Notice anything?

MATT MULLINS – SENIOR CONSULTANT, DRIVER TRETT UK REMINDS US THAT A NOTICE IS NOTHING TO BE SCARED OF OR OFFENDED BY, JUST AN ESSENTIAL ELEMENT OF EFFECTIVE CONTRACT MANAGEMENT.

For those of us in the construction industry the old adage of records, records, records will be familiar rhetoric. Yet, when it comes to providing 'notices', are we fulfilling our contractual obligations?

All standard forms of contract place contractual obligations upon each party to provide notices. For most, the requirement to notify for time and money is a given. Whilst we generally know these obligations exist, are we properly notifying in the way that such standard forms require us to do so?

As examples, both the NEC3 and the new NEC4 contracts require that both contractor and project manager provide early warning notices for an increase in price, delay in completion, or matters affecting the performance of the works. Of course, there are many other areas that require notification, least of which relate to notice of events giving rise to the basis of a claim.

Whilst many argue that they diligently follow such obligations, there are few that consider the form and content of such notices with any consistency. There are even fewer of us who actually employ formal vetting of such notification across our companies. For some, there can be a fear that issuing a formal notice will be construed as too adversarial. Therefore, they use terminology that is couched in a 'softly, softly' approach. It is in these circumstances that perhaps the message becomes lost in translation and, as such, it becomes ambiguous whether it maintains the form of a notice. In the digital world, and ever-increasing platforms of communication, the message we wish to deliver does require extra vigilance.

We should never fear issuing notices, and likewise we should not be taken aback when receiving such notices, regardless of subject matter. These notices should be the most basic of mechanisms to provide the parties with an opportunity to come together to help resolve matters before they can escalate. If there are concerns that sending such formal correspondence may disrupt a good working relationship, perhaps an easy remedy to remove the shock of sending the notice would be to verbally advise the other party in advance.

As we now communicate through many platforms the form such notices take can vary. A top tip is to put the word 'notice' in the subject line. This means that regardless of the form of communication, the message being conveyed should never be construed as anything but a notice. The very best advice will always be to follow the expressed obligations of the contract, that set out the form of communications, which of course may be varied by agreement.

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The content of the notice is also important, as the recipient needs to be clear on the message you wish to deliver. It is important that any notice is clear and concise and, as a minimum, informs the recipient of the contractual provision and the cause giving rise for which the notice is being issued.

A notice, by its own literal definition, is a warning mechanism. There is no need to provide 'war and peace'. The best advice is to keep it factual, to the point, and to submit it within any prescribed timescale; remembering that there may be an obligation to provide detailed particulars within a specified time after a notice has been given. After all is said and done, if more information is required it will be requested soon enough. ■