



Q2 INFLUENCE: RESPONSIBILITY

Responsibility Requires Authority



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Letters from London:

Paul Finch questions emerging
contractual models

What distinguishes architects from most others in the teams that create buildings?

You might argue it is the critical unwritten contracts between designer and unknown future users of the building that has been created: schoolchildren, teachers, parents in the case of schools, or patients, health workers and visitors in the case of hospitals. But just as importantly, this unwritten contract includes the working conditions and amenities for these office, factory, retail and warehouse staff members.

These contracts are unwritten because they would be impossible to write, but the effect of an architect's work is far greater than any encompassed in the formal appointment documents with clients, whether they be individuals, contractors or corporate organizations.

These unwritten contracts, obligations over and above duties to the fee-paying clients, are a symbol of what it means to be a professional. With professional responsibility comes the obligation to carry professional indemnity insurance, expressing the long-term liability of architects for the work they undertake.

Construction companies and specialist subcontractors do not generally insure themselves except where they may undertake detailed design work. Their limited liability status, and their ability to close their company at the end of a contract or undertake construction work as part of a special financial vehicle that ceases on completion of the project, is in marked contrast to the seemingly eternal liabilities of the design professions.

Until recently, the assumption was that architects could and should fulfill their professional responsibilities through, among other things, involvement with assessing tenders and inspection of supervision of work on-site as it proceeds. Decisions involving design could not be taken without reference to the architect.

Is this any longer the case?

In the U.K., the answer is absolutely not. While small projects may run on conventional lines, using conventional forms of engagement, significant buildings these days tend to be procured using design-and-build contracts, often with the architect “novated” to work for the contractor, having successfully achieved planning permission. This sort of arrangement has been commonplace for two decades, and for architects there is some relief that the potentially antagonistic relationship between designer and contractor is, in theory, eased by the clarity of the new arrangement.

Unfortunately, it is not necessarily the case that the contractor respects the ideas or the work of the architect. In order to win the contract, unrealistic bids may have been submitted, meaning that to make the job profitable, the contractor needs to find savings in respect of time and cost of materials. There is built-in pressure to cut costs.



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To make cost-cutting sound respectable, the phrase “value engineering” has become ubiquitous in respect of the process between design completion and construction start. The late, great engineer Peter Rice had a succinct comment on the concept: “It has nothing to do with value, and all to do with engineering!” In reality, cost evaluation is essential and can be creative, but all too often it becomes a cynical exercise in making things worse.

The problem for novated architects is that they are now employed by the contractor — thereby losing their relationships with the client. It may mean that, under their contract, the architect cannot talk directly to the client without the contractor’s permission or without the contractor being present. In this case, how can the client know that what is being delivered is what was designed in the first place? Or that changes are for the benefit of the client rather than the contractor’s bank balance?

And what can the architect do if they think a piece of on-site construction is substandard, even if it conforms to code? As an employee of the contractor, they must either keep quiet or risk losing the job.

Smart clients may give a side contract to their architects to report directly to them on construction quality, perhaps monthly. Alternatively, they sometimes employ a respected architect from a different practice to act with client authority, conduct site visits and, again, report periodically. The advantage of both these arrangements is that the contractor is well aware they will not be able to get away with “marking their own homework” and that the client has eyes and ears on-site, regardless of the contractual relationship between contractor and novated architect.

The ethical question that arises from all this is whether the architect can successfully deliver on that unwritten contract with the unknown third-party user they have never met, when it is the contractor who is in the driver’s seat.

This recalls criticism of media owners in 1930s Britain, memorably described by Prime Minister Stanley Baldwin as having “power without responsibility — the prerogative of the harlot throughout the ages.”

The problem for too many architects today is that they have responsibility without power. They are the legal defendant of last resort only because they are obliged to carry professional liability insurance. This is not a healthy situation.

Paul Finch is Programme Director of the World Architecture Festival (WAF). He started professional life as a journalist in the early 1970s and has edited Building Design, Architects’ Journal and Architectural Review, where he launched WAF in 2008. He has been co-editor of Planning in London since 1994. He was a founder-commissioner and later chair at the UK government’s Commission for Architecture and the Built Environment (CABE) where he also chaired its design review programme, and its London Olympics design panel from 2005 to 2012. He holds an honorary doctorate from the University of Westminster and honorary fellowships from University College London and the Royal Institute of British Architects. He is an honorary member of the British Council for Offices and the Architectural Association. He was awarded an OBE for services to architecture in 2002.