

Contractors and Employers Are Not Adversaries.

They Simply Don't See the Same Project at the Same Time.

Many contractual tensions do not begin with opposing interests, but with information that arrives too late, through different channels, and without the context a sound decision requires.

INFORMATION GAP

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CONTRACTUAL RISK

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COMMERCIAL EXPOSURE

↓

DISPUTE

A practical examination of how delayed, fragmented or informal project information changes contractual positions before either party recognises the exposure.

A contractor flags a problem that has arisen during execution. The employer rejects a request for an extension of time. Each side reads the other's reaction as a form of resistance — as if the other party were pursuing some fundamentally opposed interest.

Most of the time, however, the problem does not begin with incompatible positions.

It begins with an information gap.

The contractor knows about a problem from the moment it appears on site: an unforeseen ground condition, a delayed clarification, an access restriction, a change of solution, an unavailable resource, or an interface with the works of another party on the same project.

The employer learns about the same problem later — typically through a progress report, a contractual notice, a request for an extension of time, or a financial claim.

A significant amount of time can pass between the moment an event occurs and the moment the other party becomes aware of it and understands it.

In that interval, each side builds its own interpretation of the situation, using only the information available to it.

And when information is incomplete, the gaps are almost always filled with assumptions.

Why the Relationship Starts to Feel Adversarial

To the employer, the contractor's request can look sudden, insufficiently substantiated, or submitted uncomfortably close to a critical deadline.

To the contractor, the employer's response can look slow, excessively formal, or disconnected from the reality on site.

Both perceptions can be correct from each party's own vantage point — and incomplete at the same time.

The employer does not have constant, direct access to every condition, decision and operational constraint on site.

The contractor, in turn, does not have full visibility into the employer's internal review, approval, budget-verification, legal-control or institutional sign-off processes.

A situation that seems obvious to the delivery team may not be at all obvious to the people who must analyse and approve its contractual and financial consequences.

Without a mechanism that narrows this gap in perspective, each side begins to explain the other's behaviour through a lack of cooperation, bad faith, or a lack of professionalism.

| *A difference in information ends up being read as a difference in interests.*

It Doesn't Stay Just a Communication Problem

The information gap does more than produce misunderstandings.

It can quickly turn into contractual and commercial exposure:

- decisions taken too late;

- additional costs insufficiently documented;
- extension-of-time claims disputed;
- variations that can no longer be properly valued;
- works executed without a clear allocation of responsibility;
- resources retained on site without a formal decision;
- contractual positions that weaken as the project advances;
- operational problems that end up being handled directly as claims or disputes.

A site issue that could have been managed at an early stage becomes, weeks or months later, a discussion about liability, cost, delay and contractual entitlement.

Not necessarily because the original problem was difficult.

But because the information required for a decision did not reach the right people in time, was not sufficiently documented, or was never connected to its effect on programme and cost.

The Role of Contractual Mechanisms

Construction contracts — whether governed by FIDIC conditions, public procurement legislation, or bespoke contractual terms — contain mechanisms designed precisely to manage this gap.

Event notices, progress reports, site minutes, risk registers, instructions, requests for clarification and contractual correspondence are not mere administrative formalities.

They represent the project's information infrastructure.

Through these mechanisms:

- the employer learns of an event before its effects become hard to control;
- the contractor protects its contractual position without waiting for a dispute to arise;
- the Engineer or the employer's representative can assess the situation on the basis of information contemporaneous with the event;
- the impact on time, cost and sequencing of works can be evaluated before it compounds;
- decisions and responsibilities can be tracked in a shared, verifiable form.

The role of the Engineer, or of the employer's representative, is not only to approve or reject requests.

It is also to translate operational information into a form that the contractual structure can analyse and process in time.

When this mechanism works, the employer does not learn of the problem for the first time when a claim is received.

It learns early enough to verify the situation, request further information, consider alternatives, and limit the consequences for the project.

What Happens When Communication Stays Informal

Site discussions, phone calls and verbal understandings are necessary for day-to-day coordination.

They are not, however, sufficient for administering the contractual and commercial consequences of an event.

When information remains confined to informal channels, each party retains its own version of the situation.

A delay that was obvious to the site team may reach the employer as a request with no documented support.

A decision that seemed justified from the employer's perspective may be read by the contractor as an unreasoned refusal, because the reasoning and constraints behind it were never communicated.

Under these conditions, the two parties are no longer discussing the same event.

They are discussing two different versions of it.

Records are then reconstructed retrospectively. Impact is estimated after resources have already been consumed. The programme is analysed after the sequence of works has already changed. Positions are formed at a point when the parties have already begun to defend themselves.

That is the point at which the relationship acquires an adversarial character — even though the parties' underlying interests — completing the project, controlling cost, meeting requirements and using resources efficiently — are not necessarily opposed.

Closing the Information Gap in Practice

Closing the gap does not mean more correspondence for its own sake.

It means relevant information, delivered at the right moment, in a form that supports a decision.

In practice, this means:

- promptly communicating any event that may affect time, cost, resources or the sequencing of works;
- using contractual notices as an instrument of early warning and alignment, not only as a defensive measure;
- connecting technical information to its contractual and commercial effects;
- recording decisions together with the reasoning behind them;
- updating the programme to reflect events actually occurring on site;
- identifying the impact on cost and time at an early stage;
- tracking instructions, clarifications and decisions that remain open;
- treating progress reports as management tools, not only as periodic obligations;
- maintaining a shared, verifiable record of the events that matter.

A notice delivered on time does not automatically make the relationship adversarial.

On the contrary, it gives the other party the opportunity to understand the problem, verify the information, and intervene before commercial effects accumulate.

A notice is not necessarily the beginning of a claim.

It can be the mechanism through which a claim is avoided.

From Information to Commercial Control

Effective contract administration is not only about meeting notice deadlines.

It means turning project information into decisions that protect time, cost and the parties' contractual position.

A technical problem needs to be read through its effects on:

- the execution programme;
- productivity;
- resources;
- direct and indirect costs;
- contractual obligations;
- entitlement to an extension of time;
- the prospect of cost recovery;
- exposure to liquidated damages;
- cash flow;
- the project's overall commercial position.

Without this connection, a project can generate a large volume of documents, reports and meetings — and still have very little real control.

Real control is achieved when information is identified, structured, documented and converted into contractual or managerial action at the right moment.

The Principle

Contractors and employers do not, as a rule, start out as adversaries.

They operate, however, with different information, received at different times, and analysed through different organisational structures.

Effective contract administration does not remove the difference in position between the parties.

It reduces the information gap before that gap turns into delay, commercial exposure, and, eventually, dispute.

The Lesson

Many contractual conflicts do not begin when one party formally rejects the other's position.

They begin earlier — when an event already known on site is not communicated, documented and analysed quickly enough for the other party to understand its impact and make a decision.

A technical problem becomes a contractual risk when its effects on programme, cost and obligations are not identified in time.

A contractual risk becomes commercial exposure when the decision is delayed, the record stays incomplete, or the parties continue execution on the basis of differing interpretations.

And commercial exposure becomes a dispute when each party tries to reconstruct, retrospectively, a situation that could have been managed as it happened.

The lesson is not that projects need more correspondence.

They need relevant information, delivered through the right mechanism, supported by contemporaneous records, and connected to its effects on time, cost and contractual position.

When information reaches the right people in time, a notice does not escalate the relationship.

It prevents the escalation.

How ACC TRUST Can Support

ACC TRUST supports employers, investors, contractors, subcontractors and lenders in closing the gap between what is actually happening on site, what gets reported, and a project's real contractual and commercial position.

Each engagement is senior-led and, where required, supported by a trusted network of specialist experts selected to match the technical, commercial, contractual and sector-specific requirements of the assignment.

CONTRACT ADMINISTRATION

- Assessing how events arising during execution are identified, communicated and recorded.
- Structuring notice mechanisms, early-warning processes and decision-tracking systems.
- Reviewing the substantiation of notices and claims before the parties' positions become entrenched.
- Identifying governance and contract-administration gaps that obstruct the flow of information.

COMMERCIAL CONTROL

- Verifying whether progress reports reflect the real effects on programme, cost and contractual obligations.
- Connecting site information to the programme, cost records and contractual correspondence.
- Analysing delays and substantiating extension-of-time claims, variations and instructed changes.
- Independently assessing a project's real position and supporting management teams in turning technical information into well-founded contractual and commercial decisions.

The objective is not to increase the volume of documents.

It is to build a verifiable link between an event, the way it was communicated, the decision taken and the resulting contractual and commercial consequences.

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About ACC Trust Insights

ACC Trust Insights is the knowledge centre dedicated to Commercial & Contract Governance, Project Delivery and Risk Management in complex projects.

Each article combines practical project experience with a structured analysis of the commercial, contractual and governance mechanisms through which a project's position is either protected or gradually weakened over the course of execution.

The platform reflects experience accumulated across construction, infrastructure and energy projects.

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