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Delay Analysis – Methodology and Mythology – Part 1 by Tony Farrow

The following article is Part I of a two part article on analysis of delays in a construction project. This first part explains the process of delay analysis and methodology and examines the 'theoretical based' methods of analysis.

The second part of the article will consider 'actual based' methods of delay analysis, will contrast the theoretical and actual based methods and discuss what factors may affect the selection of the appropriate method.

Introduction

'Has construction law changed much over the past decade?' During a question and answer session at a recent lecture on construction claims, I was asked this question. In giving my answer, I considered the question from three perspectives: recent reforms, statute and case law.

With regard to the first point, I referred to Lord Woolfe's report *Access to Justice* published in 1995 and his recommendations aimed at addressing the criticisms that civil justice was too slow, costly and complex. Building on the recommendations contained in this report, the Civil Procedure Rules came into effect on 26 April 1999 and replaced the Rules of the Supreme Court (the White Book). Judicial case management lies at the very heart of these reforms and I have no doubt that anyone involved in construction disputes 10 years ago will agree that the case management of construction litigation has been revolutionised over the past decade.

I then turned to Sir Michael Latham's report *Constructing the Team* (more commonly referred to as the Latham Report), published in 1998, a precursor to the *Housing Grants, Construction and Regeneration Act 1996* (UK) (the Act) which introduced statutory adjudication into many areas of construction. Five years have passed and the effect of this legislation has been considerable. The number of construction disputes that now proceed along the traditional avenues of litigation and arbitration have been reducing each year since the introduction of the Act. Ask any construction lawyer what is the type of work they are involved in these days and the answer will probably be: 'Another adjudication: it's been non-stop for months'. Although it is not yet known what the long term consequences of adjudication will be, it can be stated with certainty that the introduction of adjudication has fundamentally altered the construction dispute process.

Finally, I considered recent case law, with particular emphasis on cases concerning extensions of time, which was the area of my talk. I referred to:

- *Balfour Beatty Building Ltd v Chestermount Properties Ltd*
- *Piggott foundations Ltd v Shepherd Construction Ltd*
- *John Barker Construction Ltd v London Portman Hotel Ltd*
- *Ascon Contracting Ltd v Alfred McAlpine Construction Isle of Man Ltd*
- *Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltd*
- *Royal Brompton Hospital v Frederick Alexander Hammond.*

From these cases, the following conclusions can be drawn.

1. Theoretical calculations of delay have been discredited on numerous occasions.
2. What actually occurred on the particular project is significant when analysing contractual entitlement.
3. Who owns the program float, as between employer and contractor, is still unclear. Simplistically one would conclude that the contractor does, but there is rarely a simple case to which to apply the rule and so the debate over ownership continues. For example, a contractor cannot allocate a general float period on a selective basis when dealing with subcontractor delays.
4. When there are two concurrent delays, one the employer's responsibility the other the contractor's, the latter is entitled to an extension of time.
5. However, where the contractor is already in delay and the employer introduces an excusable event which does not further delay the works, no extension of time is due.
6. But, if the excusable delay further delays the works, the contractor is entitled to an extension of time, on the net entitlement basis.

From the perspective of extensions of time, my view is that recent case law has not brought about significant changes to construction law. Instead, the courts have clarified a number of issues, particularly in relation to the facts and contract terms of those specific cases.

Following the lecture, I reflected on how my own practice of preparing and evaluating contractors' claims and related expert witness work had changed over the past decade. One particular feature stood out. Trett Consulting employs three times as many forensic planners (or programmers or schedule analysts) in 2001 than it did in 1991. This is significant because it indicates how the nature of contractors' claims has changed, in particular with respect to the analysis of project delay. There was a time when this work was the domain of quantity surveyors but today, in a firm such as Trett Consulting, half my colleagues are from a planning, construction or engineering background, rather than purely commercial. This stems from the fact that delay analysis today is more involved, more analytical, and more forensic and a more challenging feature of construction law than it was 10 years ago.

This change can also be attributed to developments in computer technology, in conjunction with more advanced planning and forensic software tools which are now available to the analysts involved in the investigation of project delays. Indeed, delay analysis has become a construction law subject in its own right, with American and UK publications available relating solely to this topic. The Society of Construction Law in the UK has drafted protocol for determining extensions of time.

I discussed how delay analysis has changed with several of my colleagues. Of particular interest were the experiences of one of our forensic planners, Chris Foan. Having given evidence in a number of arbitrations, he expressed the view that the approach to delay analysis was indeed changing. However, rather than setting out what had occurred on a project and why, he felt many claims were being presented on what *should* have occurred or what *would* have occurred but for a series of events imposed upon a party. Claims were based on theoretical models, not interrogation of fact.

We debated the number of text books now available and formed the view that while the problem has never changed (that is, 'what caused the delay and who is responsible for the time and cost consequences?'), the means of investigating and presenting the problem (that is, the delay analysis methodologies) had changed. We decided to review a selection of these methodologies and applied them to a single project scenario. The conclusion drawn from our research was that many of the techniques produced different and, in some cases, unrealistic results which were closer to fiction than fact.

From this we coined the phrase 'delay analysis mythology' and this is the theme of this article. That is to say, methodology is concerned with a set of practices, rules or procedures used by those engaged in an enquiry, and mythology is fictional story telling. Are those using delay analysis methodologies as a means for investigating project delay, actually engaged in delay analysis mythology?

The following notes briefly describe the types of methodologies in use, their advantages and disadvantages, the factors influencing selection of a methodology, the means of testing the robustness of each, and most importantly, identifying how *methodology* can sometimes lead to *mythology*.

What is delay analysis?

Before considering the various different types of delay analysis methodology, it is necessary to consider what we mean by delay analysis and why we should want to use it.

Delay analysis refers to a forensic investigation into the issue of what has caused a project to run late. That is, delay to the completion of work or contract milestones caused by the time impact of events such as variations, late information, excessively inclement weather, poor performance, remedial works and the hundreds of other delay causing circumstances that arise on construction projects.

Analysts distinguish between *critical* and *non-critical* delay, the former delaying the project's completion date and the latter affecting progress but not overall completion. Ultimately, we need to identify those events causing critical delay for evaluating extensions of time, but it can be difficult to distinguish between each type. Analysts also investigate program disruption, or disruptive delay, which concerns issues of productivity, acceleration, congestion, fatigue, morale and other consequential effects of project change. This aspect is not considered in this article.

There are three primary reasons why one might want to analyse delay: to establish lines of investigation; to demonstrate entitlement; and to present the case one is seeking to prove.

To help establish lines of investigation

An investigation of a construction project will involve consideration of a wide variety of issues. These include: where the delays occurred (which part of the project – was it in the foundations, steelwork, roof, air conditioning and so on); when did the rate of progress decline; where did late information or materials cause delay; instances of competing delays; poor productivity; insufficiency of resources; lack of design information; failure to progress; excessive rainfall and so on.

Such an investigation requires a forensic review of project records involving three stages.

1. *Databasing* relevant project records, such as program activities, progress schedules, actual start and finish dates, labour allocation sheets, daywork sheets, notices of delay, material deliveries, plant deliveries, weld records, chainage progress, drawing registers and so on.

2. *Analysing* the databased records by linking related data together where relevant (for example, drawing numbers linked to activity progress), sorting/ grouping data by different variables (for example, progress by floor, by gang, by 'system', by trade and so on), aggregating or summing together quantities (for example, numbers of drawings per week, progress achieved per month and so on) and selecting or filtering data of particular interest.

3. *Graphing* the results of the analysis using barcharts, histograms, line graphs, tables and so on.

Analysis of project information in this way can help to highlight when events, delays or disruptions arose, how extensive they were, where they occurred on the project and which program activities were affected.

The graphs or charts produced in this way are working documents, in that their purpose is to identify changes or variances (such as peaks and troughs in resource levels, design

information, overall productivity and so on), trends (indicating where delays arose, where events and delays occurred at the same time, reductions in productivity and so on) and differences (such as illustrating that certain floors/trades/systems were not affected whereas others were).

This kind of working data analysis can be raw and involves 'slicing and dicing' the project records in order to discover where the effects appear to exist and where the problems probably arose. In general, such analysis does not rely on a delay methodology, but requires a free format and versatile data analysis and graphics software tools. From this investigation, the analyst hopes to identify those issues, time periods or construction elements that require a more detailed study.

To demonstrate entitlement

This is the main subject of this article. I use the phrase 'to demonstrate entitlement' with caution as it may imply that the delay analysis using one of the methodologies is the demonstration (that is, it discharges the party's burden to prove the consequences of a set of events upon the progress of the works). However, this implication is mythology. The delay analysis methodologies do not provide the ultimate answer in a case concerning extensions of time. The methodologies are tools for assisting in describing or analysing complex sets of facts. It is the engineer or architect, or ultimately an arbitrator or a judge, who has to consider and weigh up all the competing evidence and form an opinion. The delay analysis exercise will assist in this process but it will only be part of the evidential matrix. That is to say, the tribunal has to weigh up the terms of the contract, relevant case law, witness evidence, contemporary records such as photographs, as well as considering analytical exercises such as delay analysis, and form its own views.

To present the case

Having interrogated the project records and analysed the delays, it is necessary to convince the opposing party. Visual aids can help this process (primarily graphs and charts) and these can be produced using IT tools used by the delay analyst.

Delay analysis methodologies

There appear to be two groups, or types, of delay analysis methodology. The first category is often referred to as *entitlement based methods*, but this is not an ideal description since it can be confused with contractual entitlement. For example, a contractor's entitlement to an extension of time is derived from the terms of the contract, whereas entitlement here is derived from the results of a delay analysis methodology (that is, it is methodological entitlement). The two are clearly different.

Theoretical based methods is perhaps a better definition, since these methods rely on demonstrating the theoretical impact of the consequences of delaying events, rather than on showing what in fact occurred. Another definition of this group could be *model based methods*, since each methodology is based on establishing a programming model of the project and then influencing it by the application of project events or constraints. The theory based grouping includes the global and net impact methods, the *as-planned but for*, the *as-planned impacted* and the *as-built but for* methods.

The second group is called the actual based methods, since they seek to demonstrate what actually occurred on a project and the analyst investigates what caused the project delay. These methods include the *as-planned vs as-built*, the *window/ snapshot* and the *impact/update* methods.

The *theoretical based methods* all approach the issue of entitlement to extension of time by first focusing on the delay event and then seeking to determine what delay may have resulted. However, this is not achieved by identifying its actual impact from recorded facts, but

by theoretical analysis of what the effect ought to have been. These methods tend to favour the contractor's position because matters such as culpable delay (that is, where the contractor has a problem of its own), the effects of mitigation (that is, the employer's delay being offset by simple corrective action by the contractor) and the programming changes actually implemented by the contractor, tend to be considered only as secondary issues, if at all.

On the other hand, the *actual based methods* approach the analysis by seeking to measure how actual progress differed from what was planned. They focus on how the works progressed, how activities were actually delayed and only thereafter seek to ascertain what delay event(s) caused this delay

I would emphasise that the two groups do have common features and cannot be distinguished in absolute terms. For example, the actual based methods also rely on models and theory, but less so than the entitlement or theory based methods.

One feature that all the methodologies have in common, however, is the subjectivity involved in the entire delay analysis process. If different analysts investigated the same project, applying the same method and using the same facts, they would be unlikely to arrive at the same conclusion. This is because each analyst will have to consider and challenge a wide variety of related issues and each analyst will apply different degrees of personal experience and judgment.

These related issues include:

- the sufficiency of the planned durations;
- the sequence and logic of the planned program of work;
- the sufficiency of resources provided by the contractor to carry out the works;
- criticality, being the determination of those activities influencing progress at each stage;
- program float or risk contingency;
- the impact of revisions to program;
- concurrency of events (two events imposed at the same time);
- concurrency of delays, (two events imposed at different times but causing delay at the same time);
- contractor mitigation, that is, making up lost time by construction experience and skill;
- dominance theory (which event was the major contributor to delay); and
- acceleration, which involves increasing the rate of production by employing more resources or working longer hours.

To take a very simple case. An element of work took two men four weeks instead of two weeks. Throughout the period the weather was dreadful. The contractor claims that the weather caused the delay. The employer asks why did the contractor not employ four men? Opinions will differ, not only between contractor and employer, but also between analysts.

The point, I believe, is this. The delay analysis methodologies each provide a set of rules for examining project delay. However, issues affecting the analysis using any methodology require subjective assessment and it is these assessments that undermine the analytical or clinical nature of the process. In addition, the rules of the methodologies can be ill defined or require judgment in applying them, and this again increases the level of subjectivity.

In summary, none of the methodologies are perfect because they all include an element of assumption, subjective assessment and theoretical projection, some more than others. For this reason, the 'answer' that a methodology provides is only as good as the accuracy of the base information, the assumptions inherent in the methodology and the reasonableness of the subjective decisions made by the analyst. This is important to recognise if you are employing delay analysis to assist in presenting your client's case.

The following notes briefly discuss each of the theoretical based methods referred to earlier. Part 2 of this article discusses actual based methods and this is followed by some practical considerations of selection and use. One problem any writer on delay analysis has is attempting to describe in words something that really requires a dynamic and graphical presentation.

Theoretical based methods

Global impact method

The global impact method is a rough and ready way of indicating what the potential impact of a delay causing event has been. An example of a global approach is where the work scope (that is, the amount of work the contractor has to carry out) doubles due to variations and so the duration of the relevant activity is doubled. In the *McAlpine Humberoak v McDermott International* case the claimant sought to demonstrate its delay case by arguing that every hour worked on particular variations equated to an hour delay to the project (the argument was not accepted!). Another example of a global claim arises when you indicate the date of a variation and measure the difference between the planned start or finish date of the relevant program activity with the date of the variation, to arrive at a period of delay to the project.

The global approach is quick and simple but never contractually supportable and provides no cause and effect. It ignores other delays occurring at the same time and does not consider timing, concurrency or dominance of delays. It also ignores any actual delays caused by the contractor.

This method has also been repeatedly criticised by the courts because it fails to consider the fundamental issue of criticality (that is, whether the works were delayed or not) and ignores reality, as well as the contractor's duty to mitigate. Despite the criticisms, the global method is still widely used by contractors endeavouring to demonstrate their case.

Net impact method

This is essentially the same as the global method but with the refinement that the issue of concurrency of delays is considered. For example, where there are two concurrent delays each of five days, only five days is taken as delay to the works rather than the total of 10 days, as would be the case with the global method. The advantages and disadvantages of the global impact method also apply to this approach. In summary, this method has little to commend its use.

As-planned impacted method

This method is also known as the *entitlement method* and the *POPE method* (program of possible entitlement). It analyses the theoretical effect of impacting delay events onto the original baseline (that is, planned) program and projecting the completion date using the original sequence and timing of remaining activities. It can be used to show the theoretical delaying effect of the employer's delays, or of the contractor's delays, or of both together.

The prerequisites of this method are a baseline critical path program that represents the contractor's intent and a schedule of delay events. The first step is an assessment of the likely critical delaying effect of each delay event in the schedule. This can be estimated using norms and experience, or be based on evidence of the actual delay experienced on the project. Second, for each delay event, the effect (such as a delayed start, delayed finish or prolonged duration) is individually impacted onto the planned program, in chronological order and the project completion date re-analysed. This process continues until all of the delays have been impacted.

The strength of this method is that the process avoids the need to analyse actual progress records in detail because the key elements of the methodology are the original baseline program and a schedule of delay events.

However, there are two principle weaknesses of this method. First, the original baseline program may not be a realistic model on which to base the whole analysis (because the works were probably carried out in a different sequence and at a different time from that originally planned). Second, since actual progress is not considered, this method does not demonstrate what actually caused delay to the works. If it can be shown that a delay event relied upon in the analysis could not have actually caused delay (for example, if it can be shown that alleged late information was received well in advance of the actual progress of the works), then the methodology will lose credibility.

If the result of this method is a projected end date that is much later than the actual achieved end date, then the reasonableness of the analysis will be in doubt, which is often the case. As with the other entitlement methods, the results derived from the analysis are likely to be attacked as artificial.

As-planned but for method

For this method, the analyst impacts the planned baseline program with the assessed implications of the events a party considers it is responsible for and the combined influences of these are analysed. The impacted completion date is then compared with the as-built completion date (that is, when the project was actually completed) and the difference is said to be how much earlier the project could have finished 'but for' all the other delay events (imposed by the other party) but which have not been analysed. The period between the analysed date and the actual completion date is said to represent either the contractor's entitlement to an extension of time or the employer's entitlement to deduct liquidated damages, depending on which set of events have been analysed.

The advantage of this method is that it is reasonably quick, as there is no need to consider actual progress of the works or the timing of events, but this means it is a theoretical investigation.

This method also relies upon the planned model for carrying out the works and ignores the fact that the actual critical path would more than likely be different. This is because a planned program is an early projection of intentions and the contractor will change the sequence and timing of activities when the works are in progress.

As-built but for method

Although this methodology adopts a model of the as-built program for analysis, and so starts off as a fact based analysis, it is still a theoretical analysis of delay. The approach is similar to the as planned impacted method, but in reverse. The as-built program is first constructed and linked together into a critical path network. This becomes the model to be analysed. A schedule of delaying events is created, including a measure of their impact (for example, a start delay, a finish delay or an activity prolongation). The very last excusable delaying event on the critical path is removed and the model is re-analysed. The difference in the overall program duration before and after this removal is said to represent the period of critical delay caused by the particular delay item removed. For example, if the last activity in the project happens to be a five day painting variation, when this excusable delay is removed, the program is able to finish five days earlier. Thus, 'but for' the additional painting, the program could have finished five days earlier.

This process is then continued until all excusable delays have been removed and the model has been fully collapsed (the method is also referred to as the *collapsed as-built* method). The process can also be applied by removing all the excusable events together, or by grouping similar excusable events together and removing each group individually. Whatever the

approach, each invariably produces a different answer! Once the analysis is underway, the model no longer represents the real as-built program but is only a simulation of what the as-built program could have been had the delay events not occurred. The model is, therefore, sometimes referred to as the *simulated as-built program*.

The accuracy of the analysis will depend on the quality of the information on which it is based. The greater the amount of information that can be provided in support of any assumptions made, the more credible the results. Such information will generally be gained from site records, in whatever form they exist, and the importance of accuracy, completeness and reasonable logic cannot be over stressed. However, since the method is based on the as-built program, it appears to have a thread of truth about it.

Although the principles of this methodology are straightforward, its application is not. It is dependant on subjective logic links that were never set down and which were never agreed in any contemporaneous program. It is open to criticisms of bias on the part of the analyst. Also, removing delay events (and logic links) retrospectively does not reflect the actual way the works were progressed. Hence, this methodology does not appear to be an appropriate one for most standard forms of contract. In summary, the results of an as-built but for analysis are often impossible to defend because they do not relate to what actually happened on the project.

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Civil Justice Reforms in Hong Kong

by Clare Williams

On 26th April 1999, the Civil Procedure Rules (CPR) came into force in the UK. Over the last 3 years we have watched with interest, as the implications of these reforms became apparent. On the whole however, the reforms have achieved their objective – to reduce the cost, delay and complexity associated with the previous system of civil justice.

LAST year I relocated to Hong Kong and, upon my arrival, discovered that the same criticisms and concerns were frequently voiced with regard to the Hong`Kong civil justice system.

There is a strong-held belief that the defects in the Hong Kong system not only affect access to justice but also undermine the competitiveness of the region as a financial and commercial centre. Critics of the current system claim that the main problem is the excessively high costs associated with litigation in Hong Kong. As a direct result of these high costs there is evidence that parties to civil disputes frequently opt to avoid Hong Kong as a venue for the resolution of disputes. It is considerations such as this, which the critics believe have led to Hong Kong becoming a much less attractive place in which to do business.

In addition to the concerns regarding the high costs of litigation in Hong Kong, other areas of concern have been identified. With regard to delay in the civil justice process it has been acknowledged that, whilst the delays encountered are not at crisis levels, they are significant and that something must be done to rectify this situation. There is also grave concern regarding the complexity of the civil justice system in Hong Kong.

As a result of these concerns in February 2000, the Honourable Chief Justice Andrew Kwok-nang Li appointed a Working Party, which included judges, a barrister, a solicitor, a professor and a lay member, to:-

“... review the civil rules and procedures of the High Court and to recommend changes thereto with a view to ensuring and improving access to justice at reasonable cost and speed.”

This led to the publication on 29th November 2001 of the Interim Report and Consultation Paper. The aims of the Report are to:-

- Report on reforms in other jurisdictions relevant to Hong Kong;
- To review available evidence as to the state of civil justice in Hong Kong; and,
- To formulate proposals for possible reform for the purpose of consulting court users and all interested members of public.

The main criticisms in relation to the current system in use in Hong Kong include the following:-

- Litigation is too expensive;
- Litigation is too slow;
- There is a lack of equality between litigants
- Litigation is too uncertain in terms of both time and cost;
- The system is too fragmented; and

- Litigation is too adversarial

There is a widespread belief that the characteristics of an effective civil justice system would include the following:-

- A fair and just system which:-
 - ensures equal opportunities for litigants,
 - provides litigants with an adequate opportunity to state its own case and answer its opponents, and
 - treats like cases alike.
- Procedures and costs should be proportionate;
- The process should progress with reasonable speed;
- The system should be easy to understand;
- The system should be responsive to the needs of those who use it;
- It must provide certainty; and
- The system should be effective, adequately resourced and organised.

In general, it is considered that Hong Kong's civil justice system suffers from similar problems to those experienced in the UK. The Interim Report draws references from the Final Report of Lord Woolf claiming that this report:-

“ .. identifies as the main cause of the ills mentioned ... the unbridled and inappropriate application of adversarial principles in the civil justice system.”

Therefore, the Working Party has used the Woolf Reforms as a framework for considering the available options and possible civil justice reforms to the Hong Kong system.

The main focus of the Interim Report and Consultative Paper is that of the procedural rules and machinery which regulate the civil justice system in Hong Kong. In examining these procedures the Working Party has drawn from developments made abroad.

Within the Interim Report and Consultative Paper the Working Party makes a total of 80 proposals for possible reform. However it is important to note that these are merely proposals, they are not the recommendations of the Working Party. These proposals have been floated in order to seek the reactions of the legal profession and all interested parties, organisations and the general public.

In general terms, the Working Party has reached the conclusion that broad based, coordinated and properly resourced reforms are what are called for.

Initially the consultation period was due to end in April 2002, however, this period was extended by two months following a request from the Hong Kong bar Association. In total 93 responses were received to the proposals. The Working Party is currently reviewing these responses and will then make its recommendations in the form of a Final Report, to be submitted to the Chief Justice in early 2003.

Therefore, once again we find ourselves waiting with bated breath for the Final Report of the Working Party. Will the resulting reforms be as sweeping as those introduced in the UK which effectively replaced the existing civil justice system, or will the Hong Kong legal profession merely have to contend with minor alterations to the current system? Only time will tell.

Clare Williams was seconded to Trett's Hong Kong office during 2001 and is now a Consultant to Trett in the UK.

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Procuring IT...

Part 1

Kevin McCafferty offers his advice on procuring information technology. His article is in two parts. Below, he considers the contents of an IT contract. In part 2, he will give his views on managing the contract.

Introduction

IN recent months a number of high profile IT contract disputes have hit the headlines. Disputes such as those between EDS and the National Air Traffic Services and W.H. Smith and Siemens/Fujitsu-Siemens, reported in the last few months are examples that the IT industry is moving in a more litigious direction. IT clients and providers are no longer prepared to sit back and accept the failings of the other party and, more and more, are looking to their contracts to recover some of the additional costs or losses that they have incurred. Statements such as "IT Projects are always late", "IT Projects always cost more than you bargained for" or "Don't worry, it'll be in Release 2" will soon be in the past. IT clients now expect to get what they asked for, when they asked for it and for it to do what they want it to do. On the other hand, IT providers should not be expected to accept changes to requirements or specifications without the cost and time impact of the changes being incorporated into the contract.

So what can be done to avoid getting into a contractual dispute? Many IT contractual disputes are around System Development / System Integration type Contracts such as those in the aforementioned reported disputes. Kevin McCafferty, who heads up the IT Services Division of Trett Consulting, has this advice for companies considering placing or currently involved in similar type contracts:

Contract Strategy and Drafting

Before agreeing a Contract it is important that you understand what it is you want the supplier to provide. Your specification of requirements is a critical document, as this defines what the supplier will provide. It also drives the type of Contract that you should enter into and who is responsible for the contractual risks. You should have a clear contract strategy addressing these points before going out to tender or seeking proposals.

Contract Types

1. Fixed Price Contract – this contract type is most appropriate where you have a very detailed specification of requirements.
2. Time and Materials Contract – this contract type is most appropriate where you only have a high level understanding of your requirements, and you have very little in the way of time or cost constraints.
3. Risk and Reward Sharing contract – this contract type is most appropriate where you only have a high level of understanding of your requirements, and you are constrained by time and by cost.

Unlike the Construction Industry, there are very few industry wide model forms of Contract for the provision of IT services. The Terms and Conditions for IT Services therefore tend to be based around those of IT suppliers which, inevitably, will be biased more toward protecting the supplier than the customer.

Contract Risks

The main risks that these type projects run are:

1. The delivery dates over-running;
2. The contract costing you more than has been agreed, and
3. The system not doing what it is that you want it to do.
4. The terms and conditions providing inadequate protection and remedy.

The Contract type you enter into will determine who is responsible for these risks within the project and commercially.

In a Fixed Price Contract, unless expressly stated, this risk should lie with your supplier. Your supplier will have protection within the Contract for extensions to the delivery dates and additional costs where you change or increase your requirements or where you have caused delays within the Contract.

In a Time and Materials Contract the risk for additional costs and time delay lies solely with the customer, except where the Contract expressly states otherwise, or where it can be proven that the supplier has been negligent in performing the Contract.

In a Risk and Reward Sharing Contract the risks are shared, based upon the levels agreed as part of the Contract.

It is possible to have a contracting strategy that combines the Contract Types, for example, the Design work carried out under a Time and Materials Contract, with the Development, Testing and Implementation work carried out under a Fixed Price Contract. The important issue here is that you ensure that the risk of errors and omissions under the Design contract are transferred into the Development, Testing and Implementation Contract.

Having determined your Contract Strategy the key is to produce a Contract document that reflects that strategy. There are a large number of issues that need to be considered and included in your contract document. As a guide, these should include, but are not necessarily limited to:

- Scope of Contract
 - Business requirements should prevail over supplier solution proposal
- Supply of Products and Services
 - What products and services are included
 - What products and services are optional
 - How do you deal with Additional Products and Services
- Supply of System
 - staged or single delivery
- Contract Charges
 - Fixed price / Time and Materials
 - Additional Services
 - Expenses
 - Payment Profile
- The System
 - Design
 - Development
 - Testing

- Delivery and Installation
- Acceptance
- Training
- Maintenance
 - Pre completion
 - Post completion
- Ownership and licenses
 - Hardware
 - Software
 - Documentation
 - Data
- Warranties
 - Performance of services
 - Fitness for purpose
 - Performance of system
 - Warranty period
 - IPR indemnity
- Contract Administration
 - Variations
 - Assignment
 - Time
 - Delay
 - Force Majeure
- Remedies
 - Liquidated damages
 - Adjudication/Arbitration/Alternative Dispute Resolution
 - Limitation of Liability
- Termination
 - Rights to terminate
 - Survival of obligations
 - Return of money and property
- Miscellaneous
 - Personnel
 - Security
 - Protection of personal data
 - Confidentiality
 - Publicity
 - Insurance
 - Contingency
 - Governing Law

Contract Management

A Contract should not be something that is professionally written and agreed, then stuck in a drawer and forgotten about until something goes horribly wrong and everyone has started shouting at each other, pointing fingers and waving invoices in the air. Unfortunately, in IT, this appears to be the case more often than not.

The Contract is the most critical document in the project and defines the roles and the responsibilities of each of the parties involved. Every time a decision is reached on the project, the impact of that decision should be considered in terms of the effect that this has on the Contract. It may change the scope, it may move the end date, it may change the price, it may do all three and more. And if it does any of these, then a variation to the Contract needs to be produced.

In Part 2 the management of an IT Contract will be addressed, with tips and advice on how the successful management of a Contract can lead to the successful completion of a project. It also addresses the touchy subject of contractual disputes and how to deal with these if you find yourself in one.

If you would like further information on our IT Services please visit our IT website at www.trett.net or contact Kevin McCafferty on 01786 449779.

Issue No : 27
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Article No : 4
Author : Rajendra Navaratnam
Title : Implications of the Highland Towers Judgement in Relation to the Duties of Building Professionals in Malaysia

Implications of the Highland Towers Judgment in Relation to the Duties of Building Professionals in Malaysia

This landmark case arose out of the 1993 tragedy of the collapse of a tower block in the Highland Towers development in Ampang, just outside the Malaysian capital of Kuala Lumpur leading to loss of life and the loss of use of the Blocks that remained standing.

The event gained widespread publicity at the time, in particular as it was captured by a dramatic sequence of photographs taken by an American visitor to the Towers, and the frantic rescue operations over the next ten days.

The case has several important implications for Building Professionals in Malaysia, which will be the focus of this discussion, and also led to interesting developments and clarifications in the law of tort in Malaysia.

Brief facts

Highland Towers consisted of three blocks 12 storey high apartments named simply as Block 1, 2 and 3 respectively. It was constructed sometime between 1975 and 1978. Directly behind the 3 blocks was a steep hill with a stream flowing west ("the East Stream"), which would have passed harmlessly to the south of the Highland Towers site if it was allowed to follow its natural course.

Some time in the course of the Highland Towers development (as found by the Court) the East Stream was diverted by means of a pipe culvert to flow northwards across the hillslope directly behind Highland Towers. The approved drainage system on the hillslope behind Highland Towers was never completed.

On Saturday, the 11th December 1993, at about 1.30p.m., after 10 days of continuous rainfall, Block 1 collapsed.

The 2nd Defendant, an architectural draughtsman, was the purported architect of Highland Towers.

The 3rd Defendant, was the engineer for Highland Towers.

The 4th Defendant was the local authority at the material time who had jurisdiction over the Highland Towers Site, the hillslope directly at the rear of Highland Towers ('Arab Malaysian Land') and the surrounding areas.

The 5th Defendant was, at the material time, the registered owner of the Arab Malaysian Land.

The 7th Defendant was the registered owner of a large piece of land (Metrolux Land) which is situated on top of a ridge, commonly known as Bukit Antarabangsa. This land is located just above the Arab Malaysian Land and at the material time was under development.

The 8th Defendant was the provider of management services to the 7th Defendant to develop the Metrolux Land into a housing estate.

Cause

The landslide that brought down Block 1 of Highland Towers was found by the Court to have been a rotational retrogressive slide emanating from a high retaining wall behind the 2nd of a 3-tier car park serving the 3 blocks of the Highland Towers.

Water was found to be one of the factors that caused this high wall to fail. This water emanated from poor and nonmaintained drainage, as well as a leaking pipe culvert carrying the waters of the diverted East Stream.

Liability

The following were the findings on liability by the Court:

The First Defendant was liable in negligence for

- i. not engaging a qualified architect,
- ii. constructing insufficient and inadequate terraces, retaining walls and drains on the hillslope which could reasonably have been foreseen to have caused the collapse
- iii. diverting the East Stream from its natural course and failing to ensure the pipe culvert diversion was adequate, and in nuisance for not maintaining drains and retaining walls.

The Second Defendant (Architect) was liable in negligence for

- i. not having ensured adequate drainage and retaining walls were built on the hillslope adjacent to the Highland Towers site, which he foresaw or ought to have foreseen would pose a danger to the buildings he was in charge of,
- ii. in not complying with the requirements of the authorities in respect of drainage, in colluding with the First Defendant and Third Defendant (the Engineer) to obtain a Certificate of Fitness without fulfilling the conditions imposed by the Fourth Defendant (the Local Authority), in so doing not complying with his duties as Architect, and
- iii. in not investigating the terracing of the hillslopes and construction of retaining walls even though he was aware they would affect the buildings he was in charge of, and also in nuisance as he was an unreasonable user of land.

The Third Defendant (Engineer) was liable in negligence for

- i. not having taken into account the hill or slope behind the Towers,
- ii. not having designed and constructed a foundation to accommodate the lateral loads of a landslide or alternatively to have ensured that the adjacent hillslope was stable,
- iii. for not having implemented that approved drainage scheme,
- iv. for colluding with the First and Second Defendants to obtain a Certificate of Fitness without fulfilling the conditions imposed by the Fourth Defendant and also in nuisance as he was an unreasonable user of land.

The Fourth Defendant (Local Authority) although negligent in respect of its duties associated with building. i.e. in respect of approval of building plans, to ensure implementation of the approved drainage system during construction, and in the issue of the Certificate of Fitness, was nonetheless conferred immunity by reason of s95(2) of the Street, Drainage and Building Act.

The Fourth Defendant was however not immune in respect of its negligence in carrying out its post building functions of maintaining the East Stream. This also attracted liability in nuisance.

The Fifth Defendant (Arab-Malaysian Finance Bhd) was liable in negligence in failing to maintain the drains on its land, and in taking measures to restore stability on its land after the collapse.

The Seventh Defendant (Metrolux Properties) and its Project Manager, the Eighth Defendant, who were liable in negligence and nuisance for preventing water from flowing downhill (into their site) and instead directing water into the East Stream, when they knew or ought to have known that this would increase the volume of water and inject silt, especially where there was extensive clearing on their land, into the East Stream where it would be deposited, which would in turn (as proved) cause or contribute to the failure of the drainage system and collapse of Block 1.

The Ninth and Tenth Defendants (essentially the State Government) were not found liable due to a technical issue in respect of the particular party sued.

The Sixth Defendant (an abortive purchaser of the Arab-Malaysian Land who carried out site clearing works) was not found liable on the evidence.

Impact On Duties Of Building Professionals

A. The Architect

(i) No Defence That Engagement Was A Limited One, At The Very Least Must Ensure The Other Aspects Of The Works By Others Was Done Competently

The Architect's defence that he was only retained to design and supervise the 3 apartment blocks, and denied that his scope extended to the drainage, earthworks and retaining walls.

This was rejected by the Court.

The Court held that the Architect must take into account the condition of the vicinity of the land upon which the building is built, as well as the land itself, must be evaluated when assessing the safety of the building.

[Also, as a matter of fact the Court found that the Architect was concerned with the vicinity as well as the building itself when he submitted the layout plan to the authorities as it included terracing and drainage of the hillslope behind Highland Towers. He must therefore ensure that this work, although carried out by others, is carried out in a competent and workmanlike manner]

(ii) No Difference In Standard Of Care For Unqualified Practitioner

Even though the Architect was in reality only an Architectural draughtsman, the Court measured his conduct against the standard of a reasonably competent Architect, holding that if a man is unqualified but holds himself out to be possessing a skill, he would be judged by the standard of a reasonably competent qualified person.

(iii) No Excuse To Say That Employer Forced Non- Compliance With Laws

Finally, the Court appears to have emphatically rejected the excuse of the Architect that he could not stop his boss from doing anything (in the context of colluding with the employer and engineer in obtaining Certificates of Fitness for the three apartment blocks without fulfilling the conditions imposed by the Local Authority and not ensuring the terracing and retaining wall were properly designed, provided for and sufficient to withstand slope failure even though he

was aware it would affect the buildings he was in charge of) – the Court has clearly stated that when the law is broken, the Architect must report to the authorities – the architect must ensure that the law is followed even at the risk of being discharged.

B. The Engineer

The Engineer's defence that he was only retained to design and supervise the structural aspects of the 3 apartment blocks, two retaining walls within the Highland Towers compound and submit plans for the drainage and two and denied that his scope extended to the drainage, earthworks.

This was rejected by the Court

The Court held that the Engineer must take into account the condition of the vicinity of the land upon which the building is built, as well as the land itself, must be evaluated when assessing the safety of the building. He should have ensured the stability of the hillslope behind Highland Towers.

His duty was not discharged by a mere belief that the terracing of the hillslopes and the retaining walls built on them were carried out by an engineer or other consultant. He ought to have inquired as to

- i. whether this professional was qualified, and
- ii. whether what he was doing affected the safety of the Tower Blocks.

[Other Aspects of the Engineer's negligence – gross violation of his duty of care to the purchasers in the issue of a notification to the Authorities that the approved drainage was built when only 10% was built]

Summary

- i. Building Professionals require to consider the vicinity of the site as well as the site itself in assessing safety-particularly in regard to adjacent hillslopes.
- ii. Building Professionals cannot hide behind limited scopes of engagement-these are a matter between themselves and their employer, but the scope of their duty owed to persons likely to be affected by their services is not so limited.
- iii. Building Professionals require to ensure that others engaged to do work likely to affect the structures they have been engaged to design/supervise are competent and will carry out their work in a workmanlike manner.
- iv. If Building Professionals hold themselves out to have expertise in a particular area when they are unqualified, their conduct will be measured against the ordinarily competent qualified practitioner of such expertise.
- v. Building Professionals must ensure the law is followed, reporting to the authorities if necessary if their clients break the law, even at the risk of being discharged by their client.

Impact On Tort Law

Negligence

The Highland Towers decision becomes another Malaysian High Court decision which diverges from the approach of the English Courts and adopts the approach taken by other Commonwealth jurisdictions in allowing the recovery of "pure economic loss", especially where sufficient proximity can be demonstrated between the negligent act and the loss. Pure economic loss is the loss related to the product itself which is defective by reason of negligence, as opposed to the loss or damage caused to the property of the Plaintiff by this defective product.

Nuisance

In this cause of action, a Defendant is liable if the Plaintiff can show the Defendant is responsible for a condition or activity which interferes with use or enjoyment of his land, and that condition or activity is not a reasonable user by the Defendant. The Highland Towers decision extends the law on nuisance in Malaysia by requiring an additional requirement to be established by the Plaintiff, i.e. whether the damage was of type that the Defendant could reasonably foresee, adopting a principle from an English case, *Cambridge Water Co. Ltd v Eastern Countries Leather plc* [1994] 1 All ER 53 @ 70.

Rule In Rylands v Fletcher

In this cause of action, if a person brings onto his land and collects and keeps anything to do with mischief and it escapes, he is answerable prima facie for all the damage which is the natural consequence of the damage, regardless of whether the Defendant was negligent or not. The Highland Towers decision, following the Australian High Court in *Burnie Port Authority v General Jones Pty Ltd* 120 ALR 42 abandoned this as an independent cause of action and merged it into the general law of negligence.

Conclusion

In conclusion, the Highland Towers decision clarifies the extent and nature of the professional duties and responsibilities of Building Professionals demanded by the law, and contains important developments in tort law in Malaysia.

It remains to be seen if the Appellate Courts in Malaysia will endorse these principles.

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Author : Peter Philips
Title : The Recognition of Foreign Arbitration Awards in Socialist Republic of Vietnam

The Recognition of Foreign Arbitration Awards in Socialist Republic of Vietnam

Peter Phillips, Director of Trett Consulting's Japan office in Kobe, discusses his experience of enforcing arbitration awards in foreign jurisdictions

THE first and most important thing to bear in mind when considering whether or not to arbitrate in a foreign country is not the applicable law or arbitration rules to be applied or even the strength of your case, but the matter of enforcement. The question you need to know the answer to is "if you were successful would you be able to enforce your award?"

There are two ways in which you can be sure. The first is if the country in question is a signatory of an international convention which guarantees such recognition. The principal one is the New York Convention. The second is reciprocity so that an award given in one country would be recognized in the other.

The New York Convention operates at two levels. Prior to an arbitration commencing it obliges the courts of signatory countries to stop any attempt by one of the disputing parties to bring an action before the court if there is an arbitration clause in the contract. After an award, with very few exceptions, it obliges the courts of signatory countries to enforce it by simple registration as if it were an order of that country's court.

Vietnam has long recognized the role of a modern arbitration law in the process of expanding and developing its economic relations with foreign countries. Of course, this has to be balanced with the need to protecting the interests of the State and the legitimate rights and interests of Vietnamese and foreign organizations and individuals undertaking business in Vietnam.

The Ordinance on the Recognition and Enforcement of Foreign Arbitral Awards in Vietnam (Order No. 42-L/CTN.) was passed by the Resolution of the Standing Committee at the Sixth Session of The Ninth National Assembly on the lawmaking activities for 1995 on 14th September 1995. A 'foreign arbitral award' is defined (Article 1) as an award which is made outside the territory of Vietnam by an arbitrator selected by the parties concerned to settle dispute arising from commercial law relations and this definition includes awards that are made in the territory of Vietnam but not by Vietnamese arbitrators.

Vietnamese courts will recognize and enforce a foreign arbitral award in Vietnam, within the terms of this Ordinance (Article 2) either:-

- i. if the award is made in Vietnam, or is made by an arbitrator of a country which has also acceded to such an international agreement (eg NY Convention, and so so called a Convention award), or
- ii. or if that other country would recognize an award made in Vietnam without either of the countries having acceded to an international agreement (Reciprocity).

The organization (and/or individual) in favour of which/whom an award is enforced or their legitimate representatives have the right to request the Court to recognize and enforce a foreign arbitral award in Vietnam (Article 3) if:-

- i. the organization against which the award is enforced has its headquarters in Vietnam;
or
- ii. the individual against whom the award is enforced resides and/or works in Vietnam;
or
- iii. if the assets related to the enforcement are available in Vietnam at the moment the request is sent.

The competent Courts to handle requests for the recognition and enforcement of foreign arbitral awards in Vietnam are the People's Courts (Article 4) where the organization against which the award is enforced has its headquarters, or where the individual against whom the award is enforced resides and/or works, or where the assets related to the enforcement are available. The last one perhaps being the most relevant consideration.

Foreign arbitral awards recognized and enforced in Vietnam by Vietnamese Courts have the same legal effect as the already effective decisions made by Vietnamese Courts for the parties concerned, and respected by State authorities, economic and social organizations, the people's armed forces and all citizens. In case the organization or individual against which or whom the award is enforced is not willing to implement the effective Court decision, enforcement measures shall be applied in accordance with Vietnamese law (Article 6). The ordinance sets out the right of appeal against an enforcement judgement.

The right to transfer of money and assets acquired from the enforcement of foreign arbitral awards from Vietnam to foreign countries is guaranteed providing it is carried out in accordance with Vietnamese law (Article 8).

The procedure to be followed by the Vietnamese Ministry of Justice in the handling of request for recognition and enforcement of foreign arbitral awards in Vietnam are generally as set out in international agreements (Article 10 to 15).

A foreign arbitral award shall not be recognized and enforced in Vietnam if the organization or individual against which the award is enforced has legitimate evidence for the Court to confirm that the arbitration process was legally flawed or is not final in some way (Article 16). A foreign arbitral award will also not be recognized and enforced in Vietnam if the Court decides that under Vietnamese law the dispute shall not be resolved by way of arbitration or that the recognition and enforcement of the foreign arbitral award in Vietnam are contrary to basic principles of Vietnamese law.

The enforcement of foreign arbitral awards in Vietnam must be carried out in accordance with the Vietnamese law on civil verdicts enforcement. Within 15 days from the date the decision on the recognition and enforcement of a foreign arbitral award in Vietnam becomes effective, the Court shall send a copy of that decision and a copy of the award to the enforcement agency in accordance with Vietnamese law on the execution of civil verdicts (Article 20).

If an international agreement which the Socialist Republic of Vietnam has signed or acceded to, contains provisions contrary to the provisions of this Ordinance, the provisions of the international agreement shall prevail (Article 21).

If a decision made by a Vietnamese arbitrator or a request by a Vietnamese organization or individual on the recognition and enforcement of an arbitral award in a foreign country is rejected by the competent authorities of another country on the ground of discrimination, Vietnamese Courts have the right to apply corresponding retaliatory measures to the handling of requests for the recognition and enforcement of arbitral awards by that country in Vietnam, or to requests made by organizations/individuals of that country regarding this matter (Article 22).

This is a very new area of law for Vietnam and this general article is just a brief and cursory look at the ordinance. For any specific questions or advice on particular disputes Trett Japan

has a wide network of legal and technical specialists in Asian jurisdictions to call on to protect any clients interests.

Peter Phillips Managing Director of Trett Consulting (Japan) Limited

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Author : Barry Kirby
Title : Dutch Custom and Practice

Dutch Custom & Practice

R&B is not just music!

It is our better understanding of local custom and practice, particularly aspects of the Dutch Civil Code such as 'Redelijkheid and Billijkheid' in business which makes us better at what we do and has resulted in Trett personnel now being invited to actively participate at the front end of a project before the trouble sets in.

Laying the Foundation

Trett began operating in the Netherlands in the eighties, bringing its expertise in the field of dispute resolution to a major yard in the Offshore sector. The successful outcome resulted in a longer term commission in commercial management, principally setting up and operating contractual procedures to avoid future disputes. This exercise has since been repeated with other clients, who have managed to avoid serious conflict, but still continue to use our commercial services in areas other than dispute resolution.

In the early days, Trett's expertise in the Netherlands was supported by consultants from its seven UK offices. Whilst this still continues, albeit to a lesser degree, today there are permanently resident staff from the Netherlands, UK and U.S.A expanding our expertise in Europe. Our seminars and training courses in Commercial Awareness, Adjudication and Arbitration continue to be in demand.

Working with Others

Our core business is to bridge any legal-technical gap. As a result much of our work, involves writing 'reader friendly' but detailed technical and quantum Expert Reports for legal counsel involved in litigation and arbitration throughout Europe.

Through a gradual learning process we now also have the ability to bridge the gap between differing cultures. This has been particularly useful in the increasing forum of international joint ventures. We recognised some time ago that there was a demand for the preparation of structured documents for the members of any proposed consortium, [or a VOF as it is often referred to in the Netherlands] to avoid disputes later on.

In addition our knowledge and experience in Chain Liability and other pertinent features of fiscal matters has assisted in developing documents which structure the thought process and the formalities required by the instigators of joint ventures, taking it from the stage of what might be an attractive idea to a formal operational procedure. This has now formed the basis of several successful joint ventures in a wide range of disciplines. It has also assisted UK companies in entering mainland European projects and on at least two occasions prevented potential disputes.

Avoiding Dispute & Managing Conflict

To be able to deal with disputes in a VOF, or international consortium, we have had to gain knowledge of the Dutch Civil Code and particularly Article 6: 248 viz:-

“... each party must always during its performance take into account the justified interests of the other party. This is an obligation of good faith which may entail that a party may not rely on an express provision in the contract, if under the circumstances that would be unacceptable under the requirements of reasonableness and equity...”

Such a doctrine is not easily taken on board, for instance by UK partners in a consortium, since it is not easily enshrined within a standard contract.

Reasonableness and Equity or “Redelijkheid and Billijkheid” is an often used expression and sometimes referred to by us as R&B.

It has of course nothing to do with rhythm and blues but it can and does signify a cultural approach, whereby making a business deal can be accomplished by fairly finite terms but where trust is everything !

This reliance on trust is the cornerstone of business and life generally in the Netherlands, which makes for at all times an egalitarian society for people in all walks of life.

However it has in some measure led to disputes.

Netherlanders rightfully hang on to their faith in the Civil Code in the belief that they can expect to be reasonably compensated for whatever they do. Being confronted perhaps by a culture where the four corners of the contract are more relevant than the intent of the parties and where trust is an unknown word comes as a shock and sometimes where it is taken personally converts a dispute into conflict.

There is a lesson to be learned here for all those who undertake projects in the Netherlands but there is also a need for local contractors to be aware of such fundamental differences when dealing with cultures other than their own.

Sadly, Barry Kirby has passed away since writing this article. Any queries regarding this article or our operations in the Netherlands should be directed towards John Lott of our Netherlands office

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Article No : 7
Author : Mark Castell
Title : Defining Yourself

Defining Yourself

As part of his MBA, Senior Consultant Mark Castell studied organisational culture and was able to confirm the existence of a strong task culture within Trett Consulting. The study also highlighted employees' self-preference for working in such an organisation.

What is organisational culture?

The term 'culture' is generally thought of in terms of the way values and beliefs vary in different countries and between people of different nationalities. However, organisations also have differing cultures that reflect certain basic values, ideologies and assumptions about the way it and the individuals within it operate. These cultures are reflected in:-

- The way work is organised.
- Organisational hierarchy and style.
- Levels of initiative looked for in employees.
- Importance of customer service.
- Traditions of the organisation.

Organisational culture tends to be visible by both symbols and behaviour, such as the type of people employed in a firm, their status in society, career aspirations, level of education and degree of mobility. Culture is also seen in the firm's product, or corporate literature, including in-house journals. So one organisation operating in the marketing sector may demonstrate its flair by a casual, modern approach to business practice; whereas a firm of corporate lawyers may emphasise a culture of formality and tradition.

What is the relevance of this to business?

Organisational culture becomes an important consideration when establishing organisational design and structure. The key point is that there is not one organisational structure that fits all cultures or all individuals. Certain cultures will work within specific conditions and particular organisations. Of importance to the firm is that any variation between the employees' self-preference and the perceived culture of the organisation can affect organisational effectiveness and employee motivation.

What is the culture within Trett Consulting?

According to Roger Harrison, there are four types of 'organisation ideologies', power, role, task and person. He suggests the main attributes of a task culture are: -

- Project or job orientated firm with the emphasis on 'getting the work done'.
- Importance of expert knowledge.
- Teams formed by cross-functional mixing of different levels of expertise.
- Flexibility.

Harrison also suggests that task culture is appropriate where sensitivity to the marketplace or environment is important.

The Survey

I conducted a questionnaire survey of staff at each of Trett Consulting's offices and using Harrison's score card, identified the perceived Trett organisation culture was one of a high task-orientated business. The survey also identified that employees themselves had a preference for undertaking task-orientated work.

The relevance of a task culture to Trett Consulting's business and clients.

The existence of a strong task culture within Trett Consulting and the suitability of the employees to the nature of the work being carried out and the firm's culture are good for clients. Firstly, the prevalent task culture is well suited to the type of work undertaken and places importance on 'getting the work done' and achieving results for our clients.

Secondly, the matching of the employees' self-preference and the perceived culture of the organisation indicates that employees are working within a personally acceptable environment. This consequently affects employee motivation and organisational effectiveness to the ultimate benefit of our clients.

Mark Castell is a Senior Consultant in Trett Consulting's Manchester Office