

# Workshop 3c:

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

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Room: London Room





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

National Housing Maintenance Forum

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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

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