

Challenges for Subcontractors

A independent study into the challenges faced by the Construction industry in the UK



Based on the results of an Academic Study carried out as a BSc (Hons) Construction Management at the School of the Built Environment degree at Liverpool John Moores University.

**Survey of 506 UK Contractors, Specialist Contractors and Suppliers
In The UK Construction Industry 2017**

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1. How the survey was compiled and analysed

'Challenges for Subcontractors' is a survey completed in 2017 as part of a BSC (Hons) Construction Management Degree at the School of the Built Environment Liverpool John Moores University.

The purpose of this study was to investigate the challenges faced by subcontractors within the UK Construction Industry.

The study focused primarily upon payment and disputes considering the relationship between the contractor and subcontractor. The literature review provided the researcher with a comprehensive understanding of subcontractors' rights and obligations and existing industry problems were identified.

Knowledge gained was then incorporated into a quantitative method of research which was facilitated by an online survey.

The survey was publicised within an online construction magazine enabling it to achieve a significant response rate.

The researcher has spent a considerable amount of time working within the construction industry and has experienced the associated adversarial culture first hand.

The industry can be considered to possess a litigious nature with disputes between stakeholders a prevalent feature. As described by Sir Michael Latham, "cash flow is the lifeblood of the industry" and a dispute involving payment could leave a subcontractor in a very precarious position.

Aim:

This study investigated the relationship between contractors and subcontractors within the UK Construction Industry with the aim to understand the underlying factors of existing issues relating to disputes, late payment and their resolution.

Objectives:

- To analyse the rights and obligations for subcontractors and investigate whether the subcontractor is aware of them and whether they feel able to enforce them / challenge the contractor
- To identify the main issues of dispute, their method of resolution and the possible benefits to a subcontractor
- To analyse the underlying issues which result in payment disputes and determine the influencing factors
- To identify the implications which the Local Democracy, Economic Development and Construction Act 2009 (LDEDCA) has had and whether, in reality, the changes have improved payment conditions and dispute resolution within the Industry
- To investigate perceptions of whether Government or representative bodies are doing enough to address current payment problems and issues of dispute within the industry.

Research and Methodology:

The research took the form of a literature review to ensure that the subject matter was understood and comprehended and reviewed printed and online documentation, including websites, textbooks, industry rights and obligations and existing issues of payment dispute and their resolution within the UK Construction Industry.

This was supported by a quantitative online study that incorporated both closed and open questions to gain views and perceptions from various stakeholders, including subcontractors.

The target sample of the survey was primarily subcontractors. However, the views and perceptions of other key industry stakeholders were sought, including clients, contractors and some suppliers. This enabled the researcher to identify differences in experiences and opinion.

The survey was strategically posted within specific social networks targeting a sample of respondents that have a genuine interest in the topic area. Secondly, the survey was publicised within *Construction Enquirer* an online publication for construction professionals.

The data collected via the online survey was from a total of 506 respondents.

All respondents

- Subcontractors: 355
- Contractors: 103
- Employers: 23
- Supply chain: 10
- Other: 15

(‘Other’ consists of design consultants, quantity surveyors and building services engineers.)

All respondents by Turnover

- £0 - £500k: 75
- £500 - £1m: 62
- £1m - £5m: 165
- £5m - £10m: 76
- £10m+: 128

Subcontractor respondents by Turnover

- £0 - £500k: 50
- £500 - £1m: 49
- £1m - £5m: 124
- £5m - £10m: 63
- £10m+: 69

2. The Findings

Disputes

In the study, the researcher says that 'Subcontracting Growth' (2016) identified that the perceptions of subcontractor disputes experienced within the industry were as follows;

- Disputes are common place: 19%
- Disputes happen occasionally: 33%
- Disputes rarely happen: 33%
- Disputes never happen: 14%
- Don't know: 1%

Source: An adaptation of 'Subcontracting Growth' (2016)

This 2017 study concluded that:

- 55.9% of those surveyed said disputes "occur frequently", with 37.75% saying that they "occur occasionally".

That's a total of over 93% of the sample and is massively up on the perceptions recorded in 2016.

This makes sense, given the fact that Contractors work on such low margins and one of the ways to improve their profits is to challenge the Specialist Contractors on whatever reasons they can find.

Revaluing the project to a lower price increases the Contractors profits. And the Specialist Contractor foots the bill, through no fault of his own, other than being unable to challenge the Contractor for the full amount.

Written responses by subcontractors also appear to supplement this theory with the following opinions provided;

"Adjudication is just a cash cow for lawyers. Not cheap, not straightforward and bears no resemblance to what it set out to be. Needs to be overhauled. Certainly not worth doing for under £20,000."

"Make the cost of adjudication more affordable. We have personal experience where to challenge for a £45,000 payment, the costs are over £15,000 and non-recoverable"

"Industry bodies to become more involved with short term adjudications to resolve payment quicker at a limited cost"

"A regular comment, adjudication is rough justice. Improve adjudicators: ensure information submitted relate only to the dispute and costs to be considered"

"Dispute resolution needs to be much quicker and cheaper as a lot of companies will not survive more than 1-2 months if a large payment is not made"

Payment

- Payment was the main issue cited by respondents as the cause of disputes, with 82% of respondents claiming this.
- Extension of Time (28.3%) and Contractual Terms (26%) were other main issues cited.
- There was certainly high awareness that Specialist Contractors working on certain public sector contracts should be paid within 30 days, although more than half (52.17%) had heard of the Construction Supply Chain Charter.
- Even with this knowledge, over 82% of respondents were not paid on time. Fewer were paid on time when working on private contracts than those working on public sector projects.
- What is concerning is that 46.68% of those surveyed felt that they were not in a position to challenge payment terms that are longer than 30 days. This flies in the face of claims made by BuildUK that Contractors and the Specialist Contractors sitting around the same table will resolve this perennial problem to the benefit of all parties.

Causes of late payment and resolution

- The main causes of late payment are in connection with variations 54.23%
- Paid-when-Paid 35.47%
- Implications relating to the progress to work /programme implications showed 20.59%.
- Defects caused late payment for 11.21%
- Valuation, including technical or paperwork problems, was cited by 44.62%

There is an evident association between the usage of the Pay when Paid effect and the turnover of the contractor.

The findings state that subcontractors with a smaller turnover are more susceptible to Pay when Paid / certified clauses. This may possibly be due to the following:

1. The subcontractor is not aware of their contractual rights and the contractor commits payment abuse.
2. The contractor is abusing their position; however, the subcontractor does not feel able to challenge the contractor due to the possibility of damaged relations.

Retention

3. The Construction industry is working to eliminate retentions completely by the year 2023, but there remains a big problem today. 56.85% of respondents say that they 'sometimes' or 'regularly' write off retention monies.
4. The biggest reason cited for not collecting is that the Contractors make it almost impossible to collect (37.31%).
5. Almost 28% said that the business owing the retention becomes insolvent, making it impossible to collect.

6. Respondents felt that among the reasons for Contractors not paying retentions was because it helped them manage their cash flow (47.46%).
7. Worse still, 58.88% said that the objective was to retain the retention.

In the main study documentation, the researcher considers the Contractor response to be honest yet concerning. In total 42.03% of Contractors suggest the reason for Contractors not paying retention was in fact to retain it.

Secondly, 30.43% of Contractors suggest the management of cash flow as their reasoning.

Both statistics support the views of many subcontractors and commentators alike, that payment abuse continues to plague the UK construction industry.

- For the Contractors it may suit them not to pay it, but for the Specialist Contractors it causes major impact (68.11%) on their business, through not having the capital to run the business effectively.

Written responses to the question have suggested “poor subcontract administration” and “disorganised and disinterested contractors”.

Alternatively, contractor responses suggest that many subcontractors never return or apply for the return of retention.

Interest on late payments

- Yes, a business can charge interest on late payments but only 18.94% do so “sometimes, depending on the main contractor”. The problem here is that 70.50% think that charging interest, or suspending works on site due to late payment, would ‘damage the relationship with the contractor’.
- This figure increases to 78.9% for subcontractors with a turnover of £10m or more.

The bottom line is that the Specialist Contractor worries that he would not get any further work if he challenged for payment too robustly. But, why would Subbies want to work for Contractors that don’t pay them?

Are the Government / Trade bodies doing enough?

- Only 2.1% of respondents said that the Government was doing enough to resolve payment problems
- 93.23% of respondents said that Trade Associations were NOT doing enough to resolve payment problems.

Government and Trade bodies do claim to be trying to resolve payment problems but the fact remains that over 93% of respondents think that the Trade Associations are not doing enough to solve the problems in the Construction industry.

In open questioning about the payment process:

- A total of 17 respondents suggested the implementation of project bank accounts to ensure a fair, transparent payment process. Several recommendations were provided to improve current payment legislation. The view that the government could make a firmer stance on

the issue by implementing fair payment KPI's as qualifying criteria for all public sector projects.

One respondent stated:

- “It has to start with the clients and Government insisting that Main Contractors have Fair Payment charter and respect Sub contractors, it is no good the government saying 30 day payments and employing Main contractors who clearly don't and will not pay within this period”

Likewise, another respondent said:

- “If the Government made payment and treatment of the supply chain as a qualifying criteria for main contractors to quote for Government contracts and then made an example of one or two main contractors with poor records by excluding them from quoting for Government contracts, this would send a message to main contractors that paying their supply chain fairly and on time is essential to enabling them access to high value, secure government contracts.”

A further open question asked if the chief executive of a major main contractor could be asked to change or amend a payment protocol, how and what would you change:

- A total of 16 respondents expressed concerns of a “new breed” of commercially aggressive quantity surveyors, who are motivated to “maximise profit” and “seemingly on a bonus to claw back cash.”
- In total, 34 respondents expressed concern, suggesting either banning retention, or implementing an improved provision to regulate the use of retention.

One respondent commenting on retention commented:

- “Any excuse is used to delay release of retention even where the conditions of their release are clear and have all been met. This applies to both Private and Public sector contracts. The problem is widespread. It nearly always involves a protracted negotiation between the contractual mechanism and the desire of the client / main contractor to cling on to the final moiety as long as possible.”

Other responses included:

- “Any excuse is used to delay release of retention even where the conditions of their release are clear and have all been met. This applies to both Private and Public sector contracts. The problem is widespread. It nearly always involves a protracted negotiation between the contractual mechanism and the desire of the client/main contractor to cling on to the final moiety as long as possible.”
- “If public sector clients paid large main contractors within 14-days, they could in turn pay their subcontractors well within 28-days.”

Likewise, another respondent reiterated this theory:

- “More needs to be done with clients. In my experience the issue lies with none payment from clients thus affecting payments down the line.”

3. Conclusions

- Payment abuse continues to plague the industry. The turnover of the contractor was determined to be a contributory factor to the level and type of payment abuse experienced.
- Owing to the adversarial nature of the industry, disputes are a common place in the industry among all parties. Negotiation was the most common form of dispute resolution with subcontractors expressing a dissatisfaction of adjudication due to the excessive costs associated.
- The researcher notes that respondents stated that in their experience, contract amendments occurred on 88.67% of all construction contracts.
- In one case 198 pages of amendments were attached to a 26-page contract. It is the researchers' opinion that the continued adaption of standard forms of contract would leave a subcontractor – who in most cases does not possess the legal knowledge to decipher the terms and conditions of a contract – unclear on their contractual rights and obligations.
- On average, 20.2% of subcontractors were paid within the agreed payment terms across both private and public sector contracts. Although the turnover does not appear to be a contributory factor to whether they get paid on time, it can be directly associated with their reason behind late payment in which several significant trends were identified.
- Both contractors and subcontractors main issues of dispute were regarding payment. There was however a difference in perception with 87.17% of subcontractors experiencing payment issues as opposed to 64.21% of contractors.
- Written responses from all stakeholders included the views that adjudication had no resemblance to what it set out to be. In total 100% of clients, 85% of subcontractors and 66% of contractors stated the current remedies available within legislation – such as adjudication and litigation – are unsuitable and need changing.
- 353 respondents out of 369 (95.66%) believed neither the government, nor the trade representatives were doing enough to tackle the evident problems within the industry.

4. References

Latham, S. M. (1994) *Constructing the Team* Department of the Environment.
Services, B.F. (2016) *Subcontracting Growth*

5. More Information

Please see all the resources at streetwisesubbie.com/survey and/or contact:

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About Barry J Ashmore Managing Director and Founder of StreetwiseSubbie.com

Barry is an experienced professional with commercial managerial and contractual expertise. He has extensive experience working on behalf of Specialist Contractors, advising and acting on their behalf in all matters relating to the resolution of disputes by way of negotiation, mediation, adjudication, arbitration and litigation.

Barry is trained in a variety of disciplines including the law, negotiation, mediation, marketing, industrial and commercial management, adjudication, arbitration, quantity surveying, and engineering.

For the last 27 years Barry has been in professional practice helping Specialist Contractors to avoid commercial and contractual problems at the earliest stages of a project, but just as importantly, getting stuck in and sorting them out when they do arise!

He also shares his expertise in a broad range of business support, such as overall strategy and marketing. Barry's ambition for StreetwiseSubbie, is to help Specialist Contractors to protect their wealth and security, now and in the future!



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