

# CONSTRUCTION INSIGHT

## The Latest News in Construction Contracts

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Quigg Golden has brought the scattered world of procurement in a single resource.

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## PROCURING THE FUTURE

This edition is packed with articles which look at the highs and lows of modern construction.

Edward Quigg looks at public sector procurement and its recent progression. For many this has been a lifeline of late. Quigg Golden has recently launched its fantastic new procurement website. The site is a one stop shop for procurement – setting out and sourcing a vast array of procurement legislation, case law and guides. The site forum is a useful tool for discussing the issues you have raised in respect of procurement. On the whole it is well worth a look!

Jarlath Kearney writes about the economic downturn and where the construction industry is headed over the next twelve months. James Golden

updates us in respect of recent case law.

Christina Kerr, Quigg Golden's marketing co-ordinator, features in our personal profile section, revealing what it is like to be the face behind the firm's hectic marketing cell.

Finally we would like to extend our congratulations to Mr Lukumon Oyedele for securing RICS accreditation for his Construction and Project Management MSc at Queens University Belfast. Being a lecturer on this course, I am glad to see the extensive list of benefits and accreditations that it extends to the students.

*Caroline Eccles*

Editor



## CASE LAW REVIEW

At last we have a reported decision on the implications of the Construction Contracts Order and enforcement of adjudication in the Northern Irish Courts.

On 27 January 2009, Mr Justice McLaughlin handed down a landmark decision in *DG Williams Limited v NI Prison Service* [2009] NIQB 8.



This is the first reported decision from the High Court in Belfast in respect of adjudication enforcement and removes

any uncertainty about the attitude of the Courts in Northern Ireland to adjudication under the Order.

DG Williams Limited called in an adjudicator to deal with some 54 invoices issued by them in 2007 and 2008 disputed by the Employer, the NIPS. Raymond Nash was appointed adjudicator and decided that NIPS owed DG Williams £261,898.76 including VAT, his own costs and interest. NIPS refused to pay claiming that:

1. there was no contract in writing;
2. they could set off money against the decision; and/or
3. they should not be asked to pay until the matter had been decided in Arbitration.

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## QUIGG GOLDEN LAUNCHES PROCUREMENT PORTAL



Edward Quigg  
Director

Whether we are advising public sector clients on developing appropriate procurement strategy or assisting contractors in winning public sector work, one question our clients keep asking us is, where they can find all the appropriate documents. There is a great deal of information available on the internet in relation to procurement but it is sometimes difficult to find and it is all not in one place.

We have therefore developed an information portal which can be found at [www.QGprocurement.com](http://www.QGprocurement.com). From there, you will find copies of or links to all of the relevant EU Directives, UK and ROI domestic legislation, relevant judgements of the ECJ and domestic courts, central government and Commission guidance notes etc.

I have also drafted a short basic guide to obligations imposed on employers when procuring work either through the Common Law or through the domestic legislation implementing the EU Directives.

Lastly, we thought about having a FAQ section but decided instead to make the website more interactive and therefore have developed a forum. The idea of the forum is that anyone can post a question and then all the other members of the forum can post answers or comments.

### *Where can we find all the appropriate documents?*

The website is in its early stages and we look forward to further suggestions. If you have a suggestion or comment, please let us know and we will amend it to try to make the website a single source of information for all your procurement questions.

Please visit [www.QGprocurement.com](http://www.QGprocurement.com) and please do log on to the forum and make use of it. The forum will only work if people use it.

Edward Quigg

### QUIGG GOLDEN PROCUREMENT PORTAL

Quigg Golden have brought together procurement primary and secondary sources into a user friendly 'One Stop Shop'. Visit our website at:

[www.QGprocurement.com](http://www.QGprocurement.com)

In particular, we welcome comments and questions on our procurement forum.

### Edward Quigg will be speaking at the forthcoming Whitepaper Conference on Procurement Rules

at:  
LONDON 24 June 2009  
MANCHESTER 10 July 2009

Quigg Golden has negotiated a 50% discount on attendance for our clients and colleagues at the conferences,  
To avail please email:

[Christina@QuiggGolden.com](mailto:Christina@QuiggGolden.com)

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Quigg Golden Limited's approved Training Programmes and Trainers have been placed on the FAS/EI National Register of Trainers. The Registration Number of Quigg Golden Limited is 901089

Quigg Golden training is also approved by the Construction Industry Training Board (UK) for grant aid purposes.



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## GETTING TO KNOW US...

### In this edition Construction Insight's Personal Profile Section features Christina Kerr, Marketing Co-ordinator of Quigg Golden.

**CI: How long have you been working for Quigg Golden and what is your role?**

I began working for Quigg Golden at the tender age of 19. By that stage, I was stepping out of my full time Graphic Design course into a new world of employment. I started as a junior in this very busy office. Seven years later, with a wealth of administrative knowledge under my belt, I climbed the ladder to Marketing Co-ordinator.

Today, my primary function in the office is managing all marketing duties with Caroline Eccles, including advertising and the organisation of seasonal seminars and social events held by Quigg Golden, whilst holding my general duties as a team secretary.

Personally, I have met and enjoy meeting potential clients as well as learning about what their roles are in the construction industry over a glass of wine or two.

**CI: What challenges do you face as Marketing Co-ordinator?**

The last two years for me saw a dramatic

change of pace for Quigg Golden. Since the company has progressed and continued to develop in the Capitals London, Dublin and Belfast, where there has been a considerable demand to market this highly professional service.

I think the biggest challenge for me has been in recent months with the company's leap to Saudi Arabia, as demand for work there has soared adding an extra ball or two to my juggling of duties. In particular, the demand to translate from English to Arabic to accommodate our Arabian counterparts.

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*“A professional service with a constructive approach.”*

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**CI: Since you are responsible for marketing can you sell Quigg Golden to us in a sentence?**

A professional service with a constructive approach. (Pun intended)



Christina Kerr  
Marketing Co-ordinator

**CI: Where do you see yourself in five years time?**

In the near future I would like to have a firm grasp of experience in this position and develop a few ideas of my own. I also would be interested in designing web pages which is of growing importance in the marketing world.

## Quigg Golden in the Middle East

Quigg Golden continues to increase its practice in the Middle East, having undertaken several successful projects in the region. UK and Irish companies operating in the area increasingly see the need for skilled dispute resolution professionals to assist in the preparation of claims.

An unfortunate side-effect of the recession is that Employers and Main Contractors are demanding more detailed and accurate claims than was traditionally the case.

Companies are realising that outsourcing the preparation and handling of claims is freeing up their site staff and increasing their chances of recovery.

One advantage that Quigg Golden brings to bear is its ability to appreciate the cultural and commercial environment in the region. Quigg Golden clients are concerned about under-recovery on a job, but also properly concerned with maintaining the strong

relationships they have built up in the region. A strong cultural sensitivity combined with the ability to negotiate without becoming adversarial have proved important in Quigg Golden's case management in the Middle East. Quigg Golden offers indigenous and ex-pat companies all the services which are available to our domestic clients combined with a strong cultural awareness and sound knowledge of international contracts.

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Robert Rooney

[www.QuiggGolden.com](http://www.QuiggGolden.com)

# DOOMED! WE'RE ALL DOOMED!!

A number of the commentators on the current economic downturn have adopted Private Fraser's outlook on life, informing us of the most pessimistic and bleak future in the construction industry.

The seriousness of the recession cannot be understated, however with careful planning and good management, good construction companies can ride these difficult times whilst the firms that have built their foundations on sand fall by the wayside.

So that the Employer, Main Contractor or Subcontractors are best protected at a time when the industry is rife with uncertainty and nervousness, not only should the parties ensure that they have fully executed an appropriate contract but that this contract reflects all the duties and obligations of the parties thereto. Should difficulties arise during the course of the works the contract shall provide for proper payment mechanisms and recourse to dispute resolution. In this way, they can avoid the situation where one party is left with a significant outlay that cannot be recovered due to the breaches of another party.

It is acknowledged throughout all sectors of industry that demand has fallen sharply over the last twelve months. In construction this is being reflected in major falls in tender levels. Although affected by increases in costs of raw materials, tenders are much more influenced by supply and demand forces. As the market shrinks contractors and sub-contractors have priced tenders aggressively so as to maintain a level of output and secure works for key personnel.

For the private client the fall in tender prices represents very good value, so long as they can have funds in place without onerous banking restrictions.

At a Government level it is recognised that stimulating the construction sector and safeguarding jobs can promote growth in other industries. It will however take time to see these stimulating packages materialise on site and the question remains as to whether or not governments can afford injecting the resources required to see the industry through the current



Jarlath Kearney  
Associate Director

downturn. With tender prices and interest rates at such a low level the Government will actually be achieving real value for money.

In the meantime the market will remain quite volatile for at least the next twelve months before any measurement of growth can be confirmed. If your company is fortunate enough to successfully tender for works, now more than ever, ensure the contract is executed and adhered to.

Jarlath Kearney

# CASE LAW REVIEW

...Continued from Page 1

The Judge comprehensively rejected all of the contentions from the NIPS and decided that the full Adjudicator's Decision was to be paid by them. In doing so he accepted and adopted the approach taken by the High Court in England and Wales regarding adjudication and so has brought Northern Irish law into sync with the interpretation applied by the Courts in England. Until then there had remained a small but nagging doubt that the Courts here would not take the robust approach adopted by the Technology and Construction Court in England and the Court of Session in Scotland regarding implementation of adjudicators' decisions. It is now absolutely clear that they will.

The Judgment underlines the importance of prompt and comprehensive acceptance of adjudicators' decisions properly reached and a futility of attempting to avoid payment on technical or spurious grounds. An extremely important point is to promptly and properly issue the appropriate notice rooted in the contract if monies are to be off set.



James Golden



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