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Webinar

# BIM & the new Information Protocol

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# Today's Agenda

- Overview
  - BS EN ISO 19650
  - The new Information Protocol
- JCT & the new Information Protocol
- FIDIC & the new Information Protocol

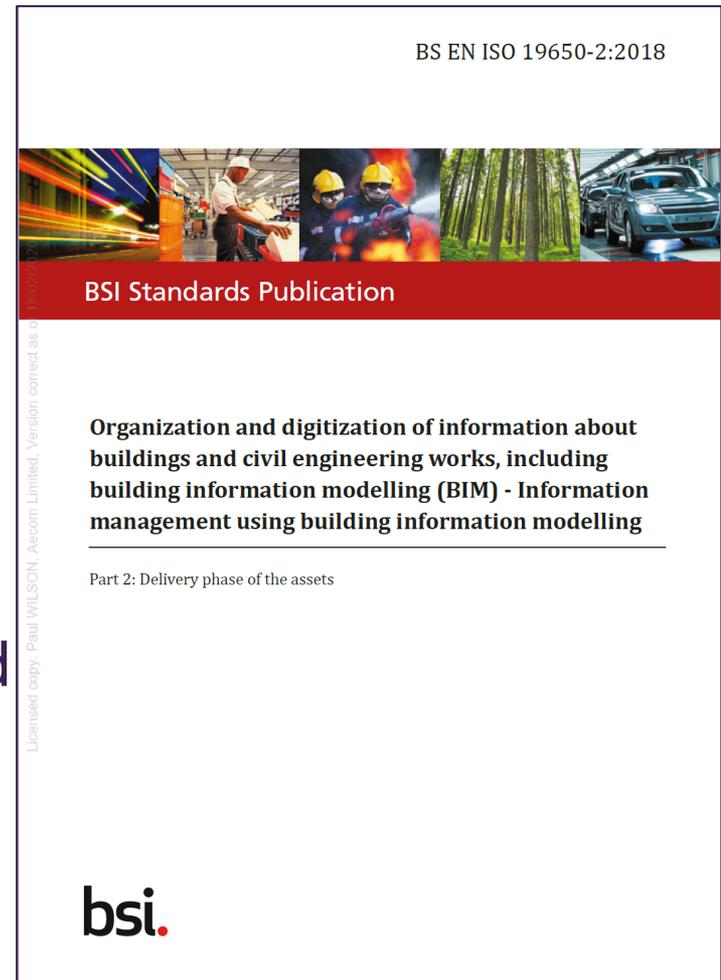
# The new Information Protocol

- BS EN ISO 19650-2:2018 requires an Information Protocol
- Published by the BSI, CDBB and the UK BIM Alliance: UK BIM Framework
- The only protocol designed to work the with the 19650.



# BS EN ISO 19650

- Series of international standards
- Management of information
- Defines processes, principles and requirements for the effective management of information during delivery and operational phase of assets when BIM is used
- Based on UK 1192 series



- ISO 19650-2 defines the requirements
- National Annexes defined the standards which must be used in a particular region.
- Guidance can be found from the UK BIM Framework:

*<https://ukbimframework.org/standards-guidance/>*

- Clause 5.1.8 requires the appointing party to establish the project's information protocol.

# Key features of the Information Protocol

- Information Particulars
- Terminology aligns with 19650
  - Appointing Party
  - Lead Appointed Party
  - Appointed Party
- Need incorporation clause
- No defined “Information Manager”
- Order of precedence (Clause 1.6)

Information Protocol to support BS EN ISO 19650-2 the delivery phase of assets May 2020 | 10

## Information Particulars

Term	Particulars
Appointment	[Describe appointment and Parties]
Appointing Party	[the Appointer] OR [Appointing Party entity]
Lead Appointed Party	[Party] OR [the Appointer] OR [Appointee]
Appointer	[Party]
Appointee	[Party]
Works	[Describe]
Level of Information Need	[Refer to document/part thereof]
Exchange Information Requirements	[Refer to document/part thereof]
BIM Execution Plan	[Refer to document/part thereof]
Project's Information Production Methods and Procedures	[Refer to document/part thereof]
Project's Information Standard	[Refer to document/part thereof]
Master Information Delivery Plan	[Refer to document/part thereof] OR (if not applicable to Appointee) [N/A]
Task Information Delivery Plan	[Refer to document/part thereof] OR (if not applicable to Appointee) [N/A]
Risk Register	[Refer to document/part thereof]
High Level Responsibility Matrix	[Refer to document/part thereof]
Mobilization Plan	[Refer to document/part thereof]
Security Management Plan	[Refer to document/part thereof]

# Key features of the Information Protocol

- Clause 3: Obligations of the appointing party
  - Information Particulars to be review and updated (if necessary) as and when required
  - Note: if updated, consider the Appointee's rights in accordance with their Appointment – more time or money?

3.1 The Appointing Party shall save to the extent that such obligations are within the scope of the Appointee's obligations under the Appointment, arrange for:

3.1.1 the Information Particulars to be reviewed and updated (if necessary) as and when required until the completion of the Works. The Appointee's rights (if any) following any such update after the date of the Appointment shall be assessed in accordance with the Appointment and this Protocol; and

# Key features of the Information Protocol

- Clause 5: CDE Solution and Workflow
  - Appointing Party establishes, implements and configures CDE, unless the Appointment says otherwise
  - Access to CDE (Clause 5.5)
  - *Trant Engineering v Mott MacDonald Ltd* [2017]

5.5 The Appointor shall arrange for the Appointee to have reasonable access to the information in the CDE Solution and Workflow as provided in the Information Particulars i) insofar as necessary to perform its obligations under this Protocol and the Appointment and ii) for such period as the Appointee is liable under this Protocol and/or the Appointment in order to access a record of the information in the CDE Solution and Workflow.

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# JCT & the new Information Protocol

**Mark Pantry**

Associate, Fenwick Elliott LLP



# BIM and the JCT Contracts

- The JCT's approach to BIM:
  - Prior to 2011 – BIM documents included as a Contract Document;
  - 2011 – JCT Public Sector Supplement includes BIM provisions for the first time;
  - 2016 – publication of an updated edition of the JCT suite of contracts, including BIM provisions in the majority of contracts.

# BIM Protocol

- BIM Protocol included in the Contract Particulars:

1.1 Base Date \_\_\_\_\_

1.1 BIM Protocol (where applicable)  
*(State title, edition, date or other identifiers of  
the relevant documents.)*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.1 Date for Completion of the Works  
*(where completion by Sections does not apply)*  
\_\_\_\_\_

Sections: Dates for Completion of Sections<sup>[11]</sup>  
Section \_\_\_\_\_ : \_\_\_\_\_  
Section \_\_\_\_\_ : \_\_\_\_\_  
Section \_\_\_\_\_ : \_\_\_\_\_

- Definition of Contract Documents:
  - “the Agreement and these Conditions, together with the Employer’s Requirements, the Contractor’s Proposals, the Contract Sum Analysis and (where applicable) the BIM Protocol.”
- Clause 2.1
  - General obligations when the Contractor is carrying out the Works
  - “The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents...”

- JCT's guidance on BIM Protocols:
  - Definitions and terminology should be consistent across the Contract Documents.
  - The BIM Protocol reflect the processes and risk allocation for the project.
  - All appendices to the BIM Protocol should be properly completed.
  - The BIM Protocol clarifies responsibility for hosting, managing and supporting the Common Data Environment where information will be held and shared.

# Precedence of Contract Documents

- Clause 1.3 of the JCT Design and Build Contract:
  - “The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or any Framework Agreement, irrespective of their terms, shall override or modify the Agreement or these Conditions.”
- Parties to agree a process for notifying and resolving BIM related discrepancies.
- What about discrepancies between the BIM Protocol and other Contract Documents?

- Design Submission Procedure
- Copyright

8.2 The Parties agree that:

8.2.1 if there are any provisions in the Appointment in relation to copyright, moral rights, rights in design, database rights (or any other intellectual property rights) in Material prepared and/or provided by the Appointee, clauses 8.3 to 8.5 shall not apply, and such provisions of the Appointment are hereby varied so far as is necessary to:

- Relevant Events
  - Clause 2.26.6: “any impediment, prevention or default ... by the Employer or any Employer’s Person”

- Optional Clause X10: Information Modelling
- Inserts additional provisions into the NEC4 Contract:
  - ownership of information
  - liability for errors
  - management of information interfaces
- NEC Guidance on the new Information Protocol to be published shortly.

# Your Experiences

- We would love to hear from you:
  - Your thoughts and impressions on the new Information Protocol
  - If you intend to use the new Information Protocol with the JCT, NEC or FIDIC suite of contracts

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# FIDIC & the new Information Protocol

**Jeremy Glover**

Partner, Fenwick Elliott LLP

Member of Examiner's Board, Centre of Construction Law,  
King's College London



# The FIDIC BIM Advisory Note Emerald Book for Tunnelling Contracts: 2019

- *“Coordination of goals and effort is essential and is generally achieved by a BIM Protocol and a BIM Execution Plan, both key documents to access and understand work in this environment.”*
- *“FIDIC contracts are designed to be fair to all parties and are considered suitable for use with projects featuring the use of BIM - providing that the parties recognise the difference in approach and use the contract appropriately.”*

# The FIDIC BIM Advisory Note 2017

- Part of the 2017 Second Edition of the Rainbow Suite;
- According to FIDIC, BIM is:
  - “founded on a team approach and successful projects utilising BIM encourage collaboration.”*
- **There is no FIDIC BIM/Information Protocol;**
- FIDIC indicated in 2016 that it is preparing two documents:
  - “Technology Guideline”; and
  - “Definition of Scope Guideline Specific to BIM”.
- Comment repeated in the 2019 Emerald Contract for Tunnelling Works.

# The FIDIC BIM Advisory Note 2017

- FIDIC has identified the key risk areas on any BIM-enabled project:
  - Misunderstanding of scope of services;
  - Use of data for an inappropriate purpose and reliance on inappropriate data;
  - Ineffective information, document or data management;
  - Cyber security and responsibility for “holding” the models or data;
  - Definition of deliverables, approval and delivery.

# Definitions

- There is no definition of BIM in the FIDIC Contract;
- Use ISO 19650, international standards;
- Use terms practitioners are familiar with (or will be);
- Golden Principle 2: clear and unambiguous drafting.

Jøns Sjøgren, Chair of the ISO technical subcommittee:

*“Taking this to an international level not only means more effective collaboration on global projects, but allows designers and contractors working on all kinds of building works to have clearer and more efficient information management.”*

# Technical standards

- 2019 Emerald Book:

*“The Contractor’s Documents, the execution of the Works and the completed Works (including defects remedied by the Contractor) shall comply with the Country’s technical standards, building, construction and environmental Laws, Laws applicable to the product being produced from the Works, and other standards specified in the Employer’s Requirements, applicable to the Works, or defined by applicable Laws.*

*All these technical or other standards and Laws shall, in respect of the Works, and each Section and Part, be those in force when the Works or Section or Part are taken over under Clause 10 [Employer’s Taking Over].”*

# Design: Information Protocol

- Clause 1.7 of the Information Protocol:

*“The Appointor and the Appointee shall exercise the Required Standard in performing their obligations under this Protocol and notwithstanding any other provision of this Protocol the Appointor and the Appointee shall each have no greater obligation under or in connection with this Protocol than to exercise the Required Standard.”*

- Required Standard means the level of skill and care applicable to the party’s equivalent obligation under the Appointment.

-

# Design obligations: FIDIC

- White Book, sub-clause 3.3.1: Consultant shall:

*“have no other responsibility than to exercise the reasonable skill, care and diligence to be expected from a consultant experienced in the provision of such services for projects of similar size, nature and complexity”;*

- Rainbow Suite, sub-clause 4.1, Yellow Book (D&B), Contractor:

*“When completed, the Works (or Section or Part or major item of Plant, if any) shall be fit for the purpose(s) for which they are intended, as defined and described in the Employer’s Requirements (or, where no purpose(s) are so defined and described, fit for their ordinary purpose(s)).*

# Documents, record keeping & the model

- Sub-clause 5.6, as-built records: *“The Contractor shall prepare, and keep up-to-date, a complete set of “as-built” records of the execution of the Works...The format, referencing system, system of electronic storage and other relevant details of the as-built records shall be as stated in the Employer’s Requirements (if not stated, as acceptable to the Engineer).”*
- Sub-clause 5.7, O&M manuals: *“The format and other relevant details of the O&M Manuals shall be as stated in the Employer’s Requirements”*

The Employer’s Requirements should set out what is required for the Model and the keeping of documents

# CDE: documents, record keeping & the model

## Clause 5 of the Information Protocol;

- Appointing party is responsible for establishing and implementing CDE Solutions and Workflow;
- Specifically, the Appointor is required to arrange for the Appointee to have reasonable access to the information in the CDE Solution and Workflow ;
- [Learning from] *Trant v Mott McDonald*;
- Express right to access information.

*“The BS EN ISO 19650 is a game changer in seeking to progress, and comprehensively align, BIM and information management practices across the industry, and worldwide.”*

May Winfield, one of the co-authors of the Protocol  
commenting on the launch of the Information Protocol

<https://www.bimplus.co.uk/news/gamechanger-information-protocol-published-replace/> [Accessed 1 July 2020]

# FIDIC & the new Information Protocol

- FIDIC relies on detailed step-by-step processes expressed as contractual terms being complied with;
- A proactive approach is policed by prescriptive procedures;
- The new Information Protocol is drafted with a similar, “stating the obvious” approach
- A lot of the key information in the FIDIC Contract in terms of processes and information, (design and otherwise) is in the Employer’s Requirements or Contract Data
- Importance of the Information Particulars in the Information Protocol.

# The FIDIC BIM Advisory Note 2017

Consultants are encouraged to clearly define:

- The proposed systems and management processes;
- Access rights and limitations of the client, other consultants and contractors;
- Reliance other parties may place on data in the digital environment;
- Potential access limitations and exclusions of liability for downtime;
- Potential exclusion of liability in the event of cyber attack;
- Potential exclusion/limitations on professional liability for the actions of others;
- Access to the all versions of the project model/ the audit trail of changes.

Ps: further information



# BIM: Further information

- The new Information Protocol can be downloaded here: <https://ukbimframework.org/wp-content/uploads/2020/06/Information-Protocol-to-support-BS-EN-ISO19650-2.pdf>
- Other useful websites/twitter sources:
- UK BIM Framework Website: <https://ukbimframework.org/>
- UK BIM Alliance (<https://www.ukbimalliance.org/>),
- CDBB (Centre for Digital Built Britain: <https://www.cdbb.cam.ac.uk/>).
- @bim4legal

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Questions?



# Webinar

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## Next week:

### Conditions Precedent: will they bite?

Thursday, 9 July 2020

12pm (30mins + 10mins Q&A)



**Claire King**  
Partner



**Rebecca Ardagh**  
Associate

Register at [www.fenwickelliott.com/events](http://www.fenwickelliott.com/events)