

Quantex Quarterly

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From the Editor...

Welcome to the First Edition of our Newsletter, Quantex Quarterly.

Keeping in touch has never been easier than in this day and age, what with mobile phones, email, mobile email - in fact sometimes it's a challenge just to get away from it all and enjoy some peace and quiet!

In construction however, we are always focussed on the task in hand and frequently miss the opportunity just to keep others informed of general matters, which may (or may not!) be of interest. That's the aim of Quantex Quarterly, which we hope will be of interest, will inform and occasionally even entertain.

I hope we achieve our aim!

Quantex Builds on Cork Success

Quantex Consulting are delighted to announce that their new Cork Office is open for business.

The new office, situated on the Clogheen Business Park in Cork, has become the flagship home for Quantex Consulting's business in Ireland, and is geared for the expansion of the current range of services provided to the construction industry.

Executive Director **Richard Tysler**, who has led the business in Ireland for the last seven years, said he was thrilled with the new office.

"This demonstrates and confirms our long term commitment to our clients in Ireland", he said. "Up to now, we have been able to service our client's needs effectively from smaller premises in the Cork area, but as our reputation has grown and demand for our expertise has increased, it had become increasingly difficult. Now we have a



base and facility to be proud of, and the platform from which we can expand our portfolio of services, not just in Ireland but also Europe in general."

Business Services Manager **Paul Soden** agrees. "Our supply chain management and facilities management services have just mushroomed over the last two years, and we expect demand to continue to grow exponentially. We are already in the process of recruiting additional consultants

so we need an excellent working infrastructure, which this office now provides."

The office opened its doors in December 2006 and trade is brisk. "Contractual and commercial claims are our staple diet," said Richard, "together with alternative dispute resolution services such as mediation and conciliation. Commercial management and in particular our retrospective delay analysis and project planning services have been very much in demand. We've achieved some excellent results for our clients so far, and shall continue to strive to do so, but perhaps in a little more style than we have been used to!"

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Quantex Consulting and the CIOB present...

Hot on the heels of our inaugural seminars with the Chartered Institute of Building in Ireland on Delay Analysis, Quantex Consulting's Associate Director **Guy Higginbottom** will be returning to Ireland to talk about the new Irish Public Works Contracts.

The forthcoming seminars, also run in conjunction with the CIOB's Eastern and Southern Centres, are entitled "The New Public Works Contracts - Can You Manage?" and are to take place in Dublin on 18 April 2007, and for the Southern Region

(date and venue to be confirmed)

"These next seminars are designed to explore the differences between the old form of contract (the GDLA - 1982 Edition) and the new Public Works Contracts which are to be introduced in February 2007," explained Guy. "The aim is to provide a positive approach to the contractor's new management obligations. It should be of interest to Local Authorities, QSs, estimators, architects, etc., of all grades, from senior level down to graduates"

The seminar is likely to last in the region of 1.5 hours, includes light refreshments, and qualifies delegates for 1.5 hours CPD. The CIOB will be contacting members directly with further details.

Further seminars are planned in Ireland and the UK later in the year, and full details will be published in the next Quantex Quarterly.

If you wish to know more, please contact **Jill Ward**:
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So you want to be an Expert ?

Quantex Consulting Regional Director and experienced Expert Witness **David Simons** considers the duties and responsibilities of the Expert Witness, and the perils and pitfalls of giving an Expert Opinion.

We often give advice, its part of what construction professionals do. But if this advice is taken further, where someone in a dispute decides to rely upon it to assist in proving their case, then the professional can be called upon to give expert evidence to a tribunal or court.

When advice becomes expert evidence however, the allegiance owed by the expert changes. The duty to give a full and complete opinion is then owed primarily to the court or tribunal and not to the expert's client. Clearly, a client would not rely upon an expert who cannot support his case, but equally the expert may be called upon to comment on evidence and argument that is unhelpful to that case under oath, in an objective way.

An expert, unlike other witnesses, is allowed, because of his special qualifications and/or experience, to give opinion evidence. It is for his opinion evidence that he is called, not for his view of the facts or circumstances of the dispute, although his interpretation of the facts is often necessary in order to explain and/or justify his conclusions.

Appointment

Expert witness appointments can sometimes arise where the expert is first asked for advice which is later the subject of formal proceedings. This can be fraught with difficulty if the expert has been associated with the matter in a technical capacity for some time before a dispute arises. There will be a certain lack of credibility in one who has contributed to the facts of the matter and may, to some extent, be thought to be defending a personal position. The difficulty is not insurmountable, but the duty of objectivity must always be performed in such a way that it will be absolutely convincing. The other method of appointment is

by direct instruction from a client's solicitor or legal representative, usually where the dispute has arisen or proceedings have commenced.

Report

The expert's first task is often to give a preliminary opinion on the matter in question to the client and instructing solicitor, indicating his reasons and the evidence upon which it is based, usually as a written report. At this stage, he should also warn of possible pitfalls and point out the view that an opposing expert is likely to take and how it may be overcome. This report will not be disclosed in the proceedings and can be regarded as privileged. Proceedings will develop so that further information becomes available in terms of the parties' pleadings in the case, witness of

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fact statements, the statements of other experts (including experts of other disciplines on both sides) and disclosed documents. The expert may be called upon to review and advise upon disclosed documents and/or to attend meetings with counsel, make site visits, etc. Once the pleadings are closed and the information to be relied upon at trial is available, the expert should prepare his final report in the form to be used in the hearing. This must be carefully drafted to set out the expert's name, qualifications and experience, the questions upon which he has been asked to give an opinion, the information he has been provided with and has relied upon, the facts in dispute, any facts observed via inspections

or surveys, his analysis and reasoning and his opinion conclusion.

Meetings

There may well be a direction from the tribunal for experts of a like discipline from each party to meet on a "without prejudice" basis, to agree facts and figures and/or to try and narrow the differences of opinion presented in their reports. The tribunal will expect to see some progress in reducing the issues to be decided and the experts will normally publish a joint report, setting out the matters agreed and summarising the experts' positions on matters not agreed, at the conclusion of their meeting(s). Once reports are completed, the expert's attention then focuses upon giving evidence at the Hearing.

In The Witness Box

An important point to be appreciated is that once a witness has begun giving evidence, he (or she) is "in purdah" and may not discuss that evidence or the case itself with anyone else.

It is now fashionable in England, (in the interest of saving time and costs) for written experts' reports to stand as evidence in chief. The expert witness takes the oath or affirmation, swears-in his report and can then be "thrown to the wolves" of cross examination, without answering questions from his own side.

In Ireland, it is still common practice, particularly in arbitrations, for the expert to first be taken through his report by his client's counsel as evidence in chief, to emphasise points that have become relevant during the hearing or to deal with other evidence that has been heard

since the report was prepared.

Once the cross examination is complete, there may be further questions from the expert's own counsel in re-examination.

Dos and Don'ts

- Make sure you can fully support the client's case before accepting instructions to act on his behalf. If you can only give qualified support, make sure those instructing you know.
- Use simple plain language in reports and testimony. The skilled expert can make complex technical issues easily understood to the layman.
- Always remember that your primary duty is to assist the tribunal.
- Ensure you address all relevant issues including the positions taken by opposing parties.
- Make sure you refer to all relevant material that might affect your opinion, including any matter that might adversely affect the validity of it.
- Agree to act where you do not fully believe in the client's case.
- Act as advocate for your own side, or assume that your client's (disputed) version of the facts is the only position to be considered or supported.
- Ignore or conceal anything that might adversely affect your client's case or your own opinions.

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