation clauses.

The main difference with the Articles of Agreement from previous forms is the inclusion at Clause 5 of the arbitration provisions. Thus arbitration is more forcefully drawn to attention of the contracting parties than before.

In the General Conditions many of the 1963 Conditions remain to a large degree, for example statutory obligations, setting out materials and workmanship, clerk of works and determination. However, there are major changes between the 1963 Form and the new Form and Mr Raven devoted the rest of his talk to these.

Firstly, under Clause 5.3.1.2. the Contractor must provide the Architect with two copies of his master programme. However, the programme is not a contract document and therefore no benefits or rights accrue from it, nor does it form an official request for information. It is only a "management tool". Mr Raven emphasied that the contract period is the Contractor's alone, and that under SMM6, if the Client or the design requires certain sequences of construction or operation then these must be stated in the Bill.

Clause 25 deals with extension of time. The Contractor must notify the Architect, in writing, of any delay being or likely to be caused by a Relevant Event, as defined under Clause 25.4, the old Clause 23. The Employer's failure to give access to and from the works is now included as an event giving rise to an extension of time. The old Clause 23 (j) (i) and (ii) have now been replaced by Clauses 25.4.10.1 and 2 which cannot be deleted. However, the Contractor cannot recover escalation of costs.

The Architect has twelve weeks in which to deliberate on an extension for the first time. The speaker thought this was too long a period, bearing in mind that three or four interim payments could pass and the Contractor would be left not knowing whether the programme would need altering. However, it was an improvement over the 1963 Form, which was open-ended. In the event that the Architect took longer than the time stipulated, Mr Raven thought that the matter should be put to arbitration and that possibly the contract would be "at large". Mr Raven also stated that these particular provisions were generally for the benefit of the Employer to preserve his rights to Liquidated and Ascertained Damages and not the Contractor. After the first occasion the Architect could review his previous awards in the light of any variations issued since his previous decision. However, the original contract period could not be reduced.

Variations under Clause 13 was the next topic, the point being that although the contract is a lump sum contract, variations are allowed and their cost is recouped under Clauses 13.4 and 26. Mr Raven pointed out that the conditions of Contract could themselves be varied, but this should be done at the bid stage.

The speaker suggested that variations should be examined under four headings:

1. has a variation occurred at all and why?
2. when did it occur?
3. what was the work content?
4. what was the effect on other unvaried work?

Value, of itself is no measure.

There is no limit defined as to the amount or degree of variations allowed on a contract, although under Clause 4.1.1. the Contractor has the right of objection to a variation order.

Mr Raven pointed out that the valuation of variations under Clause 13.4.1 should firstly be by specific agreement between the contracting parties and secondly by the fall-back rules of Clause 13.5. He hopes that the Quantity Surveyor would be more flexible and base his valuation on fact rather than opinion.

Clause 26 concerns loss and expense and covers seven instances where the Contractor must write promptly to the Architect giving full details as to fact and cost. Nominated subcontractor's and suppliers' applications must as always be made through the Main Contractor.

Mr Raven stated that the Quantity Surveyor's role had been extended in the new Form, although not far enough, and that hopefully this would enable the Architect to detach himself from commercial constraints and to concentrate more on his role of designer.

To sum up extension of time and loss and expense provisions, the Contractor's notice is now a condition precedent for these matters to be considered.

Nominated subcontractors and suppliers was the next section, Mr Raven stating that nominations accounted for 30 per cent on average of work undertaken on a building contract and that although their voice and influence were rightly important they had possibly now been overdone, thereby probably

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interview, should have familiarised himself with the firm and have rehearsed answers to likely questions about his experience, qualifications and aspirations. He should ensure that he is presentable in all personal aspects, including dress, speech and demeanour.

Throughout the process, confidence and inner security are needed and these can only be achieved by adequate preparation. Introspection and honest self-analysis, an understanding and acceptance of ones strengths and weaknesses over the spectrum of personality, health, qualifications and experience provide a framework on which positive attitudes can be rebuilt after the confidence-breaking blow of job loss. A marriage partner or close friend to whom you are prepared to "bare-all" is invaluable in providing an assessment of your capabilities.

Mental preparation and self assessment are key factors in the overall process of regaining employment but must be seen in terms of the total "package" which is being presented to the possible employer. More practical and factual matters include the adequacy and presentation of the application and curriculum vitae and the care with which this has been matched to the job description, the status of referees and the degree of support which they will give, the applicant's preparation for the interview and his reactions and responses therein, and his decision upon the level of salary and conditions which he would be prepared to accept.

Beyond all this, it is necessary to face the fact that it will take several months of hard work and, possibly, many job applications to get back into employment. The older and higher up the tree you are, the longer it is likely to take. It is possible that many employers will reject painstaking applications without even offering an interview, some will not even reply. When an interview is achieved the possibility is that the job might go to someone whose particular quirks were of more interest to the selection panel. Persistence is the only answer. Only from a constant stream of applications, well presented, and varied in style to suit the situation, will success eventually come.

mitigating against their future employment.

There are seven ways to nominate, these being by P.C.Sum, naming in the Bill, an instruction concerning a Provisional Sum, new work being introduced, additional work of a nomination nature, agreement and limitation of the Contractor's purchasing opportunity. Before the act of nomination, procedures, programmes and attendances should be agreed between the Architect, Main Contractor and Subcontractor, and a variation issued if other aspects of the contract are affected. In Mr Raven's view, the nominated subcontractor was possibly the tail wagging the dog and could be removed in preference to the domestic subcontractor, leaving the Client to deal only with the Main Contractor.

Finally, Mr Raven went on to outline the matters which had been corrected in the new Form, possibly the main one being the recovery of bonus payments where the scheme is recognised by the operatives and the Contractor can show that it was in operation before the contract was signed. "Bickerton" and "Romalpa" were other cases referred to.

Mr Raven then invited Questions from the floor, as well as answering those prepared by the Branch Secretary.

The first questioner asked Mr Raven to clarify the Architect's financial role, the reply being that although the Architect is still financially responsible to the Client, he hoped that the quantity surveyor would emerge to take a greater role in this area.

Loss and expense, Mr Raven decided, was impossible to define and that the basic Hadley v Baxendale ruling still applied. Loss and expense referred to the two contracting parties and not just on site, but also in Head Office, the provision of additional finance costs, etc.

Under Clause 36.2.10 the Main Contractor could tender for nominated subcontract works and profit be allowed on this section.

The next question concerned the duties of the Architect, although not being asked for any more information, he was being asked for it earlier. This being echoed in SMM6.

Asked what prospects he saw for a common Form of Contract covering all the British Isles Mr Raven's response was that he saw none and that although there was amongst others GC/Works/1, it was somewhat singular in its benefits.

Another person asked whether the smaller building companies might be afraid to use the new Form. Mr Raven surmised that the Minor Works Form could be generally used up to values of £300,000. Mr Raven had in fact completed one contract under the new Form and the contract had gone well, no doubt due to having left the document in the cupboard, its use being purely as a deterent.

Where mechanical and electrical engineers were relucant to finalise their drawings, Mr Raven suggested that the Standard Form in incorporating either full or partial Contractor design should be used when published.

In the event that "materials, goods and workmanship" are not procurable, the Architect should be responsible for issuing an instruction, bearing in mind that a limited market may give rise to a nomination situation.

Mr Raven explained the demise of the old Clause 23 (j) (i) and (ii) in the context of a balanced agreement to arrive at an agreed Standard Form. Basically the option to delete was probably removed in consideration of a freeze on escalation payments.

Asked whether the time limits for acceptance of nominations were fair, Mr Raven thought that they were bearing in mind that the procedures had been agreed by all the parties. However, if a nomination is known at tender stage, SMM6 Clause B9.1 requires that the name should appear in the Bill.

To the question whether the next Form should be simpler, Mr Raven replied that perhaps it should, but reflected that it was a sorry affair that the procedural matters in the new Form had had to be forced upon us all to raise standards in the industry and remove some current bad practices.

To close the evening's meeting, Mr Terry Sleath, Branch Committee Member, proposed the vote of thanks, to which there was a warm response.