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In any construction project, universities will inevitably seek protection for their investment in the event that things go wrong. Universities are protected via their direct contractual relationship with both the contractor and consultants, whom they engage through a building contract and appointments. Where there is no such direct contractual relationship i.e. with any sub-contractors, universities will obtain collateral warranties.
It is often the case that the construction documentation will be negotiated heavily and that it will contain limitations on the professional team's liability. Often, the period during which universities can make a claim against the professional team is limited to a period of 12 years from practical completion. However, as the case below highlights, it could be of particular concern for the professional team where there are differing liability periods within a project.

The recent case of *Bloomberg LP v Sandberg (a firm)* ([2015] EWHC 2858) has provided a new approach when interpreting limitation clauses in conjunction with the Civil Liability (Contribution Act) 1978 ("the Act"). The Act provides that any defaulting party who feels that another party contributed to the loss the claimant is claiming may seek from them a contribution towards the liability.

In this case, there were three members of the professional team: a contractor and two consultants, who were all subject to 12 year liability periods. However, these ran from different periods of time and accordingly did not all conclude concurrently. The claimant brought a claim against all of the professional team for loss which ensued some time after completion. As the contractor's liability period had ended the claim against them did not proceed, although the claim against the two consultants did.

Subsequently, the two consultants relied on the Act and tried to claim a contribution from the contractor for their contribution of the liability. The contractor sought to argue that the limitation clause covered all proceedings arising from the works performed under the building contract, and therefore they could not be pursued by the two consultants for a contribution under the Act. In the alternative, if the Act did apply, then the limitation clause meant that proceedings could not succeed. The court was not convinced by these arguments, as it enabled parties to contract out of the purpose of the Act. Although the limitation clause did present a procedural bar to the contractor being pursued by the claimant, it did not extinguish the underlying substantive right to bring a claim on the part of the consultants.

Implications for universities

The concern with this case is how professional teams react as a result. They may react by attempting to negotiate their contracts so that all contracts on a given project contain the same liability period, in order to provide certainty. For contractors, they may argue that all parties should be liable from the date of the building contract until 12 years after practical completion. Universities will prefer the consultants' liability period to be 12 years from completion of their services, as often these are completed after practical completion itself so their liability period is extended. Consultants would be only too happy to fit in with a contractor's demand for their liability to run for the shorter period of 12 years after practical completion. But this would weaken the university's position, and so you should be alive to the professional team attempting to use this as a negotiating tactic.

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