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Talking Point--weaknesses in construction law

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Construction analysis: Our panel of experts offer their views on the weaknesses in UK construction law and how these weaknesses affect their practice.

The experts

Andy Mather, partner in the construction and engineering group, Macfarlanes LLP
Will Buckby, construction partner, Beale and Company Solicitors
Hamish Lal, head of the contentious and non-contentious construction law practice, Jones Day (London)
Suzanne Reeves, head of construction, Wedlake Bell

What do you think is the biggest weakness in UK construction law?

Andy Mather: A continual bugbear is the state of the law on issues of concurrent delay. While the position has been improved by the decision in Walter Lilly & Co Ltd v Mackay [2012] EWHC 1773, [2012] All ER (D) 213 (Jul), there is still a large degree of uncertainty as to how precisely a decision-maker should approach any particular case, which makes it difficult to advise clients. While I do appreciate the commercial sense of the line taken in Walter Lilly, I also have some residual concerns about how this fits with the general legal principles of causation. It would be helpful to have some further guidance from the courts on the issue.

Will Buckby: The main weakness seems to be the lack of real remedies for late payment. While the government is consulting on a fair payment charter, there is real concern among those in the supply chain that something stronger is needed to encourage parties to pay on time. Project bank accounts certainly assist in this regard, giving sub-contractors who paid via the project bank account security.

Hamish Lal: Statutory adjudication has engendered a ‘rough and ready’ attitude and there is little rigour or development in the common law.

Suzanne Reeves: The industry remains a fragmented one which does not act or speak with one voice. Between the various sectors in the construction chain there remains a ‘them and us’ approach and only lip service is paid to partnering and cooperation arrangements. As has often been said, cash flow is the life blood of the industry and unfair and long payment terms do have an effect particularly on the subcontract and specialist sector which seems to suffer worst at the bottom of the chain.

Interviewed by Nicola Laver.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.