

WANT TO GET PAID?



GETTING WORK CAN BE DIFFICULT ENOUGH; GETTING PAID IS QUITE ANOTHER, AS PROFESSIONAL ARBITRATOR ROBERT GEMMELL EXPLAINS

Many contractors end up in protracted disputes to recover money they are owed. I get a call from time to time and it is the same old story: "I'm due payment but they won't pay me." Does this sound familiar? If it does then I have a few pointers that could really make a difference.

WRITTEN CONTRACT

Firstly, make sure you have a written contract in place before work commences or, at a push, as soon as possible after work commences. If you do not have a written contract in place then, if you end up in dispute about payment, your only option if negotiation fails is to go to court. That can take a long time, up to a few years in some cases, and could cost you a fortune.

PAYMENT PROVISIONS

Secondly, if you do have a written construction contract in place, what are the payment provisions? Do those payment provisions comply with the Construction Act? If they do not comply then the relevant provisions of the Scheme for Construction Contracts will apply. You must be very clear about what payment provisions apply as this will affect the amounts you are entitled to, what notices need to be issued etc. If your contract is a construction contract in writing, you can refer your dispute to an adjudicator who has 28 days to make a decision. The party having to make payment then has to make that payment, usually pretty quickly. If they do not then you can have the decision enforced by the court within a matter of weeks.

ADJUDICATIONS

This year I have represented two family run businesses in adjudications. They were both small subcontractors, one a fit out contractor and the other a decorating contractor. In both disputes the main contractor refused to pay them the amount

they had applied for. In both cases, I thought, and so did the adjudicator, that the subcontractors were entitled to the amount applied for. In both adjudications the adjudicator awarded the subcontractors over 95% of the claimed amount and they got an enforceable adjudicator's decision within 5 weeks of commencing adjudication proceedings.

SHOCK FINDINGS

What would their positions have been had there been no written construction contract? I am currently preparing a talk on payment which will be co-hosted by the Chartered Institute of Arbitrators, the Chartered Institute of Building and others. I will also give the talk to any of the trade associations if they would like me to do so. My talk will be aimed at the contractors and subcontractors who would like to know more about how they can get paid, how to get paid sooner and how to get paid what they are entitled to. In order to prepare more fully, I have decided to find out what the current payment problems and issues are in the construction industry. I have been sending out a short questionnaire (please e-mail me for a copy of the questionnaire) and the response has been very encouraging. However, the findings are not. I am shocked at the number of contractors not getting paid the amount they consider they are entitled to.



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