Clause for Thought:

Conditions Precedent Clauses, explained by your Construction Solicitor.

If a contract stated that you would not receive payment for your work unless you issued your payment application by recorded delivery, on multicolored paper and in size 18 Calibri font, you would probably think that a) the Employer is bonkers and b) that surely cannot be enforceable?

Whilst this is somewhat of a far-fetched example, here is the uncomfortable truth: if your contract says you must do something in a particular way before you are entitled to be paid, and you do not do it, you may never get that money — no matter how much work you have done. These types of clauses exist, and they are being enforced every day. They are called "Conditions Precedent Clauses".

What is a Condition Precedent?

A condition precedent is a contractual requirement that must be satisfied before a right arises. In construction, this most commonly affects payment, variations, extensions of time, loss and expense, and delay claims. Miss the required step and the right never comes into existence. This is especially dangerous in trades like roofing, cladding and M&E, where work is constantly changing on site, instructions are often verbal, and commercial teams are dealing with multiple moving parts at once.

Some contracts are brutally explicit. We regularly see clauses that say a payment application will not be valid unless it is sent to a specific address, on a specific day of the month, using a particular delivery method, and containing prescribed wording and headings (like in the example above). If any part of that process is missed, the application may be worthless, even if the work has been carried out and it is blaringly obvious that it has.

> "For the avoidance of doubt the Contractor's application as referred to in this clause can never be considered as being a valid application unless they are sent to both the Contractor's registered office and Head Office by signed for Special Delivery Post (or similar such service) (for delivery on the 24th day of the month in question as set out above) (service by e-mail will not be accepted), and they set out in express terms what the net 'notified sum' is claimed to be, and the basis on which that sum has been calculated, and they have a heading at the top of the document which says in bold red capitals (with a minimum size 18 bold font) which says "THIS IS INTENDED TO BE A PAYMENT APPLICATION AND FAILURE TO RESPOND MAY RESULT IN THE NOTIFIED SUM AS SET OUT BELOW BECOMING PAYABLE".

This is not theoretical - we see it happening all the time. A subcontractor carries out additional work, emails the site team, raises it with the project manager and even receives a verbal "yes". But a formal notice is late, or sent to the wrong address, or does not follow the contract's precise wording — and the claim is dead.

When is it actually a Conditions Precedent?

A clause does not need to use the words "condition precedent" to be one. What matters is whether the wording makes the right

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conditional on compliance. Phrases such as “if”, “provided that” or “subject to” are often a warning sign that the clause is a condition precedent. A clause that says a contractor is entitled to reimbursement “subject to giving written notice within seven days” may mean that being even one day late kills the claim entirely.

That distinction matters enormously. If a clause is a true condition precedent, missing it does not reduce the claim or weaken it — it destroys it. This is why so many weather delay claims, disruption claims and variation claims fail. The work was done, but the contractual trigger was not pulled in time.

Why does this matter?

You are probably wondering why it even matters to you if a clause is a condition precedent or not. Courts will usually enforce these clauses, even when they seem unfair or overly technical. The reasoning is simple: the parties agreed with the rules, and the courts will not rewrite the contract just because one side made them difficult to follow. That means you can do tens or hundreds of thousands of pounds’ worth of work and still recover nothing if the contract made entitlement conditional on a step that was not taken.

What can be done?

If you are already in a contract, the most important thing you can do is understand exactly what those triggers are. There should be a clear internal checklist setting out who notices must go to, how they must be sent, and when they must be issued. Site teams, QSs and commercial managers all need to know these rules, otherwise valuable claims will be lost before they ever reach the table.

If you have not yet signed, you are in a much stronger position. A contract review can often remove or soften these clauses, or at the very least highlight them so you know where the

traps are. Most subcontractors only discover conditions precedent when it is already too late.

Conditions precedent are one of the quietest ways money disappears in construction. No argument. No adjudication. No court battle. Just a clause, a missed step, and a claim that never existed.

If you would like help reviewing your contracts or understanding where these traps sit, please do get in touch.

How We Can Support You

If you require expert assistance in reviewing or drafting contracts which work well for you, or help in understanding Condition Precedents, the Federation of Traditional Metal Roofing Contractors’ National Legal Partner, Holmes & Hills can assist. Their specialist team of construction lawyers can be reached on **01206 593933**, or by emailing the team at **enquiriesconstruction@holmes-hills.co.uk.**

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