



Conflict Avoidance Coalition

## **LENS BLOG**

What an absolute rollercoaster the construction industry in the United Kingdom has experienced in the last 4 to 6 weeks, and I want to talk about some of the issues that I see that have emerged, and to consider what may happen in the future.

The background of course has been the demise of ISG Construction Ltd in administration in the latter part of September 2025 and the Administrators have published a Statement of Affairs which makes absolutely grim reading with the supply chain being owed significant sums of money and they are not likely to receive anything. In my next Blog I may be able to update readers on what has emerged but as at 26 October 2024 it is not clear how some of these major projects will be recommenced and completed and what the impact will be on the supply chain.

In the past few days, we have seen the fallout of two subcontractors also going into administration as a result of the amounts of money that they were owed. As to whether or not there were other issues affecting these organisations, remains to be seen.

The immediate lesson for anybody the industry is to stay on top of your payment and cash flow and in previous blogs I have highlighted some essential action that you need to take to protect your position including making sure that your applications are submitted on time, and are fully detailed and that you engage with the contractor, or the client concerned, so that you don't get a surprise a few weeks later when a payment notice lands on your doorstep, and you find that your application has been reduced by 50%.

It is quite clear to me that many organisations need to get an absolute grip on what is happening, and I am very pleased that the companies I am working for, are now engaging to improve the commercial management of their projects.

Another area of activity has been my role in carrying out Contract Reviews for members of various organisations, and particularly the Finishes and Interiors Sector [FIS] and the objective there is to highlight any onerous and/or high risk clauses that need to be either removed or significantly

amended, and I have been pleased at the response we have had from contractors and clients in engaging, and in accepting that some amendments are to be significantly watered down.

I have said publicly before that there is no justification in amending Standard Contracts [JCT/SBCC/NEC] and the industry was pleased to see the recent Statement from the **Construction Industry Council** deprecating amendments to contracts including adding high risk clauses. Whether those involved will respond to the criticisms remains to be seen and anyone reading this article should be reporting incidents of this type of abuse to their Trade Organisations, who can make the appropriate representations. **In my view the position is quite simple, just say NO.**

I have set out some examples of some of the nonsense I have come across in the last few weeks - subcontractors retention will not be released until 24 months after the date of Practical Completion of the main contract; a £350,000 fit out package had liquidated and ascertain damages of £50,000 per week; you have to give notification of the impact of any delay within two weeks of the event; the final account period is extended to 9 months from the date of completion of your works etc

So, this is quite clearly an attempt to shift as much risk as possible onto the supply chain and what simply will happen is that the supply chain will say **NO** and will refuse to tender and the main contractor will have to go and find somebody else, so all the experience gained of working together goes out the door - it just does not make any sense to me.

Another issue that is emerging are the implications of the Building Safety Act, and what that means for industry in the future remains to be seen. What I have experienced recently has been an increasing tendency by contractors and clients to impose increasing levels of design responsibility onto the supply chain, and contracts need to be reviewed carefully so that the subcontractor can understand what their design obligations and responsibilities are. One important thing in my experience is to ensure that the supply chain communicates these obligations to their insurers. My advice is better to be safe than sorry, and let your insurers see any contract amendments that are coming through.

Again, what I have experienced in one recent contract was 9/10 references to design responsibility which all had different implications and to get around that problem the client and I sat down with the contractor and the designers, to establish clear and understandable actual design responsibilities for the subcontractor. So, face up to this from the outset and get clarity so you can understand what it is you have to do.

I have also heard from a recent client who was six months into a contract, and the actual building contract had not been signed and the main contractor then provided a revised version which not only extended the contractor subcontractor's design responsibility but extended their liability for PII to 15 years. It was a simple try on my client simply said, "we are not signing this". The outcome of that will emerge over the next week or so.

I think another issue that is emerging relates to Project Bank Accounts [PBA] in the situation where there is a PBA in place and the client, or the main contractor, is in Administration. The difficulty as I see it is the period between the date of certification and the transfer of funds into the PBA. I think again that this is a matter that will emerge perhaps more clearly in the next few weeks and can be dealt with in a future article.

Along with some of the construction organisations I have been campaigning for a reduction in the threshold of PBA's. The current threshold for building work is £2 million and in my opinion that should be reduced to £500K because there are a large number of contracts procured in the UK that are at that level of tender value, and in so doing more and more contractors and the supply chain can benefit from the operation of a PBA. I think the important thing for you to remember is that a PBA relates only to the timing of a payment, and not to the amounts that you are going to be paid, and that is a battleground that I have referred to in many previous articles.

Despite all the doom and gloom set out above, I want to finish on a very positive note which is the take-up from the industry in signing the **Conflict Avoidance Pledge** and also the tremendous work being carried out by the **Conflict Avoidance Coalition** which I currently Chair, and this has been a very rewarding experience, and I am greatly encouraged by the response from the industry and from clients.

The Coalition held a conference in London four weeks ago with 150 delegates attending from across the industry, including the trade organisations attending as well as public and private sector clients and the response on the day and following the Conference, has been fantastic.

The Coalition now comprises about 82 organisations working together to encourage public and private sector clients to embed the **Conflict Avoidance Process** into contracts and it is beginning to happen. As I have mentioned before, the whole process is about early intervention to prevent issues on projects escalating into costly and time consuming disputes and the millions and millions of pounds that are spent every year on construction claims and disputes, and on legal fees and the cost of the adjudication process, should be channeled into creating more construction activity and more projects which the industry badly needs.

So, I encourage anyone reading this article to commit to the **Conflict Avoidance Pledge**, and I have included the link below.

Finally, I want you to take on board the bullet points that I have set out below, which I have repeated in many articles, and will continue to do so, because I and others believe that the industry needs to radically improve the way we manage the commercial and contractual aspects of contracts:

- **review contracts you are being asked to tender**
- **make sure you have a payment schedule in these contracts and make sure you stick to the dates**
- **make sure your payment applications are fully detailed and substantiated and follow these up**
- **if payment is not received by the final date for payment, then you can suspend the performance of your obligations – this can really hit hard the party who is not paying you.**
- **make sure you comply with the notice provisions in your contracts**
- **download and implement the CICV Best Practice Guide**
- **keep records, records, records – if you have contractual issues then you will need as much evidence as you can provide to be successful**
- **sign the Conflict Avoidance Pledge - for more information about the Pledge, see who has signed it to date and to sign up, go to [www.rics.org/capledge](http://www.rics.org/capledge)**

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