



Learning the science of construction claims

Andy Hewitt MCIInstCES FQSi ACIOB, Course Developer and Tutor, Claims Class

TRADITIONALLY, claims within the construction industry were handled by the parties at project level. The contractor's quantity surveyor, for example, would compile the claim and the architect or engineer would respond with support from the client's quantity surveyor.

The economic recession of the late 1980s and early 1990s hit the UK construction industry very hard however and, as may be observed whenever there is an economic downturn, contractors were obliged to tender at very low or non-existent margins. One of the ways in which they sought to improve their returns was to turn to the claims provisions contained within the contract, with the result that this era saw a proliferation of claims being brought both against clients and subcontractors. Many claimants and respondents however, found that their existing teams had little experience in the often complicated field of claims and contract law, and consequently turned to specialists to assist them. Thus, the claims specialist or consultant, if not exactly created during this period, was at least significantly developed.

Coming out of recession, the traditional ways of procuring construction contracts changed significantly and clients sought more aggressive procurement strategies in terms of both time and costs. More design and build projects came onto the market, more fast-track schemes were launched and more projects were tendered on the basis of plans and specifications rather than by way of an accurate bill of quantities. These changes brought more ambiguity and conflict to the procedure and, consequently, claims became more prolific.

These days, claims are common within the industry. Whether a claim is a relatively straightforward one brought by a contractor to establish entitlement to payment for a variation, or a complicated claim for an extension of time and payment for associated prolongation, in

order for it to succeed and be dealt with in a timely fashion, the claim must be prepared in a professional and effective manner. Additionally, every claim submitted requires a response and for the proper management of a project and to bring claims to resolution, it is of equal importance that responses are prepared with similar principles in mind.

Whether dealing with claims at project level or acting as a specialist claims practitioner, professionals who have a good understanding of the science of claims are always in demand within the industry and are assets to their employers because they can significantly affect a company's or project's profitability. Claims practitioners are amongst the highest earners in construction and, unlike many professions in the industry, they remain in demand even in times when the economic climate is unfavourable. Unless one has been fortunate to join a claims consultancy where training is provided, the problem until recently has been how to acquire the necessary skills to attain such a position. Most people involved in claims have just picked it up as they went along – not exactly the perfect method of education.

I recognised this situation many years ago when I needed to produce claims for projects and unsuccessfully attempted to find a 'Claims for Dummies' type book [Andy Hewitt went on to author *Construction Claims and Responses: Effective Writing and Presentation*]. There are, of course, several heavyweight publications, which deal with the subject of claims from a legal or contractual point of view, but nothing at the time was available to explain how to properly write and present claims. This situation became even more apparent in later years, when part of my job was to respond to and produce determinations on contractor's claims. Most of the claims I reviewed during this time were lacking in even the most basic elements that are essential to establish entitlement. Construction law specialist and industry commentator Roger Knowles agrees with this, believing that in excess of half the claims prepared fail to follow the simple procedure of including the essential information that is required to properly produce a determination of a claim.

Professionals wanting to move into claims consultancy need to learn how to correctly identify situations that give rise to a claim, how to calculate the value of a claim and how, by way of a step by step process, to develop a submission into a persuasive argument which will help it to succeed. Claims avoidance and claim management are also important tools in the claims professional's skill set and good practice in contract administration will steer claims management throughout the life of a project.

Claims practitioners are amongst the highest earners in construction and, unlike many professions in the industry, they remain in demand even in times when the economic climate is unfavourable.

Andy Hewitt MCIInstCES FQSi ACIOB,
Course Developer and Tutor, Claims Class
www.constructionclaimsclass.com