

# Workshop 3c:

Disputes and how to avoid or resolve them as painlessly as possible

Speakers: Andrew Lancaster (Anthony Collins Solicitors LLP)

Chaired by: Paul Reader

Room: London Room



Setting the standard for maintaining assets  
[nhmf.co.uk/conference](http://nhmf.co.uk/conference)

[@NHMFOfficial](https://twitter.com/NHMFOfficial)  
[#NHMFConference](https://twitter.com/NHMFConference)



# Anthony Collins

solicitors

Disputes and how to avoid or resolve  
them as painlessly as possible

National Housing Maintenance Forum

Andrew Lancaster  
27 January 2015

# What are your problems?

A problem shared

Which problems are potentially the most serious?

Where there is a maintenance contract there will be difficulties – be prepared!

# Warning signs and typical problems

## Warning signs

- Unfulfilled promises
- Complaints from other members of the project party
- Delays in responses
- Aggressive Invoicing or delayed invoicing
- Business expanding too fast
- Staff turnover
- Quality deterioration
- Customer complaints

## Typical problems

- Inadequate service
- Cost problems
  - Overruns
  - Disputed
  - No value for money
- Breakdown of relationships
- Regulatory or audit failure



# Understanding the reasons

## Client issues

- Unclear objectives
- Unrealistic expectations
- Unrealistic programmes
- Inadequate operational staff resources – numbers and quality
- Not managing change and variations

## Contractor issues

- Cash flow management
- Prices too low
  - Disconnect between estimators and those delivering
- Inadequate staff resources
- Too much work
- Do not understand client's priorities

## Other issues

- Economic situation
- Contracts remain unnecessarily complicated?
- Lack of clarity over completion
- Poor communication

# Client resource

- Client Representative role critical
  - Experience?
  - Training?
  - Ability to question and control?
  - Time?
  - Support from Client and SP



# Know the contract and your remedies



- Use of Core Group – clause 3.6.1
- Early warnings and risk reduction meetings – clause 8.1
- Service of notices – clauses 9 and 13
  - Payment
  - Default/termination
- Monitoring and KPIs – clause 12

# Getting termination right

By agreement/no  
fault provisions

Insolvency

What is a material  
breach? Clause  
13.1.2

KPI 'failure' – have  
you served the  
right notices?

Obligations to  
cooperate on  
handover – clause  
13.7

# Some Examples...

Changing terms  
after tender -  
TUPE

Gas Safety  
Certificates

Changing Prices  
after signing  
contract

Poor management  
of Contract

Performance and  
payment issues

# Don't let problems slide

- Relationship v Accountability
- Use the Core Group to address the real issues
- Ensure that minutes accurately reflect:
  - The problems;
  - Actions;
  - Time limits; and
  - Who is responsible



# The dispute process



## Most common disputes

- Costs/Payment/Invoices
- Poor Performance/Workmanship Issues

## The Dispute Process

- Sometimes disputes are unavoidable
- What can you do when a dispute arises to resolve it as quickly?

# Dispute Resolution: The Options



## The Options

- Dispute escalation procedure – clause 15
- Adjudication & Expert determination
- Arbitration or Courts?
- Mediation

# Top Tips (I)

Consider potential disputes and appropriate dispute resolution clauses pre-contract

Agree your contract and sign it before work commences

Know your contract procedures and apply them

Maintain a professional relationship

Ensure minutes accurately reflect discussions at meetings

## Top Tips (2)

Don't let disputes grow

Keep documentation up to date

Consider the implications of variations before they are made

Record in writing any variations to the contract

**Disclaimer:** Whilst every effort has been made to ensure the accuracy of these materials, advice should be taken before action is implemented or refrained from in specific cases. No responsibility can be accepted for action taken or refrained from solely by reference to the contents of these materials. © Anthony Collins Solicitors LLP 2016

If you have any queries or comments in regards to this document please contact  
Andrew Lancaster of Anthony Collins Solicitors LLP on 0121 212 7421 or  
[andrew.lancaster@anthonicollins.com](mailto:andrew.lancaster@anthonicollins.com)

Introducing Newsroom, a hub for all the latest news, legal briefings, events and training in sectors that matter to you. Take a look for yourself - see <http://newsroom.anthonycollins.com> or <http://newsroom.anthonycollins.com/subscribe> to sign up for regular updates.

[Follow us on Twitter](#) - @ACSLLP

[Find us on LinkedIn](#) – search ‘Anthony Collins Solicitors LLP’

Anthony Collins  
solicitors

Anthony Collins Solicitors LLP  
134 Edmund Street  
Birmingham B3 2ES  
MDX 13055 Birmingham I  
Tel: 0121 200 3242  
[www.anthonycollins.com](http://www.anthonycollins.com)