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# HALEYS



## NEWSLETTER

April 2011

## Foreword

So the Spring Equinox is upon us already and Easter Eggs are now filling the supermarket aisles.



This year is moving very quickly and so it seems is the start of the recovery in some areas of construction.

A number of our clients are confirming full order books for 2011 with some work already secured for 2012 which is a huge improvement on this time last year.

This Spring see's a Budget and a Royal Wedding in close succession to one another and we can only hope that one or both will bring a return to prosperity for those who are still struggling in the Construction Industry.

From our point of view the last 9 months have been better than we might have hoped but with some work still to be done to ensure that we remain competitive and strong for the future.

The pressures of rising fuel and transport costs are not conducive to

anti inflationary measures and none of us yet know whether or not the freeze on duty will be effective.

Also, on the international front the hostilities in Libya and the terrible disaster that has befallen Japan also add to potential threats to the world economy with the devaluation of businesses across the globe and further threats of soaring fuel prices.

However, we continue to work with our clients to minimise their risks and costs and to ensure that the best advice is given with regard to live and future projects in light of the uncertain times ahead.

We are also pleased with our success in the expansion of our client base in our traditional M&E market and in our other service offerings including Design, Legal and 3D Cost Modelling.

A number of prestigious and high profile projects have been secured in respect of all of our services but we will not be resting on our laurels and will continue to expand our client base by reputation and recommendation.

Haleys always likes to acknowledge the contributions of its hard working and committed staff and the last 12 months have seen many of them go a lot further than the extra mile and we thank each and every one of them and their families for this continuing support.

Haleys have made a number of key investments this year in expanding its services and enhancing its image as can be seen from the features in this newsletter.

However, our core values remain unchanged and we shall continue to provide a professional, high quality and value for money service to clients old and new.

We hope you find this publication to be of use and if you need any further information, please don't hesitate to contact us.






In the meantime a Happy Easter to everyone.

*Steve Haley*


## Haleys Launch New Website

In October last year the decision was taken by the Haleys Board of Directors to brighten up our website which was perceived as being rather tired, dull and cumbersome to navigate around. In truth we were not really sure what we wanted to see at the end of the development or which developer we would want to start an ongoing relationship with. Therefore a number of website designers were given a specification and asked to provide a short presentation of their ideas and designs to our project team. It was unanimously agreed to change supplier and proceed with some new concepts that would provide a cleaner, slicker and more professional image .

The main items that we addressed were:

-  The ability for a prospective new client to understand exactly what services we provide via concise, accurate information and the ability to easily find a contact point within Haleys.
-  The ability for someone to be able to contact the relevant individuals or the company generally to discuss their requirements and receive information.
-  Being able to advertise our services in a more cost effective and flexible way rather than via traditional print methods. This

also allowed us to advertise 24 7 365 and therefore at a time to suit the interested person globally.

-  Ultimately we hoped that by being able to understand our business and being able to contact the people involved this would generate more sales.

Since its launch in January 2011 a lot of complimentary feedback has been received from various sources. Please view our new website at [www.haleys-ltd.com](http://www.haleys-ltd.com) after which we would appreciate your comments and business.

# Oh its a jolly holiday with Katie!

On 29<sup>th</sup> April the nation will come together and celebrate the marriage of Will and Kate. Since Will and Kate are destined to rule this sceptred isle of ours and because, unlike most of us common folk, they are getting hitched on a weekday Will's Grandmother's Government has decided to declare the day a Public



Holiday. At first we think 'very nice' that's a Friday off work followed of course by a Bank Holiday Monday after the weekend. But once you have got over the initial excitement of the pending matrimony you may want to consider how this Public Holiday is going to affect your business. Whilst a good old royal occasion is sure to lift the spirits of the nation as it staggers through the mire created by economic meltdown, the financial burden of a surprise Public Holiday may well darken the skies once more. In particular some employees may be entitled to an extra day of paid holiday. In addition the progress of projects may be affected which may or may not entitle contractors to extensions of time.

## Bank and Public Holidays

The first thing to establish is the difference between a 'Bank Holiday' and a 'Public Holiday'.

In England there are 6 Bank Holidays set out in statute (*the Banking and Financial Dealings Act 1971*) these are:

- New Year's Day
- Easter Monday
- Early May

- Spring Bank Holiday
- Summer Bank Holiday
- Boxing Day

In addition there are 2 Public Holidays which are traditional religious days of rest:

- Good Friday
- Christmas Day

The government then has the power to declare further Public Holidays, as it has done for the Royal Wedding.

## Employees' Rights

Whether an employee has a right to a day off on a Public or Bank Holiday, be it paid or not, will depend upon the individual's terms of employment. All full-time employees are entitled to a minimum of 28 days paid holiday each year, however this allowance includes the 8 Bank and Public Holidays identified above. Accordingly employees have no automatic right to a holiday on 29<sup>th</sup> April 2011 and even if their employer does allow them to join the celebrations there is no automatic right to be paid for the time off work.

## Affect on Construction Contracts

If a construction project is caused to cease on 29<sup>th</sup> April on account of the Public Holiday it may affect the Contractor's, and/or its Sub-Contractors', ability to complete the project on time as well as causing it to incur unforeseen costs. In the current highly competitive construction market the risk of losing a day's productivity and being exposed to damages for late completion could have a significant affect on the



project's profitability.

## JCT 2005 Standard Building Contract

The JCT Standard Building Contract defines a Public Holiday at clause 1.1 as:

*Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.*

This definition therefore encompasses the 8 regular holidays identified above and notably does not include Public Holidays of the type declared by the Government on the day of the Royal nuptials.

Does this therefore mean that contractors working under the JCT conditions must absorb the effects of the Public Holiday on 29<sup>th</sup> April into their programme? Possibly not.

Clause 2.29 identifies the Relevant Events that entitle the Contractor to an extension of time. Sub-clause 2.29.11 provides:

*the exercise after the Base Date by the United Kingdom Government of any statutory power which directly affects the execution of the Works.*

Hence it could be submitted that the declaration of the Public Holiday is such an event, provided of course the contract was entered into before the announcement by the Government, and therefore the Contractor is entitled to an appropriate extension of time.

The Contractor's right to recovery of the loss and expense incurred as a result of the lost day are

dealt with at clause 4.23. Clause 4.24 identifies the Relevant Matters that entitle the Contractor to recover loss and expense. Unlike the Relevant Events which entitle the Contractor to an extension of time the exercise of a statutory power by the Government does not entitle the Contractor to recover loss and expense. It is therefore submitted that only in the situation where the Employer denies access to the site on account of the Public Holiday would a Contractor be able to recover the associated loss and expense. In that situation the Contractor could rely on the Relevant Matter at Sub-Clause 4.24.4:

*any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any of the Employer's Persons, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or of any of the Contractor's Persons.*

The Contractor would however, pursuant to clause 4.23, be required to demonstrate the loss and expense incurred. As identified above the amount of such loss and expense will be partly dependent upon whether or not the Contractor has a liability to pay his employees for the Public Holiday.

### The NEC Engineering & Construction Contract (ECC)

The position with the ECC is less clear. The Contractor is required to provide the works in accordance with the Works Information (Clause 20.1) and achieve Completion on or before the Completion Date (Clause 30.1). Unlike the JCT Standard Building Contract there are no extension of time or loss and expense provisions included in the ECC. Any changes to the Completion Date and associated costs are dealt with through the compensation event mechanism.



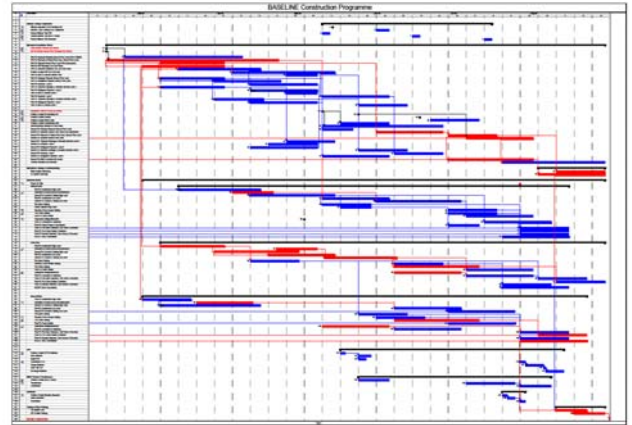
Any restrictions relating to the availability of the Site on Public or Bank Holidays should be identified in the Works Information or Site Information. Hence, as with conditions of employment, it will depend on the exact wording of the Works/Site Information. For example if it is stated that the site will not be available to the Contractor on all Public or Bank Holidays then it may be submitted that the Contractor has no entitlement to a compensation event in respect of the Public Holiday on 29<sup>th</sup> April.

However it is worth reviewing the compensation events at Clause 60.1, two of which may be applicable.

Firstly the Project Manager may give an instruction changing the Works Information (Clause 60.1(1)); for example advising the Contractor that the Site will not be available on 29<sup>th</sup> April 2011.

Secondly the Contractor may be able to submit that the Public Holiday is an event under Clause 60.1(19) being *'[a]n event which stops the Contractor completing the works by the date shown on the Accepted Programme, and which an experienced Contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it'*.

The use of Clause 60.1(19) would of course be dependent upon the Contract Date being prior to the announcement of the engagement and/or Public Holiday.



### Conclusion

Whether or not you are entitled to an extra day of paid leave and even if completion of your project is delayed by a day I'm sure you will all have a memorable time.

Now lets all sing:

*Oh it's a jolly holiday with Katie  
Katie makes your heart so light  
When the day is grey  
And ordinary  
Katie makes the sun shine bright.*

(lyrics adapted from 'Jolly Holiday' by Sherman & Sherman)

The End

*The articles contained within this Newsletter should not be taken to be, or used as, a statement of law, or for the purposes of giving advice to any party on any legal or contractual matter or dispute. Haleys therefore do not accept any responsibility for any such use or purported use and in all cases parties should seek appropriate and specific legal advice for specific cases.*

*If you would like to discuss the circumstances of any of your contracts or projects, or you require further information on the services provided by the Construction Law Services Division, please contact us on either :*

**The Construction Law Helpline on 0800 092 9272**

or alternatively at

[constructionlaw@haleys-ltd.com](mailto:constructionlaw@haleys-ltd.com)

# A New Arrival



## David Simons

BSc(Hons), Dip.Arb, FRICS, FCI Arb, MAE

## Head of Legal Support Services

Haleys are pleased to announce the arrival of David Simons in April 2011 based in the Birmingham Office at St Pauls Square.

David brings with him over 35 years of experience in the construction industry working as a quantity surveyor and as a consultant in construction claims and disputes.

He has worked for a number of leading quantity surveying practices, local authorities, contractors and specialist consultancies in the UK and overseas, including Saudi Arabia, Iraq, Holland, Singapore, Thailand, Canada, USA and Ireland.

David's work experience encompasses building, civil engineering, mechanical and electrical, process and heavy engineering works, with specialist skills in highways, underground rail, oil and marine industry works.

With an excellent track record of expert witness appointments and works in all forms of dispute resolution support including, mediation and arbitration, David also has a wealth of experience in claims preparation and the defence and management of claims including advocacy, quantum analysis and settlement negotiations.

David will carry out training and lecturing on contractual and commercial topics for Haleys clients and at breakfast seminars to be planned for Autumn 2011.

David has been a member of the Chartered Institute of Arbitrators Adjudication Panel since its inception and undertakes regular appointments. He was also the Adjudicator in *Fastrack Contractors Ltd -v- Morrison Construction Ltd* [2000] BLR 168.

David will continue to undertake appointments as an Expert Witness in litigation, arbitration and expert support for parties in adjudication and his details are available on our website.

Peter Graham, Operations Director for Haleys made the following statement concerning David's appointment:

*"I believe that David will be a key appointment in the expansion of Haleys well established legal support team and his track record speaks for itself. I look forward to welcoming David to Haleys and to working closely with him."*

# AN INTRODUCTION TO THE SERVICES OF HALEYS-RAP

Haleys-RAP is an established and well respected Mechanical and Electrical Building Services Consultancy, based in Nottingham.






## A brief history of the company

Raymond Allington established the practice in 1958, the company name later changing to RAP Consulting Engineers upon Raymond Allington retiring. The business has been progressively developed over the 53 years of its existence, and in order to maintain this development and further reinforce the resources available we merged with Haley Somerset Consulting Ltd on 1st June 2003 becoming RAP Consulting Engineers Ltd. Haley Somerset Consulting Ltd became Haleys Ltd in 2005, with RAP Consulting Engineers Ltd merging fully with Haleys Ltd in 2007, and trading as Haleys-RAP to maintain the RAP connection

## Key people

Kevin Jones - Associate Director (Mechanical) - email - kevin.jones@haleys-rap.com  
 Nigel Lawlor - Associate Director (Electrical) - email - nigel.lawlor@haleys-rap.com

## Services Provided:

-  Design - formal consultancy in connection with the design of mechanical and electrical building services
-  Co-ordination - mechanical and electrical building services project management, planning and co-ordination
-  Energy Management – Rapid result detailed energy surveys and audits. Management reports on energy use, cost and conservation
-  Troubleshooting – Exercises associated with energy consumption and the provision of suitable internal conditions, surveys, reports, schedules of dilapidation and feasibility reports
-  Maintenance - Preparation of planned maintenance procedures and contract management and reporting

Since the practice was established, we have worked on numerous projects within both the private and public sectors, with our vast experience encompassing; schools, hospitals, offices developments, sports facilities, industrial, warehouses, MOD, pharmaceutical and large domestic properties.

Haleys-RAP is certified to BS EN ISO 9001: 2008. We are also approved by Constructionline.

Haleys-RAP is committed to improving the environmental performance of our business and limiting the impact of the delivery of our services on the environment.

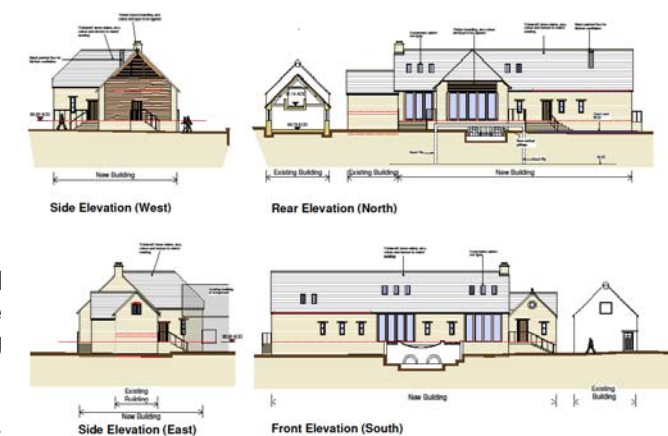
It is our policy to deliver the highest level of service to our Clients in all aspects of our business.

Recent project experience includes:

### New Restaurant, Oxfordshire

Value - £1.2 million  
 Contract Period – 7 months  
 Completion – September 2011

Haleys-RAP have just started work on a new Restaurant and Kitchen for an old hotel in Oxfordshire, the project scope consists of the replacement of the existing cooking and dining facilities on site.



The new building is on the site of the old Mill which was demolished in 1943. The Client wants a first class restaurant and, from a services perspective, ingenuity and efficiency.

An Archimedes screw in the mill race is proposed to generate electricity to drive a heat pump to provide the buildings heating needs whilst heat recovery ventilation to the kitchen will keep running costs to a minimum.

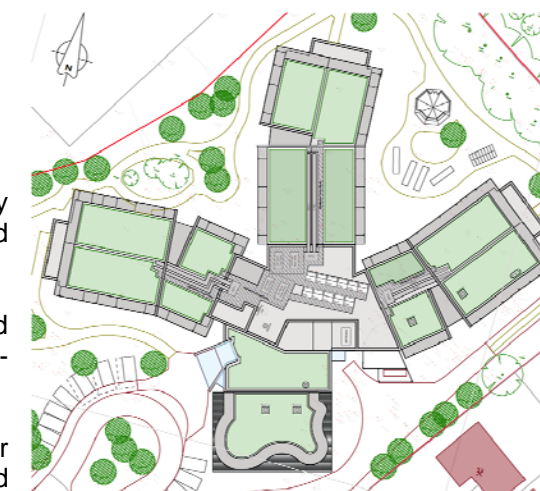
### New Care Home, Warwickshire

Value - £12.5 million  
 Contract Period – 24 months  
 Completion – November 2013

A new 78 bed care home in Warwickshire has just been approved by Planning with initial designs progressing to achieve minimum build and running costs.

The building will incorporate a large hydrotherapy pool, full dining and kitchen, and all other facilities expected from a quality building of this nature.

Various options are being considered for the main heating and hot water generation; ground source, air to water or gas absorption heat pumps; and combined heat and power. Natural and passive ventilation will be used wherever possible, to keep the building feeling fresh, the design incorporates constant pressure heat recovery ventilation.



### Cherry Trees, Nottingham

Value - £5.0 million  
 Contract Period – 18 months  
 Completion – April 2010

A new build flagship dementia care home for Local authority; we undertook production of employer's requirements and performance specification for the building services including GSHP, Solar Hot Water, Sprinklers, Timber Frame, etc., Checking contractor's designs and installations.

Haleys-RAP staff sought the assistance of Haleys Ltd Purley M&E Engineers, who undertook the production of the tender package whilst Haleys-RAP staff managed the post tender and on site works.



# All Change!

Keeping up to speed with changes in standard forms of contract is never easy and some of the specialist forms often go unnoticed. So this month we take a look at the recent changes in the newly published MF/1

**The Model Form of General Conditions of Contract** are published jointly by the IMechE/IET (an amalgamation of the Electrical Engineers (IEE) and the Institution of Incorporated Engineers (IIE)) and are intended for use on projects for the supply of electrical, electronic or mechanical plant – with erection.

The first version of this form MF/1 was issued in 1988 and has undergone several revisions since that date which have both rectified anomalies and made changes to reflect legislation and decisions of the courts. The latest revision, Rev 5 in 2010, is the first in a decade, the last revision being Rev 4 in 2000.

The historical notes included in the Rev 5 (2010) version identify that changes have been made (from the Rev 4 2000 version) to Clauses 2, 27, 36, 40, 49, 51 & 52. In addition there are associated changes to the Form of Performance Bond and the Form of Defects Liability Demand Guarantee, and a new Parent Company Guarantee.

This paper considers only changes to the clauses referred to above. A full comparison of the text of the entire document has not been undertaken.

### OVERVIEW

The changes generally do not appear to significantly affect the rights and obligations of the parties.

#### Adjudication

Adjudication was provided for in Rev 4 version in the Special Conditions for use in Contracts which are subject to the Housing Grants, Construction and

Regeneration Act 1996. Clause 52 (Disputes and Arbitration in the Rev 4 version) has now been expanded and renamed (Disputes) to include the provisions for both adjudication and arbitration.

The provisions of the new clause 52.1 meet the requirements of Section 108 (2) of the Act, and allow for the adjudication to be conducted in accordance with rules specified in the Appendix to the conditions or, in the absence of any specified rules, rules chosen by the Adjudicator. It is likely that if no rules are specified, then the Adjudicator will choose to carry out the adjudication under the rules in the Scheme for Construction Contracts. Providing any rules specified meet the requirements of the Act then they would apply.

The changes to Clauses 2 and 52 in respect of adjudication do not appear to make any significant difference to the rights and obligations of the parties that they would have had under Rev 4 version.

#### Arbitration

The clauses 52.1 to 52.5 in the Rev 4 version have been replaced by clauses 52.2 and 52.3 in the Rev 5 version.

The Rev 5 version makes it clear that the reference is to a single arbitrator. The wording of the Rev 4 version suggests a single arbitrator (“a *person*”).

#### Interest on late payments.

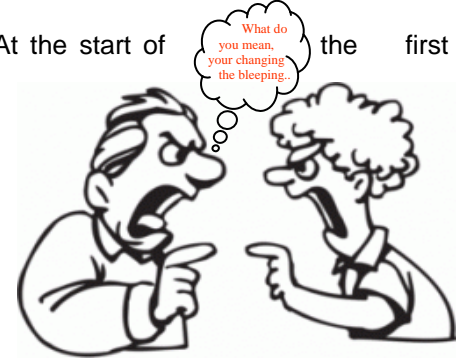
The changes to Clause 40 reflect the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

Details of the specific changes to the relevant clauses are as follows:

#### CLAUSE 2 – Engineer and Engineer’s Representative

The changes to this clause are to sub-clause 2.6 (Disputing engineer’s decisions, instructions and orders).

At the start of the first



paragraph, the words “*Without derogating from the right to adjudication under sub-clause 52.1 (a),*” have been added. This merely reflects the right of either party to refer any dispute between them to an adjudicator “*at any time*” under the Housing Grants, Construction and Regeneration Act 1996.

The second paragraph of this sub-clause has been amended by the insertion of “*adjudication or*” before “*arbitration*” in two places to reiterate the right of either party to refer any dispute to either adjudication or arbitration.

The restriction on making a reference to adjudication in the Rev 5 version not later than 21 days after a decision, instruction or order of the Engineer has been confirmed, reversed or varied may not be compatible with the Housing Grants, Construction and Regeneration Act 1996 entitling parties to a construction contract to refer a dispute to adjudication “at any time”.

#### CLAUSE 27 - Variations

The changes to this clause are to sub-clause 27.2 (Engineer’s power to vary).

In the third paragraph, dealing with the Contractor’s obligation to notify the Engineer that any instruction received which is a variation will involve an

addition to or deduction from the Contract Price, the words “or will have an effect on the Programme” have been added at the end.

### **CLAUSE 36 – Defects Liability**

The changes to this clause are to sub-clause 36.10 (Latent Defects).

The proviso that the defect “was caused by the gross misconduct of the Contractor, as defined [below]” has been deleted, as has the associated definition of “gross misconduct”.

### **CLAUSE 40 – Certificates and Payments**

The changes to this clause are to sub-clause 40.2 (Delayed payment).

It has been made clear that the interest to which the Contractor is entitled is “simple” interest by the insertion of the word “simple” between “receive” and “interest” in the second line.

The rate of interest has been changed from “two per cent per annum above the average of the base rates of the London clearing banks” to “four per cent above the Bank of England Base Rate”.

The entitlement of the Contractor to interest without formal notice and without prejudice to any other right or remedy has been deleted (last sentence of this sub-clause in Rev 4).

An acknowledgement in the following form has been added. “The parties acknowledge that the Purchaser’s liability under this sub-clause 40.2 is a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998 where applicable.”

### **CLAUSE 49 – Contractor’s default**

The changes to this clause are to sub-clause 49.3 (Payment after termination).

The definition of the “Cost of Completion” in this sub-clause has been amended from the “amount payable certified by the Engineer” to the “amount incurred certified by the Engineer”.

The calculation of any excess to be certified by the Engineer as due from the Contractor has been changed from the amount by which the total amount that would have been payable to the Contractor for execution of the Works exceeds “the Cost of Completion when added to the total amounts already paid to the Contractor as at the date of termination” to “the Cost of Completion when added to the Termination Value”. The Termination Value is defined in Clause 49.2 as the value of the part of the Works executed prior to the date of termination and all sums then due to the Contractor as at the date of termination in accordance with the principles of Clause 39 (Certificates and payment). This may be the same as “the total amounts already paid to the Contractor” but not necessarily. Any prior under- or over-payment in amounts previously paid to the Contractor would be corrected by this change.

The last sentence of this sub-clause has been changed from “If there is no such excess the Contractor shall be entitled to be paid the difference (if any) between the Termination Value and the total of all payments received by the Contractor as at the date of termination” to “If there is no such excess the Contractor shall be entitled to the Termination Value and shall be paid or shall repay to the Purchaser, as the case may be, the difference, if any, between the Termination Value and the total of all payments received by the Contractor as at the date of termination”.

### **CLAUSE 51 – Purchaser’s default**

**[I can find no differences in this Clause between Rev 4 and Rev 5.]**

### **CLAUSE 52 – Disputes**

This clause has been completely rewritten to include provision for both Adjudication and Arbitration.

Clause 52.1 of the Rev 5 version is completely new and provides for adjudication in the case of dispute.

The clauses 52.1 to 52.5 in the Rev 4 version have been replaced by clauses 52.2 and 52.3 in the Rev 5 version.

In both versions, any question (Rev 4 version only, not Rev 5 version), dispute or difference arising between the parties that cannot be resolved amicably shall be referred by either party to the arbitration of a person to be agreed upon.



However, the Rev 5 version makes it clear that the reference is to a single arbitrator.

The wording of the Rev 4 version suggests a single arbitrator (“a person”).

The Rev 4 version allows either party to request a nominating body to nominate an arbitrator whereas the Rev 5 version allows only for the appointment by a nominating body and is silent as to whether either or one particular party may request such a nomination.

The Rev 4 version provided that any question, dispute or difference relating to a decision, instruction or order of the Engineer shall not be referred to arbitration except in accordance with sub-clause 2.6. That sub-clause required any reference to arbitration within 21 days of any such decision, instruction or order having been confirmed, reversed or varied. The Rev 5 version prevents reference to arbitration of any decision instruction or order of the Engineer that has become final and binding, which it would if no reference to arbitration has

been made within 21 days after confirmation, reversal or variation of such decision, instruction or order.

The first sentence of Clause 52.2 (of the Rev 4 version) has been changed from “*Performance of the Contract shall continue during arbitration proceedings...*” to “*Performance of the Contract shall be unaffected by the occurrence of an ... arbitration*” (Clause 52.4 in Rev 5 version).

The second sentence of clause 52.2 (Rev 4 version) “*If such suspension be ordered the additional Cost to the Contractor occasioned by such suspension shall be added to the Contract Price.*” Has been deleted from the Rev 5 version.

Clause 52.3(a) (Rev 4 version) “*The arbitrator shall have power ... to open up, review and revise any certificate or valuation of the Engineer or any decision, opinion, instruction or order of the Engineer referred to arbitration under sub-clause 2.6 (Disputing engineer's decisions, instructions and orders)*” has been amended to (Clause 52.3 in Rev 5 version “*The ..... arbitrator shall have power to open up, review and revise any certificate or valuation of the Engineer or any decision, opinion, instruction or order of the Engineer save for any decision, instruction or order which has become final and binding on the parties by virtue of the operation of sub-clause 2.6*”.

### **SPECIAL CONDITIONS – AIDE MEMOIRE TO THEIR COMPLETION**

#### **PAYMENT – Clause 41.**

In the opening paragraph, the following has been added “*Where the UK Construction Act applies, the terms of payment will need to address the provisions of the UK Construction Act otherwise scheme provisions imposed by Regulations made by Statutory Instrument pursuant to the UK Construction Act will apply*”.

### **ADDITIONAL SPECIAL CONDITIONS FOR USE IN**

### **CONTRACTS WHICH ARE SUBJECT TO THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996.**

This section has been deleted – provisions for Adjudication now covered in rewritten Clause 52.

If you have any queries regarding MF/1 of any other form of contract , the Haleys helpline is always available to assist on **0800 092 9272**.



INVESTOR IN PEOPLE

# HALEYS

Construction Law Services

[www.haleys-ltd.com](http://www.haleys-ltd.com)

## **A FREE REVIEW OF YOUR TERMS AND CONDITIONS**

The start of a new year is as good a time as any to review your company's procedures and documentation. Such a review should of course include any standard terms and conditions under which your company does business.



Those companies who regularly execute contracts concerned with construction operations will be fully aware that such contracts must be compliant with the Housing Grants Construction and Regeneration Act 1996 (the “**Construction Act**”). In particular terms and conditions relating to **payment** and/or **adjudication** must meet the requirements set-out in the **Construction Act** otherwise they will be replaced by the relevant provisions of the **Scheme for Construction Contracts** (the “**Scheme**”).

Recent developments, including the pending introduction of the amended **Construction Act** and decisions of the **High Court**, may well render your company's terms and conditions ineffective which in turn could have serious commercial consequences.

The amendments to the **Construction Act** are expected to be implemented this year, possibly as early as **April**. This amendment will render most standard and bespoke terms and conditions relating to **payment** and/or **adjudication** ineffective. Whilst **adjudication** provisions should also be reviewed in light of recent decisions in the **High Court** such as that of Mr Justice Edwards-Stuart in **Yuanda (UK) Co Ltd v W W Gear Construction Ltd**.

**Haleys Construction Law Services** can provide an initial **free, no obligation**, review of your Terms and Conditions – whether they are Conditions of Sale, Conditions of Sub-Contract, Conditions for the Supply of Agency Labour or Conditions for the Purchase of Materials.

A member of **Haleys'** team will spend up to **one hour** reviewing your Terms and Conditions, completely **free of charge**, and provide you with a brief review identifying any changes that should be made to update your Terms and Conditions in line with current legislation and contractual trends.

Please don't hesitate to contact us; call on the number below:

**Legal Helpline: 0800 092 9272**

Alternatively, you can e-mail us from the link below and we will respond to you within 24 hours of our receipt of your email.

**[constructionlaw@haleys-ltd.com](mailto:constructionlaw@haleys-ltd.com)**

**DELIVERING SOLUTIONS IN CONSTRUCTION**

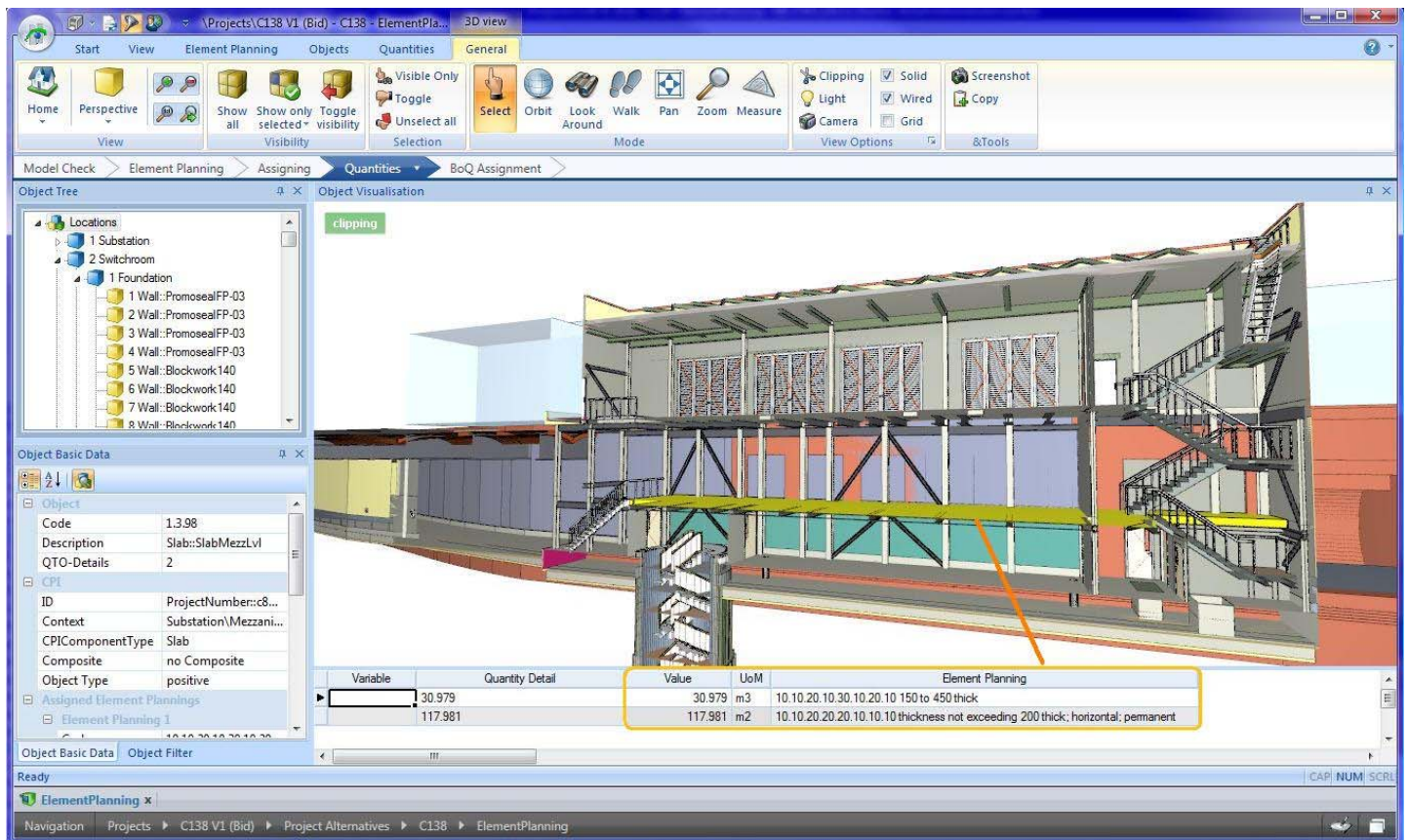
## 3D Cost Modelling – Update

Haleys have now completed the second stage of the investment programme for the next generation of 3D modelling and estimating systems.

Haleys have entered into a partnership agreement with the 3D cost modelling software provider RIB. This has resulted in Haleys acquiring software training and consultancy for the flagship product ‘iTwo’.

Haleys new division comprising of quantity surveyors, 3D modellers and technology specialists have customised and developed a unique product that can achieve significant time savings for the preparation of cost plans and bills of quantities, as compared with traditional methods. As an added benefit the client also receives a live 3D model of the project.

Haleys are currently working on live projects using iTwo and 3D modelling software to produce a fully detailed bill of quantities for a Crossrail station. The 3D models that are also being supplied will form part of the Contractors overall tender presentation.



Quantifying a live project in RIB iTwo

Haleys have the technology and expertise to bring the benefit of the next generation of cost modelling to all our clients, which will lead to a potential increase in tender output and accuracy. The modelling system is also ideally suited to design and build projects at post contract stage for tender validation and procurement.

For further details please contact Ian Criddle on 020 8645 9708 or 07734 577378

# HALEYS

If you would like further information on any of the articles contained within this Newsletter please contact us at either;

Nottingham on 0845 367 8820, or  
Purley on 020 8645 9707

Birmingham **London** Milton Keynes **Nottingham** Purley  
Email [enquiries@haleys-ltd.com](mailto:enquiries@haleys-ltd.com) Website [www.haleys-ltd.com](http://www.haleys-ltd.com)

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