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## NEWS

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### Partnership Expands

Since our last edition of SP Focus, the partnership has grown with the addition of **Annie Moy**, **Sally Stock** and **Denise Stephenson**. Both Annie and Sally are in our projects team, specialising in large scale procurement work for local authorities, including Building Schools for the Future and waste outsourcing. Denise specialises in Town and Country Planning work for local authorities.



Annie Moy



Denise Stephenson



Sally Stock

### Panel Success

We are particularly delighted to have been appointed onto two major new panels for local authorities. Four London Borough Councils and a West London Waste Authority have joined forces to create the **London Boroughs Legal Alliance**. We applied for positions on the panel in respect of 20 areas of work and were successful in all cases. Similarly, we applied for positions on a panel serving **Surrey County Council and all the district councils in its area**, and were successful in all 17 areas for which we applied. This adds to the similar panel arrangement that we have with four east London councils and consolidates our position as leading providers of legal services to the public sector in the south east.

### Planning Gain

The reputation of Sharpe Pritchard's **planning team** is rapidly growing, making giant strides up Planning Magazine's quality rankings. The team was the highest climber in the chart and sits much higher than it does in the rankings by size. The team also broke into the rankings in the Legal 500 this year, with planning partner **Brian Hurwitz** being added to the list of recommended individuals. The firm also was successful in maintaining its position as **Lambeth Borough Council's** planning advisers following the retendering of the work at the end of its last term.

### Academic Work

Sharpe Pritchard have been appointed by **The London Borough of Richmond upon Thames** to advise on their academies programme, which will see three existing secondary schools being transformed into academies, with brand new buildings and state-of-the-art ICT.

Sharpe Pritchard are also one of only 17 firms who were appointed by **Partnerships for Schools** (PfS) in July to the **BSF Legal Advisory Services Framework** to provide

professional support for local authorities delivering their BSF programmes. We are already acting for Cambridgeshire County Council and Suffolk County Council in their BSF schemes and with PFS now also taking on responsibility for the delivery of the Academies and Primary Capital Programmes, our BSF team is looking forward to advising on many more education projects in 2010.

### **On an Electoral Roll**

Our hotline service proved valuable for a number of returning officers on election night in June this year, and the only two results from the May 2008 local elections that were challenged by petition have come to a head this year and we acted for the returning officer in both cases. The firm is in the Legal 500 rankings for election law with partner **Ashley Badcock** praised for his work for returning officers. It could be another busy year in 2010 with the general election coming.

### **Supreme Achievement for SP**

Sharpe Pritchard acted in one of the two full appeal cases to be heard in the new **Supreme Court** Building when it opened for business for the first time on 5th October 2009. In the case of Cyril Archibold Capron v the Government of Turks and Caicos, heard by the Judicial Committee of the Privy Council, the firm acted as agent for the appellant. Senior assistant solicitor **William Rose** had conduct of the case. Sharpe Pritchard have a long and proud history of acting in many cases before the Judicial Committees of the House of Lords and the Privy Council and are looking forward to continuing to work at the highest level of the UK courts system across Parliament Square from the Lords at Middlesex Guildhall.

### **More Major Projects News**

The projects team has enjoyed further success in recent bids for a number of exciting public sector projects. The team has been appointed to advise on a major town centre development project in **Wokingham** and a residual waste treatment PFI project - a joint procurement by **Northamptonshire County Council** and **Milton Keynes (Project Reduce)**. The team has also secured appointments for a strategic partnering housing project for **Southwark Council** and to act for **St Albans Borough Council** on its leisure facilities project.

### **Progress on competitive dialogue**

The firm is acting on two major projects that have recently reached key milestones in the competitive dialogue process. Our BSF team is acting for **Cambridgeshire County Council** on its Building Schools for the Future project, which closed dialogue in October. Our waste team is acting for **Buckinghamshire County Council** on its major waste procurement project. This was one of the first waste projects to be procured using the competitive dialogue procedure. Dialogue has been closed and a preferred bidder selected for the construction and operation of a major waste treatment facility for the County's residual waste.

### **Procurement update - new Remedies Regulations**

Members of the projects team have been providing training to local authorities and public sector bodies on recent changes in procurement law including the changes to be brought into force by the new Remedies Regulations in December 2009.

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## **In the Courts**

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### **Local Government Reorganisation**

Sharpe Pritchard has been involved in two recent and important cases about local government reorganisation.

In **East Devon District Council (Claimant) v Electoral Commission, Boundary Committee (Defendant) & Secretary Of State for Communities & Local Government (Interested Party) [2009] EWHC 1058 (Admin)** the firm acted for East Devon in their

unsuccessful application for a judicial review of the proposals of the Boundary Committee for reorganisation of the Devon councils into a unitary authority. The Secretary of State had rejected East Devon's proposal for a unified local government on affordability grounds. The Court of Appeal upheld the high court's views ([2009] EWCA Civ 239) but the Boundary Committee conceded (and the Court of Appeal agreed) that the Committee should have consulted on more than one proposal for reorganisation in the area. This was important in the context of the next case.

In **(1) Forest Heath DC & St Edmundsbury BC (2) Suffolk Coastal DC v Electoral Commission & Secretary of State for Communities & Local Government [2009] EWHC 1682 (Admin)**, Sharpe Pritchard acted for the claimant local authorities who applied successfully to judicially review the Electoral Commission's decision concerning the reorganisation of the structure of local government in Suffolk into a unitary system.

Suffolk has a two-tier system, consisting of the County Council and seven borough or district councils. The Secretary of State invited principal authorities in two-tier areas to suggest proposals for unitary status, and specified five criteria to which proposals should conform. The Secretary of State subsequently requested that the EC's boundary committee advise on the proposals. The Suffolk local authorities identified four possible concepts for the boundary committee's consideration, one of which was an "East/West/Ipswich" concept.

The boundary committee subsequently expressed its preference for two Suffolk unitary authorities, namely an enlarged Ipswich unitary authority and another for the rest of the county (including Lowestoft), or one without Lowestoft. This preference was formalised in a draft proposal. The claimants then submitted a joint proposal in favour of the "East/West/Ipswich" concept.

At a subsequent meeting, the boundary committee concluded that there was no evidence of the viability of the "East/West/Ipswich" concept, and that it did not meet the five criteria which had been set out by the Secretary of State. Further proposals were published by the EC, excluding the claimants' preferred concept. That decision was challenged by way of judicial review. The claimants argued that the "East/West/Ipswich" concept had been unfairly excluded because the boundary committee had been working on the mistaken basis that only one alternative proposal could be published, and that the boundary committee had failed to properly and fairly evaluate and discuss the "East/West/Ipswich" concept.

It was held that the boundary committee could have published and consulted on more than one proposal, and that it had been obliged to consider or discuss all proposals which might have met the five criteria. Its decision to publish only one alternative proposal was likely to have affected its evaluation of various concepts. The claimants were entitled to relief and the parties were invited to make representations concerning the terms of relief to be granted.

This case has also gone to the Court of Appeal and judgment is awaited.

### **"Hot Spot" Injunctions Against Unauthorised Development**

In the case of **Doncaster MBC v White and Others** (2009), the firm acted for the council who successfully obtained an injunction preventing the placement of caravans and mobile homes or any other unauthorised development on a large area of land in the council's area.

There had been a history of incursions by travellers on a number of different plots of land in a rural part of the council's area, over a number of years. The council had taken enforcement action, each case in relation to the particular site in question, on a number of occasions. This included taking out injunctions on a number of occasions where there was an imminent threat of another unlawful incursion.

In the case of **White and Others**, the council applied for a single injunction over a very large area of land. The land comprised plots in the ownership of some 50 different people, all of whom were named as defendants, together with persons unknown. Although there were no identifiable specific threats of incursion, the court granted the injunction on the basis of the planning history, and in particular the repeated enforcement action, particularly the previous

site specific injunctions, taken by the council. Reliance was placed upon the case of **South Cambridgeshire District Council v Garner and Others** (2007) in which Sharpe Pritchard also acted for the successful applicants.

No doubt other authorities with similar problems will be considering whether they have grounds to make similar applications for injunctions.

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## Articles

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### **Access to information: “commercially sensitive” information can be released!**

**By Tim Farr, Senior Solicitor**

On 1st October 2009 the High Court gave judgment in a case relating to access to information which could set an important precedent. The point in issue was whether commercial information about Veolia’s £850 million PFI-funded contract with Nottinghamshire County Council should be made public under the Audit Commission Act 1998 even though there were exemptions under the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2004 (EIR).

The background was that a local elector and anti-incineration campaigner responded to a notice that Nottinghamshire County Council placed in the local press giving electors the opportunity to inspect the audited accounts. He requested that in accordance with section 15(1) of the Audit Commission Act 1998 (“the 1998 Act”) he would like to be able to see a full as opposed to redacted version of the Council’s PFI contract with Veolia. The 1998 Act governs the annual audit of local authority accounts by District Audit which takes place within three months of the end of the financial year. Section 15(1) of the 1998 Act states:

- “15(1) At each audit under this Act, other than an audit of accounts of a health service body, any persons interested may –
- (a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and
  - (b) make copies of all or any part of the accounts and those other documents.”

The 1998 Act contains exceptions to this right in relation to personal information but not in relation to commercially sensitive matters.

Nottinghamshire County Council put Veolia on notice that they were going to release the information to the local elector. This prompted Veolia to seek an injunction whilst the matter was litigated. The local elector was joined by the Audit Commission and Friends of the Earth as interested parties.

The case was heard in August and the judgment was reserved. It was handed down on 1<sup>st</sup> October 2009 with Veolia being unsuccessful in their challenge to keep confidential the information they had identified as commercially sensitive.

The judge, Mr Justice Cranston, noted that from its inception an important feature of the district audit system was the existence of public rights of inspection of, and objection to, the accounts. He traced this back to the Poor Law Act 1844. He said that he could understand the concern about commercial confidentiality. Not only may Veolia suffer from its breach, but the Council could as well, through the demands of sub-contractors once they learn the basis of Veolia’s models. But he said that the plain fact was that there was no duty in section 15 to keep commercial confidentiality and that confidentiality was no bar to disclosure. If the section applies to a contract, the Council must disclose it.

The judge said that section 15 of the 1998 Act trumps the confidentiality obligations that were set out in the contract. He conceded that there was a striking contrast with the wider confidentiality provisions in FOI and EIR. He thought that this might be because the 1998 Act only applies to the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them. As such the category of information available under section 15 is much narrower than under FOI or EIR and Parliament therefore determined that exceptions or qualifications should not be necessary to restrict disclosure. As the category of information which may be obtained under the 2000 Act is broader, more constraints are required.

Veolia has said that it accepts the judgment and will not appeal.

It therefore would seem that as soon as payments under a contract feature in the audited accounts of a local authority, a local elector can rely on this case to support a claim to have sight of the entire contract excluding personal information.



## Recent developments on planning and climate change

By Brian Hurwitz, Partner

### Introduction

The past two years have been lively as far as new developments on climate change are concerned. Parliament enacted the much heralded Climate Change Act 2008 ("the 2008 Act") and a new body, the Climate Change Committee, created under the 2008 Act, came into being in December 2008. Planning policy saw the Planning Policy Statement 1: Supplement on Climate Change. This article intends to give an overview of these initiatives.

### Legislation

The 2008 Act includes the requirement for a carbon target and carbon budgeting. The UK's net UK carbon account by the year 2050 must be at least 80% less than the 1990 baseline. This is the aggregate of emissions of carbon dioxide and various other greenhouse gases for 1990. The Secretary of State is to set an amount for the net UK carbon account for successive five year budgeting periods, commencing from 2008 to 2012. This is called the carbon budget.

The Act requires reductions in carbon budget for various budgeting periods, ie—

- for 2020 = at least 26% less than 1990 baseline; and
- for 2050 = at least 80% less than 1990 baseline.

Various matters are to be taken into account in connection with the setting of carbon budgets. These include scientific knowledge about climate change, technology relevant to climate change, economic, fiscal and social circumstances, energy policy, European and international circumstances and estimated amounts of the emissions of targeted greenhouse gases from international aviation and international shipping. Emission of greenhouse gases from international aviation or shipping do not count as emissions from sources in the UK, unless regulations alter the position.

On 31st May 2009 the Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009 came into force. It changes the 2020 targeted reduction in carbon budgets to 34%. The order does not change the position as regards aviation and shipping. One will need to await subsequent regulations (if any).

The Planning and Energy Act 2008 provides that in their development plan documents, local planning authorities may include policies imposing reasonable requirements for—

- a proportion of energy used in development in their area to be energy from renewable local sources;

- a proportion to the low carbon energy from local sources; and
- for development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations.

### **The Committee on Climate Change**

This body corporate was established under the 2008 Act. It has the statutory duty to advise the Secretary of State on whether the 2050 target should be amended. It must also advise on the level of carbon budget for each budgetary period and the extent to which this should be met by reducing the amount of net UK emissions of targeted greenhouse gases or carbon credits (subject to regulations being brought into effect). The Committee's first report "Building a low carbon economy" endorses the 80% target and the proposed level of the first three carbon budgets for 2008 to 2022. They include an aim by the UK to reduce emissions of greenhouse gases by 31% in 2020 (below 2005 levels) once a global deal is reached and pending this, aimed reduction by 21% in 2020 (below 2005 levels). According to the report, the 80% target by 2050 should cost between 1% and 2% of the UK's GDP in 2050 and the cost of meeting proposed carbon budgets is less than 1% of the GDP in 2020.

### **Supplement to PPS1**

This contains a series of key planning objectives ("KPOs"), eg making a full contribution to the Government's Climate Change Programme and securing new developments that provide resilience to climate change. Spatial strategies must follow various principles (eg new development should minimise future vulnerability in a changing climate). Development plan documents must be kept up to date and properly reflect national policy.

In practical terms, there are a number of initiatives which LPAs may take in achieving sustainable development that also assists in contributing to reduction in greenhouse gas emissions, by means of suitable Section 106 obligations or conditions. For example, it is good practice to include requirements for green travel plans/use of renewable energy in developments and construction, etc. It is hoped that the initiatives identified in this paper could make such practices more widespread in the planning system.

The above article first appeared in Planning Magazine.



### **Forfeiture of deposits - avoiding an "... undesirable uncertainty to the well-established contractual understanding"**

**By Colin Ricciardiello, Partner**

A deteriorating economy can bring with it a failure to complete purchases of land as buyers fail to secure the funds to complete. The failure to complete on time raises the question of Notices to Complete, rescission of contracts and forfeiture of deposits. The Court of Appeal had to consider these questions in *Midill (97 PL Ltd) –v– Park Lane Estates Ltd and Anr [2008] (EWCA Civ 1227 – 2009 07 EG 92)* and delivered a unanimous decision with Carnworth LJ giving the leading judgment.

#### **Facts**

In December 2005 Midill agreed to pay Park Lane £4 million for all of its shares. As Park Lane's only asset was a property in Park Lane, London, W1 the transaction was treated as a sale of land.

The completion date was 8th April 2006 and the £4 million sale price was to be paid in three instalments: £400,000 deposit; £800,000 on 8th February 2006 and the balance on completion.

The deposit and the first instalment were paid. However, Midill was unable to complete on 8th April 2006. Park Lane served Notice to Complete on 11th April 2006 – requiring completion by 27th April 2006. Midill was unable to do so and Park Lane sought to rescind on 5th May 2006.

After more abortive negotiations, Park Lane ultimately sold the property to an unconnected company for £4.3 million on 14th September 2006. Therefore, Park Lane received £300,000 more than it was due to receive under the contract with Midill.

Park Lane returned the first instalment of £800,000 to Midill but retained the £400,000 deposit.

The trial judge rejected Midill's claim that Park Lane were not itself "ready, willing and able" to complete. He also declined to exercise his discretion under Section 49(2) of the Law of Property Act 1925, to order the repayment of the deposit to Midill.

### **On Appeal – "Ready, Willing & Able"**

Midill conceded that it was not ready, willing and able to complete and the issue was whether Park Lane was ready to complete when it served its Notice to Complete by 27<sup>th</sup> April 2006, being the date on which completion was required under that Notice. That issue was material as it is also necessary for a seller to remain ready, willing and able throughout the notice period. This issue did not go ahead in the Appeal. Nevertheless, Midill's appeal was such that even if Park Lane's rescission had been effective and Park Lane was ready, willing and able to complete, Midill sought the return of the £400,000 deposit. That was the sole issue determined by the Court of Appeal.

### **Arguments in the Appeal**

The claim for the return of the deposit ultimately rested on Section 49(2) which provides—

"Where the court refuses to grant specific performance of a contract, or in any action for the return of the deposit, the court may, if it thinks fit, order the repayment of any deposit".

Whilst this power applies only to a contract for the sale or exchange of any interest in land (see Section 49(3)), Park Lane conceded that the contract for the sale and purchase of the shares should be treated as such for the purposes of the claim.

The trial judge referred to the differences of emphasis in the various cases and the text books as to the width of the Section 49(2) discretion, but regarded the Court of Appeal judgment in *Omar –v– Eil-Wakil* [2001] EWCA Civ 1090 as providing the most recent and authoritative guidance. He concluded that the guidance of the Court of Appeal was clear and that the court will not order payment of the purchase price, even if the seller makes a subsequent profit. "That would create precisely the uncertainty which a fixed deposit is intended to avoid. There is no special factor here which would justify departing from the normal approach."

Midill argued that the Court of Appeal should follow the view of Buckley LJ in *Universal Corporation –v– Five Ways Properties Ltd* [1979] 1All ER 552 so that:-

- (i) the discretion be treated as wide and was to be exercised in accordance with *Universal* "... in any circumstances which make this the fairest course between the two parties";
- (ii) the judgment (of Arden LJ) in *Omar* did not purport to redefine the scope of the discretion and merely gave non binding guidelines for its exercise;
- (iii) the trial judge was wrong to treat the guidelines as constraining his discretion or to treat as irrelevant the fact that Park Lane had made a profit on re-sale.

Park Lane simply argued that the trial judge had exercised his discretion in accordance with the most recent authoritative guidance of the Court of Appeal in *Omar* and that his judgment disclosed no error of law or principle.

### **Decision**

Whilst the wider approach to discretion of Buckley LJ in *Universal* does not seem to have been too popular with the courts, it has found favour with a number of textbook editors. This wide approach was adopted with reluctance but doubted in *Dinsdale Developments –v– De Hann*

(1983) 47 P&C R1. There the 10% deposit was ordered to be repaid in circumstances where there was a failure to complete: the contract was rescinded and subsequently sold for a higher price. That case was decided before Omar.

From Arden LJ's judgment in Omar, Carnworth LJ noted that the decision in Universal was on an interlocutory appeal heard by two Lord Justices, one of whom did not express a view. That judgment was not treated as binding on the Court of Appeal for these reasons.

Having freed itself of its previous decision in Universal, Arden LJ in Omar found that deposits are usual features of conveyancing transactions and that conveyancing transactions are common. There should be certainty attached to the consequences of paying a deposit and that translated into starting from the position that the deposit should not normally be ordered to be repaid and that the circumstances in which to exercise the discretion must be exceptional.

Carnworth LJ decided that it was not appropriate to depart from Omar particularly as it was in line with the balance of judicial view including the Privy Council's decision in Bidaisee –v– Sampath No. 33 of 1993 where it was held that if no loss is suffered by reason of a re-sale, that is not sufficient reason for the court to exercise its discretion in favour of a defaulting buyer and order the return of the deposit. For a court to exercise its discretion and order the return of the deposit it was necessary to search for something more. Following Omar that something had to be "special" or "exceptional" to justify overriding the ordinary contractual expectations of the parties that if the purchaser defaults, the deposit will be forfeited.

For Carnworth LJ the "critical point" was that the deposit is "an earnest for the performance of the contract" that can be retained by the seller if the buyer defaults without any necessary regard to the question of actual loss or the amount of that loss. In taking this view the court avoided introducing uncertainty to the well established contractual understanding. "Earnest" means that the buyer is serious about completing and this is shown by accepting forfeiture of the deposit if he does not.

### **Commentary**

The Court of Appeal's judgment here certainly provides further certainty in cases where there is a re-sale and the seller does not suffer any loss by reason of the failure to complete. He may even be financially better off (as was the case here) even without taking account of the retention of the deposit. The Courts therefore continue to regard forfeiture of deposits as special cases that are not a "penalty" against which relief can be easily granted.

As to when the discretion can be granted, the wider approach in Universal has to be treated as displaced by this decision and that in Omar. The circumstances when the discretion under Section 49(2) could be exercised have to be "exceptional" but are not restricted to cases where there has been "tricky" behaviour or the like, as occurred in Universal.

As noted by the trial judge in this case it is, in theory at least, possible to guard against forfeiture of deposit by drafting a contract so that such forfeiture depends on the outcome of a further sale.

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## **The Site Waste Management Plans Regulations 2008**

### **By Justin Mendelle, Senior Solicitor**

This note sets out a brief overview of the Site Waste Management Plans Regulations 2008 ("the Regulations"), providing a summary of the key legal and practical considerations.

### **Background**

The Regulations came into force on 6th April 2008 and aim to address two key issues:

- Improving efficiency by decreasing the volume of waste disposed of and increasing recovery; and

- Reducing fly-tipping and illegal disposal.

The Regulations apply to clients who carry out a project on any one construction site with an estimated cost greater than £300,000 (excluding VAT).<sup>1</sup> Accordingly, a project undertaken over multiple sites which are each below the threshold will not be caught by the Regulations, notwithstanding the fact that the overall value of the project could exceed £300,000. The Regulations apply to all aspects of construction work, including demolition and excavation works.

### **The Site Waste Management Plan**

A site waste management plan (“SWMP”) must be prepared before construction work begins. If the project is started without a SWMP, both the client and the principal contractor are guilty of breaching the Regulations.

Regulation 2 defines a client as “a person who in the course of business (a) seeks or accepts the services of another which may be used in the carrying out of a project for that person; or (b) carries out a project on their own behalf”. The client cannot opt out of the Regulations, nor elect another party to act as client.

The SWMP must:

- identify the client, the principal contractor<sup>2</sup> and the person who drafted it;
- describe the construction work proposed, including the location of the site and the estimated cost of the project;
- record any decision taken before the SWMP was drafted on the nature of the project, its design, construction method or materials employed in order to minimise the quantity of waste produced on site;
- describe each waste type expected to be produced in the course of the project;
- estimate the quantity of each different waste type expected to be produced;
- identify the waste management action proposed for each different waste type, including re-using, recycling, recovery and disposal; and
- contain a declaration that the client and the principal contractor will take all reasonable steps to ensure that all waste from the site is dealt with in accordance with the waste duty of care imposed by the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) Regulations 1991 and that materials will be handled efficiently and waste managed appropriately.

WIDP have issued supplementary guidance on construction waste clauses in the standard Output Specification. A copy of the guidance (which includes suggested drafting) is set out in the version of this article that appears on our website.

### **Updating the SWMP**

If a project has an estimated worth of £500,000 or less, whenever waste is removed from the site, the principal contractor must record on the SWMP details of:

- the identity of the person or firm that will remove the waste;
- the different types of waste to be removed from the site; and
- the site that the waste will be taken to.

Within three months of the work being completed, the principal contractor must add his confirmation to the SWMP that it has been monitored and updated on a regular basis to ensure that work is progressing according to the plan. He must also provide an explanation of any deviation from the plan.

For projects with an estimated worth of more than £500,000, whenever waste is removed from the site, the principal contractor must record on the SWMP details of:

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<sup>1</sup> The Regulations don't apply to a project relating to a Part A installation as defined in the Environmental Permitting (England and Wales) Regulations 2007, since these sites must already meet pollution prevention controls that include waste minimisation.

<sup>2</sup> A client who uses one or more contractors must appoint a principal contractor. It is important to note that if the client doesn't use a contractor, all obligations placed on the principal contractor by the Regulations have to be carried out by the client instead.

- the identity of the person removing the waste;
- the waste carrier registration number of the carrier;
- a copy of, or reference to, the written description of the waste required by section 34 of the Environmental Protection Act 1990; and
- the environmental permit or exemption held by the site where the material will be taken to.

The SWMP should be a “living” document and updated as often as is required to give an accurate picture of how work is progressing against the waste estimates contained in the plan. In any event, not less than every six months, the principal contractor must:

- review the plan;
- record the types and quantities of waste produced;
- record the types and quantities of waste that have been re-used, recycled, sent for another form of recovery, sent to landfill or otherwise disposed of; and
- update the plan to reflect the progress of the project.

At completion of the project, the SWMP must be reviewed and where there are variations from the original SWMP, reasons must be recorded to account for this. In particular, within three months of the work being completed, the principal contractor must add to the SWMP:

- confirmation that the plan has been monitored on a regular basis to ensure that work is progressing according to the plan and that it was regularly updated;
- a comparison of the estimated quantities of each waste type against the actual quantities of each waste type;
- an explanation of any deviation from the SWMP; and
- an estimate of the cost savings that have been achieved by completing and implementing the SWMP.

#### **Availability and storage of the SWMP**

The principal contractor must ensure that the SWMP is kept at the site office or, if there is no such office, at the site. He must keep the plan for two years after the completion of the project at his principal place of business or at the site of the project.

#### **Penalties**

Failure to comply with the Regulations can result in a conviction and a fine of up to £50,000. As an alternative to prosecution, failure to produce a SWMP can result in a fixed penalty notice of £300 being issued.

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