

Title:

Site Incident in the light of The Construction(Design and Management) Regulations 2015.

Summary:

There are no simple answers when the possible conflict lies between different regulations for different parties. Additionally, those parties often intersect in some of the duties or pass them to the next stages. However, in this report, you will find elements of different contracts under which parties responsible for the construction of new build school development are involved. None of the regulations are as detailed that we could see who is responsible for which cable on site, but they show the important framework, ways and points when, how and by whom the design information should be passed. From the researched documents we can see that the regular communication chain is:

Client provides preconstruction information for every designer and contractor
Principal designer based on information provided by the client need to prepare

Introduction:

The incident that will be considered in this report happened during clearance works at the construction of a £5.5M primary school project. The accident fortunately does not involve the loss of anybody's health or life, therefore some health and safety regulations could be breached by some parties. Parties involved in this development are:

Client

Principal Contractor – Build-It Builders

Principal Designer – Appointed by client: GFY which is a sub-consulting Plan Consult

Design team - GFY

Statement of the Problem:

The purpose of this study is to determine the parties responsible for the insufficient provision of construction information that resulted in serious site incidents involving site workers and equipment, and causing possible delays to the planned construction schedule.

Review of responsibilities of involved parties against The Construction(Design and Management) Regulations 2015:

1. What do we, as Principal Designers, need to do with regard to the provision of information about existing services to comply with the CDM Regulations?

According to paragraph1 of regulation 11. of The Construction (Design and Management) Regulations 2015 (CDM) titled **Duties of a principal designer in relation to health and safety at**

the pre-construction phase, principal designers are responsible for planning, managing and monitoring the pre-construction phase as well as coordinating matters related to health and safety to ensure that the project is carried out without risks to health and safety as far as is reasonably practicable.

Principle designers should also consider general principles of prevention and, where relevant, the content of any construction phase plan and health and safety file. They must also identify and eliminate or control foreseeable risks to the health or safety of any person involved in the construction, maintenance and use process.

Another responsibility of this role is ensuring that all designers comply with their duties and responsibilities presented in regulation 9. **Duties of designer.**

To fulfil paragraph 1. of regulation 11 principal designer must ensure that all persons working in the pre-construction phase cooperate with the client, principal designer and each other.

The principal designer also must assist the client in the provision of the pre-construction information required by regulation 4.

Pre-construction information received by the principal designer should be promptly and in convenient form delivered to every designer and contractor appointed, or being considered for appointment, to the project.

To comply with paragraph 7. of regulation 11. the principal designer must liaise with the principal contractor for the duration of the principal designer's appointment and share with him information relevant to the planning, management and monitoring of the construction phase and the coordination of health and safety matters during this phase.

More information about the principal designer's responsibilities towards the preparation of the construction phase plan is included in Regulation 12. Of the CDM **titled Construction Phase Plan and Health and Safety.** At the beginning of this phase principal designer is obligated to assist the principal contractor in being provided with all information held by the principal designer and which is relevant to the project. This includes pre-construction information obtained from the client and any information obtained from designers under regulation 9. of CDM.

Additionally, during the pre-construction phase, the principal designer is responsible and must prepare health and safety files appropriately to the characteristics of the project which need to contain information relating to the project to ensure the health and safety of any person. Health and safety files need to be appropriately reviewed, updated and revised to include any changes that have occurred.

At the end of the project, the principal designer is obligated to pass the health and safety file to the client (if the principal designer appointment ends before the end of work, then the file needs to be passed to the principal contractor).

2. What do we, as Designers, need to do with regard to existing services within our design?

The responsibilities of designers are specified in regulation 9. of CDM, Similarly to the responsibilities of the principal designer, the designer during the preparation or modification of a design “(...)must take into account the general principles of prevention and any pre-construction information to eliminate, so far as is reasonably practicable, foreseeable risk to the health or safety of any person involved(...)” in construction, maintenance and use process.

If the elimination of risk is not possible the designer must take steps to reduce or control if possible risk through an adequately proceeded design process. The designer also is responsible for the provision of information about possible risks to the principal designer, and ensuring that provided information will be included in the health and safety file.

The last paragraph states that the designer needs to take all reasonable steps, with the design to provide sufficient information about the design, construction or maintenance of the structure, to assist clients and other parties to comply with their duties under CDM regulations.

3. What should the Principal Contractor have done before starting the excavations on site?

Regulation 12. of the CDM **Construction phase plan and health and safety file** states that before setting up a construction site, during the pre-construction phase contractor must draw up or make arrangements for a construction phase plan to be drawn up. This plan must consider health and safety arrangements together with setting rules on the construction site respecting planned industrial activities that will take place during the construction process.

The principal contractor must be assisted by the principal designer in being given all information held by principal designers which is relevant to the construction phase plan such as pre-construction information obtained from the client and any information obtained from the design team to comply with regulation 9.

During the project, the principal contractor is also responsible for ensuring that the construction phase plan is being appropriately reviewed, updated and revised in sufficient intervals to make sure that construction works are carried out without risks to health and safety.

The principal contractor must also provide the principal designer with any information relevant to the health and safety file held by him to include in the health and safety file.

4. Is there a risk to GFY in sub-consulting the role of Principal Designer to Plan Consult?

According to point 1.4.2 of **Scottish Conditions of Appointment of Architect:**

“The Architect shall not sub-contract any of the Services without the consent of the Client, which consent shall not be unreasonably withheld. The Architect shall confirm such consent in writing.”

RIAS SCA/2018

However, in the earlier part of the document in part 2 entitled **Schedule of Project Details**, there are spaces dedicated to being fulfilled with project team members' information. Therefore I think that as long as the principal designer is specified as Plan Consult and this choice was a subject of discussion later signed by the Client legally everything should be correct, and point 1.4.2 aims for possible changes to the contract in later stages.

5. Based on the above, do you think the Contractor could have a valid claim for an extension of time under the provisions of the SBC/Q 2016 Standard Building Contract with Quantities 2016 regarding the service strike?

According to clause 2.28 of **Standard Building Contract With Quantities 2016** to claim an extension of time events impacting the delivery time of the project need to be Relevant Events about which we can find more information in clause 2.29. According to this clause, events causing loss or damage occasioned by any Specified Peril, in case the principal contractor did not include information on the risk of reaching electric cable on site but was acknowledged with this information without including it in the construction phase plan and without informing principal designer about this fact event becomes irrelevant. Therefore principal contractor may want to use staff to prepare the strike, apparently fitting under the definition of Relevant Events, however, it may be seen as a relevant omission of responsibilities.

Under clause 2.14, point 4 states that “any error in description or in quantity in the Contractor’s proposals or the CDP Analysis and any erroneous omission of item should be corrected, but there shall be no addition to the Contract Sum in respect of that correction or in respect of any instruction requiring a variation of work not comprised in the Contractor’s Designed Portion that is necessitated by the error or its correction.”

Additionally, under clause 6.14 of SBC/Q 2016 which involves loss or damage made to existing structures by other parties - which may apply in terms of damaged electrical structure, there is the possibility of terminating the contractor's employment under this contract followed by reasonable in terms of specified amounts of time termination notice.

Conclusion:

The design and Construction process is very complex because of the different parties responsible for different parts of the project and the matter of often information exchange between those parties. The above report presents the principal designers, principal contractors and designers' responsibilities. However, Part 2 of the CDM regulations states the client's responsibilities which are becoming crucial as those are being provided at the beginning of the design and later construction process.

To establish parties responsible for the accident that had a place on the construction site, tracing back information flow may become a key.

Recommendations:

The first important step is to go back and find if the information about the sub-consulted principal designer is included in the **Scottish Conditions of Appointment of Architect** issued to the client. As the works already started there should be also **F10 – Notification of construction project** lodged by the client to the Health and Safety Executive. This document should contain information about the principal designer and it should align together with RIAS SCA/2018 appointment. The same should happen with SBC/Q as the principal designer details are also specified in this document.

In terms of lacking existing services on the drawings, we should search within the project file if those services were included in the pre-construction information released by the client to us. Also, we need to trace back our communication if this information appeared anywhere concerning the principal designer – client, principal designer – principal contractor or principal designer – design team.

If this information appeared during the pre-construction stage we should include it on the drawings and identify possibly associated risks with it, another possibility is that information appeared only in relation client – contractor and we were not informed about this fact, in this case would be the responsibility of both sides: client and contractor.

Another important question is whether the construction phase plan prepared by the principal contractor contains information about the existing electric cable and what precautions are assigned to it.

According to paragraph 7 of regulation 11. in the **Construction (Design and Management) Regulations 2015 (CDM)**, the principal contractor is obliged to share information relevant to the health and safety file with the client and principal designer.

Checking the existing documents should become crucial right now to establish the exact situation and hopefully allow us to trace back the moment when communication between parties was distorted or even non-existent. Such a position will allow us to ensure that the architectural company makes everything in the best possible manner and it will help to determine if the site incident was not caused by any of our faults.

References:

GA23 Pre-construction information

<https://www.citb.co.uk/media/uuxlctbu/ge700-2020-ga23.pdf>

CDM 2015 The 9 Principles of Prevention (12.02.2024).

<https://www.astutis.com/astutis-hub/blog/cdm-2015-the-9-principles-of-prevention>.

Construction - Construction Design and Management Regulations 2015 (14.02.2024).

<https://www.hse.gov.uk/construction/cdm/2015/index.htm>.

HASpod (2016) *10 Differences between CDM 2015 and CDM 2007*.

<https://www.haspod.com/blog/cdm/10-differences-between-cdm-2015-and-cdm-2007>.

HSE - F10 - Notification of Construction project (16.02.2024).

<https://www.hse.gov.uk/forms/notification/f10.htm>.

Murtadza, F. (2019) 'JCT SBCQ2016,'(16.02.2024).

https://www.academia.edu/38107451/JCT_SBCQ.

RIAS Bookshop (14.02.2024) *Scottish Conditions of Appointment of an Architect SCA/2018*.

<https://bookshop.rias.org.uk/products/scottish-conditions-of-appointment-of-an-architect-sca>

2018

Sanderson, J. (2024) 'HSE F10 notification: Complete guide to notifying construction projects,'

Pro Safety Management, 29 January. <https://www.prosafetymanagement.co.uk/hse-f10-notification-guide/>