

The Journal

RICS Construction Journal

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Quantity surveying

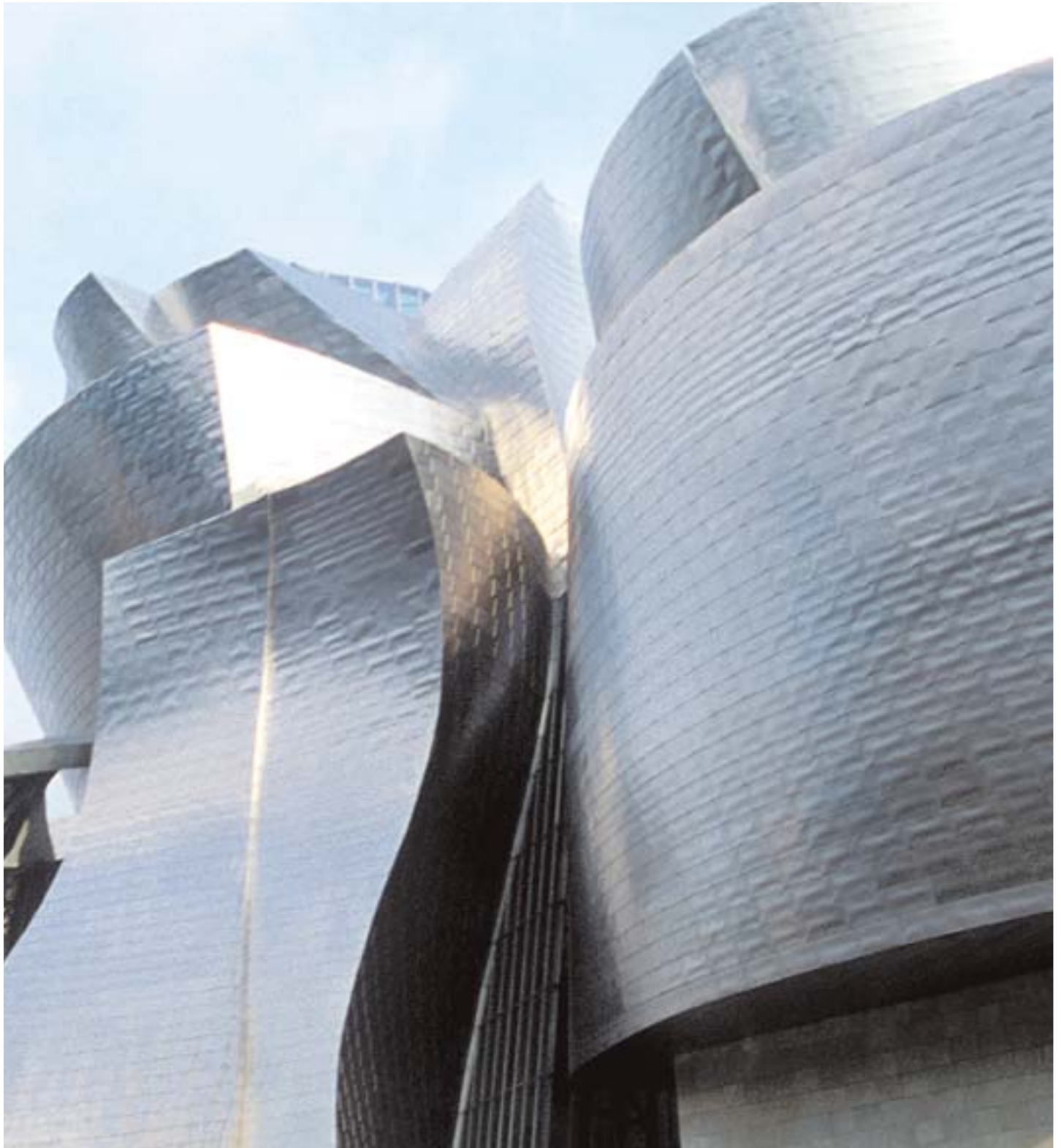
The black art of WLC - how revenue-funded projects create opportunities for QSs

Construction

Contractual differences - NEC3 and JCT 2005 compared

Project management

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Front cover: The Guggenheim Museum in Bilbao – an example of innovative 'blue sky thinking' and construction. (see page 4)

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Finding the time to innovate



Michael Byng introduces your new *RICS Construction Journal* and challenges members to consider 'blue sky thinking' as an investment not an expense

Welcome to the first issue of the *RICS Construction Journal*, which will replace the *Construction Bulletin* but will retain many of its more popular features. We have used this as an opportunity to develop the magazine by widening its technical and professional content, and increasing its frequency from quarterly to bi-monthly. *The Journal* is aimed at quantity surveyors and project managers, and all members working in the construction industry.

To those of you who have contacted our faculties over the last few months with suggested improvements to this publication, thank you for your feedback and I hope you can see the fruits of your labour. I have discussed these changes with Richard Schofield of the Project Management Faculty and we will work with the editorial team to ensure *The Journal* develops its cross-faculty focus in the future. If you have any further ideas on how we can improve, please contact us on qsandconstruction.faculty@rics.org or pm.faculty@rics.org. The quality and content of the magazine will improve the more we hear from you.

"An innovative organisation will promote networking, cultivate links with its customers and allow its staff the time and space to think and generate new ideas"

A changing landscape

I recently had an opportunity to look through the last few issues of *CQS*, the magazine produced by the RICS for the old QS Division. These covered issues such as design and build, project management, rethinking retention, using IT, alternative methods for pricing preliminaries and developing the APC. My first thought was how little has changed since 1993.

However, on reflection, I came to the view that the opposite is true. While the issues are the same, the profession has continued to change and adjust to a new construction industry landscape in cost and project management terms. In particular, the services offered to clients by consultants and contractors have improved the level of cost and programme certainty.

I believe our faculties and the RICS are playing their part in this changing environment and articles

such as the one on Forms of Appointment outline an example project we now have underway. Although there is a long way to go, these are indicative of our commitment to a forward-thinking agenda centred on increasing deliverables and output from the organisation.

However, as a profession we rarely shout about our successes and our efforts to implement change. I am particularly pleased, therefore, that the theme for this issue is innovation. The articles featuring two of the recent winners at the QS News Awards – Thomson Gray and Turner & Townsend – show two different approaches to applying innovation. Although very different in size, it is clear that these two firms have focused on at least one common trait – service differentiation.

Watching the clock

We should all be inspired by and learn from their experiences, particularly the way they have focused on improving service delivery to their clients. They also demonstrate how they have overcome one of the biggest challenges to successful innovation and the exploitation of new ideas: time pressure.

The pace of change - driven by factors such as changing consumer needs, competition, globalisation, speed of communication and technology - is only increasing and makes it difficult to develop a responsive and flexible business strategy. Time pressure can also make us focus on addressing the latest urgent paper or email that lands on our desk – rather than actioning the most important idea that will ensure our firm's long-term survival.

An innovative organisation will promote networking, cultivate links with its customers and allow its staff the time and space to think and generate new ideas. Innovative management is essential to create the right climate for this.

When was the last time you allocated 10% of your working week to innovation? Many of us find it difficult to accommodate an already overloaded schedule and can't afford to spend time on 'blue sky thinking'. But we shouldn't think of this time as an expense; we should think of it as an investment.

Charles Darwin is often quoted as saying: "The species that survived were not the most intelligent – they were the most adaptable to change."

When was the last time innovation was on your management meeting agenda?

Michael Byng
Chairman of the QS and Construction Faculty
qsandconstruction.faculty@rics.org

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The black art of whole life costing

The trend for revenue-funded projects creates an opportunity for quantity surveyors, says John Kelly, if only they would use whole life costing



Thirty years on from PA Stone and his work at the BRE, whole life costing (WLC) is still considered a black art with sufficient mystique for many clients to shun it and many consultant surveyors to avoid offering it as an integral part of their quantity surveying service. This is in spite of the HM Treasury defining value for money as: "The optimum combination of whole life costs and quality (or fitness for purpose) to meet user requirements."

Reasons for avoidance

Why are 21st-century surveyors avoiding WLC? I offer the following:

- an inability to correctly formulate the problem. Before being in a position to undertake a WLC calculation the problem has to be properly framed, e.g. is the problem one of comparing options?
 - if no, is it a financial prediction for a single option?
 - if yes, do the options relate to a project that must be undertaken or a project that is discretionary, e.g. an insulation retrofit?
- confusion over the time frame. Clearly an 80- or 60-year prediction is nonsense. Could someone in 1926 or even 1946 predict the form of a healthcare facility in 2006?
- the absence of data. Many consider collecting hard facilities management data to be a complete waste of time due to technological advances, changes in building codes, the economic environment etc
- confusion over the different WLC approaches using present value, annual equivalent techniques or other financial methods
- misunderstandings of WLC use in specific situations, e.g. PPP/PFI projects
- confusion over the discount rate, e.g. the use of HM Treasury discount rate, internal rate of return and the relevance of the bank base rate
- lack of skill in determining how to include uncertainty and risk
- uncertainty of what to do with the answers once obtained
- fear of audit.

So why bother?

The above is a formidable list of reasons why not to do WLC, so why should we?

The primary reason is that quantity surveyors have traditionally been the experts in all forms of construction cost analysis, cost planning and cost control - but to restrict ourselves to initial capital costs is a mistake.

"An 80- or 60-year prediction is nonsense. Could someone in 1926 or even 1946 predict the form of a healthcare facility in 2006?"

Secondly, best value and value for money drives us towards giving advice on a whole life cost basis. Clients are seeking the best of a number of solutions and therefore option appraisal has come to the fore, demanding a judgement based on whole life costs.

Thirdly, we have to be prepared to give cost advice on the sustainability of various options.

In addition, we are seeing maturity in the PPP arena. To date, the low-risk strategy for a 25-year concession period is to build new, preferably on a greenfield site, and therefore retain high control over the risks associated with construction and facilities management. This is not a sustainable strategy.

Increasing JVs?

Capital-funded projects are declining as a percentage of all work undertaken and we can assume this trend will continue. More projects in public and private arenas will be paid for out of revenue, demanding some form of joint venture arrangement. Revenue projects in the future must include refurbishment work for which the current value, risk and WLC models can be considered wanting. In my opinion, herein lies the opportunity.

As quantity surveyors, we should develop a standard method and approach for each facet of WLC. This will not be an easy task and may need discussion with organisations such as the Financial Reporting Council and Accounting Standards Board to clarify the tax implications of setting reserves for future expenditure, sinking funds, etc.

The number crunching is easy. It is the framing of the problem, and formulating the advice based upon the numeric answers, that will preserve and enhance our leading-edge position in this area.

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A family of titles

In recent years, the RICS has struggled to effectively communicate professional knowledge (Professional, Technical and Practice information) to members in a readily accessible and easily digestible manner. In this regard, the Building Surveying Faculty decided from an early stage to produce a *Journal* as the primary outlet for communicating professional knowledge to its members, while the Construction Faculty launched the *Construction Bulletin*. However, this is about to change.

As part of the Brooke Review's implementation process, it was agreed there was a need for the RICS to re-establish more formal,

relevant and timely communication of professional knowledge in hard copy to its members. Since then, work has been taking place to determine the scope, nature and range of journals needed to achieve this connectivity.

The result is a plan for a suite of five bi-monthly journals addressing the professional knowledge needs of members. In addition to the existing Building Surveying publication, there will be new journals for Construction, Residential Property, Commercial Property and Land.

While the family title used for all official RICS professional publications will be *The Journal*, each will be specifically focussed on a particular market and

readership, as we have done for many years with Building Surveying. This *Construction Journal* will cover the quantity surveying, construction and project management specialisms. Each journal will address matters relevant to the market, including technical, business practice, research and regulatory issues.

You are reading one of the first of these new journals, which will be distributed in April with the publication for Residential Property and followed by the Commercial Property Journal later in the year.

Greg Ward
Director of Faculties and Forums
gward@rics.org



Sustainable Construction and Energy Review consultations

Alun Michael, Minister of State for Industry and the Regions, launched a new consultation in February 2006 aimed at creating a framework within which the industry can take account of the dynamics of the modern construction environment. This will cover topics such as:

- building design and the Code for Sustainable Homes
- new construction methods and best practice
- improved embedded energy systems
- waste minimisation
- enhancement of biodiversity
- greater efficiency in carbon emissions
- the impact of climate change.

The draft *Strategy for Sustainable Construction Report 2006* consultation seeks views from key construction stakeholders on the direction they think the industry should take with a view to developing and maintaining a more sustainable future.

We would like to know if you think the draft:

- goes too far, not far enough or is sufficiently flexible
- has an appropriate structure and content
- will prove cost-effective and practical

- has targets and visions that present a challenging but achievable set of objectives over the period from now until 2020.

The closing date for the consultation is 26 April 2006 and the consultation document can be downloaded from www.dti.gov.uk/construction/sustain/sustainreport.pdf

We would also like to receive your views on the DTI's energy review consultation *Our Energy Challenge: Securing Clean Affordable Energy for the Long Term*. This paper invites comments on the medium and long-term energy policy issues to be considered in the UK Government's energy review. The closing date is 14 April 2006 and the paper can be accessed at www.dti.gov.uk/energy/review

It is very important that the RICS responds to this key consultation paper, as energy is fundamental to the issue of sustainability. We will be using our existing research (e.g. on climate change and clean coal as well as the enormous amount of work carried out by some of our members) to help inform and develop our position.

Please contact David Carun on qsandconstruction.faculty@rics.org with your views and comments as soon as possible.

Recovery and Insolvency Forum

Do you have an interest in business recovery or insolvency? If so, register with the RICS Recovery & Insolvency Forum.

Membership is open to academics and all providers of professional services (e.g. lawyers, accountants, surveyors, valuers etc) and aims to provide opportunities for networking and debate, promote best practice and provide a central source of information on recovery and insolvency issues.

The forum will be launched in May 2006. If you would like to be involved, email your name, address and telephone number (RICS members please include membership number) to Joanne Brady at rif@rics.org

Project Management Threesixty

Building on the success of 'Project Management Week' held at the RICS in April 2005, the Project Management Faculty is to hold a 'Project Management Threesixty' event, which will take place in May 2006 at the RICS headquarters in London.

This CPD event will feature a series of seminars on various aspects of project management, including programming and scheduling, project

insurance, PM from the client's perspective and IT. The conference will consist of six modules spread over two Tuesdays – 16 and 23 May. Delegates are able to book as many of the modules as they wish over the two days. This event will again be offered free of charge to RICS members. For further information and booking details please email Jessica Ellery at pm.faculty@rics.org

Netregs

Construction businesses can now keep abreast of changes to environmental legislation, thanks to a new registration tool from NetRegs. www.netregs.gov.uk is a free website offering practical advice to small businesses on their environmental obligations.

NetRegs is a joint initiative between the Environment Agency in England and Wales, the Scottish Environment Protection Agency and the Environment and Heritage Service (Northern Ireland). The website currently offers specific guidelines for 105 industry sectors in England, Wales and Scotland and 50 industry sectors in Northern Ireland.

The new tool is launched as the 2005 SME-nvironment survey (conducted through interviews with 5,554 UK SMEs including 397 businesses from the construction sector) reveals that 86% of small businesses in the construction sector could not name any environmental legislation and almost half (45%) want more help and advice on environmental issues.

Building firms can register on NetRegs to receive free email updates about environmental issues and links to further information and advice. The e-alerts can be personalised to provide information relating to the construction sector, such as

changes to the rules on hazardous waste and mobile-plant licensing, as well as more general environmental updates on subjects including water and land.

By ensuring they comply with environmental legislation, smaller building companies can avoid the risk of prosecution and also reap significant commercial benefits through cost savings, particularly in light of the rising costs of waste disposal. According to the SME-nvironment survey, 61% of construction businesses believed that complying with environmental legislation could help cut operating costs, while 83% thought it could benefit relations with customers.

Construction Ambassador programme

The CITB is looking for individuals to become Construction Ambassadors. You will act as the face of the industry, share your positive experiences with young people and inspire them to see the opportunities the construction industry offers. You don't have to be from a particular background – you might have entered as a graduate, be a quantity surveyor or project manager, or might work for a contractor – but you must be able to motivate

young people.

The Construction Ambassadors programme is nationally co-ordinated by CITB – Construction Skills through its network of regional offices. If this interests you and you are available for three or more events a year, contact David Carun on qsandconstruction.faculty@rics.org or the CITB at southerncounties.office@citb.org.uk or +44 (0)23 8062 0505.

PPPs – where they are heading?



RICS met the European Commission in February 2006 to discuss the future agenda for Public Private Partnerships (PPPs). After calling for a set of common definitions and a Community level policy for PPPs for some time, the RICS is now in dialogue with the Commission regarding an EU directive to open concessions to competition, and EU guidance on institutionalised PPPs, including some in-house contracts.

Under current EU law, there is no specific system governing the choice of private partners for PPPs. Those qualifying as 'public contracts' (under the Directives that co-ordinate procedures for the award of public contracts) must comply with the detailed provisions of those Directives; 'works concessions' are covered only by a few scattered provisions of secondary legislation; and 'service concessions' are not covered by the 'public contracts' Directives at all.

A key feature of concessions is the right of the concessionaire to exploit the construction or service that was granted as a reward for having erected the construction or delivered the service. The main difference from 'public contracts' is the risk inherent in this exploitation that the concessionaire (usually providing the funding for at least parts of the relevant projects) has to bear. Such private capital involvement is considered to be one of the key incentives for public authorities to enter into PPPs.

Currently, EU public procurement law fully applies to public contracts, whereas there are only a few stipulations for the award of concessions. The Commission Directorate responsible for public procurement has expressed a preference for legislation to tackle the issue, i.e. an EU Directive on concessions.

The second issue where the Commission sees a need for follow-up at EU level is the question of how to apply procurement law to institutionalised PPPs.

If you want to input to the PPP discussions the RICS is having with the European Commission, please contact David Carun at qsandconstruction.faculty@rics.org

Currently, EU public procurement law fully applies to public contracts, whereas there are only a few stipulations for the award of concessions

All about risk

The RICS Building Engineering Services Business Group, hosted by the RICS Quantity Surveying and Construction Faculty, invites you to a free, one-day event on risk when procuring building engineering services. The questions of whether the industry is passing down risk inappropriately, and if this can be alleviated with improved methods of procurement, will form the basis of the event.

Called 'All about risk', you should attend this event if you need to know about, or can contribute towards, best practice in:

- identification of risk and how each party goes about mitigating, managing or passing it on
- existing and alternative methods of procurement and risk analysis
- identification of parties best placed to take the risk
- consequences of taking on and later attempting to transfer risk.

The event is on 31 May 2006 and will be at the RICS headquarters in London. For more information and to register, please contact David Carun at qsandconstruction.faculty@rics.org

Contractual differences

Kevin Greene highlights some of the significant differences between the NEC3 Engineering and Construction Contract and JCT 2005, and invites comment from leading proponents of each

With its 2005 suite of contracts, the JCT is seeking to consolidate its pre-eminent position in the UK construction market. While NEC contracts are used for a variety of construction and engineering projects throughout the world, they have yet to challenge the JCT's dominance in the building sector. Can the new NEC3 Engineering and Construction Contract (ECC) compete with JCT 2005 in the domestic market?

Compensation Events

ECC sets strict time limits on the assessment of compensation events. In certain circumstances, if the contractor does not notify a compensation event within eight weeks of becoming aware of the event, then he is barred from doing so later. Likewise, if the project manager does not notify the contractor of his acceptance of a quotation for a compensation event within two weeks of receiving this, the quotation is deemed accepted if the project manager still fails to respond after a further notice is given by the contractor. Delay and loss/expense are therefore dealt with in a short time of a compensation event arising.

JCT 2005 does not set absolute time limits for submissions and assessment of Relevant Matters. As a result, submissions may be rolled-up through the course of a project, only to be decided when agreeing the final account. ECC ensures that claims are dealt with promptly, whereas JCT 2005 avoids setting time limits in case it leads to arbitrary results.

Key Dates

Under JCT 2005 the only contractual deadline the

contractor needs to worry about is the date for completion (or sectional completion) of the works. Failure to achieve completion on time can lead to the deduction of liquidated damages. ECC includes these provisions but also introduces the concept of Key Dates. This allows the employer to specify that certain conditions within a project must be achieved by set dates. If a Key Date is missed, then the cost incurred by the employer, either directly or by paying other contractors, can be recovered from the contractor.

ECC requires the contractor to produce a programme for acceptance by the project manager showing the Key Dates and to explain how it proposes to carry out each operation. Such information increases the project

manager's confidence that the works will be completed on time and reinforces the idea that the project is being performed by a team, all of whom have a say in how the works are carried out. The advocates of ECC say that this places a greater emphasis on integrated teamworking as opposed to JCT 2005, which is generally more at arm's length with considerable powers being vested in the architect/contract administrator.



Third Party Rights

A key requirement in any construction project is the need for third parties to have recourse against the contractor for defective work. Typically, this is demanded by tenants, purchasers and funders.

Both ECC and JCT 2005 make provision for the contract to bestow rights on third parties through the Contracts (Rights of Third Parties) Act 1999.

The NEC view

NEC is and has been competing with JCT in the domestic market for a while. It is a suite of contracts designed around sound project management principles and processes. It is used by many public and private sector clients for both one-off projects and very significant programmes of work. OGC's endorsement of NEC3 is likely to greatly increase the rate of take up of NEC.

Compensation Events

The intention of the ECC procedures is to focus the parties' minds on agreeing the time and cost implications of each compensation event within a relatively short period after each event is notified. This creates a rolling final account

throughout the currency of the contract rather than leave it to the end.

Key Dates

While Key Dates are important, where used, to mandate a contractual requirement to achieve a certain condition by a certain date, the uncertainty of the amount of potential employer losses is a risk to the contractor. This can be capped through the limitation of liability provisions.

The contractor is also required to produce and maintain an up-to-date realistic programme. The key emphasis of ECC is to solve problems in a co-operative manner; programmes will aid this process. Such matters are raised by early warnings and dealt with in risk reduction meetings.

Third Party Rights

This should not deter any employer from using ECC. Collateral warranties can be added quite easily if necessary, the wording generally causes most problems in practice. The ECC emphasis is more towards using the Act.

Pricing and Payment Mechanism

The objectives of the design of the ECC were to improve on clarity, simplicity, flexibility and act as a stimulus to good management when compared to traditional contracts. Of course, the industry requires competent people to prepare tenders and administer contracts; this has to be the case whichever form of contract is used.

Robert Gerrard
NEC consultant

The JCT view

JCT contracts are agreed by representatives of the supply and demand sides of the construction industry. Although designed for the home construction market they are used in jurisdictions throughout the world.

JCT 2005 provides diversity to meet various situations; they do not assume 'one size fits all' but offer different sets of provisions to provide flexibility and meet needs. For example, the detail provided in the Standard Building Contract is not appropriate for the Minor Works Building Contract, nor is it necessarily relevant to the approach adopted in the Major Project Construction Contract.

Compensation Events

JCT 2005 provides that requests for extensions of time and for loss and expense are to

be notified promptly; there are time limits for decisions on extensions of time; loss and expense claims are to be valued as soon as a case is made out; and the Contractor is obliged to furnish necessary further information on request. Contract Administrators are therefore empowered to act promptly. It is not the intention that assessments be rolled up, but difficult issues of causation and effect can arise. It is in the interests of the parties and progress of the works that these issues be properly considered, rather than to have hasty decisions against inappropriate deadlines leading to dispute.

Key Dates

As NEC rightly accepts, a Key Date system may only be appropriate in limited circumstances, e.g. construction management and infrastructure for

process plant projects. Establishment of a programme of key dates is not precluded under JCT contracts nor is 'early warning' information; indeed, there are a number of provisions that empower their use.

Third Party Rights

The merits or otherwise of utilising the Contracts (Rights of Third Parties) Act 1999 as compared with collateral warranties will become apparent over time. Meanwhile, JCT enables users to choose.

Pricing and Payment Mechanism

The comprehensive provisions that provide for various payment options reflect what is generally recognised as good practice.

Professor Peter Hibberd
The Joint Contracts Tribunal



The reality, however, is that many employers do not make use of the Act, preferring to procure collateral warranties from the contractor and its supply chain. ECC makes no provision for warranties, whereas JCT 2005 gives the employer a choice between warranties and third party rights. Until employers and third parties are prepared to rely on third party rights, the lack of provision for warranties in ECC may deter some employers from using it.

Pricing and Payment Mechanism

ECC is a single contract where parties choose a payment mechanism by selecting one of the main payment options. JCT 2005 provides different contracts for different payment methods. ECC is a modular 'pick and mix' contract

which is flexible but, say advocates of JCT 2005, only as good as the persons who complete it.

Conclusion

While there are differences between ECC and JCT 2005, proponents of each consider them to be flexible enough for use on many different types of project, both in the UK and overseas. The key to harnessing this flexibility lies with professionals who have a grasp of the project requirements, understand the contract mechanisms they are dealing with and exercise care when completing and administering the contract.

Kevin Greene
Partner
Kirkpatrick & Lockhart Nicholson
Graham LLP

An independent view

The NEC's focus on good management, co-operation and early settlement of time and money claims is admirable, but some will doubt whether such lofty aims can be achieved consistently in the rough and ready world of the UK construction industry. The client, consultants and contractor will not only have to change their philosophy when opting for an NEC standard form but, for these forms to produce the desired results, they will also have to consider increasing the level of resources allocated to the project.

The JCT standard form of contract represents the 'devil you know'. Most professionals and managers in the building industry will have used JCT forms many times and will be comfortable with them. The latest forms are shorter and better laid out than their predecessors but, at times, the JCT remain attached to the use of overlong sentences and sub-clause numbering but their forms do aim to promote an ethos of co-operation.

These standard forms are different in many respects and the choice of which one to use is likely to depend on various factors, which should be discussed with the client when deciding on the most appropriate procurement strategy for a particular project.

Christopher Linnett
Construction Adjudicator

Getting in on the Act

Chris Dancaster, chairman of the RICS Dispute Resolution Faculty, summarises the status of the DTI's consultation on amendments to the Housing Grants, Construction and Regeneration Act

When the Housing Grants, Construction and Regeneration Act 1996 (the Act) was passed, the Government said the new legislation would remain under review.

There was a consultation in 2001 on adjudication that resulted in a promise by the then Construction Minister that 'Tolent' clauses (contractual agreements that require one party to pay both parties' costs of an adjudication come what may) would be outlawed. However, this became a lower priority for the Government and was not actioned.

Industry responses

The first real sign of progress was when the Chancellor of the Exchequer, Gordon Brown, announced a review of Part II of the Act (which deals with construction contracts) in the Spring 2004 Budget, with the results being published in September 2004.

A consultation based on the suggestions from this review followed, and closed in June 2005 after 356 responses had been received.

A report on this consultation was published on 16th January 2006 and set out those suggestions that the DTI intends to take forward, and those that it does not.

The principal matters the DTI proposes to action are:

- amending the current requirements for an adequate payment mechanism and replacing them with a requirement for certification by the payer or a third party and, where such a certificate is not issued, a certificate by the payee
- outlawing any contractual requirement that payment be related to amounts certified under a superior contract ('pay

when certified' and 'pay what certified')

- improving the right of suspension under s113 of the Act to allow costs to be claimed as a straightforward loss and expense, and to allow a further extension of time for remobilisation
- preventing adjudicators from deciding that their awards must be placed with a trustee stakeholder
- providing a right for adjudicators to be paid when they stand down for want of jurisdiction
- allowing an adjudicator to open up a 'final and conclusive' decision when it relates to an interim payment
- setting a basic position that each party pays its own costs of an adjudication, with the adjudicator deciding liability for his own fees and outlawing contractual agreements that say otherwise. The parties can, however, decide otherwise after the dispute has been referred to an adjudicator.

Strong opinions

The DTI did not address the issue of 'contracts in writing' in the consultation and this generated some vociferous views on the omission. This results from the decision of the Court of Appeal in *RJT v DM Engineering*, which confirmed exhaustive requirements as to the form of a contract and for it to be 'in writing' under the Act. It is understood that the DTI has been persuaded this is a considerable concern for the industry as it is being used to avoid adjudication by unscrupulous defendants. However, it is not yet clear whether the DTI will reconsider its decision to take no action.

The DTI has decided not to

take forward the following issues arising from the review:

- banning cross-contract set-off clauses
- removing 'pay when paid' clauses in cases of insolvency
- requiring stage payments for materials off-site
- allowing adjudicators to rule on their own jurisdiction in certain circumstances
- providing adjudicators with statutory immunity
- requiring a single adjudication procedure.

Overall, the proposals appear to follow the intentions of the Act to improve payment practices. Predictably however, there is concern among main contractors but some satisfaction among sub-contractors.

The next stage is for the DTI to draft its proposals for the revised wording of the Act. The consultation on proposed amendments will end in the spring of 2006, with completion and conclusion of the review in the summer of 2006 in time for the 2006/7 parliamentary session.

The DTI has also set up a 'Sounding Board' and is seeking to engage the industry to contribute towards the development of these proposals. Comments and submissions can be made via qsandconstruction.faculty@rics.org

References

The analysis document is available at: www.dti.gov.uk/construction/hgcra/hgcralead.htm

Chris Dancaster
FRICS DipICarb FCI Arb
Chairman of the RICS Dispute Resolution Faculty and member of the DTI Sounding Board
christopher@dancaster.org

“Predictably, there is concern among main contractors but some satisfaction among sub-contractors”

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No short cuts

Ron Thomson describes his firm's approach to client service and the issues it has faced in its early years. His firm has recently won a 'Best New QS Firm' award



The founding partners: Ron Thomson, Stuart Gray and James Gibson

“We think the passive, and often peripheral, input that is regularly sold as cost management is totally obsolete”

The opportunity

We established the Thomson Gray Partnership in September 2004 because we wanted to create a firm that could offer business advice in addition to QS services.

We strongly believed clients were right to demand a high level of service from their consultants that avoided common industry short cuts. We asked ourselves questions such as:

- What was the point of a cost report or appraisal that was accompanied by two pages of 'exclusions'?
- Why should the style of client reporting be dictated and limited by the software from large practices (which have often been heavily invested in) rather than being geared to the unique needs of that client?
- Why should clients accept assurances that the commissions they award will be managed by key senior people only to find responsibility is then delegated to junior staff?

We thought there was a clear opportunity for a cost consultancy that could deliver to clients a bespoke high value professional service tailored to their specific needs. The challenge was how to do this.

Fresh thinking

The reason for the above shortcomings is frequently laid at the door of suicidal fee levels on which appointments are sometimes secured. We think the passive, and often peripheral, input that is regularly sold as cost management is totally obsolete. Fresh thinking is fundamental to changing this and avoiding one of the most serious problems in parts of our profession: complacency.

We wanted to provide more than just a normal QS service and offer business advice through a package or 'toolkit' of services that would allow us to deliver benefits to our clients by responding directly to their evolving requirements.

This approach includes advising on areas such as:

- identifying business risks, the options available and associated costs to manage or mitigate these issues
- procurements advice, particularly given the myriad of partnering, competitive tendering, management etc options available
- whole life issues
- initial project appraisals, optioneering and viability studies
- specialist advice on capital allowances and VAT.

We used this approach on the Teviot Place medical school project at the University of Edinburgh. Despite stiff competition, the University

chose Thomson Gray to act as cost consultant on the £2.5m, year-long complex refurbishment programme.

We were able to take advantage of our size by offering a flexible range of services that added up to a unique proposal. Since winning this important commission, ongoing discussions with the client, and the same project team throughout the work, helped differentiate us from the competition. Rather than work being delegated down to junior staff, our partners also 'worked with their hands'.

This approach helped us gain the QS appointment on the next £9m phase of the University's refurbishment programme.

A challenging start

The early challenges we faced when starting our new firm included:

Developing a 'corporate story'

This was essential to help distinguish us from the competition and allow staff to market our services. This was not just a case of using existing documents offering standard QS services, such as cost management, but communicating how we would help clients to improve their bottom line. Honing our proposals around services that add value to our clients was absolutely crucial.

Attracting the right staff

From the outset, we recognised that we could not offer the 'corporate safety net' and benefits packages available in larger consultancies. Accepting a position with a new small firm can be seen as a risk so we had to differentiate ourselves by offering new staff:

- equity stakes in the firm for founding members
- financial incentives for business development – we knew that to allow us to grow quickly, we couldn't just rely on senior staff to bring in new business so we recruited staff that were, or could become, business development executives to increase our chances of generating repeat business
- experience and career-building opportunities – our client range and size allows us to offer staff a variety of work and project experience, rather than long periods on a single large project.

Perhaps the most significant change (and challenge) to the profession is something fundamental to our aims: that our investment in people would always take priority over investment in software.

Investing the time

Starting a new business means there is no such thing as a 9-5 day. The time and effort needed to be invested in the full range of business start-up tasks was significant but we could not lose sight of the day job, i.e. generating business and delivering on the promises made to our clients.

New blood

We decided to grasp the opportunity of using part-time students during their courses. While we don't sponsor our two students in their studies, we do pay them for the days they work for us.

The key to attracting student staff is to keep them stimulated – we don't just give them menial tasks. By stretching them (students are nearly always able to handle more than you think) we can quickly decide if they can take on more responsibility.

We have found this approach generates loyalty to us and allows us to assess their capability when they're looking for full-time work. Our relationship with Napier University has been key to ensuring we identify good candidates for these roles.

In addition, the contacts and relationships students develop while working for us could also have a long-term benefit for the firm. We hope their contemporaries will also become senior decision-makers in other disciplines within the industry and they can use the relationships developed at an early stage to help grow our firm.

A mixed portfolio

Our portfolio is approximately 60:40 in favour of public sector clients. This balance helps us spread our risk by not being too focused on one sector and to take advantage of the sometimes cyclical nature of the industry. While, in general, private clients are focused on the bottom line, public clients look for best value but are always very interested in hearing about how the private sector operates.

Being flexible

The scale and complexity of some of our competitors necessarily result in their systems, reporting and decision-making process becoming bureaucratic. Being small means we can be more flexible, make decisions quicker and hopefully be more responsive to client needs. This has also allowed us to keep our cost management service client focused and flexible. We didn't want to invest heavily in software that was difficult to change and that we would need to keep for five or six years to justify its investment.

“Investment in people would always take priority over investment in software”

We're aware that as our business grows there is a risk to our flexibility and responsiveness to client needs. We're trying to combat this risk by implementing broad guidelines rather than strict rules for the business to follow. We don't see ourselves becoming a firm with 30-50 staff – the danger is that once we reach a critical mass of 15-20 we may become less efficient.

The challenge then is how we react if we're offered work that requires us to increase our workforce. Would we turn away the extra income to stay small? Probably not, but we would still try not to turn into a 'weighty beast'.

So have we achieved our goals? Ultimately, the only barometer of success is whether clients keep coming back.

Ron Thomson
Thomson Gray Partnership



Teviot Place – an example of Thomson Gray's repeat business

A judge's view

The entries for Best New QS Firm were varied and Thomson Gray's submission was particularly interesting because of the following key points.

Founding partners

The founding partners were prepared to leave the corporate safety net of the Gardiner & Theobald multi-disciplinary practice, with the infrastructure that goes with it, and set up their own practice.

Client base

Most start-up practices focus on a specific sector of an industry/client group. Interestingly, Thomson Gray adopted a very different strategy. As a result, they have acquired a very diverse client group covering both the public and private sector. This diversity has the attractions of lowering their financial risk profile and helps to create the conditions necessary for cross-fertilisation of knowledge across traditional industry boundaries.

Company culture

From the outset, the company had a strong cultural identity focussed around its people. This has delivered impressive results – since its creation in 2004 the company has grown to 10 strong, with a turnover of £500,000 and 70% repeat clients.

Nigel Dorman
Head of Construction Performance - ProCure 21
Department of Health

A valuable tool

Value management can be beneficial at all stages of construction projects, says **Scot McClintock in the US**, if it's done correctly

“VM can be applied at any stage of your project, but will be most effective in early planning and design phases”

Value Management (VM) is an extremely effective, but often misunderstood, tool for the design of any project. It seeks to provide the owner/user with a project that satisfies the basic functions required, at the best value for the money spent. The project can be a new facility or renovation of existing facilities of any type - large or small, complex or simple, architectural or civil, public or private, etc.

By understanding the required functions of the project through 'function analysis', the purchaser can more closely match the cost of the item with its worth. VM protects the owner, designer, contractor and user from project risks such as excessive capital, operation and maintenance costs, poor quality, scope and schedule creep, and lack of consensus.

Combined value

The term 'value analysis' has generally become associated with applying value techniques to systems, organisations, planning and standards, i.e. items that do not require heavy engineering input. Alternatively, 'value engineering' implies application of value techniques utilising engineering and architectural disciplines. VM combines both

terms, and the value techniques they share, to provide value from project conception through to final construction.

VM can be applied at any stage of a project, but will be most effective in early planning and design phases. Early VM will answer "Are we doing the right project?", while later in the design process it will answer "Are we doing the project right?" VM can be implemented either through a continuous interactive involvement with the design and management team from inception to completion or by the use of intensive workshops at key milestones. Workshop duration can range from one to five days depending on project size and/or complexity, project need and client or regulatory requirements. The potential financial impact of VM is demonstrated by the diagram on this page.

The curve demonstrates that, as a project develops, the more difficult it is to make changes. Completion schedules get harder to meet, redesign efforts get more involved and more expensive, and decision-makers get less willing to change. In fact, a so-called 'willingness to change' curve would follow a similar path. However, as time

progresses and more information becomes available for study by the VM team, the analysis becomes more complete. The optimum time to perform VM is a compromise between the above two considerations. In general, for items in the design phase, the optimum time falls between the 25-35% points of design.

Early involvement

VM for strategic planning should be as early in the process as possible, once the stakeholders have been identified and the issues are known. In addition, many potentially very important issues may arise from the VM activity itself.

Beware those who purport to 'value engineer' your project at the beginning of construction with no function analysis or trained VM leadership. These 'cost (and function) cutting' exercises have led to a misunderstanding of VM and restricted its beneficial use.

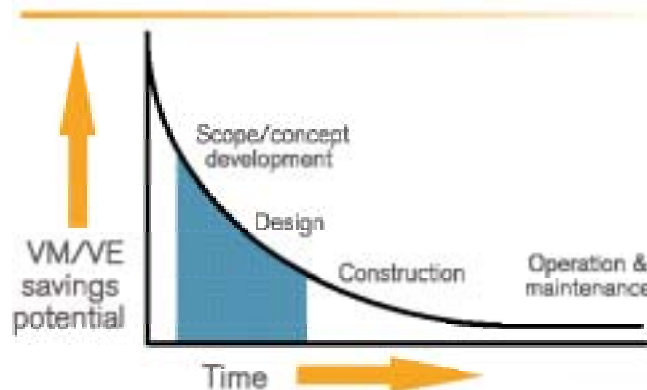
Done correctly, VM can focus on optimising solutions to a client's functional requirements, eliminating waste and unnecessary cost, enhancing value, minimising risk, or even just making decisions. It can be customised to improve short- or long-term value, obtain the balance between capital and lifecycle costs appropriate to an organisation's unique needs, or just to ensure the right problem is being solved.

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Scot McClintock, PE, CVS Life
Head of value management
Faithful+Gould, New York, USA
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When to do Value Management?



Forms of appointment

Nigel Davies explains why the RICS is assessing the feasibility of creating a Standard Form of Appointment

Based upon my discussions with RICS staff it has become increasingly apparent that many members would benefit from clearer guidance and more up-to-date standard forms for Professional Appointments. The RICS, for example, regularly receives enquiries from members about:

- misunderstandings with clients where the appointment has not been confirmed in writing
- which Appointment Form/Warranty Agreement is appropriate to use in a specific set of circumstances
- what action to take when a client refuses to pay an invoice or attempts to exercise a right of set-off.

In many cases, the only practical solution lies in taking proceedings against a client, which is costly both financially and to any continued relationship with that client.

“At a time when firms are increasingly taking a multi-disciplinary approach, a ‘one-stop-shop’ for all or a range of services is thought necessary”

An industry trend is emerging of generating a single standard Form of Appointment to which a range of Scopes of Services can be appended. This simplification has been generally applauded as a welcome step forward. The British Property Federation published the controversial BPF Consultancy Agreement in May 2005 and the Construction Industry Council is currently working on its own form of consultants' appointments. The BPF Form has received a mixed reception from the profession, however, and does not seem to provide the solution that our members seek.

The current approach of the RICS has been to offer individual Forms of Appointment for Building Surveying, Project Management and Quantity Surveying. The following Guidance Notes are presently available:

- Appointing a Building Surveyor, 2000
- Appointing a Quantity Surveyor, 1999
- Appointing a Quantity Surveyor in Scotland, 1999
- Project Management Agreement and Conditions of Engagement, 1999
- Project Management Memorandum of Agreement and Conditions of Engagement, 1999
- Project Management Form of Agreement and Conditions of Engagement – Scotland, 1999.

At a time when firms are increasingly taking a multi-disciplinary approach, and are diversifying their scope of services, a ‘one-stop-shop’ for all or a range of services is thought necessary. This would allow a client to appoint a surveyor for a range of services under a single and standard set of contract conditions. This simpler and more transparent process, resulting from a common set of conditions attached to a tailored scope of services, will be of benefit to both the client and the surveyor.

Consequently, the Building Surveying, Project Management and QS and Construction Faculties are pooling their resources to assess the viability of creating a Standard Form of Appointment with a co-ordinated set of Scope of Services for Building Surveying, Project Management and Quantity Surveying. Further Scope of Services, for example for Planning Supervisor, Employer's Agent and Project Monitor, will also be developed at the same time.

In any event, the existing Appointment Agreements need to be updated with legislation that has come into force since the Guidance Notes were published in 1999.

Clearly, this is an important project and one that the RICS must get right to ensure its members' interests are fairly represented in any standard documents. There is also a fine line between preparing a Form of Appointment that is fair and reasonable and a Form of Appointment that is seen as biased or one-sided. If the RICS delivers the former then we will have succeeded.

We welcome feedback from members on this initiative and on the issues that need to be taken into consideration. The RICS is in the process of establishing a focus group to shape the direction of this project and if you would like to contribute then please contact Sabrina Kuhn at skuhn@rics.org

Nigel Davies
Chartered surveyor and solicitor
Matrics Construction Faculty Board Member

Capturing costs

Murray Rowden gives an overview of Turner & Townsend's Inttegra Cost Database, which recently won an innovation award

Turner & Townsend (T&T) identified a gap in the market for a tool to capture and reuse cost data throughout a project's lifecycle - from feasibility to occupation. However, the development was also an opportunity to capture the knowledge that lies behind raw cost data. The result was the Inttegra Cost Database that won the Best Innovation award at the recent QS News awards.

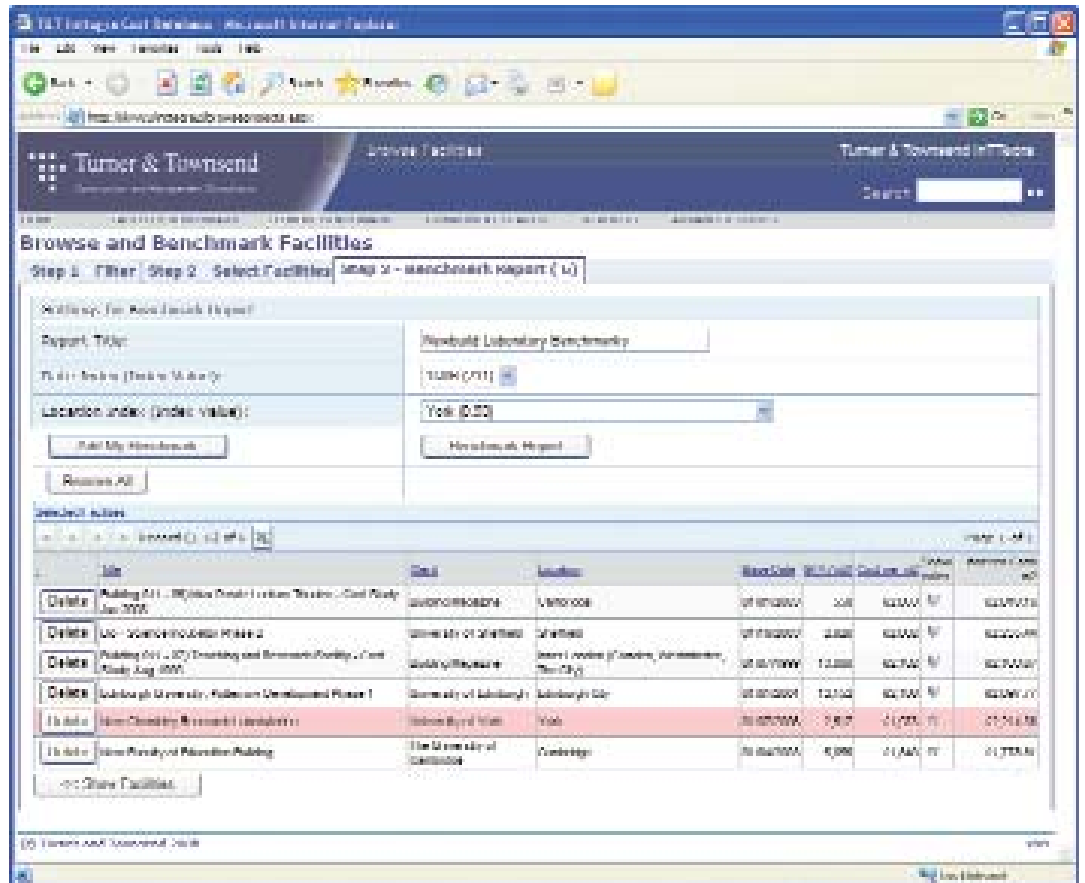
In the past, T&T used a computer-based estimating system but this was not being used to collate cost data. At the same time, we had a cost database that needed improving to make it fully effective and accurate. Once these two issues had been recognised, we looked at ways of intelligently capturing data as an integral part of our business processes.

Software development

Construction industry software and systems provider Elstree Computing had an estimating system that offered some of the functionality we required. However, we also wanted something that could export data and allow access to the central cost database from any location. We worked with Elstree to customise the Cost Planning and CAD Measure modules of their Enterprise system and create interfaces that streamlined data flows and improved the accuracy of cost data.

T&T staff managed a project team - that comprised Elstree programmers and our in-house IT developers - to create the SQL Server database that is central to the Inttegra system.

The Elstree estimating system was customised to create mandatory fields for the information captured at the start



of each project; such as location, base data, client, uniclass code and project description.

The data has been broken down into the following levels:

- Facility - looks at the overall cost per m2 and cost of the functional unit, such as the number of beds in a hospital
- Element - stores details of the building's structure, including walls and roof
- Component - looks at the parts that make up the elements.

The database can be searched to identify data at different levels (e.g. school, hospital or commercial office) but also by T&T office, client, project type (e.g. resale or new build) and allow benchmarking and comparison of data across these projects.

It has been designed to interface with our other in-house

“It has been designed to interface with our other in-house systems and has been integrated with our project and people databases”

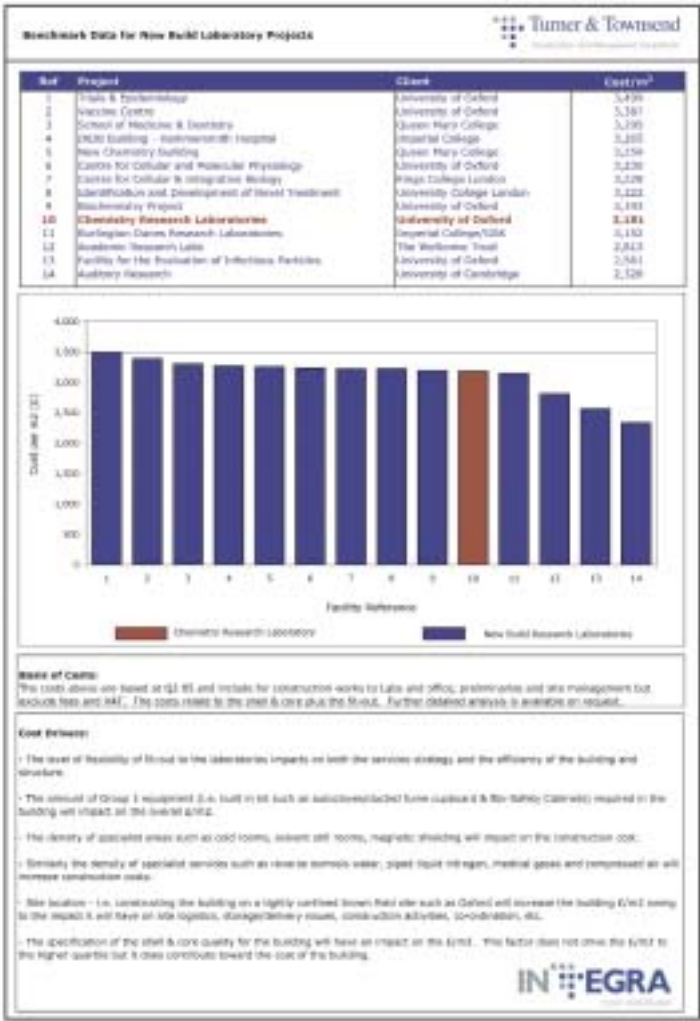
systems and has been integrated with our project and people databases meaning case studies, skills and project photos are readily linked with our cost data.

The missing link

A key requirement of the system was to move away from solely using information in price books and to take into account the

context of a project. By linking project costs in the database with the T&T people database, Inttegra goes some way to connect raw data with this knowledge.

Inttegra links each line of data with a person who would understand its context. For example, a cost manager might search the system for 'ETFE Roofing' and find a number of



Nationwide Building Society

Nationwide Building Society required T&T to estimate the outturn cost of branch refurbishment over the next five years. By working with Nationwide to define their cost breakdown structure and pool their historical costs, we were able to develop a version of Inttegra for the building society that enabled it to model more accurately the cost of new branches.

Nationwide is also using the database to monitor fluctuations and track strategic changes within its overall programme of work and drive supplier performance by benchmarking contractors.

“The development was also an opportunity to capture the knowledge that lies behind raw cost data”

A judge’s view

Turner and Townsend's award submission stood out in two distinctive ways:

Strategic vision

The development of this innovative product forms part of a clear strategic vision – to obtain a competitive advantage through differentiation. Our profession, as a whole, has much to gain by moving away from competing purely on cost. A differentiation strategy is something we often read about in management text books but rarely see in practice.

Change management

A clear strategy and a good idea are the foundation blocks of any product or process innovation. However, the real work comes in implementation. In this case, the commitment to innovation was supported by appropriate levels of investment in finance, technology and human resources.

Ed Badke
Director for Construction and the Built Environment
RICS Built Environment Team

different rates. Rather than using the rate un-checked, users are encouraged to contact the individual who worked on the project that used ‘ETFE Roofing’. This knowledge-sharing environment means all of our cost managers can find out the detailed contextual project information necessary to provide accurate cost estimates.

Client benefits

Our clients can use the database on a national or international basis, e.g. for rollout programmes of retail clients, and can be used to challenge supply chain costs and perform cross-industry comparisons.

Other benefits include:

- improved accuracy of estimates
- early stage business case support

- ‘drill down’ from functional to component level
- adaptable to work with different cost breakdown structures
- capital and whole-life capabilities.

We have developed bespoke benchmarking modules for construction clients, including London Underground, and are currently developing applications for the water utilities sector for clients such as Anglian Water.

Working in a global organisation, it is of prime importance that we leverage the experience of our people. Inttegra has facilitated this by becoming a knowledge exchange.

Murray Rowden
Director of cost management
Turner & Townsend
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An historical problem

Mervyn Richards describes how the DTI-funded Avanti project aims to help overcome problems with incomplete, inaccurate and ambiguous information

The problems of additional cost and late delivery have been recognised in the construction industry for over 100 years but little has been achieved to overcome them.

These problems only appear to get worse with the introduction of modern technologies. The accompanying photograph shows how three designers, three sets of drawings and one contractor can result in an unworkable solution, but each would argue "We built it to the drawings!"

The history

The Tavistock Institute report (1965) printed an extract from an RICS meeting of 1910 which stated "Architectural information is invariably inaccurate, ambiguous and incomplete". By the 1940s, the impact of this was valued at an additional 10% to the construction cost.

By 1994 the Latham Report *Constructing the Team*, along with the Egan Reports, suggested waste in the industry accounted for 25-30% of project costs.

This figure is supported by earlier publications from the BRE and construction research organisation BSRIA, which led to reports in 1987 from the Co-ordinating Committee for Project Information that recommended a common format and disciplined approach to reduce the problem.

These suggestions have been proven on DTI-funded projects and case studies at Endeavour House at Stansted Airport and the BAA Heathrow Express, which showed that significant savings in project cost and drawing production could be made by addressing people and process issues.

Improved collaboration

Avanti is an approach for establishing good collaboration

between construction project partners. Its core objective is to deliver improved project and business performance by introducing a methodology of safeguards to protect against failings in working practices through using technology to its best advantage.

It is managed by an industry consortium consisting of Constructing Excellence in the Built Environment, BuildingSmart and Teamwork, and is supported by DTI funding and a team of industry practitioners.

Taking the lessons learned on the early projects, Avanti has produced practical working documentation and tested the methods on live projects. This information supplements the Construction Project Information Committee document *A code of procedure for the construction industry* and addresses problems of incomplete, inaccurate and ambiguous information. Avanti guidance includes:

- *Standard Method and Procedure* - advice on classification standards, spatial and technical co-ordination, example file and directory structures, and naming conventions
- *Design Management Principles* - comprising typical design management processes, information management processes, guidance on detailed task management and typical responsibilities of delivery team leaders.

The advice also covers areas such as:

- a business case on the commercial imperatives for collaborative ICT
- guidance on ensuring the software chain supports the design and supply chains
- authoring information in a



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common data environment and controlling the sharing of information in a multi-author environment.

For most projects, using this guidance will consist of three phases:

Phase 1 Change the poor industry practice of producing information to individual standards and throwing it 'over the wall' to the next person in the supply chain who then reproduces their own information. Using an agreed standard for the project, spatially co-ordinated and high-quality 2D information will then be produced for the parties involved.

Phase 2 Implementation of those same principles to generate 3D project models to produce 2D drawings and material measurement.

Phase 3 Full implementation of the 3D object-oriented and Building Information Models systems.

Each live project captures the lessons learned and the benefits gained. A full list of current

projects and initial case studies can be found on the Avanti website. Initial results from Taylor Woodrow's St Helens project and Costain's PalaceXchange project show substantial savings in development of design production information, search and retrieval on the project extranet, and a reduction in requests for information at the site.

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How strategic is your plan?

Tom Kennie offers some advice on how to assess the quality of your business strategy

Does a strategy really matter?

This question sometimes generates a negative reaction, normally because a strategy is seen as only being of interest to the chief executive and the board, or doesn't really affect staff on a day-to-day basis.

However, given the pace of change, the uncertainties in the business environment and the increasing expectations of clients etc, the need to 'be strategic' has never been greater.


Faced with this challenge, how do you as a busy professional ensure you're being suitably strategic in your planning activities? I would encourage you to score your firm's strategy against the following six factors:

1 Analysis and horizon scanning

- Does the plan show clear evidence of the changes in the external environment?
- Does the plan consider some of the possible future scenarios the firm may face?

1 - Limited evidence, appears reactive to external conditions

10 - Highly strategic, pro-actively responsive to external conditions




2 Market choices and identifying advantages

- Does the plan clearly articulate an overall vision for the firm?
- Does the plan highlight the key strategic dilemmas facing the firm?
- Is there an understanding of the markets in which the firm 'wants to be famous'?
- Does the plan show evidence of clear choices being made to position the firm?
- Does the plan define what makes the firm sufficiently different from its competitors?

1 - Limited evidence, appears to be very similar to many other plans

10 - Highly strategic, clearly articulated and differentiated vision




3 Implementation

- Does the plan consider the resource implications of the strategy/vision?
- How clear is the plan for executing each component of the strategy?
- Have the organisational implications of the strategy been considered?
- Do processes exist so the plan can be adapted to changing circumstances?

1 - Limited evidence, implementation seems disconnected from strategy

10 - Highly strategic, clear links between strategy and implementation




4 Key performance indicators

- Does a clear set of measurable criteria exist to define the success of the plan?
- Does the plan have clear metrics that guide its implementation?
- Is it clear how to measure performance at macro (firm) and micro levels?

1 - Limited evidence, very few (if any) measures of success, rarely reviewed

10 - Highly strategic with clear, well connected and reviewed KPIs




5 Communication and key messages

- Does the plan clearly convey a set of the key strategic messages?
- Is the plan adequately integrated or a series of largely unconnected parts?
- Is there a clear plan for communicating the strategy?

1 - Limited evidence, contradictory and confused series of messages

10 - Highly strategic, clear and consistent set of strategic priorities

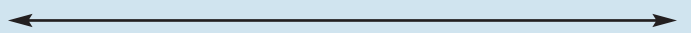


6 Focused energy

- Has the plan been developed with input from staff at all levels?
- Are directors and partners committed to the plan's implementation?
- Can you judge the extent that others are committed to the delivery of the plan?
- Are staff at all levels engaged in delivering specific actions in a clear time frame?

1 - Limited commitment, very little engagement in development or delivery

10 - Highly strategic, high level of engagement in development and delivery



So how did you score?

Less than 50? It might be time to revisit your strategy. The good news is that you have identified the need, but also ask your fellow directors and partners to perform a review.

Around 70-80? Looks encouraging. But review section 2 - get this right and you have a promising plan, but this can be a problematic area.

Over 90? Are you sure? It might be worth just checking your assumptions. How would others rate your perceptions?

Above all, remember that no strategy, however well designed, will work unless you have the right people, with the right skills and behaviours, in the right roles, motivated in the right way, and supported by the right leaders. Ultimately, there is no such thing as 'good strategy' only 'good implementation'.

Dr Tom Kennie MBA FRICS
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It's good to talk

The construction industry needs to beat down the doors of universities to form strategic alliances, says Mel Lees

“There is growing evidence that universities and industry are on divergent paths”

It is critically important that the construction industry and universities talk to each other. Without good dialogue, how can we be sure that university graduates are qualified and competent, and how can industry up-skill its existing staff to retain competitive advantage? Unfortunately, there is growing evidence these two groups are on divergent paths and that communication is becoming more difficult.

Lack of coordination

In 2002, the Centre for Education in Built Environment, working with the Construction Industry Training Board, organised a *Rethinking Construction* event in Leeds to bring academics and practitioners together to discuss this issue. It found a lack of shared purpose for higher education and no common language through which to communicate. Why? It seemed universities and industry had been looking in different directions and responding to different circumstances.

There is no doubt that universities have had a tough time over the last 10 years. Between 1995 and 2003, the number of graduates from UK full-time building courses, which include quantity surveying, almost halved (3,153 down to 1,652, source: Higher Education Statistics Agency). However, professional bodies will point to increased numbers during the same period on other programmes. This is true, but for many universities this meant running new programmes to keep the same number of students; the equivalent of doing two jobs for one fee with negative impacts on schools, departments and tutor numbers.

Paradoxically, industry activity increased during the same period. Construction output rose by 25% in real terms, creating high demands for professional services and new staff. The reduction in full-time graduates exacerbated the problem and resulted in increased 'beauty contests' and 'cold calls' to department heads as companies chased a dwindling supply of prospective students.

Now, universities are back in boom time. Applications to building courses have returned to similar levels to the early 90s. According to the Universities and Colleges Admissions Service, applications to all universities for all courses are down 4% in 2006, but applicants to building-related programmes are up by 20%. So you may think this would result in improved dialogue between practitioners and academics. You would be wrong.

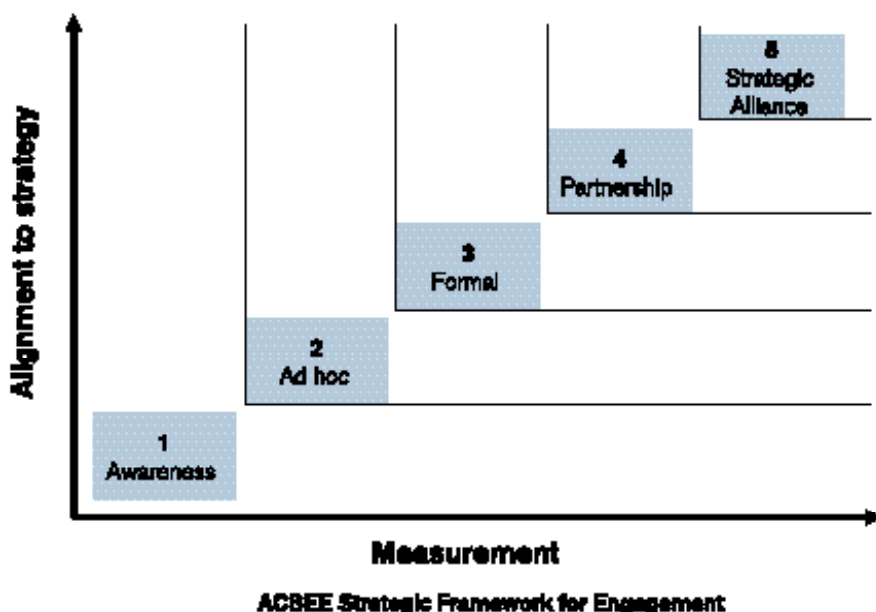
Poor strategic alignment

Following the 2002 Leeds event, the ACBEE (Accelerating Change in Built Environment Education) group was created to improve communication between universities and practice. Over the next two years, they published 50 case studies of good academic/industry engagement as examples of good practice. In 2005, ACBEE published its framework of engagement (see chart) to measure the level of strategic alignment between university and practice when they work together.

Sadly, of the 50 case studies, none of them was graded higher than 3. The quality of engagement was much lower than feared and the potential benefits of working closer together were being missed.

Potential partners do not recognise the business benefits of working together by creating strategic alliances. Other industries do it - pharmaceutical, ICT and the health sector are good examples - and the ACBEE can help broker new partnerships.

The construction industry has no excuse. It needs to progress and rebuild bridges. It is time for academics and practitioners to talk and do business.



References

Construction Education Supply in the United Kingdom, Melvyn Lees and Allan Ashworth, University of Salford
The Centre for Education in Built Environment, contact p.lowe@salford.ac.uk

Accelerating Change in Built Environment Education, www.acbee.org

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FIDIC 1999 Contract

Q At month eight of 12, a Contractor claims an Extension of Time (EOT) based on the fact that whereas the Bill of Quantities (BOQ) states 1,042m² of perforated ceiling tiles, 1,914m² are actually required, an increase of 84%. The Engineer says only a simple re-measure at BOQ rates is allowable. Who is right ?

A Depending on how the variation in the quantity of ceiling tiles arose, there are two possible answers:

1. If the mistake in stated quantities was made at the time of tender, then Cl.1.5 applies dealing with anomalies between equal ranking enquiry documents. Unless there is an express term of the enquiry, making the Contractor responsible for checking stated quantities, the Contractor may discover

the anomaly at any time and refer the problem to the Engineer for his instruction. Thus the first issue is whether or not the Contractor is entitled to a Variation ? On balance, probably "Yes".

2. Alternatively, if there has been a change in space planning, design development etc, this would be a straightforward Variation, letting in an entitlement to EOT, if substantiated, under Cl.8.4(a).

However, for the EOT claim to stand up, the Contractor will have to prove causation, not just that the ceilings took more time, as the Contractor is deemed to have a flexible labour resource.

What is needed is an analysis of the original Construction Programme, whether a contract document or not, and reasoned argument that the further ceiling work, when discovered, impacted on the completion of other trades, e.g. M & E work in the ceiling voids etc.

GC/Works/1(1998)

Q A Contract had a 33 week contract period and an EOT Claim for six weeks was submitted at Week 31, citing delays to windows. The Contract Administrator (CA) rejected the claim the next day calling for additional information. Silence for 36 weeks then further details submitted, but citing delays to concrete repairs and roofs (not windows). What should the CA do ?

A GC/Works/1(1998) was one of the early quasi-Partnering contracts following the ethos advocated by Sir Michael Latham in *Constructing the Team* and has very specific procedures for both Parties to follow in the mutual interests of completing on time and budget, and avoiding disputes.

While not saying in express terms that Claims etc submitted out of time are contractually barred, the contract provisions come very close and when read as a whole, the key Clauses 1, 1A, 33(1), 35(3), 35(4) and 36(4) make it clear the project is to be pro-actively managed by the CA, but with very limited timescales after Completion for the Contractor to bring a claim

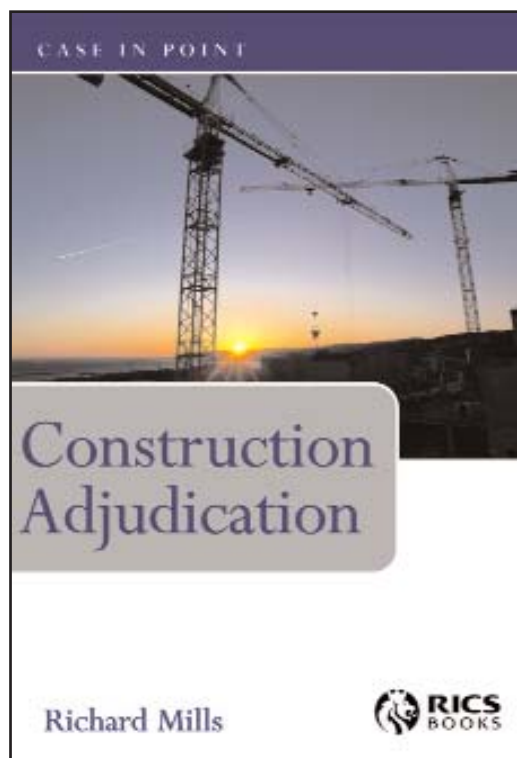
for EOT, or for Loss and Expense.

1. The original Claim was technically submitted within time, but unless the relevant events all occurred in the four weeks preceding the previous Progress Meeting, the Claim would fail the test at Cl.35(3)(c) and the CA was probably acting in excess of his remit to have considered the claim at all.
2. However, if the CA has not operated the key Clauses as above, the Employer could be said to be in breach.
3. While the six weeks claimed remains the same, the 'further details' could be deemed to be a different Claim, so fail the test at Cl.35(3)(c) as

4. The whole ethos of GC/Works/1(1998) is based on openness and trust between the Parties. As such, the Employer is entitled to be protected from retrospective Claims and Final Account disputes.
5. Alternatively, what contract is ever perfectly administered? Often the threat of Liquidated and Ascertained Damages (LADs), is the only reason for EOT Claims. The pragmatic solution here may be for the Employer to refund some of the LADs, if taken, rather than risk the wasted and unpredictable costs of an escalating dispute.

Case in Point – Construction Adjudication

“The book sets the arguments in the context of the overall dispute between the parties and is written with a practitioner audience in mind”



Adjudication was first proposed by Sir Michael Latham in his report *Constructing The Team* in 1994 and was subsequently adopted by Parliament and incorporated into the Housing Grants, Construction and Regeneration Act 1996. At that time, no one anticipated the complexity of issues that would arise as a result of the changes.

Initially seen as a simple process, it was anticipated that adjudication would be managed in-house or by existing retained consultants. It was not thought that the appointment of lawyers would be necessary and some commentators even considered the involvement of lawyers to be undesirable in what was seen as a practical process to resolve practical problems.

Creative arguments

However, the prospect of paying large sums of money pursuant to an adjudicator's decision, which may have been made relatively quickly and often without the benefit of a full legal process, has inevitably encouraged parties to invent ever more technical and complex arguments to justify why the process does not apply to them, or why they need not honour the decision of an adjudicator.

The *Case in Point - Construction Adjudication* book summarises the most significant of those arguments and explains the reasons given by the court for its decision as to whether or not those arguments are correct. The book sets the arguments in the context of the overall dispute between the parties and is written with a practitioner audience in mind.

The chapters have been structured to emulate the adjudication process as follows:

- the adjudication agreement
- the need for, and definition of, a dispute
- the reference to adjudication
- communication with the adjudicator
- production of the decision
- decisions on enforcement.

This enables the practitioner to dip into appropriate chapters of the book without having to read it from cover to cover, but this latter approach may be suitable for students studying the full adjudication process.

Easy access

Practitioners who do not specialise exclusively in adjudication and dispute resolution should also find the case summaries and statutory materials an easy and accessible means of understanding some of the complex issues raised in the adjudication process.

One difficulty with any casebook is that it can only capture the most significant decisions at a single point in time. However, cases are continually being referred to the courts and principles of law are being further explained and refined.

Two websites that contain reports of adjudication-related cases that practitioners may find useful are www.baillii.org and www.adjudication.co.uk (although other sites are available, most notably those of the larger construction law practices). Searching either of these sites using the case names given in the book should enable practitioners to quickly identify any recent decisions on an issue or to locate more details on the case in question.

Title	Case in Point - Construction Adjudication
Author	Richard Mills
Publisher	RICS Books
Stock code	9040
ISBN	1842192353
Telephone	0870 333 1600 (option 3)
Web	www.ricsbooks.com

Careering ahead

Graham Smith gives an overview of the RICS activities promoting a career in chartered surveying to students



RICS and Heathrow Terminal 5

RICS has worked closely with member firm EC Harris to use the Terminal 5 project at Heathrow airport to promote the benefits of a career in surveying and RICS membership.

The T5 programme - with its £4.2bn budget, organised into 16 projects with over 100 sub-projects - offers unique opportunities for junior employees to develop their skills and career in surveying. A case study of the project appears in the RICS careers brochure, which is distributed to students throughout the UK.

Recent figures suggest that awareness of careers in construction is increasing. The RICS attracted a record 5,000 new student members worldwide in 2005 and there was a 27% increase in entrants to RICS-accredited courses in 2004. In addition, between 2001 and 2005, there was a three-fold increase in students attending construction or quantity surveying courses and the number on project management-related courses increased by a factor of 30.

A career in surveying appeals to graduates with a variety of degrees. This is illustrated by the fact that there are more students on RICS-accredited postgraduate courses than on undergraduate courses. Construction firms are increasingly looking to such 'non-cognate' graduates with degrees in maths or economics to fill places on their graduate programmes.

Course decisions

While the RICS qualification is increasingly attracting well-qualified candidates seeking entry to higher education, deciding on the right course can be very confusing. This is where the RICS Careers campaign steps in.

The RICS is committed to communicating the benefits of the profession to careers advisors and their students. To this end, we produce a wide range of brochures and other communication materials to help demonstrate how chartered surveyors are involved in a diverse range of developments around the world. These support materials are targeted at two audiences: students at school and university.

We can also arrange presentations by RICS members at a school or college and have a number of work placement schemes available in the UK and

in other parts of the world. Each of the 12 RICS regions in the UK make regular school and university visits, promoting the benefits of a career in surveying and RICS membership. In addition, there is also support for the 400 RICS-accredited degree courses at around 100 partner universities worldwide.

The Member Zone

Underpinning all of these efforts, and a focus for 2006, is the 'Become a member' zone on the RICS website, which provides up-to-date information and advice for any individual interested in becoming a chartered surveyor. The site has had early success with over 55,000 page views in January 2006. In the same month, RICS also received over 600 student member applications and over 500 applications from professionals for full membership of RICS.

RICS keeps in contact with students on accredited degree courses to maintain student membership levels. This also enables RICS to improve graduate conversion levels and ensure students enrol on the APC once they leave university. To facilitate this, the RICS has produced a presentation, *The Real Professionals*, which helps members talk about their own career with students at university.

If you would like to help promote a career in chartered surveying please visit www.rics.org/careers or call the Contact Centre on +44 (0)870 333 1600.

Graham Smith
RICS Marketing
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"Construction firms are increasingly looking to 'non-cognate' graduates with degrees in maths or economics"

Graduate trends

This article is a timely reminder that the future of our profession lies in effective marketing of surveying as an attractive choice of career.

However, there is also a need to ensure that the infrastructure is in place to support students and employers. At a recent meeting of our Employers' Forum the following trends were identified:

- graduates with cognate degrees often lack the core technical skills required in industry
- all of the surveying practices in attendance were planning to expand the percentage of their intake of graduates with non-cognate degrees

- the changes to the funding of tertiary education are creating an increase in demand for day-release and other forms of part-time education.

This market intelligence will help us formulate an appropriate response strategy and will be followed up in future meetings of the Employers' Forum.

Graeme Hadden
Quantity Surveying and Construction Faculty
Board Member



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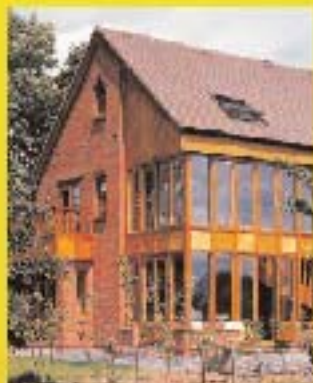
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