

## KEY CAUSES OF DISPUTE IN THE UK CONSTRUCTION INDUSTRY AND LESSONS TO BE LEARNT

- What were the top causes of disputes last year?
- How can the top ranked causes of dispute be avoided?
- What are the biggest lessons to be learnt from the last year?

### WHAT'S IT ABOUT?

According to the annual [Arcadis Global Construction Disputes Report 2020](#) (**the Report**) the following trends came to light in a year of construction disputes.

#### DISPUTE CAUSES

According to the Report, the top three global causes of dispute in 2019 were as follows:

- poorly drafted or incomplete and unsubstantiated claims;
- failure to make interim awards on extensions of time and compensation; and
- Owner/Contractor/Subcontractor failing to understand and/or comply with its contractual obligations.

The United Kingdom (**UK**) closely mirrors these global trends, however *failure to make interim awards on extensions of time and compensation* prevails here over the other causes reported. This highlights that a trend relating to problems around administering contracts continues as a major issue in the UK as it has done over many years. As in 2018, over 75% of respondents reported that the conduct of the project manager was *always* or *very often* at the heart of how the dispute crystallised, most commonly caused by a lack of understanding of the procedural aspects of the contract.

Failure of the contractor or subcontractor to understand and/or to comply with its contractual obligations was not far behind - being at second place in the UK, as opposed to ranking third in the global listings.

### WHY DOES IT MATTER?

The Report highlights that what lies at the heart of many a dispute is a lack of understanding of the contract, whether in terms of the procedures to be followed and/or the parties' obligations under it. The Report states that 60% of respondents believed that proper contract administration would have the single largest impact in avoiding disputes.

Whilst there can be a number of reasons for a failure to comply with contractual obligations, it may suggest that many contracts are poorly drafted, unclear and/or too complex in the particular circumstances, thus giving rise to disputes around the true meaning of particular clauses.

In our experience, problems can also arise when there is some form of disconnect between those drafting and negotiating the contract and those administering and implementing its terms. In some cases a carefully negotiated contract is 'put in the drawer' and the parties on the ground just get on with things without reference to the contract; and this approach may work – until there is a dispute. In others, the contract administrator and/or the parties' construction phase representatives may not fully understand the contractual procedures and/or the rationale behind them or may find them unworkable in practice.

### NOW WHAT?

The Report suggests that greater representation of true practitioners on contract drafting bodies may help to combat a lack of understanding of contract procedures and the consequences of their actions/inactions. It also suggests that a greater use of more collaborative standard form agreements may provide more confidence in project delivery.

We have found that briefings given to the team responsible for delivering and administering the project can help aid understanding and compliance with the contract. In addition, there are benefits in maintaining a link with the legal team during the delivery phase, so that problems and queries can be resolved before they escalate and potential disputes avoided.

Clarity and collaboration are key to ensuring that at all levels and stages there is less room for misunderstanding and misinterpretation and the Report indicates a need to focus on those who will be delivering the works. The Report encourages parties to make administration of contracts easier – a useful reminder as 'ease of administration' is often not a top priority in the drafting of the contract.

2020 has introduced fresh hurdles and challenges for the industry and this will likely continue to prove a challenging period. More than ever, it is important to try and learn from these all too familiar trends to ensure history does not continue to repeat itself. Parties need to understand the risks involved in a project and how these are allocated by the contract. The contract itself should be clear and unambiguous and easily understood by those responsible for project delivery. As the Report says "*contractual clauses cannot achieve project excellence on their own*".

## WHO TO CONTACT



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