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**GUIDELINES ON
PRACTICAL COMPLETION**

PAM Practice Notes

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NOTES TO MEMBERS

Usually, complaints faced by architects are related to contract administration or inadequate communications with the Employer. Very few grievances have to do with design and inappropriate specifications. Practical completion is one common cause of complaints. Architects may find themselves under pressure from the Contractor or the Employer over the timing of practical completion. Getting this wrong could lead to a contractual dispute, with the possibility of the architect facing a disciplinary hearing for misconduct or negligence.

The official definition of 'Practical Completion' is different depending on the form of contract used.

The PAM Form of Contract 1998 defines 'Practical Completion' to be 'when the Architect is of the opinion that the Works are practically completed, meaning that the Contractor has performed and completed all the necessary Works specified in the Contract and the patent defects existing in such Works are 'de minimis', the Architect shall forthwith issue a Certificate of Practical Completion.'¹

Under the PAM Form of Contract 2006², there are procedures that must be adhered to for Practical Completion, stating that the Contractor shall give a written notice to the Architect who shall within fourteen (14) days:

- A) if the Architect is of the opinion that the Works are not Practically Completed under Clause 15.1, the Architect shall give written Notice to the Contractor with copy extended to the Nominated Sub-Contractors stating the reasons for his opinion; or
- B) the Architect is of the opinion that the Works are Practically Completed under Clause 15.1, the Architect shall issue the Certificate of Practical Completion. The date of Practical Completion shall be:
 - (i) the date of receipt of the Contractor's written undertaking to make good and to complete works and defects of a minor nature, where there are such works and defects; or
 - (ii) the date of receipt of the Contractor's written notice, where there are no works and defects of a minor nature.

Whereas, in PAM Form of Contract 2018, 'Practical Completion' is defined to be when:

- a) in the opinion of the Architect, the Employer can have full use of the Works for their intended purposes, notwithstanding that there may be works and defects of a minor nature still to be executed and the Contractor has given to the Architect a written undertaking to make good and to complete such works and defects within a reasonable time specified by the Architect;³ and
- b) other requirements expressly stated in the Contract Documents as a prerequisite for the issuance of the Certificate of Practical Completion has been complied with.

Practical Completion is a turning point for the contractual treatment of any defects, which are the most likely source of complaints from Employers and the subject of professional misconduct hearings.

- It marks the start of the Defect Liability Period; when the Contractor can be asked to rectify defects that become apparent. Any defect identified prior to practical completion should have

¹ PAM 98 allows for Certificate of Practical Completion to be issued even though there are patent defects

² The major difference between PAM 98 and PAM 2006 is that the Contractor has to submit a written notification that the Works are Practically Completed.

³ With PAM 2018, the level of arbitrariness as to what constitutes practical completion is minimized as rejection of any notice of practical completion has to be accompanied with a description as to *what's left outstanding*.

been rectified by the Contractor before the architect certifies practical completion. It also marks the period for the Final Account to be completed;

- It triggers the release of half of the Retention Fund contract from the Employer to the Contractor;
- Within fourteen days upon issuing the Certificate of Practical Completion, the Architect must issue a certificate for the release of half of the Retention Fund;
- It signals that the Contractor is to ensure the validity of the Performance Bond for at least 3 months after the Completion date / Practical completion;
- It also means that the responsibility for insurance coverage and security of the property goes back to the Employer. The Employer will now need to maintain the property as well as to pay for bills for utilities used;
- It ends the right of the Employer to impose further Liquidated Damages in the event a Certificate of Non completion was previously issued

Where does the pressure for early practical completion come from?

Ideally, practical completion should be an objective decision taken by the architect as contract administrator when all parties – architect, Contractor and Employer – are in agreement. But often the architect will come under pressure to sign off completion early or, conversely, to delay it.

For example, Contractors might seek a premature practical completion because they want to be paid; because they have other work to carry out or because they want to stop the Liquidated Damages. They might encourage the architect to reassure the Employer that they will be back to take care of any snagging.

Such situations can become more complicated when there have been delays to the project, perhaps due to issues on site and when a Certificate of Non-Completion has been issued. If the delay was beyond the Contractor's control, the architect can grant an extension of time (EOT). The Contractor then would become liable only for delays not covered by the EOT.

There are also cases where the Employers themselves want an early CPC if they have committed delivery date to a third party- ie. The property has already been leased out to an operator, or the property has already been sold to a third party.

There are also cases where Employers may want to delay the architect from issuing CPC as they are apprehensive of getting a defective end product. An architect may find themselves caught in the middle; facing a Contractor pushing for a certificate of completion and arguing that the delay is due to the Employer, and an Employer in turn arguing that the works are still not satisfactorily completed.

Working around or minimizing the pressure of CPC

Objectivity is the keyword for an architect certifying practical completion. If the architect's decision is seen as being subjective concerning practical completion, they may face charges from the Employer of being too partial towards the Contractor, and vice versa.

Good communication throughout the project is even more important. Managing expectations from the outset can mitigate all kinds of unexpected problems and delays for architects.

The starting point of a project, when everybody is friendly to each other, should be the time to have difficult conversations that raise the 'what if' questions about the project, and to discuss what practical completion will mean for the Employer and Contractor; all of this should be spelt out in writing at the onset of the project. Tricky situations, for instance, when direct tradesmen under the Employer working in tandem to complete the project, can then be avoided.

There are also instances, especially with fitting out works by the Employer, where the Contractor is required to complete the final 'to do list' much later even though his scope of the works has practically ended.ⁱ It is advisable that the Contractor documents the completed works to prevent arguments over subsequent 'defects' caused by others.

ⁱ This Practice Note make reference to RIBA's Professional Feature "**How to avoid pressure to sign off early on practical completion**" dated 19 Aug 2021

Prepared by:
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