



Bingham's Corner

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THE BUMF MACHINE

TOO MANY CONTRACT DOCUMENTS

Our industry spews out dozens and dozens of standard form contracts which no one can keep up with or understand. Bad news for people who build - great for lawyers.

Construction people just want to build. The forms are what the lawyers pretend to know all about once they poke clauses up your nose - ammunition to exploit the other bloke in the blame game.

Was I being a bit of a tyke? The guest lecturer at this year's JCT Povey Lecture was yours truly. I mean to say that the lectern over all these years hitherto has been occupied by the great and the good. There have been government chief construction advisers galore; gurus on carbon free green whatsits; an MP or two; and chairmen and women of tip-top construction firms.

Then me; a tyke. And given I was the guest of JCT, I decided to bring along all of the current NEC contract documents. And just to sort of balance things up, I brought all of the current JCT contract documents. Then it was time for a smidgeon of audience participation. Each of those standard forms had been put on their seats until there were no forms left. Once settled I asked all those who had found on their chairs an NEC or JCT standard form to stand up, then hold up and wave their form.

Guess, please, how many people were now standing and waving? Blow me, it was 86! Yes, my dear friends, there were 86 printed standard, yes, standard contract documents and all different and all to do a different job. My point? Need I say? O hell's bells, this is beyond lunacy. Nor have we finished counting standard forms: add the CIOB "complex contract" forms, the ACA, and the ICC forms. All of these are ordinary construction forms being used in this country. On top of all these (yes, there's more) is an entire suite of energy contract forms from IChemE and IMechE. Even the international FIDIC form is used in the UK. Let me tell you this: my daily diet is reading or hearing dispute submissions, which have endless numbers of thumbs thumbing all these squillions of pages of bumf, which no one can keep up with. It's gone potty.

Bingham's Corner Cont...

Let me tell you about the bumf we had to supposedly keep up with when I first came to this industry. I worked as a baby QS with a super construction outfit; we turned out really good work. My job was to measure the bricklayers and the carpenters who were "on the tape". My boss told me where to shove the bumf - it was that famous bottom draw. Did it hold 86 forms? No. We had JCT 63, ICE 5th, GC works 1 (a very one-sided government form) and the favourite minor works form. That's that. Subcontracts were the blue form and green form (for nominated work) and finally the FCEC subcontract for civils work. And did we read them? No, of course not. Nor does anyone nowadays read and understand those 86 forms. Construction people just want to build. The forms are what the lawyers pretend to know all about once they poke clauses up your nose. These forms are ammunition to exploit the other bloke in the blame game.

Well now, said I, in the prestigious lecture, let's make friends with reality: we are stuck with this lunacy. Over these decades the forms have come down the conveyor belt like chocolates to be loaded by Lucy into boxes. The damn conveyor belt has got faster and faster, and she has stuffed them in her shirt, her mouth - and still they keep coming. The boys and girls at JCT, NEC (and more) won't stop the belt. So now what? Reality: no one reads them; no one likes them; no one understands them; no one, repeat no one, follows the rules in them (lawyers pretend that's a sin). So? Put up with it. Just run the risk that one day a rule in all this stuff will jump up and bite you ever so hard. Reality tells me that if you are a builder or a subby or architect or engineer or project manager, the thing to do is just do your best.

Wait, I haven't finished. Hitherto, I have been going on about standard forms as printed and sold (at too high a price). What about the game of amending the forms? It was my turn to wave. In my waving hand is the contract document for works at one of our London railway stations. It is an amended NEC. They are called Z clauses ... there are 220 amendments. Beautifully crafted amendments. That barge-pole isn't long enough.

But wait, I still haven't finished. All day I read in-house home made forms of contract. The authors have long since left behind amending standard forms in favour of these tykes. Come on, let's make friends. If you are running a public enterprise, spending public money, but using these forms to coerce, then you can't whinge about the want of good faith and fair dealing. If you are a private enterprise and using these forms to coerce, then you can't lament the want of collaboration, co-operation and teamwork. All this beating each other over the head with all these forms hasn't worked; isn't working except for people like me. I love all the forms dearly, they create masses of disputes and conflict - and I sit here reading them. That's the reality.

