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**CICV Best Practice Guide – Practice Note : Quality and Defects**

**Introduction**

This PN should be read in conjunction with **PN 7 – Retentions.**

The issues concerning defects on projects has been an ongoing issue for the construction industry in the UK for years and years. Poor quality workmanship can have an impact on payment and cash flow as the standard contracts entitle payment for properly executed work and if not then an employer would be entitled to reduce amounts due to contractors, so that is in the industry’s interest to start to be much more focused on ensuring their projects are compliant with specification requirements.. Drafted by experienced consultants Len Bunton, Sean Bradley, and Mark Holden-Smith, this practice note looks at the contractual obligations in relation to defects etc.

**1. Contractual Obligations – JCT Contracts**

The JCT Standard Building Contract [SBC] at clause 2.1 requires that the Contractor shall carry out and complete the Works in a proper and workmanlike manner. In practical terms contractors are advised to rectify defects and to be completing snagging on an ongoing basis rather than ending up with hundreds of snagging items prior to or after Practical Completion. Contractors should be able to embed a quality regime into their business and it is in their interests to do so if they wish to maintain an ongoing business relationship with their clients.

**Clause 2.38** - deals with a **schedule of defects and instructions** and sets out the contractual period for the rectification of defects.

**Clause 3.17** – deals with instructions the Architect/CA can issues in relation to **opening the works up for inspection.**

**Clause 3.18** - deals with **Works not in accordance with the Contract** where if any works, materials, or goods are not in accordance with the Contract them the Architect/CA can issues instructions in regard to the **removal from the site** of any such work, material, or goods. Again, this will have financial implications for the Contractor.

An important provision in SBC 2024, relates to Clause 3.18.4 and reference is made to the **Schedule Part 4, Code of Practice**, which deals with the implications of opening up. An important point here is to ensure that you keep photographic records of any opening up and in recording what was found.

The opening up process can have implications concerning extensions of time, **Clause 2.29.2**, unless the opening up shows that the work, materials, or goods are not in accordance with the Contract.

Another potential issue concerning defects etc is to be found at **Clause 8.4.13**, in the **Termination by Employer** provisions. Here it is a **Default by the Contractor** if he refuses or neglects to comply with a notice or instruction, from the Architect/CA, requiring him to remove any work, materials, and goods not in accordance with the Contract.

The answer might be to remove without ant admission of liability, revert to the **Conflict Avoidance Process** [see PN 10], or argue your case later.

**2. NEC Contracts**

The NEC4 Engineering and Construction Contract (ECC) addresses Defects and Quality primarily through its clauses related to the Contractor's obligations, quality management, and procedures for dealing with defects. Below is a summary of the key points:

**Defects**

* **Definition**: A "Defect" in NEC4 ECC is defined as a part of the works that is not in accordance with the Scope (the document defining the project requirements) or applicable law.
* **Contractor's Responsibility**: The Contractor is obligated to correct Defects, whether they are identified before or after project completion (Clause 11.2(2)). The Contractor must notify the Project Manager of any Defects found (Clause 42.2).
* **Defects Correction Period**: After the project is completed (Completion), there is a specified "defects correction period" during which the Contractor must rectify Defects. This period starts when the Defect is notified and varies depending on the type of Defect (Clause 43).
* **Defects Certificate**: At the end of the last defects correction period, the Project Manager issues a Defects Certificate, which either states that all Defects have been corrected or lists outstanding Defects (Clause 11.2(6)). This certificate marks the end of the Contractor's liability for correcting Defects, except for latent Defects (those not apparent at the time).
* **Acceptance of Defects**: If correcting a Defect is impractical or uneconomical, the Project Manager and Contractor can agree to accept it, potentially with a change to the Scope or a reduction in the contract price (Clause 44).

**Quality**

* **Quality Management**: NEC4 emphasises proactive quality control. The Contractor is required to operate a quality management system compliant with the Scope and submit a quality plan to the Project Manager for acceptance (Clause 40.1). This ensures that the works meet the specified standards.
* **Testing and Inspection**: The contract includes provisions for tests and inspections to verify quality. The Supervisor (a role appointed by the Client) can instruct the Contractor to search for Defects, and the Contractor must carry out tests as specified in the Scope (Clauses 41 and 42).
* **Prevention of Defects**: The Contractor is expected to design and construct the works to avoid Defects, aligning with the Scope and any additional quality requirements set out by the Client.
* **Non-Compliance**: If the works do not meet the required quality standards (i.e., a Defect exists), the Project Manager can reject the work, and the Contractor must correct it at their own cost unless the Defect is accepted under Clause 44.

**Key Principles**

* NEC4 promotes collaboration and early resolution of issues. The contract encourages notifying and addressing Defects promptly to avoid disputes.
* The focus is on achieving the Client’s objectives as defined in the Scope, with quality and Defects managed through clear responsibilities, timelines, and procedures.

This summary reflects the NEC4 ECC’s approach to ensuring high-quality delivery while providing structured mechanisms to handle imperfections in the works. For precise details, specific clauses (e.g., 40-44) and the project’s Scope should be consulted, as terms can be customised via Z clauses or secondary options.

**3. Managing Quality**

The answer is strict site monitoring and keeping records **– “fix as you go.”** Also protecting completed works is essential. How often have you had a **contra charge** for damaged work by other trades?

Contractors are recommended to sign up to the **Construction Quality Improvement** **Charter**, clc.org.uk.about /clqc-charter/.

**Final Advice**

* Follow the adage **“ get it right first time.”**
* Instil a quality regime into your projects, and make sure your supply chain is involved.
* Keep accurate records.
* For further information, refer to the **CICV Best Practice Guide.**

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