Pre-Dispute Readiness: Protecting Entitlement and Building the Project Record **Jointly written by Avan Fan & YK Lam**

Pre-dispute readiness is not about manufacturing a future claim. It is about administering the contract properly, resolving issues while they remain manageable and preserving an objective record of what occurred.

Nobody signs a construction contract expecting to end up before a court or tribunal. Yet by the time a dispute crystallises, the parties' positions may already have been materially affected by what they notified, recorded and administered while the relevant events were unfolding. In practice, recurring weaknesses include notices that were not issued, were issued late or did not comply with the contract, and records that are generic, fragmented or silent on the matters later put in issue.

Effective notices and records serve three connected purposes. They help the project team identify and manage issues at the time; they preserve contractual rights and support timely contractual responses; and, where a dispute cannot be avoided, they provide reliable evidence. The same disciplines apply to employers, contractors, subcontractors and consultants. Each party should be able to demonstrate its instructions, decisions, progress, costs, payments and responses to material events.

Four disciplines should therefore be established from the outset. They are sound project management practices in their own right and provide a reliable foundation for any subsequently appointed quantum or delay expert.

1. Comply with the contractual notice regime

In ***Obrascon Huarte Lain SA v Attorney General for Gibraltar*** **[2014] EWHC 1028 (TCC)**, the parties accepted that the notice requirement in Sub-Clause 20.1 of the FIDIC Yellow Book operated as a condition precedent. The case does not establish a universal rule that every claim is lost whenever a notice provision is not followed: the effect depends on the wording of the contract, the governing law and the facts. The practical point is nevertheless clear. Where timely notice is a condition precedent, non-compliance may bar an otherwise valid claim.

Every event that may affect time, cost, quality, scope or contractual rights should trigger an immediate check of the contract. The team should identify what must be notified, by whom, to whom, in what form and within what period. It should also identify any continuing requirements, such as updates, particulars, supporting records or separate notices under related clauses.

Depending on the contract and project procedures, a well-maintained notice register should normally record:

- the event, instruction or circumstance giving rise to the notice;
- the relevant contractual clause and deadline;
- the person responsible for drafting, approving and issuing it;
- the method and date of service, together with proof of receipt;
- any required follow-up notices, particulars or substantiation; and
- the response received and any resulting action.

The register should be maintained in real time and reviewed at progress and commercial meetings. It is a simple control, but it can help preserve entitlement, support timely follow-up and provide an auditable record of contractual compliance. After twelve (12) years, the Privy Council in ***Uniform Building Contractors Ltd v Water and Sewerage Authority of Trinidad and Tobago [2026] UKPC 2*** reinforced Sub-Clause 20.1 of the FIDIC Yellow Book as being in "classic condition precedent form" and applied it strictly by rejecting the argument that the Engineer's actual knowledge of the disputed work could substitute for the contractor's notice.

2. Create accurate, specific contemporaneous records

The quality of a project record is not measured by volume. A large document repository may still provide little assistance if its contents cannot be connected to a particular event, activity, location, resource or period. Useful records are created routinely, at or near the relevant time, and are sufficiently specific to explain what happened and what operational consequence followed.

Depending on the project and the issue, relevant records may include:

- daily progress reports, site diaries, photographs and marked-up drawings;
- records of labour, plant, materials, idle resources and productivity;
- cost ledgers, timesheets, invoices, payment records and resource-allocation sheets;
- programmes, updates, progress measurements, narratives and change logs;
- instructions, requests for information, inspection records, meeting minutes and correspondence; and
- document-control data for email, messaging platforms and common data environments.

Records should identify the date, location, activity, event and affected resources. They should be consistent across the programme, cost, site and correspondence systems, subject to an identified review or approval process, retained with proper version control and capable of efficient retrieval and cross-reference.

The decision in ***Van Oord UK Ltd v Allseas UK Ltd [2015] EWHC 3074 (TCC)*** illustrates how contemporaneous records may later be used to test the credibility of a claim. The absence of references to alleged standing time and disruption in detailed daily reports materially weakened the later claim. The lesson is not that site teams should write claims into their diaries. It is that daily records should neutrally describe the event, affected resources, location, activity, duration and actual operational consequence.

Similarly, ***Attorney General for the Falkland Islands v Gordon Forbes Construction (Falklands) Ltd [2003] BLR 280*** confirms that witness evidence prepared after the event does not itself become a contemporaneous record and will not ordinarily cure the absence of records that the contract required to be maintained. Later evidence may explain an existing record, but it cannot recreate one that was never made. Record-keeping systems should therefore be established at project commencement and aligned with the contract's own requirements.

3. Integrate cost, programme and site information

Cost, programme and site information should not be maintained in isolation. The commercial records should identify where and when cost was incurred; the programme should show the activities and sequence affected; and the site records should explain what was actually occurring. The objective is a traceable chain from the relevant event to its effect on progress, resources and cost.

Practical controls include:

- a common coding structure across cost, programme and change records;
- reconciliation of reported progress with site records and programme updates;
- preservation of baseline, update and recovery programme versions;
- documented changes to logic, sequencing, calendars and progress status;
- resource and cost records that can be traced to activities, locations and periods; and
- regular review of inconsistencies before they become embedded in the project record.

In ***White Constructions Pty Ltd v PBS Holdings Pty Ltd [2019] NSWSC 1166***, the court declined to treat either of two competing delay models as determinative. The fact that a methodology appeared in the Society of Construction Law Delay and Disruption Protocol did not give it special evidential status. Causation still required close examination of the contemporaneous project evidence, including the site records showing what was occurring and what was affecting progress.

The same principle applies to quantum evidence. ***Santos v Fluor [2025] QSC 184*** illustrates the importance of matching an expert's discipline and experience to the issues in dispute. A quantity surveyor may be particularly well placed to address measurement, valuation and construction-cost issues, while an accountant may be better suited to accounting, financing or business-loss issues. Whatever the discipline, the analysis must be transparent, traceable and supported by reliable underlying records.

Methodology is a tool, not a substitute for evidence. An analysis should be selected because it is appropriate to the contractual question, the facts and the records available—not simply because it carries a recognised label.

4. Assign clear responsibility for notices and records

Pre-dispute readiness is a project-wide responsibility. It does not depend on a quantity surveyor, planner or claims professional carrying the entire burden, and responsibility should not be allowed to fall into the gaps between disciplines.

The contract should determine who is authorised to issue notices and other formal communications. The quantity surveyor or commercial team may identify, draft, track and substantiate notices, while maintaining cost, valuation and change records against a consistent coding structure. The planner should establish progress-data requirements, manage the programme development and updating process, document changes to logic and sequencing, preserve programme versions and reconcile reported progress with the underlying site evidence. Site management should produce accurate primary records of labour, plant, activities, conditions and events. Document control should ensure that current and superseded versions, relevant metadata, correspondence and transmittals can be retrieved.

These responsibilities should be recorded in a project protocol or responsibility matrix and reviewed when personnel, systems or contractual arrangements change. The aim is not to build a partisan case for an expert to inherit. It is to preserve objective evidence from which an independent expert can form an independent opinion.

A practical readiness check

At regular project reviews, the team should be able to answer four questions:

- Have all material events been checked against the applicable notice requirements?
- Do the records identify what happened, where, when, to which activities and with what effect?
- Can the cost, programme and site information be reconciled to a common factual account?
- Is responsibility for creating, reviewing, issuing and preserving each record clear?

Conclusion

Effective pre-dispute readiness strengthens project administration while issues remain capable of being managed and preserves an objective account of what occurred. Clear responsibilities, compliant notices, integrated cost and programme information and disciplined document control improve project decision-making and provide a reliable foundation if a dispute later requires expert analysis or formal determination. Sound analysis remains essential, but it cannot compensate for an unreliable factual foundation.