


## A flavour of things to come. Legal Beagle's intent for future articles - plus something on letters of intent!

New legislation seems to be impinging more than usually on us at the moment. The next edition of **Scalanews** will examine the implications of the charge of Corporate Manslaughter together with articles on related fire safety issues. These will include the impact of the Disability Discrimination Act and advice on ensuring value for money when considering fire safety. Other legislation currently demanding attention in construction are *The Contracts (Rights of Third Parties) Act 1999*, *The Proceeds of Crime Act 2002*, and the anticipated imminent revisions to the *Housing Grants Construction and Regeneration Act 1996* (HGCRA). When the revisions to the HGCRA are published I will report them in **Scalanews** but, in the meantime, there are currently various revisions to the Building Regulations which most specifier practitioners will be familiar with. They encompass DfES Building Bulletin 93, on acoustics, with which, in my current experience, many are finding difficulty in coming to grips with.

Not so far from legislation are standard forms of contract, at least in terms of impact upon us. In May this year the JCT is publishing a new suite of contracts, on which I will be commenting in **Scalanews** later in the year. In that respect, design and build, as one of the preferred procurement formats of government and as a common feature in PFI, continues to be both of interest and concern to us whether in its various guises under a "D&B" contract form, as Contractors Design Portions in a "traditional" form or as provided for in the JCT Major Works form. Linked to that is the knotty issue of novation - is it advisable or knot!? There's a lot of fuzzy thinking around that one in my opinion but I had thought maybe my failure to see the advantage of it (for any party!) was not shared by many, until I attended a Society of Construction Law lecture last week when a leading solicitor espoused the same view. Given that liability is strictly related to the nature of the duty owed at the time the act in dispute was carried out, and given that the duty owed to a traditional client is very different from that owed to a contractor client, why not just terminate the client agreement and execute a new agreement with the

contractor? More of that in Legal Beagle later in the year. Meanwhile, under your D&B contracts, do you novate and, if so, do you use your own form of novation, the CIC or CLSS standard forms? - the latter two, of course, represent diametrically opposed approaches to the finding in *Blyth & Blyth-v-Carillion (2001)*. My preference is for the CIC.

Returning to the matter of legislation, I am sure mention of the *The Proceeds of Crime Act 2002* had one or two of us wondering. It concerns money laundering. The Regulations require "relevant businesses" to put certain anti-money laundering procedures in place. The Regulation's definition of "relevant businesses" includes "*the provision by way of business of legal services by a body corporate or unincorporated ... and which involves participation in a financial or real property transaction or otherwise by acting for, or on behalf of, a client in any such transaction.*" I came across this as it applies to adjudicators and arbitrators, and can apply when one acts as an independent expert. However, those SCALA members with property services should take advice on how the Act may affect them - as well as those who may become involved in determining disputes. The law in relation to combating money laundering, as it affects the estate agency and surveying professions, is set out in the RICS publication "Protecting Against Money Laundering: a Guide for Members".

All SCALA members should be aware of the *The Contracts (Rights of Third Parties) Act 1999*, which has been around for some time now. From the *ACA News 99 February 2005*, which I received with my last copy of **Scalanews**, I gather it remains a cause of concern in architectural circles. The ACA advises its members that the Act "*may do away with the necessity for collateral warrantees [sic] (see RIBA Journal of 11th November 2004). Meanwhile, you should beware of any reference to this Act in a contract without making sure that it is either struck out or warrantee [sic] covers you.*" The Act brought an end to "privity of contract", as it provides that third parties can make claims 



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Rob, author of the SCALA and LGTF 'Guide to Standard Forms of Construction Contracts', has offered to share his experience and expertise with you and looks forward to hearing from readers.

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under a contract to which they are not a party. In order to make such a claim, the third party must be expressly referred to as having the right to enforce the contract or the contract must “purport to confer a benefit” on the third party. In construction this was met with some hostility, with lawyers advising clients that contracts should exclude the provisions of the Act on the basis that, for example, between client and contractor, there is an unacceptable and unquantifiable risk in permitting potential claims from third parties such as funders (eg DfES funding schools?), future tenants, designers and sub-contractors. However, returning for a moment to forms of contract, the JCT Major Works form embraces the Act by identifying the third parties who may benefit and defining the benefits in a third party rights schedule, in an attempt to avoid separate warranties and collateral agreements.

Finally, I must say I share the ACA’s sentiments when it says *“Beware of starting works without a signed*

*contract. Letters of intent are dangerous unless followed up immediately with a contract. When things go wrong and the terms of a contract are uncertain the courts may throw out any claims by either party.”*

Indeed, there may well be no contract at all. Whilst there can be a number of reasons for a letter of intent, the most common is probably programme - and that can appear, with hindsight, pretty unimportant in the context of an expensive and messy subsequent dispute. Letters of intent can range from the brief form of instruction to commence work to a certain value in advance of a contract which the letter expresses an intention to enter into, through to several pages of detail seeking to incorporate a standard form of contract and define price and scope etc. Whatever form (if I had to use one, I’d prefer the former, quickly followed by a contract) and for whatever reason they may be used, letters of intent provide a fertile ground for disputes - and a considerable amount of case law. Probably also fertile ground for future Legal Beagle articles. ■

## Scala Study Day



### National College For School Leadership Nottingham on 20th May 2005

#### “Designing for Children and Young People” - a seminar for clients & designers

The government is providing substantial new resources to transform education, health and family support services. This Study Day will look at how best to develop and refurbish schools, children’s centres and childcare facilities so as to offer welcoming, flexible and inspirational places.

Through a series of presentations from leading experts delegates will look at how local authorities and architects can meet the challenges of Sure Start, Childcare and Building Schools for the Future, programmes. Topics covered will include how to join up funding streams, integrated provision, designing for early years and developing schools of the future.

The venue for the event is the innovative and inspirational NCSL Learning and Conference Centre in Nottingham, which is a purpose built venue, opened in 2002 as a unique learning environment. The state of the art building is set in its own tranquil lakeside grounds, offering superb conference facilities, including overnight accommodation and five star catering.

**For further information, including booking details, please contact Steve Dodsworth, SCALA Manager**  
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