

# **The Betrayal Of The Specialist Contractor How Bad Business Threatens UK Economic Growth**



**Based On The Results of The StreetwiseSubbie.com Ltd  
Survey of 216 UK Specialist Contractors  
In The UK Construction Industry October 2014**

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# The Betrayal Of The Specialist Contractor

## How Bad Business Threatens UK Economic Growth

The UK's Construction and Engineering Sub-Contractors have been betrayed.

For years they have suffered at the hands of unscrupulous or incompetent Contractors, so it's no surprise they have been betrayed by them. But, things have reached an all-time low now they have also been so openly betrayed by the "industry".

The construction industry is in a mess, and yet it continues to delude itself with works of fiction like "Construction 2025"<sup>1</sup> which according to the propaganda *"Sets out a vision and a plan for long-term strategic action by government and industry to continue to work together to promote the success of the UK construction sector."* What a load of absolute rubbish.

The only thing the government and the "industry" work together on to promote is B.S.!

What or whom is the "industry" anyway? If they mean the so called "Construction Leadership Council" then God help everyone who currently works in the "industry".

And if they really think that what they are currently doing is going to *"... put Britain at the forefront of global construction over the coming years"*<sup>2</sup> then they are delusional. Of course we have some world class people, and the odd world class practice and company. But saying we have a world class construction industry is just as ridiculous as saying we have a world class football team!

If we had a world class industry we wouldn't have;

- a massive skills shortage
- an ageing work force
- problems recruiting the brightest talent into the industry

Nor would we;

- have allowed thousands of firms to be destroyed over the last few years
- allow the widespread use of onerous terms and conditions
- accept the unrealistic apportionment of risk in the supply chain

And we certainly wouldn't allow Contractors to flaunt the law or allow them to stifle the flow of our money, hard earned taxpayer's money, such that 94.9% of Specialist Contractors have to wait longer than 30 days to get paid on public sector projects.

And despite what the government and other worthies might have you believe, it isn't getting any better!

### Survey Reveals True State of the Industry's Payment Practices

The 3<sup>rd</sup> annual survey by StreetwiseSubbie.com<sup>3</sup> has just revealed that the Government's 30 day payment promise on publically funded projects is not being seen through, with a staggering 94.9% of Specialist Contractors being paid in excess of 30 days, and some 4.7% having to wait longer than

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<sup>1</sup> Construction 2025: industrial strategy for construction - government and industry in partnership  
Ref: BIS/13/955

<sup>2</sup> Extract from the Executive Summary of HM Government's "Construction 2025"

<sup>3</sup>A survey of 216 Specialist Contractors completed in October 2014 by StreetwisSubbie.com Ltd. The results are available at; [streetwisesubbie.com/state-of-the-industry-survey-2014](http://streetwisesubbie.com/state-of-the-industry-survey-2014)

90 days.

The government would have you believe they are investing in infrastructure to boost the industry and the economy, but those taxpayer's pounds are not flowing down the supply chain. It's being cut off at source to prop up ailing Contractors who pay for their own incompetence with your money!

The survey also showed that there are similar issues on private sector construction projects, albeit slightly better, with around 11% of Specialist Contractors being paid in 30 days whilst a staggering 23.5% had to endure payments longer than 60 days.

And don't think for a minute that challenging the payment terms on offer is an option. When payment terms are questioned by Subbies, the Contractors often adopts a 'take it or leave it' attitude, resulting in 61% of respondents saying they were unable to challenge payment terms. *"The bigger the Contractor the less likely to get better payment terms, take it or don't do the job"* is typical of the responses we received.

### **Killing Small Businesses**

To a small business, payment terms exceeding 30 days can mean the difference between survival and failure, with labour and material costs eating away at their cashflow while the Contractors hold onto the money they so desperately need. And if you have ever run a Specialist Contracting business, you would know that delaying payment to your labour force or suppliers isn't an option. The lads walk, and the suppliers put you on stop!

The failure of these small sub-contracting businesses does not reflect well on the growth of the economy or the rebuilding of a strong construction industry. While the Government plug their Small Business initiative, the outlook for small businesses in the UK construction industry is as bleak as ever.

One of the saddest calls I've had was from a lady who had run up personal debts of £100,000 trying to keep her husband's shop-fitting business going. The Contractor had piled more and more variations on them and demanded that they did the work, but then didn't pay them, leaving them no alternative but to fold the company.

How many families have been devastated by similar disgraceful payment practices?

According to the Office of National Statistics' figures; in the 12 months ending Q3 2013, the highest number of liquidations was in the construction sector at 2,819, with 774 compulsory liquidations and 2,045 creditors' voluntary liquidations.

Is it any surprise then that when Radio 5 Live's Adrian Goldberg revealed the extent of payment abuse, the show got one of their biggest ever responses? But, the subject seems just too complicated for the media to get their heads around, or they can't see the bigger picture, or they seem afraid to speak out. Either way payment abuse in the construction industry doesn't grab the headlines.

### **Government Are Part Of The Problem Not The Solution**

Was it a coincidence that the day after that show back in October 2013, Prime Minister David Cameron said he would act and announced a "consultation" to look at helping small businesses get paid on time. What a coincidence!

So why do you think he did that? It can only be because the government sees this as an issue on which they have been incredibly weak, and it's an issue that isn't going away any time soon.

They also know that the British Public will ultimately see the real motives for supporting the big businesses rather than the small ones. Call me cynical but the only thing that matters to David Cameron is trying to get re-elected and party funds don't come in huge amounts from small businesses.

That's not a political statement (I voted for them for Pete's sake). It's not political because I believe that is true of most politicians. The one exception I have come across is Debbie Abrahams (and this isn't political either) who is fighting hard on this issue, and she deserves tremendous credit.

But let's face it the government have had plenty of time to deal with the national disgrace that is payment abuse in the construction industry, but they haven't.

So why believe them now?

Despite all the Government's pledges to 'help' the situation, our survey proves that what they are doing isn't working. And when you scrape away all their B.S. and promises to pay all Specialist Contractors promptly on public sector jobs, the reality is that less than 6% have actually received payment in 30 days!

And it isn't just me that thinks that the Construction Supply Chain Payment Charter won't work; *"Only a supreme, and poorly informed, optimist would take the view that the Charter is the panacea of all payment ills within the industry. It is not."*<sup>4</sup>

### **Why Don't We Have Simple Unbreakable Rules?**

When it comes to allowing companies to circumvent the law we must be the most stupid country in the world. And as someone who both works in the law and is immensely proud of being British it hurts me to say it.

But, having turned 60 this year, I am old enough to have been resolving disputes for Specialist Contractors since before the Construction Act<sup>5</sup>. Back then the Act was hailed by practitioners like me as an answer to the payment abuses meted out to Specialist Contractors by Main Contractors. Those old enough to remember know that Subby Bashing isn't a new phenomenon<sup>6</sup>.

Regrettably the euphoria caused by the new Act was short lived as virtually every Contractor invented ways to circumvent it, and those with the power to stop it just stood by and let them do it. What a waste of time and energy, but more particularly what a betrayal of Sir Michael Latham and all those that worked to genuinely address the problems of the industry at that time.<sup>7</sup>

Once again the Specialist Contractors were hung out to dry and left to the mercy of unscrupulous Contractors who continued to write all manner of onerous terms into their contracts with impunity.

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<sup>4</sup> "Construction Supply Chain Payment Charter – An Analysis" Confederation of Construction Specialists August 2014

<sup>5</sup> The Housing Grants Construction and Regeneration Act 1996 applies to all "construction contracts" formed after 1 May 1998.

<sup>6</sup> See the use of the term by Mr John McFall MP in the Commons Debate on 27 June 1991, relating to the treatment of Specialist Contractors at the Clyde submarine base.

<sup>7</sup> The Latham Report, titled "Constructing the Team", was an influential report written by Sir Michael Latham, published in July 1994. Latham was commissioned by the United Kingdom government and industry organisations to review procurement and contractual arrangements in the UK construction industry, aiming to tackle controversial issues facing the industry during a period of lapse in growth as a whole.

And when the problems with the Act and the ways Contractors evaded it became general knowledge, the establishment reacted slower than a snail's pace, taking a mere 15 years to amend the Act<sup>8</sup>. And yet they still left loopholes!

No surprise then that when asked *"Do you think that the remedies available to get paid the correct amount and on time, such as the Construction Act, adjudication or litigation are suitable?"* 83.5% of our respondents to our survey said they were unsuitable, did not work, and needed changing.

### **Blatant Betrayal**

When I was told that Philip King CEO of the Institute of Credit Management had been appointed to draft a Supply Chain Payment Charter for the Construction Leadership Council, because of his "independence" I was mildly encouraged that some good would come of it. When one of our LinkedIn Group Members sent me a letter from Michael Fallon to fellow MP Claire Perry advising her that Philip King would be taking account of the StreetwiseSubbie Fair Treatment Charter<sup>9</sup> I was delighted.

Courtesy of a Freedom of Information Request, I have a copy of Philip King's original draft submission to the CLC dated October 2013, and it does indeed incorporate a good many of the principles of the StreetwiseSubbie Fair Treatment Charter.

Why then did a fair and reasonable, and easily achievable, set of principles produced by a respected independent figure not get immediately adopted by the CLC?

When the CLC looked at what their own independent advisor had produced and decided not to accept it, the Specialist Contractor was betrayed by all involved, and the CLC became a sham that was never going to deliver anything of value to the "industry"!

At this point it is worth reminding ourselves that of the 30 or so members of the CLC only 2 are actually Specialist Contractors. And one of those is, Paul Kavanagh of Imtech (whose annual revenue is in excess of 500 million euro and has 3,300 employees). So, it's hard to consider him as representative of your average Specialist Contractor.

No real surprise then that the interests of the tens of thousands of Specialist Contractors who make up the construction industry, were betrayed by a council that showed the same kind of leadership as the "all animals are equal" kind only found in Animal Farm<sup>10</sup>!

### **The Devil Really Is In The Detail**

So what did the CLC leave out and how did the independent draft become the watered down version that was issued?

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<sup>8</sup> Part 8 of the Local Democracy, Economic Development and Construction Act substantially amends the Construction Act. It affects all "construction contracts" in England, Wales and Scotland. The amendments to the Construction Act came into force in relation to construction contracts entered into on or after 1 October 2011 in England and Wales, and 1 November 2011 in Scotland.

<sup>9</sup> The StreetwiseSubbie Fair Treatment Charter is a simple 12 point set of rules with the emphasis on "Fair Treatment" which includes payment. It can be downloaded here; [streetwisesubbie.com/fair-treatment-charter](http://streetwisesubbie.com/fair-treatment-charter)

<sup>10</sup> Animal Farm (1945) is a satirical novella (which can also be understood as a modern fable or allegory) by George Orwell, ostensibly about a group of animals who oust the humans from the farm on which they live. They run the farm themselves, only to have it degenerate into a brutal tyranny of its own.

Here word for word are the important sections of Philip King's draft that just got left out altogether;

- "We will use tendering processes that are fair and transparent and do not attempt to force prices to unsustainable low levels.
- "We will utilise recognised standard contracts without amending payment terms"
- "We will not change the measured works value agreed" [when issuing pay less notices]
- "We will endeavour to put simple online systems in place allowing members of the supply chain to track the progress of invoices and payments"

Why not stop the lunacy of lowest cost and driving the price down to unsustainable levels? Isn't that what's causing Balfour Beatty to issue 5 profit warnings in less than 2 years<sup>11</sup>?

Why not use standard form contracts? After all that's what the Contractor usually signs up to with the Employer.

Why not agree not to change the measured works value in a Pay Less Notice? How the heck is the Specialist Contractor meant to know what has actually been certified for payment if it can be changed later?

Why not put simple on-line systems in place to enable payments to be tracked? Why should Specialist Contractors be forced to deal with payment call centres in India such as those used by Carillion?

But, the biggest betrayal of all came in this one line extract from the minutes of the CLC meeting on 14 October 2013 which simply said; "*The behaviour change required to accomplish this [the implementation of fairer payment practices] would be better achieved through encouraging rather than enforcing.*"

And the Animal Farm pigs might fly!

But then of course I remembered: "some animals are more equal than others".

## **Note To Editors**

### **Why We Did This Survey**

Streetwisesubbie.com undertook our first survey in 2012 in response to the disturbing number of Specialist Contracting companies that were being forced into insolvency, as a result of the deteriorating payment situation and the high incidence of contractual abuse in the construction industry.

The surveys have been completed by substantial businesses across a whole range of specialisations within the industry.

Indeed the current survey has been undertaken by 216 Specialist Contracting businesses, and 78% of those who responded are firms with a turnover in excess of £1million and some 14% are in the £5million plus bracket.

For those reasons we believe it is a very credible and authoritative survey and the results cannot be ignored.

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<sup>11</sup> Construction News 1 October 2014 After 5 profit warnings in less than 2 years Balfour Beatty Construction Services UK chief executive Nick Pollard cited operational issues, a shortage of key resources, "ill-balanced or ill-judged" tenders and technical changes as the issues causing problems on contracts.

**Barry J Ashmore**

Managing Director, StreetwiseSubbie.com

Barry is the founder of StreetwiseSubbie and 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 24 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!

For further information call Barry on 01773 715062 or email [barry@streetwisesubbie.com](mailto:barry@streetwisesubbie.com)

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