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Contractual discipline in FIDIC projects: the Judicial Committee of the Privy Council's decision in *Uniform Building Contractors*

The Judicial Committee of the Privy Council's¹ decision in *Uniform Building Contractors Ltd v The Water and Sewerage Authority of Trinidad and Tobago*, [2026] UKPC 2 (22 January 2026), offers a clear reaffirmation of contractual discipline in FIDIC projects. Although the Privy Council's judgments are only binding in jurisdictions for which it is the ultimate appellate court, the reasoning will be persuasive for courts and arbitral tribunals worldwide. The case underscores that parties will be bound to the design-build, lumpsum contract they entered into; that 'variations' are defined by the contract rather than by site practice; that FIDIC SubClause 20.1 [Contractor's Claims] operates as a true condition precedent; and that termination does not revive time-barred claims. Arguments based on 'fairness', waiver or estoppel require proper pleading and evidence, and cannot be conjured when before an appellate court. Crucially, the FIDIC engineer has no authority to amend the contract or relieve either party of its notice obligations.

Background

The Water and Sewerage Authority of Trinidad and Tobago ('WASA') engaged Uniform Building Contractors Ltd ('UBC')

in 2007 to design, supply and install a pipeline. The contract incorporated the FIDIC Design-Build (Yellow Book) general conditions,² together with bespoke particular conditions, and it was priced on a

lumpsum basis. As Clause 4.11 [Sufficiency of the Accepted Contract Amount] puts it, ‘Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor’s obligations under the Contract... and all things necessary for the proper design, execution and completion of the Works and the remedying of any defects’.

Following disputes, WASA terminated the contract in 2009. In 2013, UBC sued for approximately TT\$13.9m (about CA\$2.8m), advancing four items as payable ‘variations’: (1) laying pipework in the roadway itself rather than in verges; (2) removing unsuitable backfill; (3) importing backfill; and (4) undertaking night work. UBC said these had effectively been instructed on site by the FIDIC engineer. It had not, however, followed the contractual variation procedure or given any notice of claim during the course of the project.

At first instance, the Trinidad and Tobago High Court held UBC to the contract and rejected the claim. The Trinidad and Tobago Court of Appeal took a different view, placing weight on the FIDIC engineer’s evidence about how the project was ‘actually operated’ and concluding that the contractual notice machinery had effectively been waived. The highest court of appeal, the Judicial Committee of the Privy Council, allowed WASA’s further appeal, restored the trial outcome and dismissed UBC’s claim.

Variations are what the contract says they are

The Privy Council emphasised a simple but often overlooked proposition: a ‘variation’ is defined by the parties’ agreement, not by the parties’ conduct on site in dealing with changes of scope.

The contract defined ‘Variation’ by reference to changes instructed or approved under Clause 13 [Variations and Adjustments]. As the Conditions state, “‘Variation’ means any change to the Employer’s Requirements or the Works, which is instructed or approved as a Variation under Clause 13 [Variations and Adjustments]”. Upon instructing or approving a Variation, ‘the Engineer shall proceed in accordance with SubClause 3.5 [Determinations] to agree or determine adjustments to the Contract Price and the Schedule of Payments’.

The Privy Council concluded that none of the four disputed items satisfied that definition. Two features drove that conclusion. First, the overall risk allocation in the FIDIC general conditions and the project-specific conditions required UBC to comprehensively price the works under a lumpsum contract. Second, the technical documents and specifications expressly contemplated the categories of work UBC later sought to characterise as extras; the work was part of the original contract scope of work, not a change. The fact that the FIDIC engineer considered the items to be variations, and said payment would be sorted out later, did not change the contractual analysis. In a lumpsum design-build contract, work that is expressly or impliedly within the contractor’s promised deliverable does not morph into a payable extra merely because it proves more expensive than anticipated.

Even if they were variations, the notice regime still bites

The Privy Council went on to explain that, even if the disputed items had been instructible variations, UBC faced fatal procedural defects. Under Clause 13 [Variations and Adjustments], an instruction or approval triggers the Engineer’s determination process under SubClause 3.5 [Determinations], which is the path to any adjustment to price. The Conditions make this explicit: ‘Whenever these Conditions provide that the Engineer shall proceed in accordance with this SubClause 3.5 to agree or determine any matter, the Engineer shall consult with each Party... If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract... [and] give notice to both Parties of each agreement or determination, with supporting particulars’ (Sub-Clause 3.5).

UBC did not invoke that procedure. Further, where a determination is not forthcoming or is disputed, SubClause 20.1 [Contractor’s Claims] requires the contractor to give notice of claim ‘as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the events or circumstance’. If notice is not given in time, ‘the Time for Completion shall not be extended, the Contractor shall not be

entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim'. The Privy Council treated this as classic condition-precedent drafting: no notice, no claim.

Termination does not resurrect time-barred claims

The Court of Appeal had reasoned that termination rendered SubClause 20.1 [Contractor's Claims] inapplicable. The Privy Council rejected that analysis. Termination is ordinarily prospective; it does not undo accrued rights, obligations or consequences that have already arisen. Here, the 28-day periods for notice had long expired before termination. Termination could not revive claims already extinguished by the contract's time-bar.

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'Fairness', waiver and estoppel require timely pleading and real evidence

The Privy Council dealt succinctly with the Court of Appeal's resort to 'fairness'. If a contractor wishes to avoid the contractual consequences of non-compliance by asserting waiver or estoppel, it must plead that in its initial written statements of case and support it with contemporaneous evidence of representation, reliance and detriment at or before commencement of the action in court or arbitration. UBC first raised waiver/estoppel only during submissions in the Court of Appeal. That was too late, and in any event, UBC did not provide evidence that WASA waived non-compliance with the contractual provisions.

The FIDIC engineer cannot waive the contract

Even if UBC had tried to frame waiver around the conduct of the FIDIC engineer, the contract foreclosed that route. SubClause 3.1 [Engineer's Duties and Authority] states the Engineer 'shall have no authority to amend the Contract'. The engineer is neither a party to

the contract nor the employer's general agent; the engineer's role is quasi-independent and administrative. The idea that the engineer can unilaterally dispense with the variation/claims machinery (including the condition-precedent notice regime in SubClause 20.1) is inconsistent with the structure of the contract.

Practical implications

Contractors should treat notice requirements as urgent procedural safeguards, not as administrative paperwork to be dealt with later. If a contractor considers that an instruction or circumstance gives rise to time or money, the contractor must follow the contract by seeking a SubClause 3.5 determination, where appropriate and, if necessary, giving a timely SubClause 20.1 notice. A party should not rely on informal assurances, even from the engineer. SubClause 20.1 exists precisely to 'unlock' stalled issues.

For employers/owners and engineers, the Privy Council's decision is a reminder that the site culture of 'we'll sort it out later' does not supersede the contract. Informal departures from contractual procedures may seem efficient in the moment, but they can magnify disputes, and once those disputes crystallise, the written contract will control the matter.

If waiver or estoppel is to be relied on, it is crucial that it is pleaded early with the evidence assembled. Courts, especially on appeal, will not allow relief on fairness alone where the party has not complied with an agreed upon condition precedent.

Notes

- 1 The Judicial Committee of the Privy Council is a court of final appeal for many Commonwealth countries and is made up of the judges of the United Kingdom Supreme Court.
- 2 FIDIC Conditions of Contract for Plant and Design-Build (Yellow Book, 1st edn, 1999), Clauses 4.11, 13, 3.5, 20.1, and 3.1

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