

Practical Completion - What does it mean and why is it important?



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A common question that I am asked is:

“What does “Practical Completion” actually mean?”

Unfortunately, however there is no standard definition of practical completion.

Practical completion is sometimes described as being the point at which a building is complete, except for minor defects that can be rectified with minimal interference or disturbance to the occupier.

Alternatively, practical completion can be used to refer to the point at which an architect or contract administrator confirms that the contractor has achieved practical completion under the contract, usually by giving a certificate to this effect. It is worth noting that most standard form contracts do not actually define practical completion, instead leaving this to the professional judgment of the architect or contract administrator.

Why is practical completion important?

Well, practical completion usually signifies a turning point in a project, in that it should trigger the return of any retention monies. It also usually brings about final account stage. Additionally, and possibly of more significance, practical completion is often the starting point for the

calculation of any liquid ascertained damages (LADs) which may be due from the contractor to the employer. It is for these reasons, amongst others, that contractors are generally keen for practical completion to be agreed as having been achieved and for this to happen sooner rather than later.

Conversely, employers are reluctant to take possession of a building which they consider defective, and may resist practical completion in order to put pressure on a contractor by withholding sums that would otherwise be due.

These potential consequences arising as a result of practical completion, coupled with the lack of an agreed definition within standard form contracts, means that the question of whether or not practical completion has been achieved is a common cause of dispute within the industry.

It is also an issue which, somewhat surprisingly, does not come before the higher courts all that often, with the current authoritative cases being spread out between 1969 and the present day. This means that trying to establish the court's current position has been somewhat difficult.

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Mears Ltd v Costplan Services South East & Ors - 2019

Thankfully, however, earlier this year, the issue of practical completion came before the Court of Appeal for the first time in 50 years and, in its judgment, the court set out guidance as to its current position regarding practical completion.

The case in question was *Mears Ltd v Costplan Services South East & Ors* [2019] EWCA Civ 502, in which Lord Justice Coulson reviewed the existing case law and authorities with regards to practical completion and summarised the current position to be as follows:

1. Practical completion is easier to recognise than define, there are no hard and fast rules.
2. The existence of latent defects cannot prevent practical completion. If the defect is latent, nobody knows about it and it cannot therefore prevent the certifier from concluding that practical completion has been achieved.
3. In relation to patent defects, there is no difference between an item of work which has to be completed (i.e. an outstanding item) and an item of defective work which requires to be remedied. Snagging lists can and will usually identify both types of item without distinction.

4. A practical approach has been adopted by the courts in which practical completion can be summarised as a state of affairs in which the works have been completed free from patent defects, other than ones to be ignored as trifling.
5. Whether or not a defect is trifling is a matter of fact and degree, to be measured against the “*purpose of allowing the employers to take possession of the works and to use them as intended*”. However, this does not mean that if a house can be inhabited, or a hotel opened for business, that regardless of the nature or extent of any incomplete works, or defects that the works must be regarded as having achieved practical completion.
6. The fact that a defect may be irremediable, does not itself preclude the achievement of practical completion.

When has practical completion been achieved?

As with all grey areas of the law, disputes concerning practical completion are likely to remain commonplace. No doubt the concept of practical completion will continue to evolve and change naturally over time. However, the court’s judgment in *Mears* now offers some clear guidance to the industry with regards to the courts approach when it is asked to determine whether or not practical completion has been achieved.

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