

---

# Lessons learned

Issues raised and guidance delivered by the Construction Industry Coronavirus (CICV) Forum commercial webinars

2 December 2020



---

## CONTENTS

---

3 // Introduction

4 // Lessons learned 1

5 // Lessons learned 2

6 // Commercial webinars 2020

8 // Contact

---

## INTRODUCTION

---

As we come to the end of the series of commercial webinars we ran on behalf of the Construction Industry Coronavirus (CICV) Forum, it is worth highlighting what we hope are lessons learned for the Industry.

What was the objective? The starting point is my perception as someone who deals with payment issues every day that many of the problems that contractors experience are often self-induced. We therefore decided we needed to improve the contractual and commercial management of building projects to try to ensure that contractors were paid what they were due, when they are due.

The starting point was bringing together very experienced presenters who, as well as myself, included:

- **Professor Rudi Klein**, barrister and CEO of SEC Group
- **Ian Honeyman**, Commercial Director, Scottish Building Federation
- **Angus Pearson**, Contracts and Disputes Specialist, Fortis
- **Deborah Harrison**, Legal Counsel, British Constructional Steelwork Association.

I am hugely grateful for the work and support of my colleagues during this process. So what are the main points we wanted to get across? I decided it would be best to put our thoughts in bullet point format as an easy guide. You will find them overleaf and I hope you find them useful.

**Len Bunton**

December 2020

### Watch again

Details of how to watch all six commercial webinars can be found on the CICV Forum website:

- [www.cicvforum.co.uk/webinars](http://www.cicvforum.co.uk/webinars)

### Topics for 2021

Please let us know if you would like us to cover any other topics in 2021:

- [info@cicvforum.co.uk](mailto:info@cicvforum.co.uk)

---

## LESSONS LEARNED 1

---

- Read the sub-contracts you receive and look out for issues that might cause a problem and attract risk. If the risk is too high, then be prepared to walk away.
- Make sure you understand what documentation constitutes the **CONTRACT DOCUMENTATION** and read through carefully to ensure that all documents are aligned and that there isn't conflict between or within documents.
- Watch out for amendments to the payment provisions.
- Be aware of clauses which extend your obligations and know how to deal with them, such as third-party agreements, collateral warranties, indemnity wording, cross-contract set-off.
- If you cannot negotiate any other amendment, at the very least seek to reasonably limit your liability - a 'cap'.
- Look at the contract duration stated within the tender documents and consider whether the time period stated is adequate to carry out the scope of works to be undertaken.
- If the time period is not sufficient, having given due consideration to all factors which could impact on programme, propose an alternative or qualify your tender.
- Check that you have the right to claim for an extension to the date for completion. Understand the process which allows you to do so.
- Make sure your tender is qualified in respect of potential fluctuations in materials – remember Brexit is looming – and put in something that means you do not take any risk in connection with sites closing and/or being disrupted by site closures.
- Use or adapt the payment schedule that is on the CICV Forum website and you will not run into any issues during the project on not meeting payment dates.
- Make sure you keep records, records and more records. Email communications, site diaries, resource schedules, videos and photographs. You might need these months down the line.
- Payment applications – provide as much detail as you can and don't give anyone any excuses to put a red pen through your applications. If you're asked for information, provide it.

---

## LESSONS LEARNED 2

---

- If you're not paid in full by the final date for payment then you have a statutory and contractual right under SBCC conditions to suspend the performance of any or all of your obligations under the contract/sub-contract – a powerful remedy so use it. You may be able to terminate your contract/sub-contract providing you follow the specific procedures.
- Make sure you follow the procedures in the contract/sub-contract for issuing notices. Send them to the correct person, at the correct address, within the specified time, in the manner described. Try to accommodate notice by email in your contract if you can.
- Get your final account in on time. Be sure it is clearly labelled as a final payment application in the terms of the contract. Chase up and collect your retentions. Keep a running ledger of when retentions are due to be paid. Apply for retention if necessary.
- Have in mind the risk of insolvency of **ANY** party higher up the payment tree, not just the party that is employing you.
- You have no need to be concerned about project bank accounts (PBAs), which ensure you get paid on time. If you need advice, talk to your trade association. You can also find lots of information in the Useful Links section at **[www.cicvforum.co.uk](http://www.cicvforum.co.uk)**
- Conflict avoidance – inevitably you might need to take some action if you are not getting paid. Have a look at the CIC Low Value Adjudication Scheme and the Summary Procedure, which are low-cost adjudication schemes where the adjudicators' fees are fixed, making adjudication much more attractive to the construction supply chain. Consider writing these schemes into your contracts and sub-contracts. Again, information on these schemes is in the Useful Links section at **[www.cicvforum.co.uk](http://www.cicvforum.co.uk)**.
- Conflict Avoidance Processes (CAP) – this is a game changer for the industry. This provides early intervention into any contentious issues on a construction project to resolve issues and stop them escalating. The process builds relationships as well.
- And finally.... Collaborate. Negotiate. Talk. Find solutions. Do not let problems escalate.

---

## COMMERCIAL WEBINARS 2020

---



**CICVForum**

**PROJECT BANK ACCOUNTS WEBINAR**

Tuesday 15 Sept @ 11am

**LEN BUNTON**  
Forum consultant

**RUDI KLEIN**  
SEC Group

**DAVID RENNIE**  
Royal Bank of Scotland

### **Project bank accounts**

**15 September**

Features and benefits of project bank accounts, with particular regard to the involvement of the supply chain.



**CICVForum**

**CHANGING THE CULTURE OF THE INDUSTRY**

Tuesday 29 September @ 11am

**DEBORAH HARRISON**  
BCSA

**ANGUS PEARSON**  
Fortis Contracts

### **Changing the culture of the industry**

**29 September**

Changing the culture in the industry, problem contractual clauses, things to avoid, high-risk contract amendments, negotiating better terms and the 'battle of the forms'.



**CICVForum**

**GETTING PAID ON TIME WEBINAR**

Tuesday 13 Oct @ 11am

**LEN BUNTON**  
SEC Group Scotland

**RUDI KLEIN**  
SEC Group

**IAN HONEYMAN**  
Scottish Building Federation

### **Getting paid on time**

**13 October**

Payment terms, getting paid on time, how to present payment applications and other topics such as variations.



Watch again  
at [cicvforum.co.uk/webinars](http://cicvforum.co.uk/webinars)



**LEN BUNTON**  
SEC Group Scotland

**ANGUS PEARSON**  
Fortis Contracts

**IAN HONEYMAN**  
Scottish Building Federation

**CICVForum**

**EXTENSION OF TIME, LOSS AND EXPENSE WEBINAR**

Tuesday 27 Oct @ 11am

## Extension of time, loss and expense

**27 October**

A guide to giving notices, extensions of time, loss and expense.



**LEN BUNTON**  
SEC Group Scotland

**RUDI KLEIN**  
SEC Group

**MATT HENDERSON**  
Johnston Carmichael LLP

**CICVForum**

**SUSPENSION AND TERMINATION WEBINAR**

Tuesday 10 Nov @ 11am

## Suspension and termination

**10 November**

Suspension and contract termination of contractors and sub-contractors.



**LEN BUNTON**  
SEC Group Scotland

**ANGUS PEARSON**  
Fortis Contracts

**IAN HONEYMAN**  
Scottish Building Federation

**CICVForum**

**CONFLICT AVOIDANCE PROCESSES WEBINAR**

Tuesday 24 Nov @ 11am

## Conflict avoidance processes

**24 November**

Conflict avoidance procedures, the pitfalls and benefits of adjudication, the low-cost value adjudication process and expert determination.

---

## Further information



[www.cicvforum.co.uk](http://www.cicvforum.co.uk)



[info@cicvforum.co.uk](mailto:info@cicvforum.co.uk)

