

Health and safety at your door step

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CATEGORY:
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If you need to appoint someone to undertake works at home then the Construction (Design and Management) Regulations 2015 (CDM 2015) which came into force on 6 April 2015 will apply to you. The previous regulations applied principally to commercial projects, but now apply to the projects of domestic clients, which means any one undertaking construction work on their own home, or the home of a family member, which is not done in connection with a business.

CDM 2015 places specific duties on commercial clients e.g. there are duties on the client to manage projects, notify the health and safety executive, and there are general duties that need to be complied with. A domestic client is not required to carry out all the duties of a commercial client whilst undertaking works to his/her property. CDM 2015 allows others to take on his/her responsibility – where there is just one contractor, that contractor takes on the domestic client's duties. Where there is more than one contractor undertaking the works, the main contractor becomes the principal contractor, taking on the domestic client's duties under the regulations by default. However, oftentimes, domestic clients have a far closer association with their architect, who in most instances will also take on the 'principal designer' role. A principal designer is a designer who, apart from its design role, will need to comply with the specific provisions of CDM 2015 to ensure that health and safety is considered in the design process. A principal designer will need to be appointed, where a project has more than one contractor. Such an entity has control over the pre-construction phase in a project. Where there is an architect taking on the principal designer role, the domestic client can require their principal designer to take on their duties under the regulations, but this needs to be confirmed in writing.

It is perhaps inappropriate to bracket all others into the term 'commercial clients'. There are many clients who are not experienced developers, and are unlikely to be aware of CDM 2015, let alone their duties under it. Oftentimes, it is such a client's lawyer or project manager who will alert them to the need to comply with the regulations. The market however has responded to assist them with a 'CDM client advisory' role, for example, APS have a client advisor form of appointment to assist clients with discharging their 'client' side duties under CDM 2015.

Recently however, the Health and Safety Executive (the ' HSE'), the entity that offers guidance on health and safety matters, and deals with enforcement action with regards to CDM 2015, has suggested that CDM 2015 makes no mention of a role or duty holder called ' CDM Adviser', and that this advisory role is therefore not required by law. HSE emphasises the need to make suitable 'principal designer' and 'principal contractor' appointments, stating that these roles will need to be taken up by competent persons/entities with the necessary skills, knowledge and experience ('SKE'). Where clients make an external 'CDM Client Advisory' appointment, HSE's view is that such an external advisor coming into the project cannot assume the legal duties, responsibilities and/or functions of the client. The suggestion is that if the aim of the legislation was to cut down on the cost and bureaucracy of health and safety compliance, adding such further advisors has the opposite effect. A solution for clients who are new to the business of property development and construction is perhaps to wrap up into a principal designer appointment the services that a principal designer will need to undertake under the regulations, and at the same time provide an advisory role to the client. However, SKE appears to be the buzz word within the HSE. We would therefore suggest to all clients that you start considering health and safety compliance requirements from the very beginning of a project, so that you can be satisfied that you will discharge your obligations as the client under CDM 2015.