

Defects

and Rectification under JCT contract

A construction defect can be described as a faulty workmanship, materials or design. The defect is the work which is done not in accordance with the specification, agreed design or with the building regulations. Defects may occur due to insufficient design, specification problems, poor workmanship or faulty materials.

We can distinguish between patent and latent defects. Patent defects occur immediately, can be discovered during inspection and are easy to identify, while latent defects are revealed at a later date. The example of a patent defect is the omission of painting in the required area, electrical faults or a leaking pipe. Such defects are recorded in the snagging lists at the time of practical completion. Latent defects are for example roof leakage, defective UFH, defective basement or defective foundation, etc. The defects rectification period agreed in construction contract is set for rectifying all latent defects.

Snagging lists are prepared at every construction



project, and it is essential to establish whether the client has the right to have the contractor make defects good before practical completion, at practical completion or during the defects rectification period.

The contractor's liability for defects will depend on the construction contract, whether it is a design and build or construct-only. Defects are often caused due to improper design. Design professionals, contractors and subcontractors can also be liable for defects in design if their contract contains design responsibilities and obligations.

The English law states that all activities undertaken by a contractor prior to practical completion are a work in progress and cannot be classified as defects. It is called a 'temporary dis-conformity'. Construction contracts specify the provisions for defects pre-completion. For instance, the JCT standard contract states that architect or contract administrator can open up for inspection any work covered up or to test materials or goods 'whether or not already incorporated in the Works'. The cost of such inspections or tests is at the employer's risk unless the work is found not to be in accordance with the contract (clause 3.17). Also, the architect/contract administrator has some options where work is found to be defective. These include instructing the removal of any defective works, accepting that the defective work can remain, or order further opening up for inspections.

Under the JCT contract, the contractor is obliged to make defects good identified in the snagging list during the agreed period after practical completion. Defects have to be rectified at no cost to the employer and the period of ratification begins from the date of practical completion of the works for a term specified in the contract, often ranging from 6 months to 24 months. If no period is included in contract six months is the default. The architect or contract administrator is responsible for preparation of snagging list at the stage of practical completion. The list of defects can also be prepared during the rectification period and can be delivered to the contractor as an instruction for 14 days after the expiry of the rectification period.

The client as a security have the agreed in contract retention. Moreover, if the contractor fails to remedy defects, the client has the right to damages. With regards to the latent defects, if the contractor completed all obligations under the contract, including those during any defects ratification period, he has no contractual obligation to remedy any latent defects arising. The client can seek the damages, for breach of contract, or for negligence. In the case of dwellings, there is a statutory remedy provided by the Defective Premises Act 1972. The time limitations are to 12 years under Section 8 of the Limitation Act 1980. If the client will claim for the negligence, the time limit is six years from the date when the damage occurred.

Please note this article is for informative purposes only, in the case of any contractual problems seek the professional or legal advice.

(Source: RICS, JCT)