



# YORhub CLIENT CONFERENCE 2019

12 November 2019

*The post-Carillion landscape: how can councils  
help to ensure greater payment security for firms  
in the supply chain*

Professor Rudi Klein, Barrister  
CEO, SEC Group  
President, NEC Users' Group

Formerly member of UK Government's Carillion Task Force

***“Money is like muck,  
not good except it be  
spread”.***

Francis Bacon, lawyer, courtier and philosopher  
in *Essays* (1625)

# PAYMENT IN THE CONSTRUCTION INDUSTRY

## *A History of Failed Initiatives*

- ▶ Problem has been re-stated many times over and over many years e.g. *“Major barriers to improving construction performance [for the supply chain] – poor cashflow because of late payments”*.  
(NAO, *Modernising Construction*, 11 January 2001)
- ▶ Approximately 25 initiatives, reports, charters etc. across UK over last 10 years.

# CONSTRUCTION BUSINESSES IN DISTRESS

<b>2018 Q.2</b>	<b>2019 Q.2</b>	<b>% CHANGE</b>
<b>60,468</b>	<b>62, 423</b>	<b>3%</b>

Source: Begbies Traynor

## FUNDING SOURCES

33%



Bank overdrafts

17%



Personal savings

(almost doubled since 2018)

16%



Unsecured personal  
finance, e.g.  
credit cards

15%



Bank Loans

5%



Private equity

4%



Invoice Finance

Source: Bibby Financial Services, *Subcontracting Growth 2019*.

*“If all my payments were made within 30 days my business would double in size over a 2/3 period.”*

Source: MD of Glasgow small steelwork contractor whose firm went into insolvency in 2018 because of non-payment.

*“Almost 30% of people working in the industry are suffering from mental distress due to payment problems.”*

Source: Construction News

*“Almost £1 million of cash retentions is lost each working day due to upstream insolvencies.”*

Source: Pye Tait Consulting



*“3,013 construction insolvencies in 2018 – highest for any sector (figure likely to be even higher in 2019).”*

Source: ONS

*“55% increase in construction administrations from 2<sup>nd</sup> Q. 2019 to 3<sup>rd</sup> Q.”*

Source: KMPG

*“Payment terms within contracts (for example, retentions) can drive poor behaviours, by putting financial strain into the supply chain. For example, non-payment of invoices and consequent cash flow issues can cause subcontractors to substitute materials purely on price rather than value for money or suitability for purpose.”*

Dame Judith Hackitt’s report, May 2018. Report on Building safety.



# **CARILLION GROUP**

**Approx. £15bn Liabilities!**

**(and rising)**

# WHAT CAN COUNCILS DO?

# SEC GROUP SURVEY OF ENGLISH LOCAL AUTHORITIES (BEFORE CARILLION)

- ▶ 62% of councils still to comply with Reg. 113 Public Contracts Regulations 2015 (ensuring 30 day payment clauses in all supply chain contracts).
- ▶ Only 12% of councils have in place monitoring to ensure compliance.
- ▶ 22% of councils do not deduct retentions (but only four insist tier 1s do not deduct retentions in supply chain).

*“It’s an exercise in adding value, looking after your supply chain. I advocate the use of PBAs on all projects.”*

Leo Quinn, CEO Balfour Beatty, 18 April 2018, NatWest website.

# PROJECT BANK ACCOUNTS (PBAs)

- ▶ Most effective way of ensuring cashflow to supply chain; it doesn't have to travel through all the tiers of contracting.
- ▶ Highways England use PBAs for all their work; tier 3 contractors are paid within 18 days of the main contract valuation date.
- ▶ Environment Agency have used PBAs on 29 projects.
- ▶ PBAs mandated in all devolved regions.



# PUBLIC CONTRACTS REGULATIONS 2015

- ▶ Contract authorities under statutory duty to ensure 30 day payment clauses in tiers 1, 2 and 3 contracts.
- ▶ Such clauses absent from Carillion's public works sub-contracts.
- ▶ The 30 days should commence (at the latest) from expiry of 5 days following due dates – see September 2016 Cabinet Office guidance.

# RETENTIONS

**NB. Tier 1 payments/retentions are protected since public bodies do not go into insolvency; this does not apply along supply chain.**

- ▶ Where retentions withheld by a LA consideration should be given to requiring tier 1 contractors to either:
  - provide a bank guarantee to their sub-contractors to ensure the release of retentions, or
  - segregate their sub-contractors' retentions in trust.

# EXCLUDING POOR PAYERS

- ▶ Consider introducing policy introduced by government on 1 September 2019.
- ▶ Firms not paying at least 75% of invoices within 60 days may be excluded from government contracts over £5 million.

# PROCUREMENT

- ▶ Consider direct engagement of “big ticket” supply chain inputs.
- ▶ Can larger contracts be broken up into smaller lots?
- ▶ Pilot more modern forms of procurement such as insurance-backed alliancing (which are collaborative and provide savings through cutting out process waste).

# WHERE NOW?

- ▶ Consider the use of PBAs wherever possible.
- ▶ Monitor compliance with reg. 113, Public Contracts Regulations 2015.
- ▶ Consider requiring tier 1 contractors to provide security for supply chain cash retentions.
- ▶ Consider exclusion of poor payers.
- ▶ Re-consider procurement strategies.



# YORhub CLIENT CONFERENCE 2019

12 November 2019

*The post-Carillion landscape: how can councils help to ensure greater payment security for firms in the supply chain*

Professor Rudi Klein, Barrister  
CEO, SEC Group  
President, NEC Users' Group

Formerly member of UK Government's Carillion Task Force