



Professional Negligence and how to avoid it – by Simon Kennish

It amazes me when I have a case of professional negligence to deal with, the same basic cause's crop up time and time again. It doesn't matter if it's from an architect, surveyor, project manager, structural engineer or any other professional – the same basic recurring factors seem to cause the issue. In this article I will outline what I see those causes are, and more importantly what steps you can take to prevent them happening in your field.

Lack of competence is the top of my list, whether it's a lack of skills, knowledge or experience it affects delivery of the services and can easily impact things like Time, Quality, Cost, Risk, Benefit and Scope. A few examples include

- A Project Manager failing to allow adequate time in the programme to complete tasks – e.g. forgetting there was asbestos to remove and it needing a 14 day notice to the HSE.
- An Architect specifying the wrong quality of materials for the relevant part of the works – e.g. specifying a slippery single ply roof material on a flat roof that needs regular foot traffic to maintain M&E plant
- An Architect who couldn't design a roof detail to stop water pouring into the building as part of an over cladding project
- An Architect totally ignoring the project budget and designing something that was entirely unaffordable, then seeking more fee to redesign it.
- A Project Manager who made sweeping assumptions (incorrectly) about when he could take possession of a site, without checking if the site was actually available.
- An Architect failing to understand CDM requirements to design out or reduce risk as part of their design – e.g. by placing air con condensers that need regular maintenance on a flat roof, with no edge protection (could have just gone on the ground floor without the need to access the roof at all), or an LPG tank on a roof 3 storeys high and thinking it is acceptable for the delivery driver to lower a piece of rope from the flat roof to haul his pipe up to connect to the tank, his response to both was 'its ok, we've done the risk assessment'.
- A Structural Engineer who fails to spot the extent of serious structural damage and comes up with an inadequate repair solution.
- An Architect and Project Manager who failed to take the brief down correctly, and missing key elements that were required to deliver the benefits required as part of the project e.g. a noisy work area from air con plant where speech was required to be heard.
- A Building Surveyor who fails to understand how dilapidations works, including the basic concept of loss and schedule of conditions (I have another article of Dilapidations which covers this more detail)



- An Architect who designed M&E Plant in a roof space so badly that in order to undertake any maintenance work you had to remove part of a suspended ceiling, access with a MEWP 5m high, then being unable to open the door to get the filters out for a clean without taking the roof off.
- A Contract Administrator who failed to ensure Collateral Warranties were in place on a project

The above lack of competence is worrying, this is further compounded when you think about who is supervising this work, what processes are in place to get another pair of eyes to check over anyone who lacks the skills, knowledge and experience to perform the job in a professional manner?

Lack of time to undertake the task is next on my list, assuming the person is competent of course. This could be down to overall workload – they just have too much on and can't dedicate enough time to complete the task properly. Or it could be they are under pressure to limit the time they spend, to match the fee that has been agreed for this job.

I once had a Project Manager who was running four projects on site, due to his lack of performance in managing the project it started to go horribly wrong and needed a quick intervention to get them back on track. I was staggered when he told me that he had 'run out of fee' so wasn't going to do anything more on the projects! He thought this was entirely reasonable, it just underlined his lack of performance to date.

Lack of Care or Recklessness is last on my list. Assuming the individual is competent and has adequate time, a careless attitude can be a source of issues. They just can't be bothered to do the job properly, that visit to site to check something was just too much effort, to have to climb the scaffold when it's raining and a bit windy. To fail to double check the numbers on the valuation or fail to read all the contractors quote (and in particular and exclusions) is just lazy, sloppy and totally unprofessional.

- A Contract Administrator signing off an interim valuation when he couldn't be bothered to check the work had been done, let alone done correctly
- A Contract Administrator who instructs contractors without the authority to do so from the client.
- A Contract Administrator issuing a Certificate of Practical Completion when the job is nowhere near finished.
- A Contract Administrator issuing a Certificate of Making Good defects without checking to see if they had actually been resolved.



- A Project Manager who fails to identify part of the scope, then lies to cover it up and subsequently gets found out, then just keeps digging a larger and larger hole instead of owning up as a genuine error in the first place.
- A Contract Administrator who ignored the client's direct instruction to issue a Withholding Notice on a contractor's invoice for major defects.
- A Project Manager agreeing an inadequate repair to a defect

So, as you can see there are some pretty basic causes of professional negligence, and some of them are really easy to avoid:

- **Ensure you are competent to do the job** – you have suitable and sufficient skills, knowledge and experience. If not, then you should not take the job or, or ensure that you are supervised by someone who is competent in that issue.
- **Do the job right first time** – sounds simple but it really is, check and double check before you complete the task. A second pair of eyes can be invaluable, if you have made an error (and people do make errors) now is the easy time to fix it.
- **Ensure you have adequate time** to do the task, don't rush it and if you don't have time to undertake this task then decline or pass it to someone who can deliver it.
- As far as **lack of care or recklessness** goes – if things are that bad, then it's only a matter of time before you go bust or get sacked, either way a change of career beckons.
- **Consider your options** - If it's gone wrong, stop for a moment and think what your options are. A simple error owned up to quickly can usually be resolved without too much drama. Don't try to cover it up, you will be found out and lying will destroy your professional reputation. Where it is a large error, you may have to involve your professional indemnity insurers and be liable for the excess on the policy, plus have your premium increased in future years along with having to demonstrate how you will prevent these events recurring. If you want to keep working with the client, you need to have a pragmatic discussion with your insurer and the client to work out a resolution.

Finally, prevention really is better than cure, so take a few minutes to reflect on the above causes and see where you can tweak your operating methods to ensure competence, adequate supervision, adequate time and a way to root out those who just don't care either way.

Bio Notes - Simon Kennish FRICS, MAPM, MCMI is a Chartered Surveyor, Project and Programme Manager with a passion for delivering major projects and programmes in both the public and private sectors. www.simonkennish.com