

## The Architect's Responsibility In Setting Out The Building

# **PAM Practice Notes**

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In his finding in a High Court case in which an adjoining owner was suing the owner of the neighbouring building for encroachment onto his property and the building owner was suing his architect for negligence in permitting the building to be set out wrongly, Mr. Justice Abdul Hamed Omar said no liability could be attached to the architect if the contractor had built the wall and drains on land he thought was the Owner's. He held that it was not part of the architect's duty to ascertain the boundary and, clearly the Contractor and the Owner had themselves decided the demarcation of the lot.

The finding was based on:

- a. Clause 1.2.1 of the PAM Conditions of Engagement and Scale of Professional Charges which states:

"The client shall also be responsible for the provision of all legal, survey and other particulars of the site including particulars of existing structures and features, sub-surface conditions and adjoining sites as well as any legal counselling recommended by the Architect to protect the Client's interest. If required, the Architect may obtain the required information or advice on behalf of the Client provided the cost is met by the Client"

- b. Clause 5 of the PAM Building Contract 1969 which states:

"Levels and setting out of the Works

The Architect shall determine any levels which may be required for the execution of the Works and shall furnish to the Contractor by way of accurately dimensioned drawings such information as shall enable the Contractor to set out the Works at ground level. Unless the Architect shall otherwise, instruct, in which case the contract sum shall be adjusted accordingly, the Contractor shall be responsible for and shall entirely at his own cost amend any errors arising from his own inaccurate setting out."

So, legally, provided the Architect has given all the necessary information to the Contractor, that is the end of his responsibility. However, in practice the situation is not so simple: the Architect has a professional responsibility to ensure that the Works are constructed in accordance with the Contract. The Contract requires the building to be set out in accordance with the Contract Drawings and the Architect owes it to his Client to ensure that this is done. While the Architect is not legally responsible for the Contractor's mistake he should make every effort to ensure that such mistakes do not occur. (send an instruction for setting out refer e.g. letter attached)

In their book "The Architect in Practice" Willis & George state, "The setting out of the works is especially important and should be carefully checked by the architect or his clerk-of-works. It is the architect's responsibility to furnish the contractor with full information to enable him to set out the enclosing walls of the building at ground level and this can either be done by carefully dimensioned drawings or personal supervision at the time of setting out. After the initial setting out has been checked, the contractor is responsible for the accuracy of the works and will be held liable for the correction at his own expense of any errors arising from his setting out".

One might take issue with the above statement in its reference to the responsibility of the contractor "after the initial setting out has been checked". The contractor is wholly responsible for the setting out and while the architect should check work in an attempt to forestall problems which might arise later from a mistake on the part of the contractor, he should make it quite clear that his doing so in no way absolves the contractor from his responsibilities under Clause 5 of the various standard PAM Building Contract.

In his book "Architectural Supervision on Site", A A Macfarlane states, "The contractor is required to set out the works and be responsible for the accuracy and to make good errors at his sole cost. The architect is not required to check the setting out but contractors often expect him to, which could be held to be passing the buck. The architect need not acquiesce but he should make sure no gross error has occurred such as building too near the road, or to another building or at the wrong level".

In the proposed Uniform Building By-laws Clause 23 states, "As soon as the setting out of building has been completed, the qualified person shall give written notice to the local authority in form C as set out in the Second Schedule to these By-laws certifying either that the setting out has been carried out in accordance with the approved site plan or, if there has been any deviation from the approved site plan, that he will undertake to submit the required number of amended site plans for approval before the completion of the building. In either event the qualified person shall certify that he accepts full responsibility for ensuring that all town planning and building requirements are complied with".

The "qualified person" means any architect, registered building draughtsman or engineer.

Thus it would seem that, while under the contract the contractor is solely responsible for the setting out, under the UBBL the local authority will hold the Architect responsible. This brings up the question of the Architect's competence to accept such a responsibility. Detailed and accurate survey work is not within the competence of most architects and it certainly does not constitute part of his duties under the Architects (Scale of Minimum Fees) Rules 1986. Thus it would seem to be a wise precaution that in all but the simplest projects the contractor should be required to have the building set out by, or at least have his own setting out checked and certified by a Registered Land Surveyor.

So, what actions should the architect take to ensure that his responsibilities in this respect are fulfilled?

1. He should ensure that he is furnished with a proper boundary survey of the site from his Client and that the boundaries are clearly marked on the ground. If such a survey is not available he should advise his client of the need and assist him in appointing a surveyor to carry out the work. He should also instruct the Contractor to employ a Licence Surveyor for setting out.
2. He must ensure that all the information necessary for setting out the building is shown on his site plan. One frequently sees site plans in which dimensions to boundaries are shown but the building is not parallel to the boundary and the exact point at which the dimension is taken is not clear. If the building is to be parallel to one boundary this should be stated. If the building is not to be parallel to any boundary, at least two dimensions from building to boundary along one side are required. Alternatively, a compass bearing for one side of the buildings may be given. In addition, 3 dimensions are recommended to be given in the setting out plan.

A datum level for the building, commonly the structural ground floor level should be given related to ordinance Survey Datum or some prominent and permanent feature in the vicinity of the site.

3. Architect should carry out a general check of the contractor's setting out but should make it quite clear in writing that this in no way absolves the contractor from responsibilities under clause 5 of the PAM Building Contract 2006. (see attachment "Sample Letter")
4. On all but the simplest projects, make a provision in the specifications or the Preliminaries of the Bills of Quantities (as the case may be) that the setting out, including the establishment of temporary benchmarks on site, is done, or at least certified by a Registered Land Surveyor.

# Sample Letter

Address of the Architect .....

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Address of the Contractor .....

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*Dear Sir*

## **SETTING OUT WORK**

*We refer to the above and pursuant to Clause 5 of the Conditions of Contract. You are required to set out the Works in accordance with the drawings and information given by us.*

*In the circumstances, any inspection we may decide to carry out will not relieve you of your obligations under the Contract.*

*Yours faithfully*

.....  
*(Architect's signature)*

*cc Client  
QS  
C & S  
M & E*