

CONSTRUCTION LAW

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Lawyers warn of rising disputes over materials shortage

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Severe shortages of construction products and materials which resulted in a record rise in purchasing prices last month will inevitably lead to an increase in disputes as projects suffer ensuing disruption, lawyers are warning.

The latest UK Construction PMI report from IHS Markit and the Chartered Institute of Procurement & Supply shows that while June saw construction activity expand at the fastest pace since 1997, supply chains have struggled to keep up with demand and lead times for materials lengthened to the greatest extent since the survey began.

Construction companies overwhelmingly cited stock shortages among vendors as imbalanced demand and supply resulted in rapid cost inflation across the sector, with average prices paid for products and materials increasing at survey record pace. Meanwhile the steepest rise in rates charged by sub-contractors since the survey began added to cost pressures.

“I’m in no doubt that the impact of Covid-19 and Brexit will spark a number of liability disputes across the construction industry – materials costs have risen way above inflation and there are significant shortages in supply,” commented Addleshaw Goddard partner Jonathan Tattersall.

In particular he said disputes will arise over whether the unavailability of materials and increased costs has been caused by these events or whether there is anything a party could have done to better mitigate risk.

“The best thing for contractors to do in this situation is to properly record and give timely notice of any delays, disruption and cost increases. For future contracts, they should ensure that indexation and fluctuation clauses are considered carefully and not routinely deleted, as they often have been in recent years due to an extended period of low inflation.”

Charles Russell Speechlys construction partner Steven Carey said: “Survey data suggests as the economy gets back on its feet, the construction industry is bouncing back strongly. However there are a number of storm clouds on the horizon, none more so than the shortage in materials.

“The pandemic caused factories to shut down and then as the USA and China started motoring, their economies began sucking in whatever supplies were available. Couple this with an increase in shipping costs and in the UK the impact of Brexit (a lack of lorry drivers and the paucity of skilled ‘domestic’ construction workers) has led to real pressure on prices,” he said.

“This is undoubtedly likely to lead to more disputes. Contractors that had entered into lump sum contracts will be dusting down their contracts to look for ever more imaginative ways of classifying events in ways that lead to an entitlement to time or money or both (in many unamended standard forms that may pose difficulties).

“Going forward we may see contractors unwilling to take these types of risks on, at least for certain materials and/or certain types of specialist labour shortage,” he predicted. “Mechanisms such as price fluctuations (rarely seen since the 1970s) might make a comeback. Parties on a case by case basis may have to look to share cost increases (as well as potential delay impact) and cost reimbursable contracts may see a resurgence. Larger contractors on large scale projects may look to hedge key raw materials. In short it may be, for many, a bumpy ride out of this perfect storm.”

Trowers & Hamlins senior associate Laura Lintott said increasing cost inflation and shortages of labour and materials lead to delays on building sites, “which can result in liquidated damages becoming payable under construction contracts as well as applications for extensions of time and higher overall costs”.

In addition, she said: “budget cuts can lead to cash flow issues, cheaper materials of poorer quality and less than optimal work standards. All of these factors are contributors to more disputes arising in the construction sector.

“In order to mitigate the likelihood of disputes, it is advisable that construction companies keep accurate records of progress of works, labour and materials and seek legal advice early to prevent and/or manage risks and disputes out of court.”

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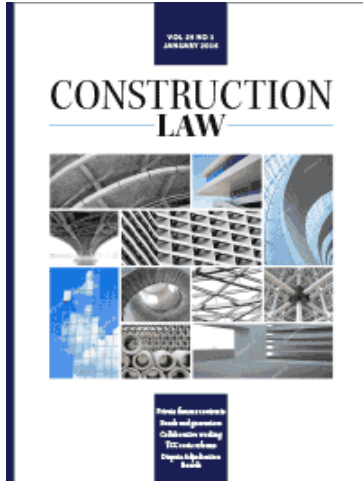
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