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## Key Failings and Risks Impacting Construction

From an analysis of 230 projects in the buildings sector, the top four claims and dispute causation factors point to potential failings and risks for construction project manager.

### What were the big issues?

In the 2019 **CRUX Insight Report**, more than 230 building type construction projects were analysed, across six continents. The report identified that the top four causation factors accounted for 42% of the issues that eventually lead to disputes. Interestingly, all four leading causation factors are in some way controlled, managed, or influenced by the project manager. So, what can the construction project manager learn from this valuable research?

CAUSATION FACTORS	PRIMARY	SECONDARY	TOTAL
Change in scope	102	39	141
Contract requirements were poorly drafted	52	43	95
Design information was issued late	57	27	84
Contract management and/or administration failure	37	43	80
Poor management of sub-contractor/supplier and/or their interfaces	35	43	78
Level of skill and/or experience	38	33	71
Design was incomplete	45	21	66
Cash flow and payment issues	39	25	64
Design was incorrect	41	21	62
Claims were spurious, over-inflated, opportunistic and/or unsubstantiated	26	26	52
<b>TOTAL</b>	<b>472</b>	<b>321</b>	<b>793</b>

**Source: 2019 CRUX Insight Report, Buildings (p.12) - the above table identifies the top primary and secondary dispute causation factors across 230 building type projects.**

### 1. Change in Scope - Avoid Early Adoption of Flawed Plans

Few final building designs remain true to the initial idea, concept, or outline sketch. Clear, accurate and unambiguous client requirements are notoriously difficult to pin down. Key stakeholders will change and pull the requirements in different directions, often in conflict with the originally stated requirements.

During design development, there is a continuous process of design review and refinement to be balanced with budget, quality, and time constraints. A significant change in scope prior to the contract being finalised can cause significant delay; making similar changes post-contract can result in greater exposure to claims and disputes. Late change caused by lack of scrutiny by the project manager can disproportionately impact the project team and the project.

Poorly detailed employer's requirements and inadequately considered designs or scopes of work that do not meet the baseline requirements are often committed

too prematurely to meet artificial programme constraints; approval by a finance committee or to meet financial year spend.

Critical review of the project and confirmation of its readiness to transition to the next stage by the project manager is missed out or rushed. The project is on programme and within budget, but the design and scope are flawed.

Significant changes in scope can be avoided or reduced if more up-front design work is completed. This approach is often shunned because of misconception of cost or programme or both. It seems there is an opportunity to challenge this view: What is the cost of abortive design or reworking information at a later stage when fees are already expended? What is the cumulative programme delay in the late issue of design information? Would the client obtain better tender prices by having better quality design information?

Success requires both urgency and patience. Be urgent about making the effort, and patient about seeing the results.

Correct design information and accurate tendering reduces the risk of these causation factors cascading through the project, especially in the potentially more litigious post contract phase.

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## **2. Contract Requirements were Poorly Drafted - Match the Drafting To The Project**

The drafting and agreement of contracts is clearly an occupation for eternal optimists. Take a standard form (the one used last time) push the risk to the other side as far as possible and, hopefully, all will be fine. Standard forms of contract have many benefits, but they cannot be appropriate in every circumstance.

Allocation of risk has accounted for a disproportionate number of the problems project teams have encountered on building projects. Project managers need to understand the risk appetite of the client, how the employer's requirements are set out and then determine the correct risk profile to be allocated within the contract. Many clients either underestimate or overstate what they do not know and then agree contracts that are inappropriate for their business or required outcome.

Offloading risk to contractors can also be counter-productive as they seek to offset low margins with increased variation claims. The evidence shows that variations are causing delays, cost overruns and technical failures, as well as damages claims for increased maintenance. This can lead to unplanned and un-costed additional services and resources for the project manager.

However, beware the project manager who makes wholesale amendments to standard forms of contract and, in doing so, invalidates or includes conditions inconsistent with the standard terms. Those drafting contracts need to be aware of reading the contract as a whole or complete set of conditions. Negligence and

opportunism contribute to the poor drafting of contracts, which ranks second as a cause of disputes. If in doubt, consider taking legal advice.

### **3. Design Information was Issued Late - Accurately Plan the Design Process**

Late issue of design information resulting from a change in scope was discussed above. However, many project managers view the preparation of a design programme as a dark art, especially now that BIM is being used more regularly.

In reality, the process of developing and issuing design information remains much as before. Each consultant will have a pre-defined set of standard pieces of information to prepare for issue to the contractor; general arrangement plans, sections, elevations, and details. All these outputs still exist, it is the way they are combined into the common data environment that has changed.

Human actions, failures and omissions remain the main causes of disputes. Careful monitoring of design progress and transparent discussions with the design team to ensure timely delivery of the design information remains the project manager's best tool to reduce the impact of these issues.

### **4. Contract Management and/or Administration Failure – Read and Understand the Contract**

Poor management and/or administration of contracts is the fourth causation factor in disputes. Our experts see the evidence of this across all sectors of building contracts. The project manager will often be appointed for the additional role of contract administrator. Working with poorly drafted contract requirements and contract conditions (see 2 above) the contract administrator routinely fails to adequately review and understand the contract terms and conditions.

*Naively, the contract administrator often believes it is for the legal advisers to resolve and thus often fails to protect their client's best commercial interests.*

### **Some Final Considerations**

Within each of the above issues, there are ancillary contributory factors to disputes, an underlying current of lack of experience, with limited skills, fewer resources and less time. In general, project management fees remain compressed with evermore competitive frameworks continuing the downwards pressure. This pressure must be released somehow and the industry-wide move to deploying less experienced staff or limiting time and resources to projects, which will often exacerbate many of the major factors, needs to be addressed.

These are difficult issues to resolve, as lack of competitiveness is not a long-term strategy for success. My final thought is that perhaps project managers need to scrutinise and take a more realistic look at their terms of appointment, scope of service and fees to ensure a more balanced and transparent service is offered to clients.

A full copy of the report is available to download here – 2019 [CRUX Insight](#)

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