



CHARTERED QUANTITY SURVEYORS CHARTERED BUILDING CONSULTANCY

DISPUTE RESOLUTION SPECIALISTS. CONTRACTUAL ADVISORS. EXPERT WITNESS

Newsletter Number 17 – Spring 2011

News Update

by Ray Crabbe

As predicted in Newsletter 16, the Coalition Government is busy wielding the spending axe and it is beginning to hurt across the board.

In construction there had been a slight improvement in prospects (albeit at a lower level of activity) for those in the privately funded sector towards the latter part of 2010.

Those who rely on public sector finance have, up until the change of Government (and direction), been buoyed up by Public Sector spending. They were, no doubt, waiting to see what would happen but fearing the worst. Of course we all now know of the well publicised public sector cuts put in place. As the cuts continue to bite harder it is inevitable that there is further pain to come.

We, along with everyone else in construction are just concentrating on doing our job as efficiently as we can whilst maintaining a high quality service.

Company News

by Ray Crabbe

We at RJC reported last time a slow but steady upturn in instructions in the dispute resolution sector and that trend continues at present.

We have diversified our business in order to better match our skill base to our client need.

As you will see from the photograph below, we are busy on site acting as Contracts Administrator, Employer Agent and Quantity Surveyor on a Residential Care Home under construction in Reading.



The Private Healthcare sector is one of the few sectors that remains buoyant. We are in the advanced stages of negotiation for a 70 bed Care Home in Oxfordshire.

For further information, please contact:
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Expert Witness

by Ray Crabbe

Having worked as an 'Expert' for over ten years, I have become aware that the term is often misunderstood. An expert is not someone who looks at an issue in dispute and comes up with the definitive answer. He or she is someone who can take instructions, follow them and in so doing investigate and then answer the questions asked of them. The difference may not be immediately obvious but is significant.

To be an expert it is of course necessary to be technically competent in your field of expertise but that is not the totality of what is required. To be an effective expert you must be capable of receiving your instructions, understanding them and then, if necessary, asking for clarification as appropriate. You must then complete your investigation and/or analysis before arriving at any preliminary or interim view. Once you have formulated your preliminary/interim view you need to test and interrogate your findings against the facts before finalising your view.

Then before going to print you must re read your instructions, ensure that you have properly formulated the questions to be answered and make sure that the process followed has ensured that the questions have been properly addressed and answered in your preliminary findings. Only then are you in a position to write your report or give an opinion.

All of this is necessary to ensure that you do not just 'shoot from the hip' and answer the question that you thought had been asked or that it suits you to answer.

In other words your job is to use your expertise to answer correctly as far as possible the question that you have been asked, it is not to demonstrate how clever you are or to give an answer you think the parties may want to hear.

Finally, something that is often not understood by those instructing you, it is your overarching duty / responsibility to assist the court. It is for this reason that you must answer the questions put to you either by those instructing you, or by the court.

The experience I have obtained in acting as an expert informs my practice and enables me to offer a unique insight when advising on contract or claims issues.

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Have you tried Mediation Yet?

by Ray Crabbe

I suspect the answer to that question may be No, but if you have not, it may be that you should consider it. In Newsletter 13 we explained the process and in Newsletter 15 we noted that the JCT 2005 Suite of Contracts offers Mediation as an option for dispute resolution.

Our experience is that, providing the parties approach the process with an open mind and a willingness to engage, a settlement that is acceptable to both parties can be reached in a fraction of the time and at a lesser cost than the alternative.

So why has Mediation taken so long to become accepted and why is it not the first port of call for those parties with a construction dispute? The answer to that question may be because it is a consensual process and if one party is reluctant to engage, the Mediation will not take place. If this is the answer it tells us something about our industry, i.e. that we need compulsion in order to address our disputes and without that compulsion we tend not to engage in a process that might be beneficial to us.

Another possibility may be that we have a system that works (i.e. Adjudication) that is backed by statute that once commenced cannot be wriggled out of other than with the consent of both parties. The fact that it can be expensive, time consuming and/or sometimes produces an unsatisfactory result is accepted as a 'fait accompli'.

So we are left with the situation where many disputes that could with the consent and the active engagement of the parties be resolved in Mediation are instead the subject of a single or a series of Adjudications. I wonder when and if this will change. Watch this space.

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Do you have a difficult Contractual issue that you cannot resolve?

by Ray Crabbe

Lets face it most of us do have such an issue and we tend, once we find we cannot easily resolve it, to put it on the back burner. Sometimes of course this is the right thing to do as a "cooling off period" can take the heat out of the situation. However, in some circumstances leaving a difficult issue for a later date does not improve the chance of resolution and may in fact make things more difficult.

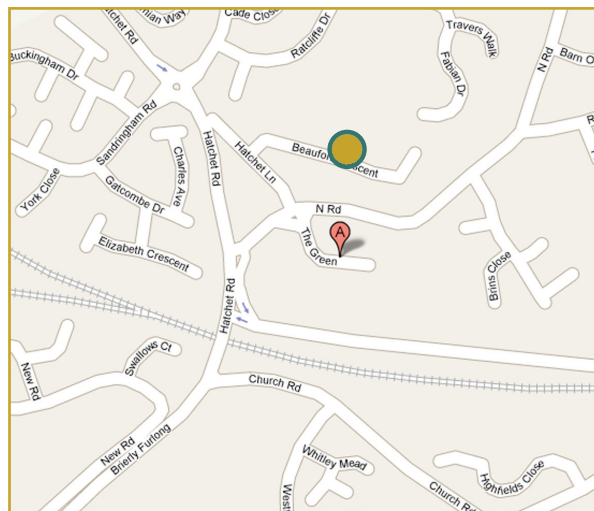
If you have an issue of this sort, whether it is an EOT issue, a Final Account issue, an unagreed measurement / valuation issue, a variation or a defect issue, why not give us a call.

We are willing to give an initial overview and proposal for resolution free of charge to our customers.

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We are located...

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