



# **The JCT Povey Lecture**

**The construction industry and Government**

Rt Hon Nick Raynsford MP

13 November 2008

## **Introduction**

On Thursday 13 November the JCT Povey Lecture was given by Nick Raynsford MP, Chairman of the Strategic Forum for Construction and Deputy Chairman of the Construction Industry Council. His lecture, entitled, 'The construction industry and Government' was presented at the Bevin Hall, Local Government House, Smith Square, London.

The JCT Povey Lecture is an annual event at which an eminent person is invited to give his/her thoughts on significant matters that are relevant to the construction and property industry.

The JCT Povey Lecture was inaugurated in 2003 as a public acknowledgement and tribute to Philip Povey who served the Joint Contracts Tribunal for 50 years.

## **Biographical Details**

**Philip John Povey – Barrister** – commenced in construction as a legal adviser to the NFBTE, now the Construction Confederation, in 1951. At the same time he began to assist the Joint Secretaries of the Joint Contracts Tribunal (the JCT).

Philip first became Director of Legal Services at the Confederation and then its Director General. He later became the first Secretary-General of the restructured Joint Contracts Tribunal Limited in 1998.

Philip's work for the JCT became well known through the publication of JCT Standard Forms of Contract, which in time found their way to many parts of the world. He had a keen mind, which steered him around what he viewed as the less important or parochial issues for which the industry seems to have a particular attraction and enabled him to get to the core of a problem and to resolve it. He was an extremely skilful draftsman who invariably managed to satisfy the demands of many disparate, often competing, bodies.

Although there were committees, working parties and individuals that provided valuable input, it was Philip who shouldered the burden of writing the text.

He retired from the JCT at the end of 1999 but died suddenly only 18 months later, in 2001.

## **About JCT**

The Joint Contracts Tribunal was established in 1931 and has for 77 years produced standard forms of contracts, guidance notes and other standard documentation for use in the construction industry.

The Joint Contracts Tribunal is an independent organisation representing all parts of the construction industry and is the leading provider of standard forms of building contract. The following are Members of JCT:

British Property Federation Limited  
Construction Confederation  
Local Government Association  
National Specialist Contractors Council Limited  
Royal Institute of British Architects  
The Royal Institution of Chartered Surveyors  
Scottish Building Contract Committee Limited

and JCT Council is comprised of five Colleges representing:

employers/clients (including local authorities)  
consultants  
contractors  
specialists and sub-contractors  
Scottish building industry interests.

Acting Chairman: Neil Smith FRICS, MCI Arb

Secretary-General: Professor Peter Hibberd MSc, FRICS, MCI Arb

Past Chairmen:

1931 – 1956	Sydney Tatchell CBE, FRIBA
1956 – 1960	Sir Percy Thomas OBE, PRIBA
1960 – 1973	A. B. Waters CBE, GM, FRIBA, FRIAS, PPCI Arb
1973 – 1978	P. H. Bennett CBE, MA, FRIBA, FRSA
1978 – 1983	Norman Royce FRIBA, PPCI Arb
1984 – 1988	Patrick H. Barry OBE, RIBA
1988 – 1995	Roger M. Squire MA, FRICS, FRSA A. M. Millwood OBE, FRICS, FCI OB (Acting Chairman – May to September 1995)
1995 – 2002	Roy Swanson Hon DSc, FRICS, FIMgt, FRSA
2002 – 2007	Christopher Vickers CBE, FRICS, ACI Arb

## **The construction industry and Government**

Nick Raynsford MP  
Chairman of the Strategic Forum for Construction  
Deputy Chairman of the Construction Industry Council

The relationship between the construction industry and government in Britain is a complex one. It involves three distinct government roles and a very large number of different interfaces. The three roles stem respectively from:

1. The government's responsibility for economic management and the construction industry's contribution to national GDP.
2. The public sector's role as by far the largest client of the industry, accounting for around 40% of its order book.
3. The government's role as regulator of the industry.

The mass of separate interfaces stem both from these three distinct roles and from the plethora of different organisations involved on both sides. The industry is notoriously fragmented, comprising a mass of separate organisations, no one of which accounts for more than a tiny percentage of the total industry output let alone UK GDP. This is not to deny the valuable work of cross-cutting organisations among which I of course acknowledge JCT. My point is that by contrast with other major sectors of the economy, such as the petro-chemical industry or the retail sector, each dominated by a small number of very large players, the construction industry is as fragmented as a jigsaw puzzle. Similarly government, although often described as a single body in fact comprises a very large number of distinct organisations which relate in very different ways to the industry.

Understanding the complexity of the relationship between government and the construction industry is the necessary starting point for any serious analysis and for proposals for change. But understanding the fragmentation which characterizes both sides is not the same as endorsing it nor accepting the status quo as desirable. The industry reform agenda over the past 15 years and in particular the Latham and Egan reports have demonstrated clearly the case for better collaboration and integration. Similarly the calls for more "joined up" government have been too numerous to list. However, even if we make progress in integrating and joining up the different parts of industry and government, there will remain a complex web of relationships and interfaces. Government departments, non-departmental public bodies, agencies and local authorities will continue to relate to most of the players in the industry both as client and as regulator while the government's overall economic management policies will have a huge bearing on the health of the industry, a point which hardly needs emphasising in current circumstances.

Inevitably this complexity poses formidable challenges to both sides in understanding and relating to the other. It is all too easy from either perspective to focus narrowly on whatever issue is the most pressing of the moment – whether that involves for example procurement processes, sustainability or health and safety issues – and to use

that as the basis for far-reaching conclusions about the competence and performance of government or industry. It is very easy to find individual examples to justify the claim for instance that government is hopeless at managing construction contracts, that red tape is throttling the industry, that the industry is profligate in its use of resources and that it kills and injures an unacceptable number of its employees every year. Each one of these statements could have been – indeed probably has been – advanced with justification by almost every person here this evening at some time or other in the course of recent years. But as all of us who have looked closely at the issues understand, not one of those statements tells the full story or acknowledges the successes as well as the failures on both sides. Indeed there may be an inherent contradiction between pursuing a desirable objective under one heading and aggravating a problem under another. So achieving more sustainable construction or bearing down on accidents and injuries may well require new regulations which could be considered as imposing more red tape on the industry.

This is not, I hasten to add, the prelude to a pessimistic and world-weary conclusion that it is all too difficult and we will just have to muddle along as best we can. On the contrary, having been involved closely in the reform processes emanating from both the Latham and Egan reports, I have absolutely no doubt that we have to continue to seek further improvements in the way the industry operates and how it relates to government.

Most fair-minded observers would, I suspect, agree that significant advances have been made over the past 15 years in improving the construction industry's performance, but there is still a long way to go if the ideals behind the Latham and Egan reports are to be realized. Sir John Egan said as much earlier this year when commenting on progress 10 years after the publication of his report. Interestingly few, if any, commentators have publicly challenged the validity of the Latham and Egan analyses nor their prescriptions for industry improvement. This is not saying that there is continued unanimous support for the objectives spelt out in their reports. Various elements within the industry are probably comfortable with a situation in which implementation of the reform agenda appears to have slowed down, and several of the Egan objectives remain only partially adopted. They may not say so publicly, but they will not lift a finger to press the reform agenda forward. "Thou shalt not kill, but needst not strive, officiously to keep alive" could well be the unstated policy in significant parts of the industry.

If this analysis is correct, it leads to two obvious conclusions:

1. First, the Latham and Egan reports remain a sound basis for reform, as few if any commentators are prepared to dispute their recommendations in public.
2. Second, we will need to do more if we are to ensure their full implementation.

In saying this I am not criticizing the work of those organisations, notably the Strategic Forum for Construction and Constructing Excellence which have been the most involved in implementation, particularly of the Egan agenda. As Chairman, this year, of the Strategic Forum, I am well aware of the considerable work that has already gone in to monitoring progress with the implementation of Egan. But the Strategic Forum is not an executive body. It can persuade, cajole, inspire, prompt and possibly even shame industry bodies into doing more, but it cannot mandate them.

The Construction Commitments, which emerged out of the 2012 commitments and have now been promulgated by the Strategic Forum, are as good a set of principles as we are likely to devise for promoting industry best practice and thereby ensuring the implementation of the Egan agenda. But as everyone involved in the process of operating and promulgating the Construction Commitments will agree, there is a very long way to go to get most of the key players in the industry even signed up to the commitments let alone reaching the stage where their implementation has become the norm rather than the exception.

The difficult economic circumstances we face will simply add to the problems. Businesses are not surprisingly less ready to sign up to demanding conditions, particularly where these may appear to have cost tags attached, when times are hard. So we cannot simply assume that the commitments will be taken up as a matter of course. Having participated a few weeks ago in the launch of the WRAP campaign to achieve the Strategic Forum target of reducing waste to landfill by 50% by 2012, I can say with some conviction that the target is justified and there is a real wish to ensure it is met, but at the same time there is no assumption that it will be easily achieved. It will require sustained effort to spread the word throughout all parts of the industry and to convince the sceptical or the apathetic that there are sound economic as well as environmental reasons for meeting the target. The leading voices in the industry have signed up and are showing the way. But white van man is not necessarily even aware of the target let alone committed to delivering it. And this is on an issue where it is possible to demonstrate the benefits to profitability from waste reduction. When the business case is, on first sight, less clear cut, the challenge of signing the whole industry up to the commitments is even greater. So we have a huge task on our hands, in which I am pleased to see JCT already actively involved through its sustainability consultation.

Now the reason I have spent a little time on this particular theme is because it illustrates very neatly, I believe, the importance of an effective relationship between government and the construction industry. No one can seriously doubt the fact that the impetus for reform over the past 15 years has come as a result of government's engagement with the industry. Government has not had sole responsibility for the process. Without active industry participation there could have been no lasting benefits. But had government not been behind the Latham and Egan agendas, I doubt very much whether we would have made the progress that has been achieved.

Similarly, looking ahead to the implementation of the Construction Commitments, government once again has a key role to play in all its guises.

Taking these in turn:

1. The regulatory role will be significant, not least in helping to ratchet up environmental standards. The waste reduction target would be very difficult to achieve without the existence of a landfill tax, and the move towards zero carbon developments would not be possible without progressive improvements in the performance standards required by Part L of the Building Regulations and the code for sustainable buildings. There is a widely held view across the industry that where improvements in performance standards are necessary, all parts of the industry should have to meet them, rather than exposing those in the vanguard of reform to the risk of being undercut on price by competitors who are not signed up

to the improvement. Regulation is therefore necessary to ensure a level playing field. But we have to be careful to avoid stifling initiative and creativity by unduly prescriptive and intrusive regulatory obligations. The industry itself should be closely involved in the preparation of new regulations to ensure that they are proportionate, avoid unnecessary bureaucracy and are most likely to deliver the desirable outcome.

2. Secondly the government has a crucial leadership role to play within the client community. Without strong client pressure to improve performance many of the advances which we have to make would not happen. By pointing the way forward and demonstrating that real improvements can be secured through client insistence – for example on the sustainability agenda and on health and safety standards – the public sector can help to spread best practice throughout the wider client community. One very obvious illustration is the way in which the Housing Corporation as the main funding agency for social housing has pushed housing associations to higher standards of energy efficiency and environmental performance than the private housebuilding industry. But the housebuilding industry has to raise its game to meet the demanding standards of the code for sustainable houses by 2016. By demonstrating that very substantial improvements in performance are achievable, housing associations have helped the industry to raise its sights. Without a strong emphasis from the Housing Corporation – shortly to be replaced by the Homes and Communities Agency – it is difficult to see how we could have made the progress that has already been achieved, let alone get the industry's buy-in to the even higher standards required on the route to zero carbon.
3. At the same time the government's wider macro-economic role is equally important. Traditionally, in periods of economic downturn, the construction industry has felt the pinch in both public and private sector programmes. Faced with declining revenue, government has tended to cut capital spending programmes, not least because it has been easier for them to make such cuts than to reduce revenue spending which usually has much more sensitive and immediately obvious employment implications. If necessary, politicians have been able to put a gloss on the decision, implying that the investment is only being postponed, not cancelled. In reality the outcome was often indistinguishable. What however is noticeable in the very challenging financial circumstances facing the British, and the wider global economy at the present moment, is the government's determination to maintain capital investment. The fact that government has made a virtue of its intention to sustain programmes such as Building Schools for the Future, the housing and regeneration work to be financed by the Homes and Communities Agency and large civil engineering projects such as Crossrail, is not just a cause for celebration in the industry, it also makes it far easier to sustain the ambitious improvement targets enshrined in the Construction Commitments. There is an unwritten compact here, not yet articulated but nevertheless beginning to be understood. Both government and industry have everything to gain from working closely together. The industry cannot expect government to underpin capacity in the industry through difficult times without being prepared to accept a quid pro quo – in this case we continued programme of reform implicit in the construction commitments. Of course periods of retrenchment do limit the scope for advances which might more easily be accepted in periods of growth. There will be a need for realistic assessment of what

additional costs can be required, for example under Section 106 agreements. But government can reasonably expect the industry to go the extra mile to improve performance and raise standards when its order books are being sustained increasingly by public sector contracts.

Some economists have questioned the wisdom of the government's commitment to sustaining capital investment. It will involve a level of borrowing above that envisaged when the Chancellor adopted his prudential criteria for limiting public sector debt. But these are exceptional times and slavish adherence to borrowing criteria evolved in very different circumstances could seriously inhibit our capacity to steer a survival course through very troubled waters. Having recognized the need to deploy public sector resources on a massive scale to avoid the threatened meltdown in the banking and financial services sector, it would be perverse to refuse to sustain capital investment in key construction projects because the former borrowing limits have been breached.

What is however vital is to ensure that, insofar as possible, public sector investment is used to best effect, and does contribute to the maintenance of capacity and the rebuilding of confidence in sectors which are potentially most at risk. Again both government and the industry have everything to gain from working closely together, understanding where the pressures are most threatening and identifying where investment is most likely to bring positive outcomes. It is very much with this in mind that I have convened a Task Group of the Strategic Forum for Construction as a focal point for information on the impact of the current economic downturn across the whole industry and to act as a channel for liaison between the industry and government. I would hope that the Task Group which is meeting for the first time on 6<sup>th</sup> November will improve both government and industry's understanding of the longer-term implications for the construction industry of the unprecedented financial turmoil which we have been experiencing, and the effectiveness of different options which might be considered in response. Throwing money at the problem is not the right way forward. Targeted investment may well be crucial to minimizing the damage and facilitating recovery in due course.

So far I have been referring to government in the round, even if using specific parts of government as illustration. But as I have already stressed government is not a single homogeneous body. On the contrary, it comes in a huge variety of different forms. Achieving better co-ordination between these different facets of government remains a crucial objective. Indeed the pressures working in the opposite direction remain formidable. Local authorities guard their independence jealously, so when rolling out a programme such as Building Schools for the Future, where 150 separate local authority clients are involved, there was inevitable difficulty in establishing a reasonably coherent procurement framework which does not involve endless reinventing of the wheel and continuing frustration for bidders. Even with central government itself there are tensions between the sometimes conflicting objectives of different departments. I well remember as a recently appointed construction minister in 1997 facing conflict between the pressures for improvements in the energy performance and accessibility of buildings (though changes to Parts L and M respectively of the Building Regulations) and the deregulatory instincts of the then DTI and the Treasury. More recently we have seen tortuously slow progress in getting cross-government commitment to the assessment of whole life value in buildings. There are just a few illustrations of the problem. There are countless more.



In response three approaches have been advocated over recent years:

1. First has been the suggestion that responsibility for all matters relating to construction should be concentrated in one government department. However attractive this might sound in principle, it founders because the spread of issues affecting construction is so broad that parts of every single government department would need to be transferred to a single construction-facing department. Not only would this unbalance government, it would also prompt justified complaints that issues which have a much wider remit – such as Health and Safety – should not be moved in the interests of one industry alone. They could be equally justifiably located in a number of other departments, whose responsibilities embrace the activities of other sectors of the economy with major health and safety concerns.
2. The second approach is to suggest an enhanced role for the Minister for Construction. As a former holder of the post, I might be thought biased in favour of such a proposition, but in truth I can see difficulties. When I was in the post, I was lucky to have been allowed a decent period in office in which I could get to know the industry in all its many facets and understand the many different perspectives which were brought to bear in debates about the industry's future. I had also had the considerable advantage of having shadowed the job for the three years before I took over as minister. Describing this experience sounds almost like a throwback to a mythical golden age when things were different. Today ministerial appointments generally last for very much shorter periods. Since I ceased to be Construction Minister in 2001, my successors have been in post respectively for two years, two years, one year, one year, seven months, and seven months. The current minister is just one month into post. With the best will in the world, and many of the post holders have been very talented and hard-working people, it is simply not possible for ministers with such a short tenure to fully understand this large and complex industry, let alone to exercise an authoritative influence on the sector. Asking someone who might only be in post for a year or less to ensure effective co-ordination of relations between all parts of government and the industry is not just hard. It's quite simply impossible.
3. That essentially explains how the BERR Select Committee in its recent report '*Construction Matters*' concluded that the appropriate response should lie not in an enhanced role for the Construction Minister, but rather in the creation of a new post of Chief Construction Officer. Before I go on to examine this proposal, I must pay tribute to the work of the Select Committee. Everyone I have met with a good understanding of the industry has agreed that the Select Committee report was exemplary. It is a thoughtful, serious, comprehensive, balanced and perceptive overview of the industry and the key challenges it faces. Peter Luff MP, the Committee Chairman, his colleagues and the Committee staff who compiled the report all deserve great credit.

Their analysis strongly supported the case for better co-ordination across government and for a single point of contact to which the whole industry could relate. The precedents on which they drew when recommending the creation of the post of Chief Construction Officer were other cross-cutting posts in government such as the Chief Scientific Adviser. We know from the experience of such posts just how effective a

senior figure in Whitehall can be if he or she commands the respect and attention of the Prime Minister, Senior Ministers and officials across Whitehall and key players in the relevant disciplines. A suitable candidate able to gain the confidence of the industry and to carry weight across government could make an enormously powerful impact – as for example Sir David King did in his period as Chief Scientific Adviser.

Encouragingly, the government has accepted this recommendation for the creation of the post of Chief Construction Officer, and will be consulting about the way it is to be established and its remit. This raises all sorts of interesting questions. First is where the post should be based in Whitehall. BERR has an obvious claim, so too does the Treasury as the home of the Office for Government Commerce. A third option is the Cabinet Office in which a number of the over-arching roles in government are based. I have to confess to some scepticism about too precise a location for the Chief Construction Officer. The remit as we know will be very wide ranging. It will include liaison between the key spending departments such as education, transport, health and communities and local government. It will also involve co-ordination between the regulatory departments such as BERR, CLG, DEFRA and DWP. And it will obviously involve the Centre of Government, usually associated with No. 10, the Treasury and the Cabinet Office. Whoever fills the post will need the freedom to speak with and influence all these and other arms of government. Too prescribed a departmental remit would be a real disadvantage. The ability to range across the whole of Whitehall and not to be seen as the creature of one part of the structure of government will be vital to the success of the Chief Construction Officer.

But ultimately influence does depend on the ability of the post holder and that leads me straight on to the question of what qualities should we be looking for in the Chief Construction Officer. Speculation about potential candidates has, perhaps inevitably, already begun and I am not going to fuel these flames tonight. Suffice it to say that the post demands an exceptional person who can command respect and confidence across the industry and across government. While there are some senior civil servants who could probably perform this role, my instinct is that the first Chief Construction Officer should come from within the industry but be someone already well versed in the ways of Whitehall and so able to negotiate the potential minefields of government departments and agencies with confidence from day one.

As for the Chief Construction Officer's remit and priorities there will be an overriding need to establish credibility from the start. However important many of the longer term ambitions and objectives for the post will be, the Chief Construction Officer will be taking office at a time when the whole construction industry will be facing some of the most serious and difficult challenges we have confronted in our lifetimes. As the principal point of contact between government and the industry, the Chief Construction Officer will be thrown in at the deep end. Understanding how the industry in all its component forms is coping, where the pressures are likely to be most damaging, where there is the greatest scope for positive government intervention, what more needs to be done to sustain capacity or prepare the ground for recovery – these and many other equally challenging issues will be the Chief Construction Officer's bread and butter from day one. And behind each and every one will be the inevitable pressures coming both from government and industry to give priority to any number of particular causes, programmes or interests. To date the government's commitment to maintain large capital investment programmes such as Building Schools for the Future and Crossrail has been welcomed as an indication of

its support for the industry and the economy through difficult times. But resources are finite, and the maintenance of some such programmes inevitably limits the potential resource available for others. In the months ahead look out for more disparate voices calling for other priorities and even beginning to query the commitments that have been given to date. The Chief Construction Officer will need considerable political skills to steer a course through these competing pressures.

But I do not intend to end on a note of caution or apprehension. I have no doubt at all about the importance and the value of the reforms and improvements that have been carried forward over the past decade and a half. For all that we can and do still focus on the issues which remain challenging or problematic; for all that we may regret that we have not accomplished more, it is nevertheless true that the construction industry has made enormous advances in recent years. It is unquestionably a better, more efficient, more responsible industry than it was two decades ago, delivering a better quality product and service than it did, and relating more positively to its clients and stakeholders. These advances have to a very significant degree reflected a positive and constructive relationship between the industry and government. More than ever in the very challenging environment which we now face, we need that constructive relationship to continue and to flourish.

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