



3 June 2021

Conflict Avoidance - early intervention to avoid disputes

Purpose

1. This Construction Policy Note (CPN) confirms Scottish Government's support for the principle of avoiding conflict in construction contracts and urges other contracting authorities to align their construction procurement policy likewise.

Key message

2. Early recognition and intervention to address differences of opinion in construction contracts can quickly identify the key determinants and, where supported by a structured process, can help broker mutual recognition, understanding and agreement to avoid matters escalating into entrenched disputes which are costly, lengthy, disruptive and damaging.

Coverage

3. This note is intended for all those contracting authority staff involved in the planning and delivery of public works projects. It is applicable guidance under the [Scottish Public Finance Manual](#).

Background

4. This CPN develops policy in respect of early intervention and conflict avoidance noted previously:
 - Chapter 1 of the Project and Business Cases Handbook in the Client Guide to Construction Projects ("The Guide", paragraph 4.7 refers).¹
 - CPNs [1/2020](#) and [4/2020](#).
5. Paragraph 22 of CPN 1/2020 stated that engagement between contracting authorities and contractors should progress honestly, openly and constructively, recognising the mutual need of clients and contractors to pragmatically address issues relating to COVID-19, which should not be exploited as an opportunity to gain from the loss of another party.

¹ [Construction procurement: project initiation and business cases handbook - gov.scot \(www.gov.scot\)](#)

6. Paragraph 8 of CPN 4/2020 stated that disagreements should be resolved as quickly as possible within the terms of the contract in order to unlock cashflow. Paragraph 10 advised that where matters arise on site during the period in which national pandemic mitigation measures apply, which either party feel could escalate to a become a dispute, they should look at implementing an appropriate conflict avoidance procedure to seek to “head off” such issues in order to maintain site progress and cashflow.

Rationale

7. Both CPNs referred to matters principally arising from COVID-19 and built on the underlying policy which was first stated in The Guide in 2018. Conflict avoidance is above all else an authoritative and proven technique for preserving the professional respect and collaboration necessary to sustain trust and co-operation between people from different organisations. Their conduct and interaction will to a large extent determine which project success criteria are realised, including safety; timeliness; quality, affordability; profitability; and reputation.
8. Scottish Government urges contracting authorities to incorporate conflict avoidance into their contracting ethos and integrate related procedures into their procurement policy. These should allow for different tacks to be taken which are scaled to project parameters and also the scope and urgency of the actual issue at hand. Not all differences of opinion occurring in complex projects are necessarily difficult and critical; and not all issues on relatively straightforward projects are simplistic and linear.
9. Project criteria which may help inform the relevance, proportionality and effectiveness of conflict avoidance approaches include the following:
 - size e.g. value, site footprint, enclosure volume.
 - complexity e.g. new or existing technologies/techniques.
 - risk e.g. voids, ambiguities, contradictions in documentation.
 - reputation e.g. opportunities for success, consequences of failure.
 - inter and co-dependencies e.g. geo-commercial supply chain complexities.
10. There is no value threshold above which a conflict avoidance approach can or should be implemented. A relatively low value project with disproportionately large risk and co-dependency profiles would probably be a good fit for conflict avoidance procedures. While some high value projects derive assurance from mature technological inputs and sound working relationships, they may nevertheless benefit from a formal route to quick engagement in the event that key people unforeseeably leave the project and informal business continuity is disrupted.

Approach

11. Several of the UK’s leading professional bodies for construction and engineering have come together to form the Conflict Avoidance Coalition Steering Group.² The Group initiated the Conflict Avoidance Pledge³ the principles of which are as follows:

² [Royal Institution of Chartered Surveyors; Chartered Institute of Arbitrators; Royal Institute of British Architects; Chartered Institution of Civil Engineering Surveyors; Institution of Civil Engineers; International Chamber of Commerce; Dispute Resolution Board Foundation](#)

³ [Conflict Avoidance Pledge](#)

- differences of opinion to be resolved before they escalate into disputes through collaborative working and early intervention techniques throughout the supply chain.
 - conflict avoidance mechanisms embedded into projects to identify, control and manage potential conflict without formal, adversarial dispute resolution procedures.
 - proactive avoidance of conflict; and potential disputes quickly identified and early resolution facilitated, including developing the related capability.
 - identification, promotion and utilisation of conflict avoidance mechanisms collaboratively with industry partners.
12. It is not necessary for contracting authorities to sign the Pledge in order to implement an effective approach to conflict avoidance. Equally, contracting authorities may, if they wish, consider doing so. Signatories to the Pledge will want to ensure the scope of their corporate governance rules permits the associated endorsement of its specific conflict avoidance principles. They will also in the same context need to consider how they engage third party conflict avoidance processes which involve commissioning related commercial services.
13. By way of illustration to date, the standard form of contract used on the Scottish Futures Trust Hub Programme incorporates mediation provisions with a view to expediting the resolution of disputes. Also, the five development and delivery partners in the hub Programme (the hubCos) have signed the Pledge. NHS in Scotland has incorporated RICS's conflict avoidance panel into its new Framework Scotland 3 procurement model.⁴ While in this instance the Pledge has not yet been signed, this innovative approach within Frameworks Scotland 3 reflects the policy note principles.
14. Implementing conflict avoidance procedures does not preclude a subsequent process of formal dispute resolution should avoidance discussions prove unsuccessful.

Dissemination and Contact

15. Please bring this CPN to the attention of all those staff involved in the procurement of relevant construction projects. If you have any questions about this CPN please contact:

Construction Procurement Policy Unit
The Scottish Government
3B South, Victoria Quay
EDINBURGH
EH6 6QQ

Tel: 0131-244-8492

E-mail: constructionpolicy@gov.scot

Webpages: [Construction Procurement](#)

⁴ [Framework Scotland 3](#)