

LIABILITY FOR DEFECTS IN A WIDER SYSTEM WHERE INCOMPATIBLE COMPONENTS ARE NEGLIGENTLY DESIGNED

- Can a contractor be held responsible for defects in its design/installation works where such works are components of a wider system and 'inconsistent' with that system?
- Applicability of 'fitness for purpose' requirements.
- Concurrent contractual and tortious obligations.

WHAT'S IT ABOUT?

The recent Technology and Construction Court (**TCC**) case, *DBE Energy Ltd v Biogas Products Ltd*, has found a contractor to be on the hook for defects in its design and supply of certain limited components of a sophisticated wider plant works system on the basis that such components were not 'consistent' with that wider system

Biogas Products Ltd (**Biogas**) contracted with DBE Energy Ltd (**DBE**) for the supply of pasteuriser tanks and tank heaters (the **Components**), which were key parts of a newly built anaerobic digestion waste facility in Surrey worth £12 million. Two separate contracts were entered into for the Components on DBE's standard T&Cs. Although Biogas was required by the contracts to design, manufacture and supply the Components using "utmost skill, care and diligence", the contracts lacked any detailed specification. Accordingly, there was a corresponding lack of contractual clarity over what design work the contractor was actually obliged to carry out. Perhaps more importantly, it was also unclear whether Biogas was responsible for ensuring the Components integrated within the wider system for it to function properly. The contracts also contained terms implied by statute requiring the Components to be of satisfactory quality and fit for purpose.

After the works were completed, several issues arose at the waste facility leading to malfunction as a result of design defects in the Components and causing DBE to suffer losses. DBE subsequently started proceedings against Biogas on the basis of breach of contract and/or negligence in order to recover its losses, for which Biogas was ultimately held responsible.

The Court's reasoning for this conclusion was that Biogas was intrinsically involved in the overall mechanics of the system, i.e. it was not just undertaking aspects of isolated work. It was found to be clear to the parties during the course of the project that the Components were crucial to the functioning of the wider system as a whole.

Some interesting related points also concerned liabilities arising in relation to implied 'fitness for purpose' obligations and tortious duties (that is 'negligence').

Whilst the parties had agreed that there was an implied statutory fitness for purpose obligation on the part of Biogas in respect of its works, the Court interpreted this using the same principles as outlined above – namely that in assessing this requirement, regard was had to Biogas's obligation to incorporate the design into the wider system rather than considering its design in isolation – and on this basis the Biogas design was not 'fit for purpose'.

Likewise, Biogas accepted that it owed a duty of care in tort to DBE but sought to limit this obligation by reference to its limited design obligations (thereby not assuming responsibility for integration of systems and economic losses flowing from this). Again, the Court disagreed. On the basis that it found Biogas responsible for integration of its works with the wider system, this meant that it had assumed this responsibility and there was a co-existing contractual and tortious liability in respect of the related design defects.

WHY DOES IT MATTER?

The Court held Biogas to be responsible for ensuring the Components integrated with the wider system to ensure it functioned properly on the basis that the degree of input Biogas had into the overall project was a significant factor in the way the wider system worked in the end. Despite this, the Court was of the view that even if Biogas had not had such a significant role, it still should have holistically considered the way in which the Components fitted within the wider system. Further, in the event that implied fitness for purpose or tortious duties are found to exist, these 'wider integration' issues may be a factor in deciding if a party is in breach and/or owes a duty of care and is consequently liable for losses arising.

NOW WHAT?

Parties should look at the wider view to assess how and to what extent particular works or featured components form part of a wider project as a whole.

It is vital that the designs of key elements forming part of wider, complex systems are well defined in contracts by way of detailed specifications and applicable conditions to provide clarity to the contracting parties and avoid potential ambiguity and dispute. In particular, ambiguities/omissions in specifications and/or poor contract drafting may result in a party accepting responsibilities in relation to matters (such as inter-project integration) that it may have considered to be outside of its scope.

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