

**SAFETY FILES
AND ONCE-OFF
HOUSES**

The Conveyancing Committee would like to thank Rory O'Donnell and Breda Sweeney of O'Donnell Sweeney, Solicitors, for the following practice note which has been approved by the committee.

The object of this practice note is to consider who is 'the Client' (if there is one at all) within the meaning of the Health and Safety Regulations where an individual buys a site for a house for himself and arranges to get a building contractor to build a house as a residence for himself or herself. The following definitions are important in considering this.

'Client' means any person engaged in trade, business or other undertaking who commissions or procures the carrying out of a project for the purpose of such trade, business or undertaking. 'Contractor' means a contractor or an employer whose employees undertake or carry out construction work or any person who carries out construction work for a fixed or other sum and who supplies the materials and labour (whether his own labour or that of another) to carry out such work or supplies the labour only. 'Project' means any development which includes or is intended to include construction work.

The definition of construction work is quite long and it is not necessary to set it out in full. It includes construction, alteration, conversion, fitting out, renovation, repair, upkeep and redecoration. In other words, everything you could possibly think of in relation to a building.

It is clear that the definition of contractor includes both a main contractor and a sub-contractor. To illustrate the point best, we would like to give a series of examples:

1. A development company is developing a business park. It engages architects, engineers and so on to prepare drawings and obtain planning permission for its development. It then employs an independent building contractor to construct the building in accordance with the approved drawings. In that case, the development company is the Client who has the responsibility to appoint the Project Supervisor for the design stage and the Project Supervisor for the construction stage. The Project Supervisor for the construction stage in appropriate cases has the obligation to prepare the safety file. In such a case, the independent building contractor is the Contractor.
2. A house-building company buys a site on which to build 100 houses. It retains an architect, an engineer and obtains planning permission. It then proceeds to build houses. Typically, it would have a foreman and a small staff, and most of the work would be done by specialist sub-contractors. In this case, the house-building company is the Client and it is also a Contractor. Each sub-contractor would also be a Contractor.
3. A company buys a site to expand its builders' providers business. It appoints an



architect and engineer to procure planning permission for the building it wants and then puts the building contract out to tender, and in due course enters into a building contract with an independent builder. In that case, the company carrying out the builders' providers business is the Client and the building contractor is the Contractor.

4. An individual or company buys sites, gets planning permission for a house and builds the house. Say, for example, that it buys a two-acre site for the purposes of sale. The individual/company gets an architect/engineer to design a house and obtain planning permission. The individual or company who buys the site is the Client and the company who carries out the building of the house is the Contractor.

5. An individual buys a site upon which to erect a house for his own use as a residence. He gets an architect and engineer to arrange for the preparation of drawings and to obtain planning permission. He puts the job out to tender and an independent building contractor tenders for the job and proceeds to build the house on behalf of the individual.

The question is: who in this scenario is the Client? Clearly, the individual is not the Client. The building contractor is clearly a Contractor within the meaning of the regulations but the question is: is he also the Client? He is clearly a person engaged in trade business or other undertaking who carries out a project for the purposes of such trade, business or undertaking. However, the definition is a person engaged in trade, business or other undertaking who commissions a project for the purposes etc or who procures the carrying out of a project for the purposes etc.

The Oxford Dictionary defines 'commission' as follows:

1. Authority committed or entrusted to any one specially delegated authority to act in some specified capacity, to carry out an investigation or negotiation, perform judicial functions, take chargeable office and so on.
2. The action of committing or giving in charge the entrusting of (authority etc to any one).
3. A charge or matter entrusted to any one to perform: in order to execute objective work.
4. Authority given to acts of agent or factor for another in the context of business or trade; system of trading in which a dealer acts as agent for another, generally receiving a percentage as its remuneration.
5. To furnish with a commission or legal warrant to empower by a commission.
6. To give a commission or order to (a person) for a particular piece of work: chiefly used of the orders given to artists.
7. To send on a mission, despatch.

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It seems clear that the word ‘commission’ means the act of getting someone else to do something. When the expression ‘procures the carrying out’ is examined, it is self-evident that this also means getting someone else to do something.

It seems, therefore, that the use of the word ‘commissions’ or the words ‘procures the carrying out’ excludes the application of the definition to a person *actually carrying out the work* (save in a case such as that outlined in example 2 above, where the person carrying out the work is also the owner of the land). It is arguable, however, in the theoretical event that a contractor bought a site and had sufficient capacity within its own organisation to carry out the construction work (so that no sub-contractor or any other third party whatsoever was necessary) whether the contractor would come within the definition of ‘the Client’.

The distinguishing factor between these two scenarios is the engagement of sub-contractors. In the latter, no-one has been procured or commissioned to carry out a project. It would seem, however, that the engagement of sub-contractors does not of itself bring one within the definition of ‘the Client’. There seems to be a difference between engaging a contractor for the purposes of the ‘Project’ (as in example 1 above) and a main contractor engaging sub-contractors who carry out construction work and/or supply labour and so on. In the latter case, the sub-contractors have not been appointed for the purposes of carrying out the project (which is the broader picture). However, this rationale does not in our opinion taint the conclusion reached in example 2 above. In such a case, the project is being ‘commissioned’.

The obligation to appoint the Safety Supervisors is imposed on the Client. If there is no Client in connection with a particular project, it seems that there would be no person fixed with the obligation to make the appointments of the Safety Supervisors, and consequently no person is obliged to prepare a safety file.

The Regulations also clearly intend that the Client will be the owner of the land on which the project is carried out. We say this because the Safety Supervisor (Construction Stage) is obliged in appropriate cases to prepare a safety file and give it to the Client. The Client is then fixed with the obligation to keep the safety file so that it will be available for persons who need to inspect it. The only way in which the Client can relieve himself or herself from this obligation is under Regulation 3(6) which reads: ‘It shall be sufficient compliance with paragraph (5) by a client who disposes of his or her interest in the property involved in the project if he or she delivers the safety file for that property to the person who acquires such interest in that property and such person shall keep available such safety file in accordance with paragraph (5)’.



It seems, therefore, that it is implicit that the Client must also be the owner of the land (or perhaps entitled to control the ownership thereof).

The building of houses like this is a very common feature in rural Ireland and this matter of interpretation is going to become the focus of much attention. In conclusion, it is clear that in some cases where 'once-off' houses are being built that there is no Client and therefore no obligation on any person to prepare a safety file. In such cases, solicitors dealing with conveying the house should not concern themselves with the matter of a safety file.

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The Law Society published a practice note about the need for certificates of compliance relating to retention permissions in the November 1997 issue of the Gazette. This practice note was intended to apply only to private houses. The committee takes the view that it is reasonable for a solicitor for a purchaser to ask for confirmation by way of letter of opinion by a suitably qualified person that the drawings submitted for the retention application correctly showed the actual structure for which permission to retain was applied for. If there are conditions to the grant of permission to retain, the certifier should go on to deal with these in the usual way.

No certificate of compliance should be required where the permission related only to the retention of a (changed) use, where no conditions were attached.

The committee was asked to consider whether it was reasonable to accept a title in a case where permission to retain an extension to a dwellinghouse was obtained more than ten years ago and no certificate of compliance is available.

The committee takes the view that, in light of the provisions of the 1992 Act, it is reasonable for the solicitor not to require a certificate of compliance in such a case unless there is an evident problem.

When acting for a vendor in such a case, a solicitor preparing a contract should put in a special condition putting the purchaser on notice of the position and providing that no requisition or objection shall be made due to the lack of certificate. In that way, before signing a contract, a purchaser has an opportunity of getting advice in the matter and, if necessary, to get advice from an experienced architect or engineer.

RETENTION PERMISSION – DWELLINGHOUSES

CERTIFICATE OF COMPLIANCE?

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