

Getting what you pay for

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Shy Jackson summarises a recent court decision that reminds us of the importance of having and adhering to a schedule of services

Clients depend on quantity surveyors for many different services, but surveyors are usually retained to ensure that costs are monitored and controlled. [William Clark Partnership Ltd v Dock St PCT Ltd \[2015\] EWHC 2923 \(TCC\)](#) concerned the services provided for the construction of a primary healthcare centre for the North Lancashire Teaching Primary Care Trust.

The claimant, William Clarke Partnership (WCP), provided quantity surveying and project management services for the defendant, Dock St PCT Ltd (Dock St). WCP claimed ?174,500 for professional fees, but Dock St argued that WCP failed to provide the services specified, leading to an overspend of ?733,395. Dock St also claimed ?195,000 for sums already paid as abatement and ?214,557 for unnecessary variations.

Provision of services and causation

In its claim, Dock St listed the appointed services to be provided at each stage and sought to identify those that WCP had failed to perform. In the pre-contract phase, for example, it argued that WCP had failed to advise on the option for a guaranteed maximum price contract and did not provide a cost plan or a full final account analysis, which prejudiced the final account negotiation.

The judge rejected many of the allegations, but found that WCP did not provide monthly reports on either the actual or projected costs and valuations, or cost estimates for proposed changes. He also found that advice on the cost implications of changes resulting from the design process and project management was poor, and that the RICS Black Book guidance note on [Cost Reporting](#) had not been followed.

However, he held that Dock St failed to prove the loss caused by such failures, especially as it would have often proceeded even if it had received the full advice from WCP. He observed that: 'establishing causation in construction-related professional negligence claims is notoriously difficult precisely because of the difficulty in showing how things would have turned out differently even if the professional had not acted negligently.'

Dock St was successful in some items. For example, in 2 variations the judge held that if WCP had provided cost information then Dock St would not have proceeded. WCP was therefore liable for the cost of these variations.

Abatement

Dock St argued that it was entitled to make deductions due to the poor service it had received from WCP. The judge noted that abatement is not available as a defence to a claim for payment regarding professional services. Dock St could, however, defend itself by

demonstrating that all, or some specific part, of those services were either not performed or executed so poorly that they were worthless.

Dock St's claim regarding advice on the final account settlement therefore failed because some advice was provided and it was not entirely worthless. Dock St was, however, successful in its claim for the complete failure to provide cost reports, which the expert witnesses agreed had a value of £25,000.

Global claims

The judge observed that Dock St's argument had the characteristics of a global claim because it identified numerous breaches said to be potential or actual causes of the overrun, but without providing any details of the causal connection between the two. In his view, such a claim failed because Dock St did not prove, on the balance of probabilities, that some overrun would not have been incurred in any event. He also thought there were other plausible explanations for the overrun.

Conclusion

This decision highlights the difficulties in pursuing claims against quantity surveyors when there is a cost overrun. The judge did, however, find that there was a failure to provide the contractual services, and some failures did cause a loss. The outcome was that WCP recovered £42,977.

Extensive schedules of services are often included in professional appointments, but can still be ignored, with the quantity surveyor providing what they believe are the required services. It would be good practice to review the schedule of services throughout the works to ensure that they are all performed or, if they no longer apply, that the client is informed and agrees that these are no longer necessary. This will help reduce the risk of claims for failure to provide services.

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Further information

- Related competencies include [Conduct rules, ethics and professional practice](#) , [Clientcare](#) , [Contract practice](#) , [Project administration](#) , [Project processes and procedures](#)
- This feature is taken from the RICS *Construction journal* (June/July 2016)