Issue No : 18
Published : Spring 97
Article No : 1
Author : Roger Trett
Title : Introduction - 20 Years Young

Introduction - 20 Years Young

In writing this editorial I feel very proud that the company has entered its 20th year of trading. One of my colleagues told me that 75% of all new companies go out of business within 10 years, so I feel I must have done something right!

A lot has happened over the years. We have grown to a company of not only national repute, but we are fast gaining our wings as international consultants. January 1997 has seen the opening of our first office in India, in New Delhi. In the previous month, a team from Trett, including myself, undertook a series of seminars on construction topics in Madras and Bombay I was impressed with how well trained construction professionals are in India and the commitment of companies to the ongoing personal development of their staff. It is an example of "investment in people" that needs to be followed in the UK. We were so well received by our hosts that I truly envy my colleague, Tony Fletcher, in his task of building up our business there.

Over the 20 years, our services have developed in line with changes in the industry and in the law. The role of the expert in litigation and arbitration is now very important. I like to think we are the premier firm for expert witness work on quantum and planning matters, but I know there are a number of other very experienced individuals and organisations as well; which is good because it means we have to keep advancing the skills of our staff as well as developing our techniques of analysis.

I have always been keen to keep abreast of technology; I can boast that everyone in the company now has a computer on his/her desk (whether they know how to switch it on or not!) and all our offices possess the most up-to-date integrated business software and e-mail and Internet access, as well as powerful project management and planning software and scanning facilities.

With such advanced communication facilities, you would imagine I now work 5 days-a-week at my own office in Great Yarmouth. But construction and engineering is a people - business and the nature of its problems requires a close understanding of the parties relationships and the individuals involved. That is why our staff are forever mobile - a fact that I cannot see changing during the next 20 years.

We now have over 60 in our multi-disciplined team, which includes civil and mechanical engineers, construction managers, mathematicians, planners, computer whiz kids and of course, quantity surveyors. In fact, our QS compliment has been significantly strengthened recently. Malcolm Trusler, previously Group Chief QS with Laing Plc has joined us to develop our business in London and the South East, and David Carrick, this year's President of The Institution of Civil Engineering Surveyors, has joined us to pursue our work in Scotland.

To bring you fully up to date with events, in December we changed our trading name to Trett Consulting. I believe the change helps reflect the more comprehensive range of services we provide to an ever growing list of clients, and the range of projects never ceases to amaze me; recent commissions have involved the manufacture of trains, conversion of ships, undersea post -lay trenching and open cast mining.

In these 20 years, I estimate I have travelled well over 1 million business miles. It takes its toll of course (I used to have jet black hair!), but the interest I and my colleagues have in our work keeps us going. That is why I say the company is 20 years young, and I am keenly looking forward to the millennium.

Please forgive me if I have been a little indulgent in this editorial, but at least you can be confident that you will not here again from me in this fashion until 2007. I promise.

Finally, I must not end without mentioning my many and sincere thanks to the clients who have been confident in our abilities and given us work these past 20 years and to my colleagues, for their loyalty and commitment to the company.

Issue No : 18
Published : Spring 97
Article No : 2
Author : Anthony Farrow
Title : The Problems of Being A Sub-Contractor - Part 3

The Problems Of Being A Sub-Contractor - Following through a contract from start to finish

PART TWO

In this three part article, Tony Farrow looks at some of the difficulties of being a sub-contractor. In Part One, factors during the tender period were considered. In this part, he reviews events after the tender has been submitted. Part three will consider the on-site period

CONTRACT NEGOTIATIONS

Turning now to the period during which the submitted tender becomes a binding contract, a number of issues arise. These include:

- Settlement of alternative proposals
- Price reductions and possible 'dutch auctions'
- Letters of intent
- Meetings and correspondence
- Terms and conditions

Alternative Proposals

A major initiative for subcontractors to gaining the competitive edge' during the tender period is to propose alternative equipment, materials or construction methods to those specified. However, when the alternative is disclosed, the question is whether or not the client or main contractor is going to seek price proposals for the alternative from all the other bidders? If the subcontractor does not disclose in his bid that his price is based on an alternative, he is putting himself at risk of having to provide the specified item at the quoted (reduced) price should his tender be accepted; if he discloses the alternative, his idea is likely to be notified to all other bidders!

The bottom line is that the subcontractor is likely to put himself at financial risk by entering into a subcontract having based his price on an alternative proposal but which he has not sought to clarify prior to contract.

Dutch Auctions

Having secured a project, one of the first tasks of the main contractor is to re-bid all the sub-contract work, to obtain even lower prices than those originally quoted [in today's economy, main contractors bid tenders at zero margin and any profit (and overhead) is derived from sub-contract and supplier buying savings]. Hence, pressure is placed on sub-contractors, in order to drive their prices down. This pressure exists whether work is let in the traditional way or by Construction Management or Management Contracting methods.

I was told by a groundworker sub-contractor that one particular main contractor obtains the very keenest of sub-contract prices, has an aggressive valuation and payments regime, with the intent of driving the sub-contractor into receivership - then having another sub-contractor finish off the work, at equally low rates!

Letters of Intent

Modern procurement methods often leave everything to the last minute and this includes the selection of sub-contractors. Having made the decision to appoint a company, the client/main contractor requires the sub-contractor to make an immediate start. Letters of intent are therefore despatched and it is remarkable just how many contracts are completed without any formal contract documentation having been issued. Great situation, if there are no significant problems! If there are, however, there can be unexpected risks for (in my experience) the main contractor.

My work primarily involves jobs with problems, usually time and cost overruns. Of these, I would say two thirds have some question of there being a 'no contract' situation - a third clearly do not have a contract between the disputing parties.

There never seems to be a clear solution to these cases, but in my experience, the sub-contractor usually comes off best (about time too!!)

If you are contemplating issuing letters of intent, my advice is …… don't!

Meetings and Correspondence

Negotiations involve meetings and exchanges of proposals and so the parties issue minutes and letters. The sub-contractor usually sets out to clarify what his tender represents and so it is in his interest to have those documents expressly incorporated into the formal contract; the risk is with the subcontractor if they are not. Such exchanges may contradict the tender documents and it is necessary to clarify which document is the more relevant.

The exchanges can continue for some time, on a whole variety of issues. Instead of including all the correspondence, it is sensible to draw up the list of issues debated and the final agreement on each.

Terms and Conditions

The tender documents state that a particular main contractor's in-house form of sub-contract will apply; the sub-contractor's tender refers to DOM/1; the post-tender exchange of correspondence indicates that the main contractor is willing to consider DOM/2, to which the sub-contractor is agreeable, provided certain provisions relating to payment and design liability are debated. A letter of intent is despatched and the sub-contractor commences design work. The formal DOM/2 documents are issued and the parties continue to debate the terms. After five months there is still no agreement and there is a parting of the ways; the subcontractor sues for £500k of costs incurred over the period he was involved and the main contractor is six months late procuring a major element of the work.

This is the job presently on my desk! What started off as an excellent business relationship ended in bitter disagreement because the parties did not face up to the differences between them and resolve the issues at the time. My advice is do not put pre-contract differences to one side, for later discussion. Get them resolved at the time.

PRIOR TO START ON SITE

Having secured the project, the subcontractor mobilises his team to carry out the work. It is unusual to have someone standing by to take on the project, so the initial input can be rather 'hit or miss'. Criticisms can often be levelled at the sub-contractor's performance in this period.

The sub-contractor's QS or his project engineer will re-estimate the project, to establish how good the original estimate is, or how bad. He will quickly let management know how bad it is!

In preparing the re-estimate, the QS or project engineer will obtain final quotes from suppliers and sub-sub-contractors and appoint the cheapest companies. Hopefully, he will be thorough in preparing the tender documents and include all the information from his contract which may affect the supplier's. The problem though, is that the more thorough he is, the higher is the potential price.

It is at this point in time that the sub-contractor gets to grips with the obligations for which he has tendered. Hence, inconsistencies in the documentation or questions of interpretation will begin to surface.

Detailed Design

The major task during this off-site period, is the carrying out of any design or detailing work. As mentioned in my first paper, this area represents the biggest cause of all M&E disputes. Yet, it is surprising how infrequently the problems are identified at this stage.

The sub-contractor's designers have to familiarise themselves with the project and the drawings and specifications and will have to liaise with the architect, structural engineer and services engineer. The architectural and structural designs will have been on-going during the period when the services engineer has completed his brief and the M&E sub-contractor is waiting to be appointed (ie the 'breakpoint'). The sub-contractor's designers/ draughtsmen will be under great pressure to get work done. Errors occur when you rush and good administration procedures fall by the way side. Hence, if you look back and examine what has happened, the tracking of information, in and out, can become somewhat of a forensic nightmare.

Another feature of the circumstances at this time, is that the newly appointed M&E subcontractor is less likely to make waves' or stand his corner should issues arise. For example, the services consultant will have indicated the routing of electrical systems on his schematic drawings or the types of pumps or valves in the specification. The subcontractor will produce detailed drawings and seek approval of his selected equipment. However, it is not unusual for the engineer to come back with requests such as "why don't you do it that way" or "I don't like the way you've done that" or "drawing not approved - please comply with the contract". The comments are often extremely general, indicating that something is not quite right, but not a direct instruction of such.

Even valid variations can be difficult to identify and value at this time; a vague specification can mean that whatever the subcontractor proposes, it never exceeds the specification requirements; although it may exceed his tender expectation.

The identification of the extra hardware ie, the pipes, ducts, cables etc, is something that can be physically measured, but problems arise in identifying the extra input by the designers. At best, you have the timesheet of the individual, his discipline and occasionally a record of the drawing or system he was working on. However, there is no readily available data to say why certain systems took longer to design or why drawings were frequently modified. What is, therefore, required is a very detailed analysis of the flow of information and an examination of the design records. In my experience, design claims are far more complex to put together than construction claims.

Programme of Work

Finally under this stage, the subcontractor and main contractor will begin to discuss the question of detailed programme. Given that the sub-contractor is to (detail the) design, procure, install and commission the sub-contract works and that these activities are to be carried out regularly and diligently, it is obvious that the programme should include the following important matters:

- information required prior to commencing each of design, procurement and installation
- the period required for the preparation of drawings and approvals. (You need not anticipate variations but you should anticipate undescribed but indispensably necessary and expedient work).
- the periods required for off-site preparations prior to start on site
- the period of notice to start
- the period required for on-site operations
- the sequence of operations, reasonably co-ordinated with the work of others trades
- regular updating, keeping of records and the giving of appropriate contractual notices.

So far as the employer, the architect/consulting engineer and the main contractor above the subcontractor are concerned, the programme has a different purpose:-

- timing requirements for production of drawings and other information
- giving possession of areas
- issuing variations
- co-ordination and integration of the sub-contract work
- monitoring progress and serving notices
- dealing with extension of time applications and financial claims
- likely cashflow requirements
- date for completion and handover.

The sub-contractor's rival purpose is to:-

- be highly optimistic as to the date for completion to cut overheads
- show that all sub-contract work can be performed in one visit, continuously
- request that all information be made available on 'Day One'
- show that the main contractor is responsible for co-ordinating all the other sub-contractors
- show that no account has been taken of the possibility of other trades working in the same area.

These points are likely to be resisted by main contractors and consultants!

Issue No : 18
Published : Spring 97
Article No : 3
Author : D Helps
Title : The Housing Grants, Construction and Regeneration Act 1996 Part II, Sections 104-117

The Housing Grants, Construction and regeneration Act 1996 Part II, Sections 104-117

In July last year this legislation received Royal Assent. Although it is not expected to have legal force until later this year, it is important to all involved in the Construction Industry to consider its implications now.

Part II of the Act translates into legislation two of Sir Michael Latham's recommendations in his report "Constructing The Team" issued in July 1994. These are the recommendations for fairer and more effective payment provisions in construction contracts and provision for a quicker and cheaper means of resolving disputes.

The Act will be supplemented by a separate document called the "Scheme For Construction Contracts". The second version of this document was recently put out for consultation and the Act will not become law until the scheme is approved by Parliament. It seems unlikely that this will occur until this summer.

The Scope of the Act (Sections 104-107)

Part II of the Act will apply to any construction contract that is in writing. The expression construction contract is defined as any agreement for the carrying out of construction operations which is in turn defined by a long list of operations.

Agreements with a residential occupier, as defined in section 106(2), are expressly excluded from the scope of the Act as are all agreements that relate to oil or gas drilling or extraction, extraction of minerals and other underground or tunnelling works, power or process engineering contracts and agreements that provide simply for the manufacture and supply of plant, materials and building, engineering and services components.

The types of agreement that will be caught by the Act include the following:-

- civil engineering and building contracts;
- all forms of consultancy appointments whether made by letter or formal appointment document;
- agreements for lease, development and funding agreements that include obligations on any part to perform construction operations;
- most forms of warranty agreement provided by contracts or consultants; and
- some forms of bond and guarantee provided in connection with the performance of construction operations.

To be caught, the agreement must be in writing but this has a considerably wider meaning than one might expect. The Act will also apply where an agreement is made by exchange of correspondence or is evidenced in writing. An agreement will be evidenced in writing for these purposes where it is recorded in a written form, such as minutes of a meeting or memorandum, with the authority of the contracting parties. An agreement in writing will also be deemed to exist if one party alleges in any legal proceedings that there was such an agreement and this is not expressly denied by the other party.

The Right to Adjudication
(Section 108)

Any party to a construction contract, once the Act becomes operative, has the right to refer any dispute that arises under the contract to adjudication. That adjudication must follow procedures that comply with the requirements of Section 108 or, alternatively, where there are no such procedures, the so-called default procedures in the "Scheme for Construction Contracts" will automatically apply.

Importantly, adjudication under the Act will apply to all disputes arising under the contract of whatever nature or magnitude, not only to payment and set off disputes but also to complex and detailed claims for extension of time and loss and expense and to defect and professional negligence claims as well.

Arguably, the Act does not require that claims for breach of contract, as opposed to claims brought under the contract, should be referable to adjudication. No doubt this anomaly will itself give rise to further disputes in due course. Almost certainly, claims brought in the absence of a contract, such as quantum meruit claims, and claims relating to misrepresentation and negligent misstatement, are not covered by the Act.

To comply with Section 108, the construction contract must contain an adjudication procedure that satisfies the following criteria. The contract must:-

- provide for either party to refer a matter to adjudication at any time;
- contain a timetable for appointment of an adjudicator and referral of the dispute to him within 7 days;
- require the adjudicator to reach a decision within 28 days of referral or such longer period as may be agreed by both parties;
- allow the adjudicator to extend that period by up to 14 days with the consent of the party who referred the dispute to him;
- require the adjudicator to act impartially;
- permit the adjudicator to take the initiative in establishing the facts and the law;
- provide that the adjudicator's decision is binding until final determination of the dispute through litigation, arbitration or by agreement between the parties although the parties may make his decision final and binding; and
- provide contractual immunity from claims against the adjudicator in the absence of bad faith.

Where the contract falls down on any one of these points, and despite any statement to the contrary, the relevant provisions will become irrelevant. They will automatically be replaced by the provisions of the Scheme for Construction Contracts which are apparently cast in iron and cannot be amended.

The scheme is currently under its second consultation and there remains a couple of wrinkles that must be ironed out in the document. Unless the adjudicator's decision is given equivalent status to an arbitrator's award, albeit on an interim "pay now argue later basis", the parties will really be in no better position legally than they were before.

Improving the Payment Position
(Sections 109-113)

The payment provisions in the Act work on the same "unless" basis as those covering adjudication. If the contract terms agreed between the parties do not meet the minimum criteria laid down in the Act, that part of the contract effectively goes out of the window and the detailed payment provisions in the Scheme will apply.

In summary, the minimum criteria set out in section 110 are that the contract must provide:-

- an adequate mechanism for determining what payments become due and when; and
- a final date by which payments that become due must be paid.

The latter requirement may actually mean in practice that payment is made later than would otherwise have been the case. The Act then goes on to provide procedures for legitimate set offs to be made against interim payments, involving the service of the appropriate notice not later than the final date for payment, on the lines of DOM/1.

Where the Act makes a radical departure from existing standard forms is the statutory right to suspend work if payment has not been made in full by the final date for payment on seven days notice. Quite what the practical implications of Section 112(4), which deals with the effect of suspensions upon existing completion dates, are is pretty much anyone's guess. What if the suspension was unjustified? And, does it mean that if a sub-contractor suspends for whatever reason, the main contractor is automatically entitled to an extension of time under the main contract? Answers on a postcard please

Finally, Section 113 outlaws the infamous "pay when paid" clause. Or does it? It is probably correct that the astute draftsman can get round the Act simply by the device of making payment conditional upon the certificate being issued by the contract administrator rather than upon payment being made by the employer. Furthermore, the Act does not affect the position where the employer has become insolvent which is precisely the situation where the existence of this sort of clause causes the biggest headaches for sub-contractors.

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Issue No : 18
Published : Spring 97
Article No : 4
Author : M Kenyon and P McQuillan
Title : Ascertaining the Cost of Retained Plant

Ascertaining The Cost Of Retained Plant

It is common for construction plant of all types to be retained on site for extended periods of time when construction activities suffer delay. During any such extended period plant may be operational executing the original and unchanged, albeit prolonged, scope of work, the plant may be undertaking additional work for some of the delay period, alternatively the plant may stand idle and be incapable or prevented from earning turnover on other contracts. In the foregoing circumstances it is arguable that the contractor may incur loss and/or expense for which recovery will be sought.

The ascertainment of loss and/or expense arising from the prolonged retention of plant on site has recently been considered by Judge Lloyd QC in the case of **Alfred McAlpine Homes V Property and Land Contractors**. McAlpine entered in to a contract with Property and Land (PLC) dated 14th April 1989 for the construction of an estate of twenty two houses. The contract incorporated the standard ICT Form of Building Contract, 1980 edition. On 16th June 1989 McAlpine gave an instruction to postpone the works. This led to PLC submitting a claim under Clause 26 of the Contract, part of which addressed the recovery of loss and/or expense arising in respect of its own plant which was retained on site. Central to Clause 26 is that loss and/or expense is to be ascertained. In this instance PLC had determined its loss and expense by using hire rates for similar plant items.

In giving his judgement Judge Lloyd QC first gave consideration to what was meant in Clause 26 by the word "ascertain". He said:-

'… … "to ascertain" means to find out for certain and it does not therefore connote as much use of judgement or the formation of an opinion had "assess" or "evaluate" been used. It thus appears to preclude making general assessments ……'

Judge Lloyd QC then went on to consider the method by which PLC had determined its loss and expense. He said:-

' … … in ascertaining direct loss and expense under Clause 26 of the JCT conditions in respect of plant owned by the Contractor (which would not have been hired or which was not able to be hired) the actual loss or expense incurred by the contractor must be ascertained and not any hypothetical loss and expense that might have been incurred whether by way of assumed or typical hire charges or otherwise'.

The judgement also gives an insight as to the manner by which such loss and expense should be ascertained. Judge Lloyd QC said:-

'An ascertainment needs to take account of the substantiated cost of capital and depreciation … … '

This is not an inclusive definition of the types of loss and expense that need to be considered when owned plant is retained on site for prolonged periods. It is suggested that when loss and/or expense is being ascertained for owned plant it is convenient to consider it in terms of ownership costs and operational costs.

Ownership costs continue for as long as the plant item is in the contractors ownership, whereas operational costs are only incurred when the plant is put to work. Operational costs

would typically include fuel and maintenance costs. The cost of capital and depreciation are both associated with ownership.

The cost of capital should be reasonably straight forward to ascertain from a contractors financial records. The same cannot, however, be said for the cost of depreciation. Depreciation is influenced by any number of factors including the following:-

- **Age of plant/number of users** - new plant will depreciate quicker than second hand and older items of plant;
- **Usage** - an excavator used predominately to break out concrete ground beams on a demolition site will depreciate quicker than the same type of excavator working predominantly in soft soils.
- **Model availability and improvement** - certain models of plant are in higher demand than others and maintain high residual values. Conversely product development can accelerate obsolescence and depreciation.

Two approaches commonly applied to the calculation of depreciation, the reducing balance and straight line methods are not ideally suited to the ascertainment of loss and/or expense. Reducing balance depreciation involves annually reducing the value of plant by 25% of the previous years reduced value. The purpose of this calculation is to calculate an annual depreciation which is used as a tax allowance. The value written down by this method will be subject to later adjustment when the plant item is actually disposed of so as to provide for the actual cost of depreciation. The annual depreciation does not therefore equate to the depreciation incurred. Also, with the reducing balance method plant always has some value even though it may be obsolete and worthless.

Straight line depreciation involves taking the plant item purchase price, deducting the expected residual value and dividing by the number of hours, months or years of expected use. The problems with this approach are the accuracy with which future residual values can be determined and that depreciation is spread evenly across the planned period of ownership.

Clearly the actual depreciation of an item of plant will vary from situation to situation. Given that there is no formula or standard calculation which provides for the ascertainment of the cost of the depreciation, it may be prudent for a contractor which owns plant that suffers depreciation, to consider having the plant independently valued at the start of the delay and again at the end so as to determine the actual depreciation incurred. The practical problem of course, is in recognising when such a delay situation is starting. Additionally the contractor must establish causation, ie that the cost of depreciation would not have been incurred or would have been recovered elsewhere but for the delay.

It should be noted that the McAlpine Judgement does not preclude the use of hire rates in ascertaining loss and expense in appropriate circumstances. Such circumstances would include situations where the contractor has lost the opportunity to hire out its own plant because of the delay; where the plant retained on site is itself hired; or where the contractor has had to hire plant for another contract to take the place of plant retained on the delayed site. In all these situations normal contractor records should readily identify the loss or expense.

The judgement of Judge Lloyd QC will be welcomed as useful authority by those defending claims. It will not be similarly viewed by those pursuing claims that lack substantiated and sustainable quantum. It again comes down to records and the management of information. A contractor that is experiencing delay and that has its own plant suffering depreciation retained on site would be well advised to ensure that records of its actual depreciation are maintained.

Issue No : 18
Published : Spring 97
Article No : 5
Author : C Wilcock
Title : Expert Witness

Expert Witnesses

INTRODUCTION

Experts of many disciplines are regularly used on disputes of all shapes and sizes. As a solicitor often responsible for the management of a team including experts, witnesses, clients etc., I often wonder whether the standards and procedures to be adopted by the members of that team are well-understood.

Much has been written on the "independence" required of experts but little has been written from a practical perspective of what is involved in an expert appointment, particularly from a solicitor's point of view, albeit a personal one. So, here goes!

THE REFERRAL

I often receive from experts brochures outlining their services without their having given (seemingly) much thought to where that information is going, and to what end.

Many firms of solicitors have construction units or departments. Take the time and trouble to find out the partner or partners in charge. Find out if the department is stronger in certain areas. Tailor your efforts accordingly if that is the case. Ring first. Explain who you are, what you are doing. Why not suggest a short meeting at the solicitors' offices to discuss things?

Remember, you are selling a service - your expertise - and that initial contact and meeting can be important. Look to offer something which your competitors can't -advice in a specialised area or some cross-selling ideas.

Once you have made that contact, your name/practice will spring to mind when an appointment beckons.

THE APPOINTMENT

On many occasions, you may be fortunate enough to secure work directly from the solicitor, and without competition. I would suggest that these occasions are becoming, or will soon become, rarer.

On any large-scale construction or engineering dispute, for example, the client and solicitor will probably want to assess the relative strengths and weaknesses of several experts of like discipline. This will probably take the form of an informal interview with the solicitor and client. This is likely to be the route which I would advise. Be prepared for this. Find out, in advance of your meeting, something about the client's business and about the project. Why not suggest, if you are not asked for it, a confidentiality undertaking so that you can see in advance some of the project documentation. You may baulk at the thought, but the investment of a little time and money may prove of great value subsequently.

At this stage, the solicitor and client will probably want to know about the following:

- experience particularly suited to the project
- the likely size of the expert's team

- availability of resources, both now and in the future. Many experts use agency labour, particularly for some routine quantum tasks, and this labour (and its knowledge) may be vital at a later stage.
- other long-term commitments
- rates of pay sought
- presentational aids

Have the answers to these questions ready. Prepare a hand-out with your rates on as fees should be addressed at an early stage. Explain who will fit into each category. If (as on a construction project) planning/programming expertise is required, explain how this will be dealt with.

If successful, the expert can and should expect a letter of appointment directly from the client. This is the normal contractual arrangement, albeit that the expert will be receiving most instructions directly from the solicitor. The letter should confirm broadly: the work expected of you; any rates of pay agreed; whether you are bound by deadlines; whether the project requires long-term commitment (perhaps a far-off trial date which you must nevertheless commit to now); the records which you must keep showing what work is done, when and by whom (these are essential for subsequent taxation purposes). If any of these issues are not dealt with, clarify them immediately.

PRE-TRIAL WORK

You've been appointed and you are looking forward to a long and healthy relationship with the solicitors and their client. Your work will progress through some relatively well-defined stages such as:

- preparation of claim documents
- assistance on discovery, both practical and technical
- experts' meetings and experts' reports
- trial preparation.

These stages may require long hours and periods of work. This is not unusual. Litigation and other forms of dispute resolution often work to strict deadlines. It may be tactically very important to a client to achieve a deadline, perhaps to serve a claim on time to demonstrate strength of purpose to an opponent. If you anticipate problems, whether your own or any other team member's, don't hesitate to raise them at the earliest opportunity. If your solicitor has not set them up (and he should have) suggest regular team review meetings when these sorts of issues can be discussed.

On discovery, can you or your staff assist in the marshalling, coding, listing of (what can often be) thousands of relevant documents? If you can do this, and have experience, raise it with the solicitor first. It may fit in well with the overall case strategy, and the client may be delighted at the offer.

When you meet your other expert(s), be prepared for the meetings. Understand what a "without prejudice" meeting is. Understand the scope and/or limits of your authority at the meetings -can you agree figures as figures? Do not exceed your authority. If you feel inclined to agree something outside that scope, then clear it first with the solicitor and client.

Take notes at your meetings. Circulate and agree them with the other expert(s). Let your solicitor see the draft notes - not to re-write them, but to understand what is being discussed and the possible impact of it on the case.

So, you've done all the pre-trial work, experts' meetings and trial preparation. The case won't settle despite efforts on all sides. Trial looms.

THE TRIAL

This is often the most important part of the case for you. Be ready for long days and nights of intensive work with all the team - lawyers, other experts, witnesses of fact and the client. You may be working away from home so make sure you have technical support. Do you need other members of your staff present for all or part of the hearing? If so, explain why to the client.

You will be expected to listen to and comment on the opponent's witnesses (both expert and factual) as they give their evidence. Of course, you've already seen and commented on their reports and statements but it's surprising how often changes to that evidence come out when in the witness box.

Help the lawyers to prepare fully for cross-examination. Don't be afraid to suggest questions or lines of enquiry not only to put to your opposing' experts of like discipline but also to experts of other disciplines. Don't forget, it's a team game, and the team that is best prepared and organised may win not just because of that, but it will do no harm to the effective presentation of its case.

CONCLUSION

I apologise if, to many, this all seems to be a case of "teaching grandma to suck eggs". It's surprising how often team spirit is not engendered at the outset, or is lost through lack of effective communication amongst the team members. It can be summarised quite simply. You are appointed by the client to investigate aspects of its case. In doing so, you ought to be guided by the clients solicitor. You should report fearlessly on your findings. You should look to contribute to the development of the case management. That will lead to team spirit and, hopefully, a job well done. (So, that's my perspective on our use of experts. How about the situation in reverse?)

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