

What is Practical Completion?

The issue of whether a construction project has achieved Practical Completion has long been the source of many disputes within the construction industry. This is not surprising as many of the Standard Forms of Contract rely upon the issue of a Certificate of Practical Completion to trigger for such matters as the release of the first moiety of retention, exclusion of liability for Liquidated and Ascertained Damages and Insurance of the Works.

Given the importance of this matter it is somewhat surprising that the Standard Forms used throughout the Construction Industry (with the exception of the process plant industry IchemeE, although still open to interpretation) do not define completion. Instead they generally leave the matter to the discretion of the Architect, Engineer and Supervising Officer etc.

The following unhelpful entry is made in the JCT 1998 at Clause 1.3 (Interpretations, Definitions etc):-

'Practical Completion: see Clause 17.1'

Clause 17.1 provides

'When in the opinion of the Architect Practical Completion of the Works is achieved,..... he shall forthwith issue a Certificate to that effect and Practical Completion of the Works shall be deemed for the purposes of the Contract to have taken place on the day named in such Certificate'.

Various attempts have been made by the courts to form a definitive opinion for Practical Completion and the following cases are worth noting: -

Westminster Corporation v J. Jarvis and Sons 1970

Here Lord Salmon LJ stated that *"The obligation on the contractors under clause 21 to complete the works by the date fixed for completion must, in my view, be an obligation to complete the works in the sense in which the words 'practically completed' are used in clause 15 and clause 16 of the contract. I take these words to mean completion for practical purposes, i.e. for the purpose of allowing the council to take possession of the works and use them as intended. If completion in clause 21 meant down to the last detail, however trivial and unimportant, the clause 22 would be a penalty clause and unenforceable."*

However, in the same case a further definition was given by Lord Dilhorne who appeared to view practical completion as fault free completion of the works saying that:

"The contract does not define what is meant by Practical Completion. One would normally say that was practically completed when it was almost but not entirely finished, but practical completion suggests that this was not the intended meaning and what is meant is the completion of all the construction that has to be done..."

In 1982 this rather strict impression was diluted in the case of **HW Neville (Sunblest Ltd) v William Press and Sons** where it was said “*I think the word practically gave the Architect a discretion to certify that the contractor had fulfilled its obligation Where very minor deminimis work had not been carried out, but that if there were any patent defects in what the contractor had done the Architect could not have given a certificate of Practical Completion*”.

Judge Newy in **Emson Eastern v EME Developments (1991)** further reinforced this view where he said that “*because a building can seldom if ever be built as precisely as required by drawings and specification, the contract, realistically refers to ‘practical completion’ and not ‘completion’, but they mean the same. If contrary to my view, completion is something which occurs only after all defects, shrinkages and other faults have been remedied and a certificate to that effect has been given, it would make the liquidated damages provision unworkable*”.

Whilst Practical Completion seems to be generally understood by the industry, in practice there remains a difficulty in arriving at a formal definition that is accepted within the industry as a whole. **Keating** submits that the following represents the correct analysis: -

- “1. *The Works can be Practically Complete notwithstanding that there are latent defects;*
2. *A Certificate of Practical Completion may not be issued if there are patent defects. The Defects Liability Period is provided in order to enable defects not apparent at the date of Practical Completion to be remedied;*
3. *Practical Completion means the completion of all the construction work that has to be done;*
4. *However, the Architect is given discretion under clause 17.1 to certify Practical Completion where there are very minor items of work left incomplete, on ‘de minimus’ principles.”*

Hudson’s approach, whilst not as simplistic, essentially follows the same principles i.e.

“*It is desirable to be clear as to the precise meaning of ‘completion’ in a time obligation. There is surprisingly little English authority on the point, but it is clear that the requirement will be less rigorous than in other contractual contexts. Usually it will mean bona fide completion free of known or patent defects so as to enable the owner to enter into occupation. The words ‘practical’ or ‘substantial’ in the English standard forms probably do no more than indicate that trivial defects not affecting beneficial occupancy will not prevent completion (the more so, of course, if the contract provides for a maintenance or defects liability period).*”

Notwithstanding the “definitions” referred to above, it is often the case that individual circumstances can and do affect the issue of a Certificate of Practical Completion, irrespective of the condition of the works on site. Such circumstances may include the Employer’s willingness, or not, to accept the works which may be dependant upon whether he has a client to occupy them – why take on the cost of maintaining, securing and insuring the works when you have a Contractor in a position to do these works at no cost and you may be able to recover Liquidated and Ascertained Damages in addition?

Given the ambiguity in current case law and the currency at which this matter arises, it is surprising that the more frequently used standard forms of contract contain no clearer definition for Practical Completion. In the absence of such clear definition or persuasive case law either way, it is at the mercy of the Architect, Employer and Employer’s Agent and their interpretation of Practical Completion that the Main Contractor finds himself and against whom he has to argue his position accordingly

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