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Webinar:

20 Brilliant Construction and Engineering Questions – and answers!

26 August 2021 | 11:00am (UK Time)


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Adrian Cole
FZ LLE


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Chartered Quantity Surveyor, Arbiter


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Bill Howard | President
FIDIC

Area of Expertise

- Water Resources Engineering
- Project Management
- Executive leadership

William Howard is an executive vice president of CDM Smith, a global consulting, and construction company headquartered in Boston Massachusetts with over 100 offices around the world.
Bill has had a long association with FIDIC starting as USA member association ACEC's liaison to FIDIC in 2000, then serving on numerous committees and delivering presentations since. Bill is former chair of ACEC, a fellow of ACEC and ASCE, and a board certified environmental engineer with the American Academy of Environmental Engineers and Scientists. He has a wealth of global experience in executive leadership, quality management, training and risk management. Bill began his two-year term as FIDIC president in September 2019.

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/fidic---international-federation-of-consulting-engineers/

Bill Howard
FIDIC

Question: What advice would you offer Owners in initiating a project, especially a complex one?

Answer:

1) *Use your professional engineer as a trusted advisor for all phases of a project provided that you are satisfied with their services.*
2) *Get the procurement process right as a key step in achieving successful projects.*
3) *Use the most appropriate FIDIC form of Conditions of Contract and minimize the modification of same.*
4) *Follow the five FIDIC Golden Principles when using FIDIC Conditions of Contract.*
5) *Prequalify key project participants wherever possible.*

Following the above guidelines will increase the probability of establishing a cooperative atmosphere through the proper balance of risk among qualified project participants throughout all phases of a project.

Andrew Miller QC
2TG

Area of Expertise

- Construction
- Energy
- Property damage
- Insurance and reinsurance
- Professional negligence

Andrew Miller QC FCIArb is a barrister with over 30 years of experience of dealing with and resolving commercial disputes both domestically and internationally. He now practices as a Mediator and Arbitrator in a wide range of commercial sectors, including in the areas of construction, energy, property damage, insurance and reinsurance and professional negligence. He is the current NMA Civil & Commercial Mediator of the Year 2020/21.

Andrew has been involved in the mediation of disputes since 1995. He has experience of over 200 mediations across a wide range of disputes. He also sits as an arbitrator and has been a trustee of the Chartered Institute of Arbitrators since 2019.

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Andrew Miller QC
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Question: Are construction disputes really suited for mediation and when is the best time to go to mediation?

Answer:

1. *Construction disputes and mediation have a major component in common – namely negotiation.*
2. *Negotiation is at the heart of all construction disputes, pre-contract and post contract. At the precontract stage the parties are looking for the best deal and at the post-contract stage the parties are looking to move forward in the most economically and efficient way.*
3. *Mediation provides this combination of efficiency and economy as a process and allows for the final resolution of a dispute.*
4. *It is not only cheaper than adjudication, but it is also quicker and allows for a flexibility that the rigidity of adjudication cannot ever achieve.*
5. *There is no right time to go to mediation but as a general rule the sooner the better.*
6. *And yes, mediation can be used as an alternative to adjudication or even may be introduced as part of the adjudication process.*
7. *The mechanism for providing a resolution to a dispute in a very short period of time (most mediations only last one day) is something that should not be overlook.*
8. *At a recent successful mediation of mine… post settlement the commercial and finance director turned to the contracts/legal director and said…. "Why have you never mentioned or tried mediation before."*
9. *SO DON'T HESITATE…. MEDIATE!*

Adrian Cole FZ LLE

Adrian Cole | Arbitrator
Adrian Cole FZ LLE

Area of Expertise

- Construction arbitration

Adrian Cole is an experienced international arbitrator, DAB member and mediator specializing in energy, real estate and infrastructure development disputes. He previously led King & Spalding's number 1 ranked Middle East Dispute Resolution Practice.

Mr Cole is listed by Who's Who Legal as one of the top 25 construction dispute resolution lawyers in the World and ranked tier one by Chambers Global and Legal 500. Part of the "Global Elite" in thought leadership, "He's the kind of guy you want with you rather than against you." and is ranked for "his knowledge in arbitration" (Chambers Global). He "stands out as a strong expert in construction-related dispute resolution" (Legal 500).

Adrian Cole | Arbitrator
Adrian Cole FZ LLE

Adrian Cole FZ LLE

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Question: Is a contractor entitled to compensation for encountering unforeseen ground conditions ("UGC") ?

Answer: ***No, maybe and yes!***

Construction contracts typically identify the scope of works, the duration in which they are to be performed and the price the contractor is to be paid for carrying them out. In the absence of any express provisions to the contrary, contractors are required by most legal systems to carry out that which they have contracted to do and bear all associated burdens of doing so.

Under English law, for example, an employer does not impliedly warrant that the works undertaken by the contractor are possible (legally or physically). The employer is entitled to rely upon the contract and the expertise of the contractor to carry out the works and the contractor will not be entitled to be compensated (time and or money) in dealing with the more onerous conditions.

Some contracts seek to share the risk of encountering UGCs. FIDIC clause 4.12 for example, entitles a contractor to claim an extension of time for delay to completion and payment of cost for adverse UGCs that were not reasonably foreseeable by an experienced contractor, subject to giving appropriately timed notices and meeting other criteria. However, a raft of English law cases show that it can be difficult for contractors to satisfy the necessary tests, particularly the test of foreseeability.

Question: Is a contractor entitled to compensation for encountering unforeseen ground conditions ("UGC") ?

Answer continued:

In Obrascon Huarte Laine SA v Her Majesty's Attorney General for Gibraltar (2015), the Court of Appeal rejected the contractor's claim for UGC where the ground conditions were not expressly identified in the geotechnical information with the court holding that "an experienced contractor at tender stage would not simply limit itself to an analysis of the geotechnical information contained in the pre-contract site investigation report and sampling exercise".

Likewise in Van Oord UK Limited and others v Allseas UK Limited (2015), the court held that the contractor failed to prove that subsurface conditions were different from those described in the contract or were unforeseeable.

Compensation may therefore depend upon proving foreseeability, which extends beyond the boundaries of the contract and documents upon which it is formed.

David Rogers / Deputy Editor
Building Magazine

BARTON LEGAL

Area of Expertise

Dave Rogers has enjoyed a long career reporting on the construction sector, including stints at Building Design, Construction News and as a freelance journalist. He is currently the Deputy Editor of Building – one of the sector's leading magazines – where he covers a broad range of construction stories from high-profile employee moves to post-covid working models; major construction projects across the UK through to government policy changes that will affect the built environment.

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Dave Rogers
Building Magazine

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Question: Given there is a well-known and widespread materials shortage, are contractors still liable for materials not turning up to their sites? What can and should be done by clients and contractors to reduce contractual liability on this and to avoid disputes?

Answer:

Liability for material shortage will usually depend upon the terms of the contract and the circumstances which led to the shortage.

Some contracts specifically allocate the risk of material shortage, with the Contractor assuming the risks except in circumstances where a 'relevant event' or 'compensation event' has occurred.

Under JCT D&B 2016, on receiving notice of a 'relevant event', under Clause 2.25 the Employer may award the Contractor an extension of time for completion of the works, relieving them of delay damages. Contractors however are not entitled to claim for the loss and expense incurred as a result of this delay.

A relevant event is an event (described within its contract) not caused by either of the parties but which affects the ability to comply with the timescales of the project.

The NEC equivalent of relevant events are 'compensation events' and under NEC3 Clause 60, a compensation event may entitle the Contractor to an extension of time or an additional payment.

Force Majeure events fall within the definitions of both 'relevant' and 'compensation' events under JCT and NEC respectively. As such, if the Contractor can show the material shortage was a direct result of Covid-19 of Brexit, they may be protected against any claims for delays to completion.

However, if the contract was entered into after the outbreak of Covid-19 or following Brexit, the consequences of these events were arguably reasonably foreseeable, so are unlikely to be considered Force Majeure.

Although it may seem like the obvious answer, read the terms of your contract.

TWENTY ESSEX

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Gordon Nardell QC
Twenty Essex

Area of Expertise

- International litigation
- Arbitration
- Cross-border and public/private projects

Gordon is a barrister practising at Twenty Essex in London and Singapore. He specialises in international litigation and arbitration. He is best known for his work on claims by and against state bodies, including disputes about public-private projects in the energy, infrastructure and transport sectors. Gordon also advises on regulatory and contract issues across a range of projects and transactions. He accepts appointment as arbitrator ad hoc and under the rules of the main institutions and is a regulator contributor to professional publications and training events.

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Gordon Nardell QC
Twenty Essex

TWENTY ESSEX BARTON LEGAL

Question: When does English law imply a duty of good faith into a project contract?

Answer:

- *No general duty of good faith. Each party free to exercise contractual rights for own commercial purposes as it see fit.*
- *But court may be willing to imply good faith duties into a "relational" contract -- where parties in a long-term mutually beneficial relationship. Design-Build-Operate contracts often in this category. Typically, duty not to exercise a contractual power (such as termination for contractor default) "arbitrarily, capriciously, irrationally or for an improper purpose".*
- *Does not apply where contractual right is "absolute" – ie. no "assessment" required – Compass Group UK and Ireland Ltd v. Mid Essex NHS Trust [2013] EWCA Civ (employer awarding "service failure points" for underperformance by contractor)*
- *But courts willing to imply a duty of good faith in designating a force majeure event under a unilateral FM clause supposedly giving employer "absolute" discretion: Dwyer (UK Franchising) Ltd v. Fredbar Ltd [2021] EWHC 1218 (Ch). Employer should not have designated FM event where small contractor prevented from performing by Covid self-isolation of principal.*

Martin Booker / Managing Director
Fibre Architects

Area of Expertise

- Building deign and development for high quality Residential & Commercial buildings
- Sustainable design and construction
- Extensive work involving Listed Buildings and in Conservation Areas.

Martin has over 30 years' experience in all sectors and sizes of building design projects with particular interest in sustainable design, especially innovative and cost effective design solutions and maximising development value.

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Martin Booker
Fibre Architect

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Question: Can defective construction work or materials on site (or any work or materials not in accordance with the contract drawings and specifications) be accepted rather than condemned and asked to be removed, remedied or replaced?

Answer:

Yes and an "appropriate deduction" made from the contract sum, but before doing so ensure the work in question will still fully comply with:

- ***The Planning Approval, including any relevant Planning Conditions***
- ***Current Building Regulations***
- ***Employers Requirements/Brief/Specification***
- ***BREEAM or any other applicable Environmental Standards***
- ***Any Relevant British Standards or Codes of Practice***
- ***The CDM Regulations***

MERMEROĞLU
LAW & CONSULTANCY

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Begum Mermeroglu / Owner
Mermeroglu Law &Consultancy

Area of Expertise

- Attorney at law since 2009
- Foreign Trade
- Public Procurement
- E trade expert
- Mediator & Arbitrator

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Begum Mermeroglu / Owner
Mermeroglu Law & Consultancy

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Question: Is it possible to finance an international investment arbitration expenses by a third party? In this case, what is the legal status of the third party?

Answer:

We see that the rules that previously prohibited the third party from covering the arbitration costs were Implemented in some countries, but this has been changed over time. We can give Australia, Singapore and Hong Kong as an example.

We see that the 3rd party financing method is used not only by companies in financial difficulties, but also by companies that do not have bankruptcy problems, only to share the risk.
The party to the dispute and the financier usually sign a financial contract.

In this agreement, the parties can determine the profit of the financier in a ratio over the amount to be won in the case, or they can agree on a specific return.

It is also possible to collect the financial provision by giving a share from the company share that is the party to the dispute.

Disclosure of the existence of the funder to the arbitrators and parties affects whether there is a conflict of interest, the impartiality and independence of the arbitrators, and the authority of the arbitral tribunal.

Begum Mermeroglu / Owner
Mermeroglu Law & Consultancy

BARTON LEGAL

Question: Is it possible to finance an international investment arbitration expenses by a third party? In this case, what is the legal status of the third party?

Answer continued:

Again, the International Bar Association's Conflict of Interest Manual only mentions the disclosure of significant financial relationships between the third-party financier and the actual party to the arbitration.

While some of the finance parties are willing to follow and supervise the case effectively, some are content to provide the finance only.

This status of the financier actively participating in the case may affect the jurisdiction element of the arbitration.

In the judgment of the Court of Cassation of UK , the financier's being a financier is not sufficient to be held liable for the litigation expenses of the other party, but also that she is willing to be a party to the proceedings.

On the other hand the Court of Cassation in Hong Kong ruled in a decision that third party financing is not contrary to public order and is obligatory if the third party proves that the third party has a legitimate interest in winning the case, that the party to the case needs third party financing in order to access justice, or that it is in processes such as bankruptcy.

39 Essex CHAMBERS

BARTON LEGAL

Karen Gough | Barrister
39 Essex Chambers

Area of Expertise

- Complex construction
- Engineering
- Professional Negligence
- General commercial disputes whether resolved by litigation, arbitration or ADT

Karen Gough practises internationally as counsel, attorney-at-law, arbitrator, adjudicator and ADR neutral. She has specialised, for more than 30 years, in complex construction, engineering, professional negligence and general commercial disputes whether resolved by litigation, arbitration or ADR. She represents a wide range of clients including governments, government agencies, local authorities, educational institutions, contractors, sub-contractors, and major commercial organisations.

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Karen Gough | Barrister
39 Essex Chambers

Question: Are there any material differences between the dispute resolution provisions, and particularly where statutory adjudication under the HGCRA is concerned, between NEC4's Dispute Resolution Services Contract and the new JCT DAB Documentation 2021?

Answer:

Yes.

The NEC4 dispute Resolution Services Contract has three elements/different dispute resolution provisions:

- ***W1 is where the statutory adjudication scheme is not applicable, and the parties choose ad hoc adjudication.***
- ***W2 provides for statutory adjudication under the Housing Grants, Construction and Regeneration Act 1996 (as amended) ("HGCRA").***
- ***W3 is the new option for NEC4 and it provides for the appointment of a Dispute Avoidance Board.***

Importantly, there is no overlap between the three processes. Parties can choose which process they wish to use.

In England and Wales, any party to a construction contract has a statutory right to adjudicate a dispute "at any time" either under the Contract [here option W2] or if the Contract contains no Act-compliant provisions, then under Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended).

If parties, not subject to the statutory adjudication regime in England and Wales, opt for W3, then in order to avail themselves of arbitration or litigation to resolve a dispute, all potential disputes must first be referred to a DAB for a [non-binding] recommendation and, if it is not accepted, a notice of dissatisfaction must be given within 4 weeks of its receipt in order to preserve the right to bring a claim in arbitration or litigation.

Roger ter Haar QC
Crown Office Chambers

Area of Expertise

- Arbitration
- Adjudication
- Construction
- Engineering
- Insurance

Roger ter Haar QC is an English QC who has practised as a barrister, adjudicator and arbitrator for 40 years at what is now Crown Office Chambers, Temple, London. He has a wide practice that is recognised by such directories as Chambers Directory, which list him as a leading silk for international arbitration, construction and engineering, commercial dispute resolution, insurance, property damage, professional negligence, and energy and natural resources.

In addition to now acting principally as arbitrator and adjudicator, he sits as a deputy high court judge in the Technology and Construction Court and other divisions of the High Court.

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Roger ter Haar QC
Crown Office Chambers

Question: Should discussions between opposing parties' experts in arbitrations and litigation cease to be held on a "without prejudice" basis?

Answer:

Yes: the practice is open to abuse by instructing lawyers particularly in international arbitration where those lawyers may not have experience of this process. It is unnecessary if the experts act in accordance with usually expected professional ethics to cloak the discussions by holding them on a without prejudice basis.

Chris Everett | Director
Capital Consulting International (CCi)

Chris is Director and Quantity Surveyor providing quantum expert and consultancy services to the construction and insurance markets.

Area of Expertise

- Quantum Expert
- Director of an international expert services consultancy, managing Quantum, Delay and Technical teams
- Quantum Expert on complex construction and engineering projects
- Providing Expert and Advocacy services to the construction and insurance markets
- Operating in the Construction Industry since 1999 for Employers, Multi-Disciplinary Consulting Engineers, Main Contractors and Sub-Contractors
- Experience in all major forms of ADR as Quantum Expert and representing parties in adjudication

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Chris Everett | Director
Capital Consulting International (CCi)

Question: If a Provisional Sum is defined but not instructed under the contract, can an Employer procure a third party to complete that work.

Answer:

Timing of the Provisional Sum works is key in determining the answer.

The Employer has no obligation to instruct a Provisional Sum, although it remains a part of the Contract Sum and the programme until Final Account. It cannot therefore be awarded to a third party, as this may be deemed a breach of contract.

After the contract works are complete and the Final Account settled, the Employer may procure the works from a third party without committing a breach.

Bunton Consulting

Chartered Quantity Surveyor, Arbiter

BARTON LEGAL

Len Bunton FRICS FCIArb Hon FRIAS | Partner
Bunton Consulting

Len Bunton is a quantity surveyor with a significant track record in the construction industry. He has been involved in commercial developments, health and defense projects, schools, industrial developments, power stations, hotel and leisure projects, golf courses, governmental buildings, private finance projects, public/private sector partnerships, manufacturing and production facilities.

Area of Expertise

- Adjudicator
- Arbitrator
- Expert Witness
- Conflict Avoidance Consultant

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Len Bunton FRICS FCIArb Hon FRIAS | Partner
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Bunton Consulting
Chartered Quantity Surveyor, Arbiter

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Question: Is there growing support for the RICS Conflict Avoidance Process?

Answer:

Yes, definitely in the UK. Resolve issues at an early stage before they become disputes.

As one of the members of the RICS conflict avoidance coalition steering group, it is clear that claims and disputes are viewed as an integral part of the construction process.

These may be for extensions of time, variations, failure to serve notice, or defects. These are usually resolved through the dispute mechanisms set out in the contract.

What the RICS initiate seeks to do is to resolve these at a much earlier stage, rather than waiting and only responding when a dispute arises.

Conflict avoidance requires clear, concise, careful and proper planning, of the strategy for the execution of a project. It is also about adopting a proactive conflict avoidance approach such as risk analysis, clarity in the contract documentation or partnering.

The full guidance note can be found here

Len Bunton FRICS FCIArb Hon FRIAS | Partner
Bunton Consulting

Bunton Consulting
Chartered Quantity Surveyor, Arbiter

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Question: Is there growing support for the RICS Conflict Avoidance Process?

Answer continued:

The CAP Working Group in Scotland includes public and private sector procuring authorities, construction organisations, design teams etc and we now have a number of projects proceeding with CAP forming an integral part. Cross Industry support is excellent with Scottish Government fully supporting CAP.

Jamie Gray | Founding Partner
NPG Abogados

Area of Expertise

- Specialist in Construction Law and Alternative Dispute Resolution

Jaime Gray has participated and continues to participate in the most important construction projects in Peru including, most recently, the New Terminal of Jorge Chávez Airport, Lima, and the Villa Panamericana Project for the Lima 2019 Pan American Games.

Has advised on various types of infrastructure projects, notably mining, ports and airports, hydroelectric power plants, water and sewage facilities, highways, bridges and tunnels as well as highly complex building projects such as luxury hotels and hospitals and on several of these projects he led the NPG contract administration staff.

In the area of dispute resolution, he is not only an arbitrator and Dispute Board member, but also specializes in the handling of disputes during the execution phase of the projects themselves. Has successfully represented parties in international ICC arbitrations as well as in others administered by local arbitration centres.

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Jamie Gray | Founding Partner
NPG Abogados

Question: Impact of Covid-19 on Liquidated Damages (LADs) within established form of contracts?

Answer:

- *For years, projects funded by financial institutions used EPC/Turnkey Lump Sum contracts;*
- *"Certainty of price" is the Holy Grail for owners, who transfer risk to contractors;*
- *Contractors charge a risk premium to cover "unfair" assignment of risk;*
- *Recently, owners are considering how to avoid payment of large risk premiums;*
- *Yes – possible to reach certainty of price & use collaborative approaches;*
- *How? Using a two-stage contractual approach:*
    1. *Pre-construction – Collaboration between parties e.g. establish objectives & KPI's which avoid high risk premium, exchange information, execution of early works;*
    2. *Construction (Design & Build) – Negotiate turnkey lump sum contract, target price or guaranteed maximum price contract = price certainty, without charging excessive risk premium;*
- *Investment in time and money involved, but change in participants behaviour is required.*

Chris Beirise | Partner
HKA Construction - Las Vegas

Area of Expertise

- Delay and quantum expert with over 32 years of construction industry experience.
- Has worked on numerous types of project in the construction and engineering industries, including airports, bridges, highways and tunnels, various types of buildings, power plants, railroads and water treatment plants throughout the world.

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Chris Beirise | Partner
HKA Construction

Question: Is the use of Teams/Zoom/Other Platforms effective for Mediations?

Answer: *I think the "jury" is still out on this issue, but based on the number of mediations heading back to in person as soon as mandates were lifted, I think most people didn't feel they were as effective.*

Why were they not as effective?
First: The usual mediation style puts people in conference rooms and away from their homes. Doing a mediation at home allows people to eat generally normally and what they want to eat, tend to emails, work on other matters, tend to family matters, etc much easier. Therefore the desire to get something resolved and go home is lessened leading to extended meditations.

Second: it is much harder to see and gauge people's reactions when presenting. Therefore understanding when you making an impact or the other side is confused about your presentation is much harder. Being able to judge body language is a powerful tool. Being able to exude certain body language is also a powerful tool.

Lastly: The ability to "make a deal" often comes down to relationships. Those relationships are not as easy over your computer, especially if they are not already established, to foster. I was just at a mediation that I don't think would have been successful if we had not been in rooms and gotten the key people together to forge the ultimate conclusion.

Chris Beirise | Partner
HKA Construction

Question: What are the advantages/pitfalls of Teams/Zoom/Other Platforms in relation to effective testimony?

Answer: It depends on which side of the table you sit on

Advantages

- ***No travel should mean more rested questioners and respondents***
- ***Reduced cost for the clients involved***
- ***More preparation time for everyone involved***
- ***More access to documents that might not have been brought to a deposition can allow a change in questioning or a deeper review of certain issues. Compare US and England and Wales.***

Disadvantages

- ***Tougher to gauge body language from either side***
- ***Technological breakdowns (internet access/audio clarity/proper lighting, etc.), whether real or convenient, can interrupt the flow of questioning or even delay the deposition entirely***
- ***Distractions from outside (family, pets, deliveries, etc.) that wouldn't exist in person***
- ***Less ability to monitor the person being questioned (cheat notes out of site from the screen, access to chat/text from others, etc.)***

EXPERT DETERMINATION CHAMBERS
Legal and engineering expertise

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Dr Donald Charrett BE (Hons), LLB (Hons), MConstLaw, DipLPSE, PhD, ProfCertArb, DipIntArb, FIEAust, FCIArb | Barrister Expert Determination Chambers

Area of Expertise

- Dispute resolution of construction disputes involving the intersection of complex technical and legal issues.

Dr Charrett is a Barrister at the Victorian Bar and practises in construction law as an Arbitrator, Expert Determiner, Mediator and Member of Dispute Boards. He is a member of the FIDIC President's List of Adjudicators. As Senior Fellow at Melbourne University, he co-presents a Master's course on international construction law.
Prior to becoming a lawyer, he worked as an engineer for over 30 years.
Dr Charrett has published widely and presented numerous conference papers and training courses. He is the author/joint author/editor of five books on construction law, including the recently published "The International Application of FIDIC Contracts: A Practical Guide".

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Donald Charrett (Hons), LLB (Hons), MConstLaw, DipLPSE, PhD, ProfCertArb, DipIntArb, FIEAust, FCIArb | Barrister
Expert Determination Chambers

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EXPERT DETERMINATION CHAMBERS
Legal and engineering expertise

Question: Will Building Information Modelling (BIM) make a substantial contribution to more successful construction projects?

Engineer's answer

Yes. BIM can substantially improve time, cost and quality outcomes.

The ability to share up-to-date documents in real time will lead to significant reductions in the time to prepare tender designs and to provide more timely responses to RFIs. Supplier's access to detailed drawings will reduce procurement time. The design team working off a common set of drawings will identify clashes at the design stage and significantly improve the quality of the design and thereby avoid rework in the field. Those time and quality savings will undoubtedly result in a lower overall cost of the project.

Lawyer's answer

It depends.

If the current silo approach to design, procurement and construction is maintained there will be little financial incentive for the significant investment required in hardware, software and training. Without that investment the potential benefits of BIM will not be achieved.

The successful implementation of BIM will require a paradigm shift in the way design and construction is procured, by focusing on the value added, rather than the cost. The benefits of BIM will only be achieved by a more collaborative approach that fully addresses the proper management of the BIM model throughout its life, IP issues, investment costs, and a rational allocation of the risks. This will require significant investment at the front end of a project but will result in substantial savings over the life-cycle of a project.

Carolann Watson | Associate Director
Walker Sime

Area of Expertise
Public Sector Projects

Having been a qualified QS for over 15 years, I have gained valuable experience in a range of sectors including Education, Health, Housing, Heritage, Sport & Leisure, Commercial spaces and Hospitality with individual project values ranging from £500k to £40m. I am passionate about construction and take great pride in the projects that I have been involved in no matter how big or small!

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Carolann Watson | Associate Director
Walker Sime

Question: Material Cost Increases – What's the current state of play?

Answer:

A further implication of the long lead times for construction materials is that they are increasing in price.
There is an unprecedented demand for materials due to amongst other things such as: homeowners having more available funds, saved from lockdowns to undertake DIY projects; increase in larger scale construction work & major Infrastructure projects; and projects re-starting after covid suspension.

This situation is made worse by material shortages causes by; reduced labour to produce materials during the pandemic (eg wood supplies); Brexit and increased paperwork and delays on imports; huge shortage in HGV drivers (primarily again Brexit); containers not being in the right place to facilitate intended shipping (Suez blockage; back log at Felixstowe and closure of Ningbo –Zhoushan port in China); pingdemic; and holiday backlogs. This was all aptly demonstrated by the temporary closure of British Steel to new orders in April 2021, blaming extreme high demand and their inability to produce or price accordingly

Examples of current price increases include:
Steel - rebar/structural/metal decking 25% plus July 2021
Paint 33% 2nd June 2021
Aggregate 4-7% June 202

Information From: Walker Sime - Quantity Surveying - Market Intelligence Report - Summer 2021 Date: 07 July 202

Laura Sherliker | Associate Director
The Fairhursts Design Group

Area of Expertise

Laura has an in depth involvement in the feasibility, design and management of a wide range of projects. Whatever the project, she applies the same attention to composition, form and quality of implementation. She works closely with her clients and her project team in order to develop an appropriate design, managing the project from inception through to completion

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Laura Sherliker | Associate Director
The Fairhursts Design Group

Question: What are the top tips to communicate with the client about material delays?

Answer:

If there are delays in the supply, delivery or simply provision of materials on a project, one of the likely consequences is that new/alternative materials will be suggested and introduced in order to keep the project programme moving.

It's really important to communicate this to the client at the earliest possible point when you are aware of or think there might be delays to the programme, or consequences from any changes to the nature of the materials used.

Should new materials be used, it is critical to check the following:

- ***Is the new material meeting the specifications outlined in the original contract?***
- ***Are the client requirements still going to be met from the original contract?***
- ***Are fire safety requirements considered and met with the introduction of the new material?***
- ***Do the materials work or fit with other materials from a technical point of view?***
- ***Do they comply with any contractual requirements as to deleterious material?***

Laura Sherliker | Associate Director
The Fairhursts Design Group

Question: What are the top tips to communicate with the client about material delays?

Answer continued:

What is most important is to allow time for this process to happen. This process is also in addition to any time that may already have been lost or will be lost from issues surrounding issues with materials.

What is critical is to get all the relevant parties and specialists to sign off a critical change to the design. If not this can have bigger implications on budget and programme later down the line.

The above comments also apply broadly to issues arising from other current issues such as pingdemic, holidays and issues with labour.

Rance Booth Smith Architects

Allan Booth | Director
Rance Booth Smith Architects

BARTON LEGAL

Area of Expertise

- Projects in:
  - Health
  - Education
  - Commercial
  - Industrial and public sector projects

Allan was a founder of Rance Booth Smith Architects in 1982. He has over 35 years' experience in health, education, commercial, industrial and public sector projects.

Within the public sector, Allan has run major master-planning projects for Bradford Council, the refurbishment of Shibden Park in Halifax and the £100m Shipley Sustainable Resource Park.

www.rbsarchitects.co.uk

Allan Booth | Director
Rance Booth Smith Architects

Rance Booth Smith Architects

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Question: You are the contract administrator for a project which is on site. A sub-contractor calls you to say that the main contractor has gone bust and trades are leaving site. What are the first things you should do?

Answer:

- *Check correct & make arrangements to secure the site because if the sub-contractor has not been paid by the contractor, he may remove goods the client has paid for.*
- *Inform the client and advise to notify insurers.*
- *Other tasks including a site inspection, get others to complete the works, assuming that an arrangement for completion is not made with the insolvency practitioner appointed.*

Atkin Chambers Barristers

Nicholas Dennys QC
Atkin Chambers

BARTON LEGAL

Area of Expertise

- Arbitration
- Construction & Engineering
- Road and rail transport
- Infrastructure
- Oil and gas
- Overseas disputes

He also acts as arbitrator, adjudicator and mediator. He has acted as party-nominated arbitrator, chairman and sole arbitrator on numerous occasions in domestic and international disputes and conducts adjudications early neutral valuations and other forms of dispute resolution.
He has been involved in disputes involving foreign law including in India, Hong Kong, Singapore, UAE, USA (including New York, Texas, California), Europe (including Spain and Poland), South Africa and Gibraltar.
Nicholas has been recognised for many years by the legal directories, Chambers and Partners (UK, Global and Asia) as well as The Legal 500, as a leading silk in the fields of construction, professional negligence, international arbitration, professional negligence and information technology.

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Nicholas Dennys QC
Atkin Chambers

Atkin Chambers Barristers

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Question: Is the concept of fiduciary duty useful in defining the relationship between an expert witness and his or her client when determining whether a conflict of interest has arisen? (Secretariat v A Company [2021] EWCA Civ 6)

Answer:

Not in my view. Whilst it is obvious that an expert should not advise two clients with different interests, the reason is not that the expert is a fiduciary in any conventional sense but rather that the expert could not properly fulfil his obligations to both clients and the court of Tribunal if he or she was trying to serve two masters.

39 Essex CHAMBERS

BARTON LEGAL

Paul Darling OBE QC
39 Essex Chambers

Area of Expertise

- Construction & Engineering
- Adjudication
- Commercial Litigation & Sale of Goods
- Professional Negligence
- Domestic & International Arbitration
- Procurement
- Health & Safety

Paul Darling OBE QC has established a formidable reputation as an advocate in all types and levels of tribunals all over the world. He specialises in complex cases which feature multiple parties, large teams, and high volumes of material, and is often brought in by clients at short notice, late in proceedings. An ability to work with colleagues from any jurisdiction, and to grasp detail, strategy, and tactics quickly has allowed Paul to develop a practice which has taken him to every major jurisdiction, appearing in a wide variety of construction, energy, and commercial matters.

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Paul Darling OBE QC
39 Essex Chambers

Question: How can you win 6-3 and lose?

Answer:

In the case of Triplepoint v PTT, Triplepoint succeeded in persuading at first instance Judge (Jefford J) and the Court of Appeal (Lewison, Floyd LJJ and Rupert Jackson) that the reference to negligence as an exclusion from a limitation of liability applied only to the tort of negligence not a contractual duty to exercise reasonable skill and care. In the Supreme Court two of the Judges agreed (Lord Sales and Lord Hodge) but the majority (Lady Arden, Lord Burroughs and Lord Leggatt) disagreed. So despite having 6 Judges (and those 6 Judges), Triplepoint failed.

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NEXT WEBINAR

Subject: Is Your Dispute Resolution Process Fit For Purpose

Date: Wednesday 23 September at 11am

Speakers: Marion Smith QC, 39 Essex Chambers

Robert Gerrard, Thomas Telford Ltd

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Thank You