

Dispute Resolution UK Style — Moving into the 21st Century

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Key words:

ABSTRACT

During the twentieth century the United Kingdom construction industry developed a reputation for many facets of its performance. One area of considerable concern was the growth in the number of payment disputes leading the contracting parties into taking entrenched positions to the extent that in many cases they were unable to resolve the dispute themselves. Apart from the various serious adverse effects these disputes had to cash flow, further costs were incurred and substantial additional time was taken to resolve the matter by arbitration or litigation. This, in turn, could lead to the demise of a company that simply had insufficient resources to run with the fight. An alternative means of dispute resolution was desperately needed.

Sir Michael Latham was commissioned to carry out an investigation into the construction industry and his report entitled *Constructing the Team* was published in July 1994. In this report were a number of proposals for fairer contracts including the recommendation that the industry be encouraged to use certain standard contracts which were not subject to amendments. In this way the contracting parties knew at the outset what was expected of them during the performance of the contract. It was not sufficient for this to be undertaken at the good will of the parties but certain actions would be unfair or invalid as noted below:

1. Any attempt to amend or delete the sections relating to times and conditions of payment, including the right of interest on late payments;
2. To seek to deny or frustrate the right of immediate adjudication to any party of the contract or sub contract, where it has been requested by that party;
3. To refuse to implement the decision of the adjudicator;
4. To seek to exercise any right of set-off or contra charge without;
 - a. Giving notice in advance
 - b. Specifying the exact reason for deducting the set-off
 - c. Being prepared to submit immediately to adjudication and accepting the result subject to 3 above.
5. to seek set-off in respect of any contract other than the one in progress.

TS10.4 Discussion Group – The Role of Professional Institutions in the Current International Commercial Market Place

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In addition, it was also stated that any attempt by contractors to introduce 'pay when paid' conditions should be explicitly declared unfair and invalid.

Confidence in these recommendations was a necessity and therefore the central provisions of the report should be the subjects of legislation. Within two years of the publishing of the Latham Report the Conservative Government introduced The Housing Grants Construction and Regeneration Act 1996 which came into force on 1 May 1998. The Act provides the following:

- a. Interim settlement of disputes by adjudication
- b. Payment by installments for contracts lasting longer than 45 days
- c. The ability to suspend performance if not paid within a specified period
- d. The outlawing of 'pay when paid' clauses.

The most prominent of these provisions is the right to interim settlement of disputes by adjudication.

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