

Having spent most of my professional life as in-house legal adviser on each side of the construction industry here, and the Employer's side in Lesotho, I produced a paper along similar lines to the inquiry on this subject for the Society of Construction Law on returning home from Lesotho: I have recently updated it as far as my limited IT skills allow.

I have also recently rejoined Constructing Excellence in Wales: it was in the hope that I might pass on what I learned in Lesotho about collaboratively delivering construction projects on time and within budget: I had failed to do so when approaching the Welsh Government on returning home in 2003.

To return to the AMs' letter, I realise that the inquiry is limited to the issue of retentions, which, of course, have been a bug bear in the industry ever since the House of Lords effectively restored them after they had been outlawed by the redoubtable Denning LJ. in the Court of Appeal.

However the subject of retention, particularly unwarranted ones, is but one issue that casts the industry in a bad light. Others include (but are not limited to) unrealistic financing and programming by promoters and unrealistic tendering by contractors.

One example of the former was the initial budget for the infrastructure that would allow the London Olympics to open on time. The result was that the American Jack Lemley resigned from heading up the construction team and the budget was increased to match what was needed for completion on time.

This was the same Jack Lemley that I had the pleasure to work alongside on the Channel Tunnel. He never promised that the Chunnel would be completed on time and within budget, but, at least along with his American Eurotunnel counterparts, he got it over the line eventually.

This malaise of insufficient budgeting and tendering continues to mar the industry: think Crossrail and HS2.

Although, on reflection, it should have been submitted to the address that it now is, I am submitting this letter published by the Western Mail on 5th. October. It had been prompted by Messrs Llyr Griffiths' and Russell George's published letter of 1st. October. Although it is now passed the closing date to respond, I have decided that the problems are sufficiently deep-rooted and serious as to warrant copying you the letter.

As you can see, my response about construction's ills was much wider than the subject of retention, important as that might be in the supply chain. On reflection, I might have confused retention with pay-when-paid clauses, which Lord Denning (using the example of the grocer) certainly outlawed until the House of Lords overruled him: mistakenly, in my opinion, as someone who drafted main contractors' forms of sub-contracts. Nevertheless, the need for the Griffiths and George letter points to retention still being an issue worthy of their attention.

Whilst that might be so, I still submit that Wales should pave the way to the pre-contract investigatory analysis of the adequacy of the project plan and the price tendered for its execution. The execution itself should be matched by the adoption of a post-contract inquisitorial approach, along the lines adopted by Lesotho and South Africa on the \$3.6 billion Phase 1 of the Lesotho Highlands Water Project. It resulted in international acclaim being heaped on it for being completed on time and within budget: and that after overcoming an attempted coup d'etat in Lesotho.

Yours faithfully

Derek Griffiths