

The Landscape Institute Pathway to Chartership:
Preparation Course

The Landscape Consultant's Appointment

10th January 2011
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The Landscape Consultant's Appointment

A3: Professional Appointment

- A3A: Professional Engagement
- A3B: Fees and Charges
- A3C: Fee Tendering

A4: Professional Relationships

- A4A: Client Relationships
- A4B: Inter-professional Relationships
- A4C: Role of other Professions

The Landscape Consultant's Appointment

First issued in 1988 when it superseded *"the Conditions of Engagement and Professional Charges"*

Revised May 1998 as a result of Housing Grants, Construction and Regeneration Act 1996 to include adjudication and payment in the update

The Landscape Consultant's Appointment (May 1998) aims:

- to enable the Consultant and Client to achieve clear understanding of services required by Client; and
- to define conditions concerning the provision of these services.

The Landscape Consultant's Appointment

The Landscape Consultant's Appointment (May 1998) comprises of:

1. **The Memorandum of Agreement;**
2. **Appendix 1: Landscape Consultants Appointment;**
 - Part 1: The Landscape Consultants Services;
 - Part 2: Other Services;
 - Part 3: Conditions of Appointment;
3. **Appendix 2: Schedules of Services and Fees.**

- <http://www.landscapeinstitute.org/publications/index.php>
- Download for £5.10

Other Landscape Institute Guidance

- Appointing a Chartered Landscape Architect: Guidelines for Best Value (March 2003)
- Engaging a Landscape Consultant: Guidance for Clients on Fees (September 2002)
- Guide to Procedure for Competitive Fee Tendering
- LI Guidance for Design Competitions
- <http://www.landscapeinstitute.org/publications/index.php>
- <http://www.ribabookshops.com/>

The Landscape Consultant's Appointment: the Memorandum of Agreement

Formal agreement between the Client and the Consultant(s) setting out the following:

- Names of parties;
- The conditions of appointment;
- Schedule of Services and Fees;
- Project description and location;
- Payment provisions; and
- Signatures and witnesses.
- To be read in conjunction with Appendix 1 and 2.

The Landscape Consultant's Appointment: Appendix 1 and 2

APPENDIX 1

- **PART 1: The Landscape Consultant's Services**
 - description of services normally provided,
 - can be grouped if required depending on project
- **PART 2: Other Services**
 - description of services provided by agreement with the Client or may be subject to a separate appointment;
 - list is not exhaustive
 - may make up part of "exclusions" list to the fee.
 - Needs to be very clear.
- **PART 3: Conditions of Appointment**
 - general conditions such as: Duty of Care, Terms of Payment, Appointment of Sub-consultants, Disputes, Arbitration, CDM guidance...

APPENDIX 2

- **Schedules of Services and Fees**
 - summary of fee proposal, referred to in MOA

The LI's Work Stages: Appendix 1, Part 1

- | | |
|--|---------------------------------|
| • A- INCEPTION | PRELIMINARY
SERVICES |
| • B- FEASIBILITY | |
| • C- OUTLINE PROPOSALS | STANDARD
SERVICES |
| • D- SCHEME PROPOSALS | |
| • E- DETAIL PROPOSALS | |
| • F/G- PRODUCTION INFORMATION
AND BILLS OF QUANTITIES | |
| • H- TENDER ACTION | |
| • J- CONTRACT PREPARATION | |
| • K- CONSTRUCTION | |
| • L- COMPLETION | |

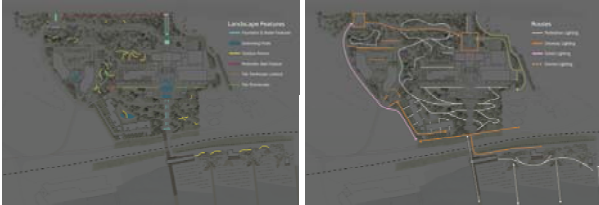
example Stage C: Outline Proposals

Illustrative Master plan (Saraya Sochi Mixed-Use Complex)



example Stage C: Outline Proposals

Diagrams (Saraya Sochi Mixed-Use Complex)



A B **C** D E F G H J K L

example Stage C: Outline Proposals

Illustrative Site Section (Saraya Sochi Mixed-Use Complex)



A B **C** D E F G H J K L

example Stage C: Outline Proposals

Perspective Drawing (Saraya Sochi Mixed-Use Complex)



A B **C** D E F G H J K L

example Stage D: Scheme Proposals

(WGS, Education City, Doha)



A B C **D** E F G H J K L

example Stage D: Scheme Proposals

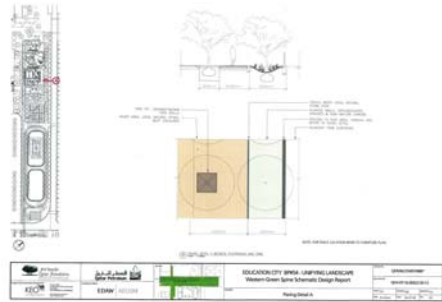
(WGS, Education City, Doha)



A B C **D** E F G H J K L

example Stage D: Scheme Proposals

(WGS, Education City, Doha)



A B C **D** E F G H J K L

example Stage E: Detail Proposals

(WGS, Education City, Doha)



A B C D **E** F G H J K L

example Stage FGH: Production Information/BoQ /Tender

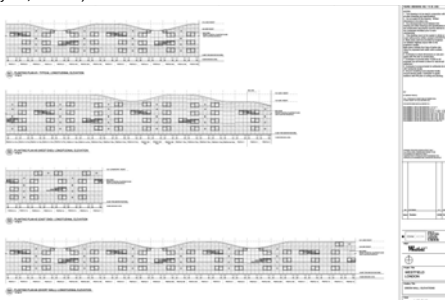
(WGS, Education City, Doha)



A B C D E **F G H** J K L

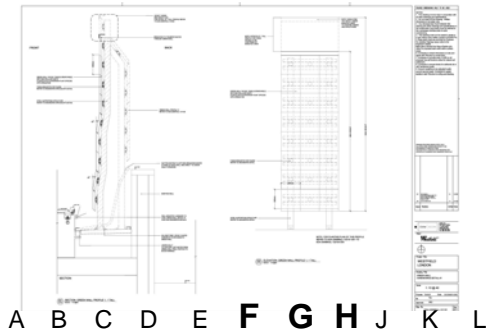
example Stage FGH: Production Information/BoQ /Tender

(Westfield, London)

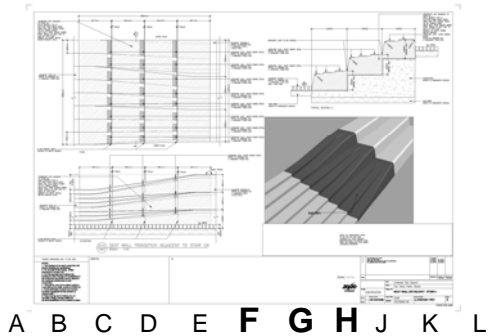


A B C D E **F G H** J K L

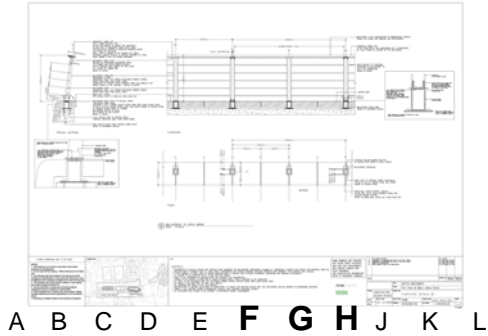
example Stage FGH: Production Information/BoQ/Tender
(Westfield, London)



example Stage FGH: Production Information, BoQ and Tender
(Pier Head, Liverpool)



example Stage FGH: Production Information, BoQ and Tender
(Pier Head, Liverpool)









The LI's Other Services: Appendix 1, Part 2

Note: this list is not exhaustive....

- Development plans, master plans, strategies;
- Environmental/Character Assessments;
- Landscape and Visual Assessments;
- Visit to the Nursery;
- Expert witness – Planning Inquiries;
- Planning Negotiations;
- Art commissions;
- Graphic Design;
- Consultations, public meetings;
- Landscape Management plans; AND.....
- Additional administration of projects: Project Management, extensions, Planning Supervisor.

Why should landscape architects know about *other professionals'* work stages and fees?

- Landscape Architects frequently submit multidisciplinary fee proposals for Clients where design team can include architects, engineers, QS, specialist consultants/ lighting /ecologists etc
- These proposals must respond to the available guidance issued by the relevant bodies
- The form of contract may be determined by the nature of the project
- It will help you manage projects and Client's expectations

Other Work Stages

RIBA Outline Plan of work		LI Work Stages	
A	APPRAISAL	A	INCEPTION
B	DESIGN BRIEF	B	FEASIBILITY
C	CONCEPT		
D	DESIGN DEVELOPMENT	C	OUTLINE PROPOSALS
E	TECHNICAL DESIGN	D	SCHEME PROPOSALS
		E	DETAIL PROPOSALS
F/G	PRODUCTION INFORMATION/ TENDER DOCUMENTATION	F/ G	PRODUCTION INFORMATION/ BILLS OF QUANTITIES
H	TENDER ACTION	H	TENDER ACTION
J	MOBILISATION	J	CONTRACT PREPARATION
K	CONSTRUCTION TO PRACTICAL COMPLETION	K	CONSTRUCTION
L	POST-COMPLETION	L	COMPLETION

Why Professional Fees?

- The landscape architect's education, skills and expertise;
- The expenses and costs of running a practice; and
- The costs and expenses for providing professional services.

On average: 37.5 hours per week
 x 48 weeks= 1,800 working hours per year
 which has a **cost** and a **value**

Methods of charging Fees and Expenses

Charging Fees:

- Time Charge
- Lump Sum
- Percentage
- Retainer
- Other: ceiling figure, unit price fees, incentive fees or betterment fees.

Charging Expenses and Disbursements:

- At cost
- At market rates
- Included within fee
- As a percentage of the fee
- Lump sum

AVOID disbursements: should be a Client cost

- IF undertaken, add a handling surcharge
- Consider cost/risk of non-payment

Time Charge or Lump Sum

Used for work stages **A- INCEPTION**, **B- FEASIBILITY** and **OTHER SERVICES**

The LI recommends that PRELIMINARY stages are charged as **Time charge** or **Lump Sum** since budget and complexity of project may not be fully defined.

Time charge: when you can not clearly define the scope of works, where works can not be determined as part of construction costs, for ad hoc small elements of work.

Time charge: can be converted to lump sum once scope more defined

Calculate Time Charge as 0.15% gross salary per hour or:

$\frac{\text{Person's gross annual payroll cost} \times \text{total practice overhead} \times (100 \times \text{profit}\%) }{\text{Fee earning hours} \times \text{total gross non-fee earning staff annual payroll cost} \times 100}$

Time Charge

ADVANTAGES for the Landscape Architect:

- All time spent on a project is charged at previously agreed rates.
- Rates can be daily or hourly and revised at intervals as stated in your Terms and Conditions. Otherwise ensure rates accommodate changes in salary over the time period.
- Good for cash flow, low level of risk

ADVANTAGES for the Client:

- Only pays for work that is undertaken and once completed

DISADVANTAGES for the Landscape Architect:

- All work needs to be recorded and accountable, and need to keep client informed of progress = lots of paperwork and potentially high level of disputes
- Should agree a ceiling figure with the Client

DISADVANTAGES for the Client:

- Open ended and no certainty of final costs, potentially high level of disputes
- No incentive for the Landscape Architect to work efficiently

Lump Sum

ADVANTAGES for the Landscape Architect:

- Agreed payments at agreed times therefore costs are known and determined.
- For projects under £22,500 in value
- Less vulnerable in a volatile market

ADVANTAGES for the Client:

- Client knows the fee in advance
- Agreed payments at agreed times

DISADVANTAGES for the Landscape Architect:

- If miscalculated the fee>>>tough!
- Can be a risk if something goes wrong, as a justification for fee revision/add-ons may not be justified or recognised.
- Whilst cash flow is regular it may not accord with work undertaken/hours spent

DISADVANTAGES for the Client:

- May agree to a larger fee than the project actually requires.

Lump Sum or Percentage

C- OUTLINE PROPOSALS

D- SCHEME PROPOSALS

E- DETAIL PROPOSALS

F/G- PRODUCTION INFORMATION/ BILLS OF QUANTITIES

H- TENDERACTION

J- CONTRACT/ PROJ. PLAN

K- CONSTRUCTION

L- COMPLETION

- The LI recommends that STANDARD stages are charged as **Lump Sum** or as a **Percentage** of the total budget using the graph which correlates complexity and budget
- Percentage fees can be converted to lump sum when budget or construction is known
- Use time charge as basis to calculate fee breakdown
- Compare to previous like experience/other jobs

Percentage

ADVANTAGES for the Landscape Architect:

- Simple to calculate
- Allows for increases (Client add-ons or increased tender price)
- If construction budget is high, the LA's fee % is high too

ADVANTAGES for the Client:

- Only pays for work that is undertaken

DISADVANTAGES for the Landscape Architect:

- % agreed on the latest agreed budget revision until contract is let, then it is based on contract sum until the final construction cost is established.
- Can result in lower than expected fees due to low tenders or market conditions (current conditions!) and therefore also loss in money/(profit) if incorrectly budgeted.
- Stage payments are bad for cash low

DISADVANTAGES for the Client:

- If % fee is high, then low incentive for the Landscape Architect to work efficiently.

Competitive Fee Tendering

Fee submissions likely to require:

1. Expression of Interest
2. Tender Submission including two envelope submission
3. Interview panel for final selection

ADVANTAGES of competitive tendering:

- more open and competitive market
- gives all a chance
- avoids monopolizing markets

DISADVANTAGES of competitive tendering:

- Smaller firms have lower overhead costs, reflected in lower bids especially if the market is low
- By competing on the basis of money, the quality of the work could be compromised

Fee Proposal

Submissions are likely to include:

- Response to the brief
- Proposed design team
- Relevant project experience/ company and individuals
- Proposed methodology/ initial design ideas if appropriate
- Identify services to be undertaken, and conditions of appointment
- Define the scope of anticipated work stages / outputs/ deliverables including a project programme in response to time frame
- Present fee totals and breakdown as appropriate
- As Appendices:
 - Curriculum vitae of team members
 - Project examples (of relevance to the bid)

The Brief

Key to successful submissions is **UNDERSTANDING** the brief:

What are you being asked to do?

What are the brief's Aims, Objectives and Aspirations.

Submissions must be **CLEAR** and **UNAMBIGUOUS** and **EXACT** :

- **what services you will provide for the fee**
- **what outputs will be delivered for the fee**

Fee Calculation

1. **The job:**

- Project type, location and value.
- Professional services required, standard and additional services.
- Extent of work required, related to LI work stages.
- Type of appointment: as the lead or sole consultant, or as a sub-consultant
- Requirement of other professions: sub-consultants
- (Note: project meetings and consultations: **QUANTIFY** number and attendees)

2. **The Landscape Architect's Organisation:**

- Overhead costs: premises, heating, electricity etc
- Salary costs: pay, pensions etc
- Earning capacity/profit margin
- Finance costs: loans/interest payments etc
- Insurances: PII, building, contents etc

Day rates

Overhead costs + salary cost/person

Number of hours worked = profit

=

Hourly rate/member of staff

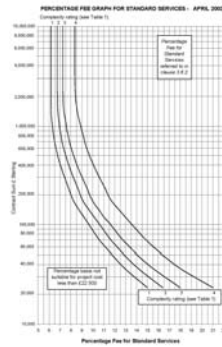
ie. Profits are built into day rates

LI Guidance on Fees and Charges: Percentage

TABLE 1
Classification of Landscape Work according to complexity

WORK TYPE	COMPLEXITY RATING	1	2	3	4
Planning Design and Implementation Services for:					
a) Local Authorities and Public Authorities					
b) Private and Public					
c) Public and Private					
d) Public and Private					
e) Public and Private					
f) Public and Private					
g) Public and Private					
h) Public and Private					
i) Public and Private					
j) Public and Private					
k) Public and Private					
l) Public and Private					
m) Public and Private					
n) Public and Private					
o) Public and Private					
p) Public and Private					
q) Public and Private					
r) Public and Private					
s) Public and Private					
t) Public and Private					
u) Public and Private					
v) Public and Private					
w) Public and Private					
x) Public and Private					
y) Public and Private					
z) Public and Private					

1. Work in Column 1 is classified as normal, whereas columns 2, 3 and 4 deal with increasing complexity. These classifications are shown in the graph.
2. Where the complexity work is not shown above but falls within or between complexity ratings, the work and complexity component may derive its complexity as appropriate complexity rating and graph curve.
3. Environmental Assessment, Landscape Appraisal, Design, Studies, and Development, Environmental and other Environmental Strategy Planning Studies and normally represented on a lump sum basis.



Percentage: Converted to Lump Sum & paid at the end of each stage

A B C D E F G H J K L

15% 15% 15%

F G H J K L

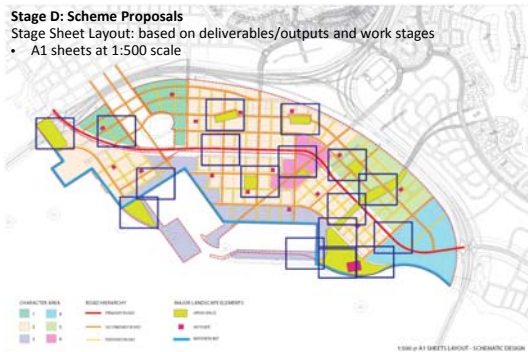
20% 5%

J K L

25% 5%

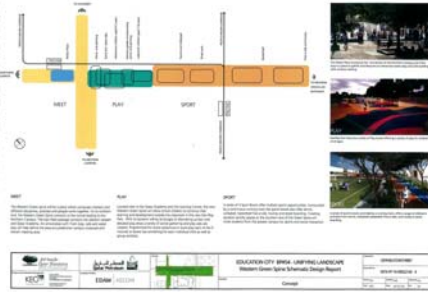
LI Guidance on Fees and Charges: Percentage and Lump Sum

Stage D: Scheme Proposals
Stage Sheet Layout: based on deliverables/outputs and work stages
• A1 sheets at 1:500 scale



example Stage D: Scheme Proposals

WGS, Education City, Doha



A B C **D** E F G H J K L

LI Guidance on Fees and Charges Percentage and Lump Sum

Stage E: Detail Proposals

Stage Sheet Layout: based on deliverables/outputs and work stages

- A1 sheets at 1:250 scale



example Stage E: Detail Proposals

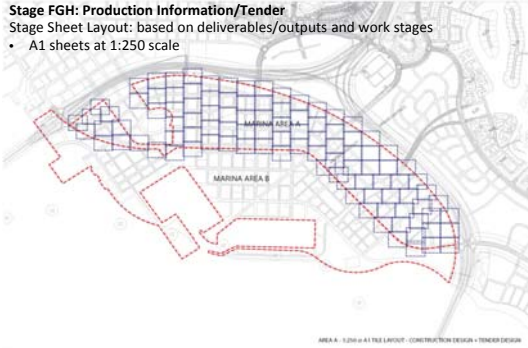
WGS, Education City, Doha



A B C D **E** F G H J K L

LI Guidance on Fees and Charges Percentage and Lump Sum

Stage FGH: Production Information/Tender
Stage Sheet Layout: based on deliverables/outputs and work stages
• A1 sheets at 1:250 scale

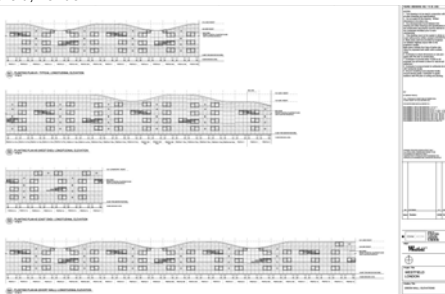


example Stage FGH: Production Information, BoQ and Tender
WGS, Education City, Doha



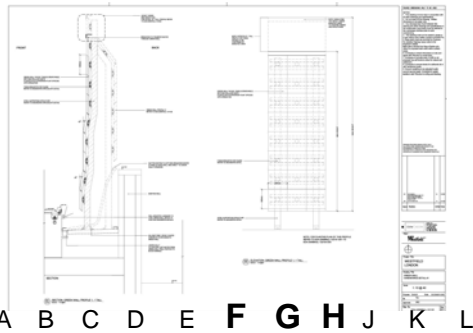
A B C D E **F** **G** H J K L

example Stage FGH: Production Information, BoQ and Tender
Westfield, London



A B C D E **F** **G** H J K L

example Stage FGH: Production Information, BoQ and Tender
Westfield, London



Charging Fees

Payment of Fees:

- At regular installments, agreed with the Client (preferably monthly)- allows payments to be budgeted over a period
- At completion of work stages. %fee/work stage as per LI guidance (table 2)
- Payment schedule recorded in MOA
- Seek all relevant guidance for debt recovery, interest charges
- Prevent disputes/ seek guidance for dealing with disputes

Value Added Tax: VAT

A tax charged on goods and services when a VAT registered company sells services or goods to a business/non-business customer

A VAT registered company can generally reclaim VAT paid on bought goods/services

3 standard rates of VAT:

- 17.5% Standard rate increased to 20% on 4/01/2011
- 5% Reduced rate
- 0% Zero-rated
- Some goods/services are exempt
- Minimum turnover for compulsory registration: £70,000

Always exclude it, add as a separate cost on a fee bid or invoice

- <http://www.hmrc.gov.uk/vat/start/introduction.htm#8>

Appointing Sub-consultants

- The selection of sub-consultants, may need to be tendered if the project is large or work is of a specialist nature. Use LI guidance.
- If the LA appoints the sub-consultant directly, this can avoid tendering which is good for the Client. However the risk is placed with the LA (e.g. responsibility to check sub-consultant's PII annually)
- Letter of Appointment needs to be clearly set out:
 - Project description
 - Project work stages to be undertaken
 - Schedule of fees and project programme
 - Services and outputs/deliverables to be identified

Refer to LI's Professional Practice Note 03/00: Sub-consultant Appointments: Guidelines and Checklist of Heads of Agreement.

Appointing Sub-consultants

- The obligations of the Parties:
 - Identify roles of main consultant and sub-consultant
 - Define programme, outputs and deliverables including required meeting attendance
 - Clarify any relevant copyright requirements
- Liabilities and Insurances:
 - PII and any other insurances required by the project.
 - Health and Safety policies etc
- Management:
 - Quality management system, or Client may want to implement specific project system
 - Establish methods of communication and reporting
 - Agreed format and quantity of outputs and deliverables
 - Agreed process of review and revision

Appointing Sub-consultants

- CDM regulations:
 - Ensure the sub-consultant is following and aware of CDM obligations
 - Ensure the sub-consultant is following and aware of Health and Safety
- Dispute Resolution:
 - Establish agreed method for preventing/dealing with any disputes
- Fees and Expenses:
 - Confirm fees, if relevant how relate to overall fee/basis of calculation
 - Determine method for expenses
 - Establish rates for any additional work
 - Confirm payment schedules (normally one month after main consultant paid/invoicing schedule)

Collateral Warranties

Collateral Warranties:

- A **collateral warranty** is a contract which gives a third party rights collateral to rights in an existing contract entered into by two separate parties.
- Sometimes sought by Clients, advised by solicitors, to ensure the designer is legally held responsible not only to the Client but to the funder (if client raising funds from a 3rd party) or purchaser or tenant.
- E.g. an architect is appointed to design a block of flats for a developer. That developer intends to sell the block of flats to a Housing Association. Due to Privity of Contract the architect would normally only be contractually liable to the client should defects arise. The collateral warranty establishes a contractual relationship between the Housing association and the architect against defect.
- Always seek guidance and assistance from the PII insurers before proceeding or signing a collateral warranty

- <http://www.thkip.co.uk/media/bulletins-new/Collateral%20Warranties%20HK.pdf>
- <http://www.collyerbristow.com/Files/server.aspx?oiD=1337&iD=4>
- <http://www.cic.org.uk/services/publications/CIC.shtml#Collateralwarranties>

Novation

A legal instrument that formalizes an arrangement to substitute one party for another party in a contract;

OR

The substitution of the original contract with a new contract.

- The *novated* party then takes on the obligations and entitlements of the party he or she has replaced.
- The obligations of the withdrawing party are discharged
- Novated design and construct (ND&C) contract is an increasingly preferred option among developers of large commercial and residential projects, especially where they have in-house construction branches
- As a consequence of novation, the design team's obligation to the client gets transferred to the contractor who becomes responsible for carrying out the detailed design work at a later stage of project life cycle

- <http://www.contractstore.com/novation-agreement-construction>
- http://www.infolaw.co.uk/pod/ip-construction_agreements.htm

Copyright

Copyright Designs and Patents Act 1988

- Also: the Duration of Copyright and Rights in Performance Regulations 1995
- Copyright Rights in Databases Regulations 1997
- Copyright European Directive (2001/29) 2003

Under Literary, dramatic, musical, artistic (including architecture/landscape architecture) Copyright:

- Work must be ORIGINAL
- In material form:
 - Graphic work: painting, drawing, diagram, map, chart, engraving, etching, lithograph, woodcut
 - Photographs (not part of a moving film), sculpture, collage, works of architecture (buildings and models for buildings) and artistic craftsmanship (jewelry etc)
- Protection is valid for 70 years (at end of year) of death of the author
- Protection includes copying whole/parts of work, or issuing works to the public
- Ownership with the LA unless commissioned to carry out work, in which case transfers to the CLIENT: upon payment they can take possession. LA can still use elements of work in future works as long as original overall design not replicated. (use repeat details)
- Note: employees do not own copyright but freelance staff may if not contracted.

Client Relationships

Clients may come from:

- The public sector: at national, regional or municipal/local level.
- The private sector
- Corporate clients
- **PFI: The private finance initiative:** a way of creating "public private partnerships" (PPPs) by funding public infrastructure projects with private capital.

General Methods of Engagement:

- By direct appointment
- By negotiation
- By design competition
- Two envelope system
- Competitive tendering
- Also by reputation, approved lists, feasibility work, adverts, in-house clients...

Client Relationships

BEFORE accepting/undertaking a commission, consider:

1. Competence: relevant experience/skills
2. Commitments: time and staff/skills
3. Finance: can the organisation carry the job
4. The Client: integrity and standing

Acceptance and Confirmation of Appointment:

- Verbal (Scotland only)
- Under Seal (not valid in Scotland): not very common, large sums, formal document, signed and witnessed and sealed
- Exchange of Letters: written formal acceptance to Client setting out Terms of Appointment and requiring formal recognition to proceed
- Memorandum of Agreement: U's recommended approach, using a Standard Form of Agreement: the Landscape Consultant's Agreement including MOA

Acceptance/confirmation of Appointment

Note: Required by the Code of Conduct to agree to Terms and Conditions in writing with the Client .

Ensure you cover the following:

1. Other landscape consultants: Code of Conduct clause 4: obligation to inform (in writing) other LA involved in the project, no other action required
2. Project description and location
3. Scope of Services
4. Additional Services
5. Conditions of Appointment
6. Fees and Expenses
7. Other consultants
8. Site staff if required
9. Arbitration
10. Other points:
 1. Programme of works
 2. Statutory obligations
 3. Decision making procedures and protocol

Client Relationships: Legal Implications

Once an agreed acceptance and confirmation: contractual relationship has commenced. Reinforced by the Code of Conduct and assurance of professional competence.

If the contract is breached:

- | | | |
|----|---|---|
| a) | CLIENT can sue the Landscape Architect for: | -professional negligence (error and omission)
-tortuous negligence: breach of duty of care |
| b) | LANDSCAPE ARCHITECT can sue the Client for: | -breach of contract
-unpaid fees |
| c) | CONTRACTOR can sue the LA for: | -common law faults/laws of tort
-slander |

Other Client Relationships

Design and Build

Term contracts

Concept of Agency: is an area of commercial law dealing with a contractual or quasi-contractual, or non-contractual set of relationships when an agent is authorized to act on behalf of another (called the Principal) to create a legal relationship with a Third Party.

i.e. the principal authorizes the agent to work under his control and on his behalf. The agent is, thus, required to negotiate on behalf of the principal or bring him and third parties into contractual relationship. This branch of law separates and regulates the relationships between:

Inter-professional Relationships

- Multi-disciplinary teams
- Methods of working/Terms of Engagement, seek relevant guidance
- Implications of sub-consultancy
- Clarity of roles and responsibilities: relationships should be established
 - Design team leader
 - Communications protocols
 - Management systems etc...
- Deal respectfully with other professions

Role of other Professions

- Understanding their skills
- Understanding when and where another discipline is required
- Finding and engaging other professions
- Frequent co-professionals include architects, engineers, quantity surveyors (prelims, tender, BoQs, cost planning etc), clerk of works (work in accordance with drawings/spec, keep records, answerable to LA but employed by Client), Planning supervisor...
- Useful links:
 - <http://www.rics.org/>
 - http://www.icwgb.org/page_viewer.asp?page=Home&pid=1

Examples

Some examples and exercises are included as handouts:

Example 1-1_091124_Stage 1 Feasibility Proposal

Example 1-2_091124_The School - Stage 1 fee

Example 2-1_project Brief high st 2012 final design tender document22dec

Example 2-2_%fee BREAKDOWN

Example 3-1_PQQ TNSC

Example 3-2_fee BREAKDOWN

Thank you!
