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We must not let our resistance to change hamper efforts towards improved international collaboration, maintains Justin Sullivan

Change up

How do you react when an alternative approach to tackling a problem is put on the table? Do you immediately feel irritated and adopt a rigid stance? Do you highlight the negatives? Is your assessment of the proposed change limited to how it will affect you personally?

Our personality type and experience dictate how we respond to change. The quality of leadership and our openness to collaboration are also important factors. How we cooperate with others is particularly important in an international context, where cross-cultural barriers can add complexity.

Quite often, international initiatives involving such collaboration do not yield the success that is anticipated. Why? Humans tend to cling to habit, and fear doing things differently; they value self-interest over group needs and hold on to self-centred perspectives. All of these behaviours can thwart the best ideas and scupper game-changing collaboration.

Look at the EU. Mentioning it is often contentious, but whatever your view on the EU after Brexit, no one can deny that the union has been one of the world’s biggest projects in transnational cooperation. However, the collaboration is often poisoned by a mixture of common goals and competing interests.

In the less-contested world of professional services, there is an example of healthy collaboration that led to a fundamental, positive change. Until the late 20th century, companies around the world applied national standards when preparing their financial statements. However, the increased globalisation of business drove the need for common criteria, and the International Financial Reporting Standards (IFRS) were born.

According to their website, the IFRS are “a single set of accounting standards ... capable of being applied on a globally consistent basis ... providing investors and other users of financial statements with the ability to compare the financial performance of publicly listed companies on a like-for-like basis with their international peers” (http://bit.ly/2drwTl6). UK-listed companies were first required to use the IFRS in 2005; they are now mandated in more than 100 countries.

In November’s Modus, you can read about how globalisation is causing problems for quantity surveyors (see p.22, “A Known Quantity”). Five cost management specialists talk in this article about why there is a clear need for international standards to take some of the pain out of how we work.

In this issue of Construction Journal, Alan Muse’s excellent article discusses how the pressures of globalisation and the need for consistency are being addressed in our industry with the International Construction Measurement Standards (ICMS).

To ensure effective change, we must do things differently and challenge our existing ways of working. ICMS are a big deal in construction, and many people have worked successfully together to bring the standards to where they are today.

More than 40 professional organisations from around the world, including RICS, have taken the bold, forward-thinking approach to achieve something with the ICMS that most would have dismissed as fantasy little more than two years ago.

It seems that in everything we do there is a continual focus on globalisation. Though members working on projects in UK towns and cities might feel that the ICMS will not affect how they work, they certainly will. ICMS will become fundamental to the way we, I and we as a profession interpret, cost and report construction works, from the smallest buildings to the biggest bridges.

Responding to the ICMS consultation is your chance to help shape these standards to provide a common way of working for quantity surveyors everywhere. If you would like share your thoughts, please visit www.icms-coalition.org. The consultation is live from mid-November.

To ensure effective change, we must do things differently and challenge our ways of working.

Justin Sullivan is Chair of the RICS Quantity Surveying and Construction Professional Group Board
qsandc.professionalgroup@rics.org
Survey of the profession
More than 5,796 members of the profession responded to RICS’ latest survey. Our areas of focus continue to be as follows:
- ensuring demand for RICS standards and qualifications
- establishing regulation worldwide that gives the profession a competitive advantage
- attracting the brightest and best talent to the profession
- agreeing international standards, in collaboration with partners across the markets in which we work
- explaining clearly what the value of RICS’ plans is
- putting the profession ahead of the competition with cutting-edge training, knowledge and information.

Please also let us know what APC advice you would like to read in future issues by getting in touch with us at journals@rics.org

BCIS Schedule of Rates
The 2017 comprehensive (major and minor works) plus alterations and refurbishment rates are now available on the Building Cost Information Services (BCIS) section of the RICS website.

The updated online service provides rapid access to the latest construction cost rates for creating and benchmarking estimates, offering:
- improved useability, allowing you to enter quantities when you select the rate
- the capability to create, save and re-use stored abstracts by rebasing with BCIS data or your own adjustment factors, allowing you to cost individual projects and save valuable time
- a new, clearer download layout that enables faster analysis
- the ability to download a rate and resource build-up, giving you in-depth analysis and detailed customisation.

The service also covers a range of data sets to suit your individual needs, including civils, maintenance and dilapidations; see www.rics.org/bcirsrates for more information.

ICMS progress
Private consultation on the preliminary draft of the International Construction Measurement Standards (ICMS) was completed in August, and changes in response to this were being completed at the time of going to press.

Following this, ICMS Coalition trustees and the Standards Setting Committee are to meet in London in November to launch the formal public consultation. Publication is expected in 2017, after which each coalition member will need to assess the changes required to their existing guidance to comply with ICMS.

For more detail see Alan Muse’s article “Common Ground” on pp.16–17 of this issue.
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Building on Brexit

After the Brexit vote, the outlook for the UK economy remains tough – especially for construction, says Jeremy Blackburn

A head of the UK’s EU membership referendum, RICS worked with members and stakeholders to consider the impact of the two possible outcomes across the property sectors.

Following the decision to leave the EU, we will continue with this evaluation and propose measures for continued investment in development, housing, construction, commercial property and the rural economy.

The result of the referendum caused huge political upheaval, with the resignation of David Cameron and a Conservative leadership contest won by Theresa May. This meant a new government, a new Prime Minister and new priorities.

With Philip Hammond appointed Chancellor and Mark Carney still Governor of the Bank of England, there was greater emphasis on reinforcing the UK economy. In August, the bank announced its biggest stimulus package since the 2008 financial crisis, including an interest rate revision, the Term Funding Scheme to provide funding for banks at interest levels close to bank rate, and the purchase of corporate debt.

Carney said the UK’s economy was resilient, but the bank’s surveys said it would only narrowly avoid recession and potentially require further stimulus. The Federation of Master Builders even claimed that the sector was already in technical recession.

While the economy has performed well in recent years compared to those of other countries and has recovered from the 2008 crash, overall growth levels have remained sluggish.

The Chancellor ditched the previous austerity measures and suggested he would take the period up to the Autumn Statement in November to assess Brexit’s impact on the economy and, if required, implement a fiscal reset.

While consumer spending has held up, business surveys report that companies are reluctant to recruit or invest. This indicates mixed levels of confidence, despite government stimulus being mostly targeted at businesses.

Some survey results deteriorated significantly shortly before and after the vote; the Confederation of British Industry, the Bank of England and Deloitte all reported investment intentions slumping. The Purchasing Managers’ Index surveys perhaps provided the biggest scare, dropping significantly in June and July – the sharpest monthly economic decline since 2009 – but rising during August. This was a strong relative, rather than absolute, recovery. I am writing this in September, and the next few months will see whether the upturn continues with the aid of a weak pound.

The British Chamber of Commerce also cut its growth forecast in September, predicting growth of 1.8% this year compared to its estimate of 2.2% in March. It claimed the UK would “skirt”, but manage to avoid, recession. However, a report from accountancy and services group BDO suggested that business optimism was beginning to improve, after dropping to a three-year low in August.

RICS UK Construction Market Survey

The pace of increase in construction workloads continues to slow, extending a trend that stretches back to mid-2015. Workload growth moderated in Q2 across all sectors as uncertainty delayed investment, with the private commercial and industrial sectors seeing the greatest slowdown. Workloads and employment should continue growing, but more slowly than previously anticipated.

For Q2, the biggest constraint on output was finance, with more than two-thirds of contributors highlighting this as the principal challenge. Despite the slowdown in Q2 activity, 56% of contributors reported skills shortages as a constraint.

Q2 saw a further moderation in the growth trend, but the Bank of England’s actions should alleviate some of this pressure. Nevertheless, anecdotal evidence indicates that the government’s challenge to establish a new relationship with the EU could see some construction investment plans scaled back.

Theresa May has announced a “major housebuilding campaign”, recognising that while housing market drivers remain domestic – for instance, death, divorce and debt – there is a need to build at much greater scale across the tenures.

RICS has welcomed the decision for a comprehensive industrial strategy, especially plans to reinforce strategic sectors such as steel, but this must include fresh thinking around innovation and skills. Policies announced before the referendum, such as increasing capital allowances, should be maintained.

May has also signalled that one of her priorities as Prime Minister is controlling immigration. This could potentially limit access to the single market and have an impact on construction, its labour supply and skills shortages.

The government must make Brexit an efficient process, secure a balanced deal with the EU, ensure that this is enough to keep Scotland in the UK, maintain the free movement area with the Republic of Ireland, mitigate any impacts on the UK’s relationship with the EU, ensure that this is enough to keep Scotland in the UK, and keep the UK’s relationship with the EU.

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Jeremy Blackburn is RICS Head of UK Policy
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Helen Brydson looks at some basic principles for programming and planning projects

Work in progress

Project management is essentially about delivering the right thing at the right cost on time. This seems simple, as there are just three factors to consider, but achieving all – or even just one – of these requirements can be complex. Construction is often viewed as a sector that is poor at delivering on time. The Constructing Excellence 2015 key performance indicators identified that only 40% of projects were completed on time. While this statistic must be considered alongside wider economic challenges, it still creates a negative perception of the industry.

Detailed and frequent programme analysis and monitoring is sometimes considered necessary for large, complex projects alone, due to the potential magnitude of any commercial issues arising from delay. However, smaller projects can have a tighter margin for error as the project timetable is often shorter and so more sensitive to delays affecting completion.

While the accurate production and effective management of a project programme or schedule is essential, the detail and frequency of programme production and review should be appropriate to the project's characteristics, the particular phase or activity level and the relative importance of completing on time.

Developing a realistic programme is the first step. Activities required to finalise a project should be listed and the relationships between them identified: what other activities need to have occurred for a particular task to commence or be considered complete? The individual tasks and their interdependencies form the outline plan or project strategy.

To translate this into a meaningful project programme, time and resources need to be considered: what is the duration of each activity, who is doing it and when? Ensure that non-working time is taken into account – typically bank holidays and Christmas – and that the working hours reflect those permitted on the project.

Many types of software can be used to build and present a project schedule, from the manipulation of spreadsheets to specialist software capable of varying degrees of automation for programme development, analysis, review and management. The project programme is commonly presented as a bar chart or Gantt chart.

Whatever software is used, it is imperative that the relationships between all tasks are correctly identified by the logic links shown, as this informs the critical path. Specialist software will identify the critical path activities, but it can only analyse these on the basis of what is input. Any errors will mean a misleading output that will hinder the effectiveness of the programme as a tool to monitor and control progress.

These items can also be used as a basic checklist for reviewing a programme: have all required works been recorded? Are relationships between tasks correctly defined and bars linked? Are reasonable time and resources allowed for each activity? Is the resource available for the time the works are scheduled? All of these determine whether a programme is realistic.

Once there is an agreed project timetable in place, the second step is to monitor its fulfilment. This involves examining actual progress, recording this in the programme, and comparing it with the activities originally forecast. Setting a baseline for the original project programme enables comparisons when there are deviations.

Assessing progress can be done in many ways, depending on the level of accuracy or interrogation required and the phase of the project; for example, a site visit can be used to see whether activities with a forecast start or finish date have actually commenced or have been properly completed.

Updating the programme with progress made shows just that – the progress against forecast – and does not identify the impact of that progress on the project programme as a whole. The third step, therefore, is to understand the impact on the remaining tasks, particularly any effect on the critical path and completion date.
Completing a project on time is a team effort. Coordination is crucial to identify and mitigate risks to prevent delays before they occur, and/or factor time in to the programme upfront to enable proactive rather than reactive management.

A project manager depends on the right input at the right time from everyone from the subcontractor to the main contractor, the consultant team and the client. The project manager should also understand what needs to be done and when, identify whether or not activities are being carried out, understand potential risks, identify delays as well as their cause, and ensure that corrective measures are implemented.

Multiple parties are involved in the work and responding to delays, and this will sometimes involve changes to what they had originally planned. So, to ensure the project’s completion on time, the schedule must be communicated to and accepted by those responsible for each task, in a way they can understand.

When in the red, the project is behind forecast: unless mitigation measures are applied, it will complete late. Project was reprogrammed and works are back in line with forecast.

On completion, buffer chart will end here if project is on time. Project ahead of forecast: if works continue at this rate, it will complete early.

Figure 1 shows a buffer chart that is ahead of programme, and if actual progress is maintained as forecast then it would be completed early. Conversely, Figure 2 shows a buffer chart that is behind programme. Despite various successful mitigation measures being implemented for multiple delays, the practical completion date is still threatened. Even if the rate of progress is maintained in line with the forecast for the remainder of the works, the project will be completed late.

While the methodology behind this is not appropriate for all projects – as a result, for instance, of its complexity and contractual concerns surrounding float – the concept of the tool is simple, as traffic light colours provide an effective monitoring and communication method. The chart can be displayed on site noticeboards or in monthly client reports, and requires little commentary.

Figure 2 shows a buffer chart showing a project behind programme.
Measurement is intrinsic to RICS, from its origins among railway surveyors who sought consistency and comparability, to its current establishment and promotion of international standards. The measurements themselves have evolved from quantifying inputs, such as plant, labour, materials and time, to defining outputs, such as safety, operational performance, service provision and, most recently, behaviours.

Where any attempt at measurement is made, a defined terminology and taxonomy is essential. As every surveyor knows, mature construction sectors have well-established cost planning and modelling frameworks allowing funders, clients and stakeholders to make clear assessments of the value for money and cost drivers that are associated with their schemes.

These frameworks of rules and definitions are usually published by professional institutions; familiar examples include the New Rules of Measurement suite from RICS, or Civil Engineering Standard Method of Measurement 4 from the Institution of Civil Engineers.

**Key questions**

Over the years, there has been an exponential increase in interest in the economic benefits of infrastructure investment and assuring value for money with effective commercial stewardship. This has particularly been the case in rail, where the absence of such a framework hampered the industry’s ability to address four key questions: namely, what rail infrastructure works should cost, will cost, did cost and why.

- **Should cost:** this question concerns the ability to provide consistent and credible advice on outturn cost ranges during business planning and procurement phases.
- **Will cost:** this covers the ability to provide active commercial stewardship to influence and predict accurately the outturn costs during delivery.
- **Did cost:** this deals with the validation of outturn costs relative to final scope and constraints, client behaviours and supplier performance.
- **Why:** this seeks an illustration of segmented spend, associated cost drivers and efficiency opportunities, through informed analysis of data and benchmarking.

To provide coherent answers to these questions, a common industry language is necessary so that measurement is consistent; this also ensures that domestic and international benchmarking are both supported.

Such a language requires a standard hierarchy and set of definitions for the description, measurement, pricing and modelling of rail infrastructure works.

**Meeting the challenge**

That language is provided by a suite of documents that have been developed over the last three years through collaboration with industry. This suite is collectively referred to as the Rail Method of Measurement (RMM), with three volumes envisaged:

- **Volume 1:** Cost Planning & Measurement of Rail Infrastructure Works
- **Volume 2:** Standard Rail Activity Cost Models
- **Volume 3:** Cost Planning & Measurement of Maintenance to Rail Infrastructure.

By convening an Industry Development Group to consider the views of more than 40 bodies, including some of the professional institutions, industry stakeholders and supply chain operators shown in Figure 1, we have focused on refining and publishing Volume 1.

**Familiar territory**

The structure of Volume 1 will feel familiar to any practising quantity surveyor, and provides a logical and structured basis for planning, measurement and modelling of the cost of railway work. From an industry perspective, it should be seen as representing good if not best practice.

The rules deal with measurement for preparing early order-of-magnitude cost plans and estimates, pricing schedules, cost models, benchmarking and analysis, and provide standard definitions for a range of cost categories, group elements, subelements and components.
Produced in a tabular format, items have coverage rules, measurement rules, and definitions to help the practitioner work to a level of granularity appropriate to each project’s maturity and form of contract. In addition, the industry concept of working in a ‘railway corridor’ is reinforced and defined, setting the parameters in which the majority of our work will be planned and completed (see Figure 2).

The contents of Volume 1 are:

1. Direct Construction Works
   - 1.01 Railway Control Systems
   - 1.02 Train Power Systems
   - 1.03 Electric Power and Plant
   - 1.04 Permanent Way
   - 1.05 Operational Telecommunication Systems
   - 1.06 Buildings & Property
   - 1.07 Civil Engineering
   - 1.08 Enabling Works
   - 1.09 Rolling Stock
   - 1.10 Building Service

2. Indirect Construction Costs
   - 2.01 Preliminaries
   - 2.02 Overheads and Profit

3. Project/Design Team Fees and Other Project Costs
   - 3.01 Design Team Costs
   - 3.02 Project Management Team Costs
   - 3.03 Other Project Costs

4. Risk
   - 4.01 Total Risk Allowance

5. Inflation
   - 5.01 Inflation

6. Taxation and Grants
   - 6.01 Tax Allowances and Grants.

Rail industry practitioners will also have a sense of familiarity with these as RMM has been incrementally deployed in our business and through our supply chain for some 18 months in the form of an industry consultation version. In a similar vein, stakeholders such as the Office of Rail Regulation are already attuned to RMM and now expect relevant funding submissions to be in this format as standard.

We therefore know it works and has industry support, and intend to release a first edition of Volume 1 by the end of the year, with Volume 2 to follow in 2017.

In parallel, Network Rail has been developing a unit-cost modelling capability with a data architecture directly aligned with the RMM. We are aiming for increasingly effective cost capture and analysis of UK rail works so the industry is better informed – a Rail Cost Information Service, if you will.

Clearly, the successful adoption of RMM will, in time, enhance the ability of the industry to demonstrate value for money, improve the capital cost dynamics of rail infrastructure schemes and enable whole-life costing as well as greater transparency and consistency.

There are of course perennial issues to be addressed in meeting this aspiration: resource, skills, competencies and practitioners’ appetite to measure diligently at appropriate levels of granularity. But I am confident that, with the support of the Industry Development Group and other interested stakeholders, our efforts will prove fruitful.

And we are not alone in such endeavours. You only need look at RICS’ aspirations regarding the International Construction Measurement Standards to see a global approach to the very same issues: the establishment of a common language and framework to enable consistent answers to those four key questions. Through its Infrastructure Steering Group and other forums, RICS, supported by informed clients such as Network Rail, is perfectly placed to develop and deploy such a language.

Network Rail’s focus is on promoting consistency and clarity of costs through standard approaches to measurement, cost modelling and benchmarking. Our journey continues.

Stephen Blakey is Commercial Projects Director at Network Rail
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For an insight into progress and to access the current version of RMM, visit www.networkrail.co.uk/cdf

Related competencies include Commercial management of construction, Quantification and costing of construction works
The new norm

Andy Green outlines how NRM 3 can allow data interoperability between projects and asset information models as well as the application of digital lifecycle costing.

Specifications (SFG20) and the economic life-expectancy data structure published in CIBSE Guide M and BCIS online. However, the full RICS NRM suite was only published in hard copy; it has thus been necessary to create electronic lifecycle cost templates (see Figure 1). The Digital Life Cycle Costing Toolkit is an extract from NRM 3 in an easy-to-use, standardised data format, with informative practical worked examples for four specific applications that are aligned to stages 1, 2/3, 6 and 7 of the RIBA Digital Plan of Work.

BIM data standards

BIM data standards are defined in PAS 1192, which states that the relevant data classification for the design and construction specification is Uniclass 2015. The data standard for costing is NRM 1 capital expenditure, and NRM 3 for operation and maintenance expenditure. PAS 1192 does not specifically require the use of SFG20 and CIBSE Guide M. However, NRM 3 is aligned to SFG20 and CIBSE Guide M life-expectancy details (for more information, see Figure 1 of “Ready to rule” Construction Journal June/July 2014, pp.11–12). So, using NRM 3 provides the means to integrate the various data classifications and the freedom to apply the right data format according to the specific user’s needs, as well as working with relevant technology or systems in an interoperable, BIM-compliant way.

By selecting the relevant data classification standards for specific purposes, data transfer and document formats will enable all disciplines to participate digitally, and eliminate the misunderstanding that Uniclass is the only data classification for BIM Level 2 compliance purposes.

Common data environment

A common data environment is the single source of information for project delivery and is used to collect, manage and disseminate documentation, as well as the graphical model and non-graphical data, for the entire project lifecycle. This means that all project information, whether created in a BIM environment or a conventional data format, can be transferred from the project into the asset information model (AIM).
To transfer the project information effectively into the AIM, a number of early adopter clients have structured their project data to be interoperable with the facilities or asset information management, by mapping to the relevant NRM-based standards and embedding the data structure into their common data environment. For example:

- A constructed specification is linked to Uniclass ‘types’ using the NBS construction specifications.
- An operation and maintenance specification is connected with SFG20 task schedules.
- Asset life-expectancy data is linked to CIBSE Guide M reference life data.
- Lifecycle costing data is linked to NRM 1 and 3, using Digital Life Cycle Costing Toolkit templates.

Additional asset component level details can be captured using a Construction Operation Building Information Exchange (COBie) template, a data schema for moving data from one point to another. This includes details of ‘type’, that is, the make, model and specific attributes, of the asset and its codification.

Data transfer between projects and AIMS

The Digital Life Cycle Costing Toolkit and common data classification have been successfully used on the Ministry of Justice’s Custodial Kitchen Project, focusing on RIBA project stages 6 for “handover” and 7 for “in use”, with the specific purposes of:

- Establishing a robust basis to transfer project data into the AIM.
- Generating the asset maintenance plan, annualised costing using the NRM Toolkit’s “maintain” template.
- Generating the asset renewal plan, lifecycle costing using the NRM Toolkit’s “renewal” template.
- Defining the building operation and maintenance information using CIBSE’s Building Log Book.
- Helping to set and defend the annualised budget for the in-use phases, i.e. revenue costs.
- Unlocking salient asset information that can be used to feed back into future Ministry of Justice projects.

Using the Digital Life Cycle Costing Toolkit on the Custodial Kitchen Project has shown how to bridge the gap between project and asset information and integrate this with the lifecycle costing of the capital and revenue expenditure, as well as setting up the operation and maintenance plans.

It further highlighted that, without a common data classification, the original project data file was missing significant amounts of asset data, that is, around 40% of applicable items.

This has led the Ministry of Justice and other central government departments to include data collection and classification in the Digital Life Cycle Costing Toolkit approach. This will make BIM Level 2 a reality for asset managers and operators, enabling them to realise greater efficiencies when managing an asset, as well as providing rigour in handover data. By incorporating this approach into client BIM documents, it will ensure that the employer information requirements include digital lifecycle costing.

Benefits offered

Because the capital asset data can populate the post-project AIM, a more rigorous approach to the capital asset...

---

![Figure 1](Image)

The Digital Life Cycle Costing Toolkit aligned to the RIBA Plan of Work

![Diagram](Image)
data collection and delivery phase of a project is possible. The Digital Life Cycle Costing Toolkit approach complies with the UK BIM Level 2 standard approach, as defined by PAS 1192 standards, and enables facilities managers and asset managers to collaborate and share information effectively, which for the first time enables BIM operational efficiencies.

Key benefits include:
- demystifying and simplifying the carrying out of digital lifecycle costing on any project/system or constructed asset, over its whole life
- making project data transferable to use and re-use both in asset information management systems and in facilities management systems
- unlocking robust cost analysis and benchmarking to use in future projects
- feeding relevant operation and maintenance, renewal costs and asset data back into projects
- using the common data classification to enable 3D visualisation of project building information models to work with AIM data
- making better decisions at key stages and informing trade-offs between options.

Initial applications of the Digital Life Cycle Costing Toolkit have identified savings of around 28% in asset maintenance expenditure, while assuring the statutory and legal compliance of assets. The AIMs have used the structured data and legal compliance of assets. The AEs have identified savings of around 28% in asset maintenance expenditure, while assuring the statutory and legal compliance of assets.

Impact on lifecycle costing and BIM

The Digital Life Cycle Costing Toolkit simplifies the digital application of lifecycle costs (capital and revenue), and how to apply the operation and maintenance data for 3D BIM projects.

The toolkit and the adoption of a common data classification makes the collection and use of data in a digital environment more robust and easier for clients. This approach allows a client to engage with BIM at an asset operational level, enabling whole-life efficiencies. This will help deliver BIM-mandated requirements for asset data through well-defined employer information requirements, and embed 5D and 6D into new ways of working on future projects.

Aligning to an industry-accepted asset data classification system and embedding this into the COBie schema will make the BIM process relevant to future estate and asset operators and facilities management providers as well as to the project capital delivery team. A concerted effort by these groups will accelerate the uptake of BIM Level 2 and simplify application of digital lifecycle costing and appropriate use of the relevant operation and maintenance data.

Table 1

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Andy Green is a director at Faithful+Gould and Technical Author of NRM 3. andy.green@fgould.com

“Unlocking the 2025 vision”, Construction Journal, April/May 2015, pp.6–8


The 2016 Product data dictionary from the BIM Task Group maps NRM 3, Uniclass, CIBSE and SFG20 data classification systems.

Related competencies include BIM, Data management.
Planning ahead

Skills shortages are increasing the competition for quality staff – but candidates should not be enticed by short-term gains, says Chris Peace

Since July, there has been a slight market slump, with some firms becoming more hesitant when recruiting, compared to 2015 and early 2016. However, despite this downturn and well-publicised skills shortages, as well as uncertainty over Brexit and the future of the single market, there is still a lot of positivity in the construction sector.

In particular, the quantity surveying and project management markets remain strong. Competition for candidates in these areas continues to be fierce due to the aforementioned skills shortages. We have seen at least a 40% increase in demand for quantity surveying and project management jobs this year, and expect demand to continue to rise.

However, the problem is that every client seems to be looking for the same thing – a quantity surveyor or project manager with around three years’ experience and a strong potential for business development – because of a concern with succession planning, which is high on the agenda of most organisations. As a result, this person specification is currently difficult to fulfil, and no doubt these highly sought-after candidates will have multiple offers to consider when they do become available.

Firms need to plan further ahead and start thinking longer term, ideally, planning their recruitment strategy for the next 12 months on a rolling basis. If this does not happen, it will be hard for them to find the right quality of candidate when required. It is essential that time is made for recruiting now or they run a high risk of being unable to provide for their clients.

Organisations need to be aware of the following.

- Flexibility is vital – a ‘10 out of 10’ candidate may be particularly difficult to source, so slight expectation adjustments may need to be made to accommodate a 7/10 candidate and to focus on their development.
- Counter-offers will be made, which slows down the recruitment process.
- Candidates have a lot of power – they will take their time when deciding on which is the right job for them. This will most likely be well paid with good future prospects.
- All of the above factors contribute to a prolonged recruitment process.

Companies need to start rewarding their existing staff, too, as retention is crucial. There are three important reasons for this.

1. If you want to ensure that productivity is kept high, you will need to keep staff happy and motivated, which will involve paying individuals their market value.
2. Headhunting will happen, so if valued members of staff are not rewarded then they could easily be attracted by opportunities elsewhere.
3. People talk, so when you are competing to hire, candidates will already know whether your company has a good reputation for looking after its staff.

The most important piece of advice I would give candidates is not to price yourself out of the market. Think about your long-term career prospects rather than just a short-term financial win. I would also recommend that everyone undertakes a twice-yearly career MOT. This will allow you to look at the options available, market conditions and earning levels among your peer group. There are always industry experts available who can offer you private and confidential advice.

In terms of the future, we will have to wait and see what the full impact of Brexit is; but from speaking with our clients, we believe the market will remain steady, particularly for quantity surveyors and project managers whose skills remain scarce. We will also see some pretty major technology advances in construction recruitment, which will be exciting, the main objectives being process improvement combined with cost savings. So: watch this space.

Chris Peace is Managing Director of Peace Recruitment chris.peace@peacerecruitment.co.uk

Related competencies include Managing people
Common ground

Alan Muse discusses progress on the International Construction Measurement Standards

Businesses operating internationally increasingly demand global rules. We have seen this in accountancy with the International Financial Reporting Standards, and the same approach is now being extended to professionals in land, property and construction.

In a previous Construction Journal article, I introduced the International Construction Measurement Standards (ICMS) initiative (“Measuring up”, September/October 2015, pp. 6–7). So how has this developed? How will it affect cost management professionals and others interested in the economics of construction, both in the UK and globally?

After the formation of the ICMS Coalition at the International Monetary Fund in Washington DC in June 2015, an ICMS Standards Setting Committee (SSC) was elected, comprising 27 experts from around the world. Since then, the coalition has grown to 42 professional bodies, representing cost management professionals in building and infrastructure in key global markets.

Meanwhile, the SSC has been busy developing the standards. After an initial review of practice in different parts of the world it established a project brief, which was then agreed with the coalition. The aims and objectives of ICMS are:

- to agree what is included and excluded from construction costs at both a project level and a national reporting level
- to create a framework for a standard system of costing for building and civil engineering projects, which will allow cost comparisons to be made on a like-for-like basis between countries
- to let governments and international bodies compare construction costs for building and civil engineering projects so:
  - construction costs can be consistently and transparently benchmarked
  - the causes of costs differences between projects can be identified
  - properly informed decisions on the design and location of construction projects can be made
  - data can be used with confidence for construction project financing and investment, programme and project decision-making and related purposes.

To meet this brief, the SSC divided itself into four groups, the first three covering buildings, infrastructure and drafting, with a steering group providing oversight. This allowed a closer focus on specific problems together with regular, integrated reviews.

Meetings were held by teleconference and augmented by a pair of two-day workshop sessions. The first of these was hosted in March by the European Commission in Brussels, which has been very supportive of ICMS, with the second at the RICS offices in London in June.

A preliminary draft for private consultation with selected external stakeholders was completed in August, and responses were expected as this article went to press. After these have been considered and incorporated, the ICMS Coalition trustees and the SSC are planning to meet in London in early November to launch the formal public consultation; publication is expected in May 2017. After publication, each coalition member will need to assess the changes required to their existing guidance to ensure compliance with ICMS.

Key features of ICMS are a high-level cost presentation and reporting classification system, aligned with the UN’s Standard Industrial Codes, with standard project values and attributes across buildings and principal infrastructure sectors (see Figure 1). They are designed to be used both with the International Property Measurement Standards (www.ipmsc.org), in terms of reporting cost per square metre or square foot of building area, and with building information modelling, in terms of a standard classification, values and attributes. At the moment, the ICMS only deal with capital costs across defined project categories: there are plans to add lifecycle cost classification and further civil engineering sectors at a later date.

As the UK works through the implications of Brexit, international standards may assume greater significance. These will provide common terminologies and systems for the
development of trade agreements, particularly in professional services. In any case, foreign direct investment in property and infrastructure is an important component of the UK economy, and harmonised ways of presenting and reporting space (IPMS) and cost (ICMS) enable such investors to make better decisions. ICMS also help with the globalisation of the quantity surveying, cost management and cost engineering professions. These have similar core skills, but there has been no universal taxonomy or body of knowledge: ICMS bring that a step closer.

UK practice will need to adapt to this new environment. Therefore, after the publication of ICMS, RICS will review its current UK guidance material, such as the New Rules of Measurement (NRM) and the Black Book, so that this accords with ICMS. It may also be necessary to write a new global professional statement that, within the framework of ICMS, summarises the principles included in the NRM and Black Book. This could then be used to regulate RICS cost management professionals on a global basis.

This also presents huge opportunities for the global cost management profession. In both mature markets, where cross-border consistency in making investment decisions is increasingly critical, and in emerging and developing economies, where establishing transparent cost systems is necessary for investment, ICMS allow global rules for the first time.

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**Figure 1**

Draft ICMS framework

<table>
<thead>
<tr>
<th>Level 1: Project categories</th>
<th>Level 2: Cost categories</th>
<th>Level 3: Cost groups</th>
<th>Level 4: Cost subgroups (discretionary)</th>
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</thead>
<tbody>
<tr>
<td>Buildings</td>
<td>Total project capital cost</td>
<td>Capital construction costs</td>
<td>Cost subgroup</td>
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<td>Roads and motorways</td>
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<td>Cost subgroup</td>
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<td>Railways</td>
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<td>Bridges</td>
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<td>Tunnels</td>
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<td>Sewage treatment works</td>
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<td>Water treatment works</td>
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<td>Cost subgroup</td>
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<tr>
<td>Pipelines</td>
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<td>Cost subgroup</td>
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<td>Well drilling</td>
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<td>Cost subgroup</td>
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<tr>
<td>Power-generating plants</td>
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<td>Cost subgroup</td>
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<td>Chemical plants</td>
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<td>Cost subgroup</td>
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<tr>
<td>Refineries</td>
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<td>Cost subgroup</td>
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Provision for further categories to be added at a later date

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Related competencies include Quantification and costing of construction work.

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www.icms-coalition.org
Claire Haynes and Helen Garthwaite highlight the importance of sustainable digital infrastructure for broadband connectivity

Enabling a superfast future

Superfast broadband connectivity is now regarded as essential by businesses and the majority of homeowners. The government’s ambitions for digital connectivity are also high, with a target for 95% of the UK to have access to superfast broadband from 2017.

The Building (Amendment) Regulations 2016 implement the Broadband Cost Reduction Directive 2014/61/EU as law in England and Wales. The primary purpose of the legislation is to contribute to reducing the costs and obstacles to deploying superfast broadband. The regulations offer an established route to set requirements for buildings, with an enforcement mechanism already in place.

The 2016 regulations introduce a new Part R of Schedule 1 to the Building Regulations 2010, which contains a new requirement that all new or existing buildings that are subject to major renovation works are adequately equipped with the necessary infrastructure to support superfast broadband of at least 30Mbps.

The government has also issued Approved Document R: Physical infrastructure for high-speed electronic communications networks, which gives practical guidance on compliance with the technical parts of the new requirement. Although compliance with the regulations is not guaranteed by following the guidance, there will be a presumption of compliance. This also brings a degree of flexibility as there is no obligation to adopt any particular solution from an approved document, so other ways of complying can be discussed with the relevant building control body.

The Building Regulations take effect on 1 January 2017 in England, and for a limited number of energy-generating sites in Wales; however, they will not apply to works that are subject to existing building control notices and applications submitted before this date.

A building will meet the regulatory requirements if it is designed and constructed in such a way that it is ready to receive superfast broadband in the future, but this need not be installed immediately after completion of the works.

**Major renovations**

The new regulations apply not only to new-builds but also major renovation works to a building. These works are defined as encompassing structural modifications of the entire internal physical infrastructure or a “significant part” of it, comprising installations such as ducting that host the wired or wireless access networks through which broadband services are delivered.

The regulations and guidance give no explanation of what is meant by renovation of a “significant part” of internal infrastructure, however. This will lead to uncertainty as to whether some refurbishment projects are covered by the new requirements. The installation of new ducting throughout an entire building will mean that the new regulations are applicable; but suppose an anchor tenant requires new ducting in their premises – will they apply in this case? Given the lack of guidance, it will be a question of fact and degree in the individual circumstances of each case.

**Access points**

The regulations provide that in-building infrastructure is to be installed up to a “network termination point”, the physical spot at which an occupier is provided with access to broadband. For multi-occupancy buildings, there will typically be multiple network termination points, with one in the premises of each occupier.

Where works are carried out to such a building, that building must also be equipped with a “common access point” for broadband connectivity. This is a physical point inside or outside the building that is accessible to broadband providers, where they can connect to internal infrastructure. Single-occupancy buildings will also be required to have an access point, but there will only be one network termination point connected to it.

The new requirement is only to provide in-building infrastructure between the access point and the occupier’s network termination point. Site-wide broadband infrastructure extending externally from the access point is outside the scope of the new regulations, as is cabling or in-building infrastructure beyond the network termination point.

Although the regulations will enable improved connectivity, they missed an opportunity to go further and cover the requirements for site-wide infrastructure – an important consideration given both the increasingly connected world in which we live, where more public spaces and areas between buildings are connected, and the drive towards ‘smart cities’.

**Exemptions**

The regulations will apply to dwellings and non-residential property. However, there are exemptions for certain types of building and building work. These include:

- conservatories and other small detached buildings that contain no sleeping accommodation
- buildings that are listed or in a conservation area, for which compliance would unacceptably alter their character or appearance
- buildings in isolated areas where the prospect of a high-speed connection is considered too remote to justify equipping the building
- major renovation works where the cost of compliance would be disproportionate to the benefit gained.
A person wishing to take advantage of the latter exemption would need to demonstrate to building control that the cost of compliance would be unreasonable, taking into account the work required and the alternative means of high-speed broadband delivery available. There is no guidance, though, on what would constitute an unreasonable level of expense.

**Incentives for stakeholders**
The guidance states that suitable ducting should be provided to connect all network termination points to an appropriate access point, for example wall ducts or, for multi-occupancy buildings, dedicated vertical and horizontal riser service routes. Implementation of the new regulations will not be without challenges or costs, particularly for older buildings that were not designed with space for broadband infrastructure and ducting.

The new regulations will encourage developers, investors and occupiers to consider IT infrastructure early when moving premises or in their development project, because non-compliance could significantly affect a building's value, marketability and use. For some developers and investors, the cost effect of the regulations may be minimal as many new buildings are now designed to be fibre-ready with ducting for broadband access and termination points already integrated into the design; for others, the changes will be a wake-up call.

The new regulations are another step in the right direction for the legal framework to keep pace with the practical realities of technology. A new Electronic Communications Code is promised as part of the forthcoming Digital Economy Bill, underpinning agreements to install and maintain communications apparatus on land and property. A project led by the City of London Corporation, with the backing of former Culture and the Digital Economy Minister Ed Vaizey, has also developed a standardised wayleave. Together with the new regulations, these initiatives should help to improve connectivity and reduce the costs and delays of the current protracted wayleave and street works processes.

While green buildings have firmly established their place in the market, we have recently seen a change in focus towards the ‘wellness’ of buildings, and we predict that connected buildings will follow in their footsteps.

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The regulations offer an established route to set requirements for buildings

Paul Yandall, Project Manager and Quantity Surveyor, Torbay Development Agency

“**When I joined my new company in April 2015 they did not have access to BCIS. For a couple of months I had to manage without access which made it very difficult accessing cost data. Now having a subscription to BCIS, gives me easy access to a large amount of building cost data, saving me valuable time. BCIS is invaluable, as it helps me provide realistic early cost advice to our customers from a widely recognised source.**

Paul Yandall, Project Manager and Quantity Surveyor, Torbay Development Agency

BCIS provides essential data to carry out early cost advice

A reliable source of independent data

To find out more about BCIS visit rics.org/paulsstory or phone +44 (0)24 7686 8433

To advertise contact Emma Kennedy +44(0)20 7871 5734 or emmak@wearesunday.com
In the second of a series of articles providing guidance to APC candidates, Ian Frankton looks at the Design economics and cost planning competency

Reaching the next level

One important task for a quantity surveyor is to establish a project budget. It is crucial that this is calculated with considerable care, as the more accurate the budget, the more successful the project will be. Design economics and cost planning is therefore one of the primary competencies of the Quantity surveying and construction pathway, and one in which you must demonstrate that you have achieved Level 3.

This means that your written submissions and questioning at final interview must demonstrate your ability to give reasoned advice, along with a depth of knowledge specific to your experience and the requirements of the competency itself.

Seminars, a degree and structured reading should provide you with the basic knowledge for Level 1. Work activities should then give you sufficient experience to demonstrate Level 2 and, critically, show you have provided advice to meet Level 3.

I often see candidates who remain at Level 2 because they cannot highlight at Level 3 what specific advice they have given and why. When candidates prepare written submissions, particularly their experience records, many just state what they know about Design economics and cost planning. However, the purpose of your written submissions is to sell yourself to the assessment panel, by telling them what you have done or achieved (Level 2) and then what advice you gave and why (Level 3). The following is an example of what you might write.

“I produced a detailed cost plan in accordance with the NRM 1 for a proposed primary school in Warwickshire (Level 2), which was 5% above the client’s maximum expenditure. I advised that I should consider the design in detail by reviewing various building ratios – such as floor-to-wall ratios – and storey heights, to see whether these were higher than expected compared to a ‘normal’ school design model.

“I therefore looked at the proposed specification and advised that a full-value engineering exercise should be undertaken to identify elements of the design/specification where costs could be reduced without affecting the building’s functionality. I then reported these to the client and design team and advised them of the items that could be reviewed to allow the client to progress the project within their budget constraints (Level 3).”

This approach must also be remembered at your interview. Assessors will signal as much as possible the competency and level of answer they are seeking, so listen carefully. They will be specific in their questioning and will use questions such as “How would you perform a value engineering exercise?” The key phrase is “How would you perform...?”, which indicates they are looking for a Level 2 response, detailing how you would prepare this report. However, if your assessor says “Tell me about a situation when you gave a client advice on reducing project costs,” this indicates they want you to confirm what advice you gave on value engineering and details of when, what and why you gave that advice; that is, a Level 3 response.

You must have a good understanding of all aspects of design economics and cost planning and the assessors will use your written submissions to identify your experience. However, you should be aware how this relates to more general issues surrounding design economics and cost planning, and what effects these may have when formulating your opinions and giving advice to your clients. You should be prepared for questions in the following areas.

- What is the difference between a cost estimate and a cost plan? How does NRM 1 influence how these are prepared?
- What effect do site density, storey heights and so on have on construction costs?
- What sources of cost data do you use and why?
- How do you advise on site abnormals?
- How do you update data and ensure it remains correct?
- How do you advise handling inflation in your cost estimates?
- What advice would you give when revising specifications, consider capital costs, lifecycle costs and so on?
- What value management and value engineering techniques do you use?
- How do you manage risk on a project?
- What is the general state of the economy? What are local and global market forces? What effect will changes in interest rates have on your cost advice?

This list is not exhaustive, but it does give a flavour of the types of question you should expect during your interview.

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The Black Book can be found at www.rics.org/blackbook
RICS training courses can be found at www.rics.org/training
# Professional guidance and standards for QS and PM

## RICS international standards

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## The Black Book

The Black Book is a suite of guidance notes that define good technical standards for quantity surveying and construction professionals.

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*RICS professional guidance and standards are constantly under review so for the most current list please visit [www.rics.org/professional-guidance](http://www.rics.org/professional-guidance)*
Disability or discipline?

Helen Crossland advises employers on how to deal with drugs and alcohol at work

Research suggests that 13% of employees in the UK use illegal drugs, with the figure rising to 29% for those under the age of 30. Furthermore, an estimated 5% of all work absences are alcohol-related, while 15% of employees have also admitted to having been intoxicated at work.

Any business should thus be prepared for the eventualities that a worker confesses to having an addiction, that an employee is suspected of using illegal or prescription drugs or alcohol to the detriment of their duties, or that a member of staff is found to be in possession of or using illegal drugs on site.

No sector is immune to these issues, but the stakes are that much higher for the construction industry, where misuse of drugs or alcohol could have catastrophic consequences because of the health and safety factors in play.

Workers under the influence can prove costly for any business in terms of behavioural issues, including those affecting other workers, absenteeism, unreliability, reduced productivity, negligence and general underperformance. But where the use of machinery and construction sites are also in consideration, it can have other devastating ramifications – for the individual themselves, their colleagues and the public – and potentially derail projects or deadlines. This can naturally lead to legal implications for the business engaging them, as well as untold damage to a company’s reputation and its ability to secure future contracts.

So how should a business act where it suspects or discovers one of its workers is misusing illegal drugs or alcohol?
Addiction or recreation?
As a starting point, any action is likely to hinge on whether a distinction can be drawn between a person's dependency on or recreational use of drugs or alcohol, and whether the individual themselves alerts you to the problem.

If a worker has an addiction to alcohol or illegal drugs, this could have significant effects beyond their control, both physically and mentally. In such cases, while the potential dangers presented to work by a person's addiction should never be overlooked, the advice in most cases would be to treat their condition as a serious illness and thus a capability rather than a misconduct issue.

If it is clear the problem is one of addiction, and particularly if the individual has volunteered this information themselves, the focus should be on encouraging them to seek help and treatment. This may involve a referral to occupational health or a specialist substance abuse counsellor, and granting the individual special leave, paid or unpaid, for any treatment. Subject to the worker having been professionally assessed as capable of resuming their duties, their progress and ability to perform their role can then be monitored. If there is a concern they may not resume employment to the standards of work or the confidence required of the business, a capability (performance management) process may be warranted, which could ultimately lead to their dismissal.

If an individual has not declared any addiction but by virtue of their conduct or appearance is very likely misusing drugs or alcohol in a way that is affecting their performance or behaviour, the employer may still prefer to explore their suspicions, but should proceed with extreme caution. They might require the individual to undergo a drug or alcohol test if there is a company policy permitting this or, where the contract of employment or a specialist substance abuse counsellor, and granting the individual special leave, paid or unpaid, for any treatment. Where misuse has been reported or is suspected. Where there are positive findings, it is essential to administer any sanctions governing this. This policy should be widely communicated to workers so they are aware of what the tests entail and also that any information they receive will then be treated, particularly where there is evidence of alcohol or drug misuse but the employee has not admitted this or that they have a problem.

Subject to what is said below on disability discrimination, where an employer prefers to avoid the additional administration, time and cost of testing and reference to medical professionals, an alternative approach is simply to default to a standard capability or disciplinary procedure, focusing on the performance or conduct issues under consideration and making no reference to the suspicion of drug or alcohol use.

Regard should also be given to whether an individual is known to have used, or been seen in possession of, illegal drugs on the premises. Notwithstanding that this would likely constitute gross misconduct, a business owner could be criminally liable if they know that illegal drugs are being used on their premises. Even if an employee has a known addiction, disciplinary action culminating in dismissal would very likely be a justifiable response in this case.

Disciplinary route
Where the issue is one of misconduct, a formal disciplinary procedure should always be followed, incorporating a reasonable investigation before any course of action is decided. The exceptions are when the individual concerned is a contractor and not subject to the company's disciplinary procedure, or where an employee has less than two years’ service, rendering them ineligible to claim unfair dismissal, and the risk of not following a procedure is assessed as low.

In the event that the employee is dismissed and brings a claim for unfair dismissal, an employment tribunal would want to review whether it would have been reasonable to defer to medical advice. For example, if an employee presents as being drunk at work but they claim to be suffering from a medical condition that bears similar symptoms to intoxication, the employer would be ill advised to disregard the evidence without investigating it before deciding to dismiss.

Disability discrimination?
When faced by an employee with an addiction, it is essential to consider whether a person's use or suspected use of drugs or alcohol could amount to a disability, entitling them to protection from disability discrimination pursuant to the Equality Act 2010. The need to consider reasonable adjustments to accommodate their condition, as well as the risk of the individual bringing a disability discrimination claim – on top of any unfair dismissal claim if they are terminated – can then be reviewed. Any individuals, including employees, workers and freelancers, can claim discrimination, and need no minimum length of service.

An addiction to or dependency on “alcohol, nicotine or any other substance” does not constitute a disability under the 2010 act unless the addiction has been triggered by the use of prescription drugs or other medical treatment. However, impairments brought on by addiction, such as depression or nerve damage caused by alcoholism, could be classed as a qualifying disability.

Policies and testing
In a safety-critical environment such as the construction industry, employers are permitted to undertake spot testing for drugs and alcohol provided they have a company policy governing this. This policy should be widely communicated to workers so they are aware of what the tests entail and also that they may be subject to random testing, or “for cause” testing where misuse has been reported or is suspected. Where there are positive findings, it is essential to administer any sanctions consistently, which may include disciplinary proceedings or, where an addiction emerges, to support the individual in seeking professional help.

Conclusion
The underlying advice where an employer needs to take steps to address an employee's addiction is to adopt a line of help and support. No employer is expected to maintain this approach indefinitely, however, and where there is a loss of trust in the employee or a legitimate concern that the individual could endanger themselves or others at work, dismissal can normally be justified.

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Verbal alteration

Shy Jackson considers the validity of verbal agreements

It is sometimes said that a verbal agreement is not worth the paper it is written on, as a way of highlighting the risks of arrangements that are not recorded in writing and the uncertainty that can result from them. A common means of limiting this risk is to include a clause stating that any agreement to vary the contract must be made in writing and signed by both parties. Whether such clauses are effective was the subject of the recent decision in MWB Business Exchange Centres Ltd v Rock Advertising Ltd [2016] EWCA Civ 553.

The case concerned a claim by MWB, a company operating managed offices in central London, against an occupier, Rock Advertising, for the arrears of licence fees as well as other charges and damages.

In its defence, Rock claimed that an oral agreement had been reached with MWB’s credit controller to reschedule the licence fee payments. Rock said it paid the first instalment that was due in accordance with the revised payment schedule, and also argued that MWB should not be able to deny the variation that it had orally agreed. The oral agreement was the subject of various discussions and email exchanges on 27 February 2012, as well as an email sent on 29 February proposing new terms.

When it came before the court, the judge held that agreement was reached on 27 February, despite the later email, but that there was a clear clause which precluded an oral renegotiation of a core term of the agreement. The clause stated: “All variations to this licence must be agreed, set out in writing and signed on behalf of both parties before they take effect.” This meant that contract clause prevented the oral agreement from being effective, and the claim for payment was thus successful.

Court of Appeal

When Rock sought to appeal the decision, the Court of Appeal relied on an earlier appeal decision from April 2016, in the case of Globe Motors Inc v TRW Lucas Varity Electric Steering Ltd [2016] EWCA Civ 396. In that case, the three Lord Justices concluded that a clause prohibiting oral variations cannot stop parties from subsequently entering into such an agreement.

When considering Rock’s appeal, the court noted that there has for some time been a considerable degree of uncertainty as to whether an agreement in writing that contains an anti-oral variation clause can itself be varied, other than in accordance with the terms of that clause. The Court of Appeal, however, agreed with the reasoning in Globe Motors and concluded that the existence of such a clause did not prevent a subsequent agreement.

This was largely due to the principle of contract autonomy and the right of parties to enter into contracts as they wish. In that context, the clause that limited change could be changed like any other, and the prohibition of an oral waiver could itself be waived. The appeal was therefore successful, and MWB could not pursue its claim for payment due to the verbal agreement.

Conclusion

Oral agreements on payment or other contractual issues are equally common in construction projects. Individuals will discuss issues and reach agreement, often through an exchange of emails, from which the companies may later seek to resile.

While clauses prohibiting oral variations are common, the decisions in MWB and Globe Motors have now clarified the law, confirming that such a clause will not prevent an oral agreement from binding the parties. It is still necessary to show how and when such an agreement was reached, and MWB highlights the uncertainty that can arise when seeking to rely on evidence of verbal discussions and email exchanges. It is also a reminder that once an agreement is reached, it cannot be undone by a later email, as was attempted in this case.

To avoid such issues, it remains best practice to make it clear in writing when negotiating that such discussions are on a “subject to contract” basis and, where possible, to avoid informal discussions and agreements. That should go some way to limit the risk of ending up in court arguing about what may have been agreed verbally.

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