

Architect's legal role is not fair

The architect's roles of independent certifier and employer's agent are incompatible – it's time for change



LAW

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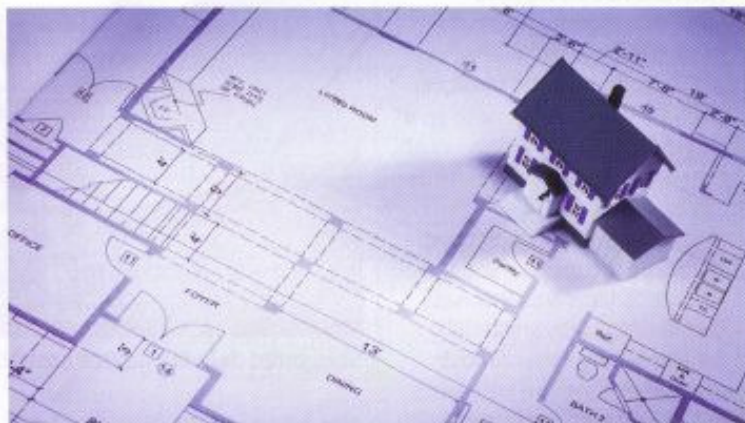
Isn't it about time that the architect was taken out of the role of independent certifier?

This is a rich vein for dispute. The architect's obligations essentially cover two aspects: design of the work; and the administration of the contract once work starts on site.

In the latter role he is the employer's agent, acting in the best interests of the employer, and also as independent certifier on matters such as the value of the work or completion.

The case of *Sutcliffe v Thackrah* clarified the role of the certifier: "The building owner and the contractor make their con-

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A conflict of interest can occur when elements are missing for plans

tract on the understanding that in all such matters the architect will act in a fair and unbiased manner and it must therefore be implicit in the owner's contract with the architect that he shall not only exercise due care and skill but also reach such decisions fairly, holding the balance between his client and the contractor.”

The position at common law is also reflected in many of the major forms of contract such as JCT and ICE, but the situation is an obvious source of dispute.

There are a number of instances where the judgement of the architect has been questioned.

In refurbishment projects, for example, I have heard the argument that the contractor should have known that there would be changes and have allowed for them within the programme.

Level best

Another example concerned a contractor's apparent failure to vet an architect's design and pick up that the levels for installing a complex roof guttering were wrong.

Apparently the contractor, who did not have any design responsibility, should have checked the design information prior to the installation.

Further difficulties exist where the architect is the source of delays in providing design information during construction.

I have come across the situation where a whole floor was missed from the design in the tender documents.

The error was only discovered during a walkabout once the contractor arrived on site.

For a contractor, it is not just that a new design has to be issued, it is the subsequent timing of the issue of the revised design information.

Often, the design changes are issued piecemeal due to the pressure to reduce delay and progress the work.

But this prevents working in a cost effective sequence. By the time the majority of the design is received the contractor has multiple trades on site, working from hand to mouth on scraps of design information.

In such circumstances, will the architect reach his decisions fairly?

There can be much muddying of the waters, where the usual arguments are used to avoid issuing an extension of time or

paying additional costs: the contractor was behind programme and not ready for the design information, failed to mitigate the delays, failed to effectively plan and sequence his works or failed to work efficiently.

In such circumstances it is unsurprising that the architect's duty to be independent is not top of his list.

A benefit to all

There are architects who are unhappy with the situation.

Even when an architect is acting fairly and reasonably, the relationship he has with the client can still cause the contractor to question his judgement.

Using a truly independent party to carry out the certification obligations would not be difficult to introduce.

Parties would be far more willing to accept an independent award and it would not necessarily cost any more.

Whatever arrangement is chosen, it surely must be better than the current one.

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