



ARTICLE

The Humble Timesheet

So simple. So powerful. So overlooked.

The humble timesheet. A simple document. If used effectively, it can be a powerful primary record, but it's often overlooked because it requires discipline and 10 minutes of your day!

“It should never be an issue to record the issues faced on projects, or the specific work details on timesheets, but so often the psychology behind doing so prevents the simple truth from being recorded.”

The timesheet - at its most basic, is a piece of paper that records time. The time spent by skilled tradesmen such as bricklayers, joiners or electricians recording their daily construction activities such as laying bricks, installing roof trusses, or laying cables. At its most complex, it's a powerful primary record of daily construction activities that will be hard to beat.

The timesheet is a humble document. It should be quick and easy to fill out, but so often in construction, it's overlooked and undervalued. Is it because it requires some daily discipline? Is it because it takes 10 minutes of your day to fill out? What if you had an app on your phone that allowed you to complete your timesheet instantly, and even add photos of what you were doing, and where, or what issues you faced? Would the timesheet still become a chore to fill in? Whatever the reasons, the industry still fails to grasp the importance of it and how useful it can be. By not respecting this humble document you may find yourself losing thousands, or indeed millions of pounds on financial entitlements, all because you cannot demonstrate the actual works done on a project.

Why write about timesheets?

You may have read that last paragraph and thought that sounds extreme; well it isn't, I assure you. It stems from my recent involvement in a large and rather lengthy multi-million-pound construction dispute that was heading for litigation. The contractor got into difficulties in the latter stages of the project, resulting in termination of the contract – and the works left incomplete. The owner was left to finish the remaining works and in doing so, incurred substantial additional costs that it later tried to recover in litigation.

A significant proportion of the costs incurred by the owner related to labour (highly skilled and expensive, I may add) provided by subcontractors employed to ‘come back’ and finish the remaining works. The subcontractors were appointed on a cost-reimbursable basis after providing estimates for measured works and unit rates for labour and plant for the works that couldn’t be measured. The costs spiralled and the owner was left with substantial losses that it needed to recover.

I was part of a team tasked with independently verifying the costs incurred to establish a value (or at least attempt) of the incomplete works completed by the subcontractors and value the defective/improvement works (where possible). This was an almost impossible task, primarily due to the contemporaneous documents provided by the subcontractors to the owner, and the owner’s reliance on those documents as the basis of its claim.

A key document in this process was the subcontractors’ daily timesheets (thousands of them) issued contemporaneously, for skilled and unskilled labour, plant and equipment used to complete the works. The timesheets were originally issued on paper, changing mid-way through to an electronic system. The contract specified that timesheets were to be “verified by the subcontractor, submitted weekly to the Owner Representative and [were to] confirm the associated services provided in relation to the contract”. An opportunity was missed to clearly specify what was expected from the subcontractor in explaining exactly what works must be described within each timesheet.

In many instances, the owner appointed the subcontractors that the original contractor had appointed, which was the right approach. However, liability relating to defective works was not proven, nor was the subcontractor afforded the opportunity to rectify their own defects strictly at no cost to the owner. Therefore, subcontractors were effectively paid for fixing their own defective works.

The timesheets provided by the subcontractors included the time spent on the project per day, names of the individuals and their skill, the date(s) on-site including travel time and other basic information such as working overtime.

But, the crucial and specific details about the works undertaken each day were missing. What works had each person been doing each day (e.g. removed 45m of 3” defective steel pipework), where on the project had the works been undertaken (e.g. Block A level 2, East Wing, gridline A12-A15) and did the works relate to incomplete measured works or the fixing of defective works?

The quality and accuracy of the timesheets failed to adequately prove causation. The additional costs incurred in completing the remaining works far exceeded the remaining contract value.

The owner’s claim was left with large portions of the costs being noted as ‘costs incurred but not substantiated’. It was clear that the costs had been incurred by the owner, but it was unclear exactly what those costs related to, and if those costs could be attributable to the original contractor.

Case law

The case law on timesheet records is thin.

The decision of *AG Falkland Islands v Gordon Forbes* clarified that the term ‘contemporary record’ meant “original or primary documents, or copies thereof, produced or prepared at or about the time giving rise to a claim, whether by or for contractor or employer.”¹

The contract used by the parties in this case was the old FIDIC Red Book 4th Edition, which included the term “contemporary records”. The later FIDIC Red Book revisions (1999 and 2017 versions) kept the same term. FIDIC clarified the meaning of “contemporary record” in the 2017 version to mean “records that are prepared or generated at the same time, or immediately after, the event or circumstance giving rise to the claim”.²

Whilst FIDIC refers to the claim, it could apply to variations or be considered for a document for any other purpose. Timesheets are considered primary documents and if kept contemporaneously, and then issued to the owner weekly, would be considered contemporary.

The decision of *Premier Engineering Limited (Premier) v MW High Tech Projects Limited (MW)*³ clarified the process of signing off timesheets, examining large amounts of disputed invoices and the issues that incurred when there are several ways that time is recorded. Premier (a subcontractor) was awarded payment based on its timesheets and the fact that they were signed off by MW, without really checking the details recorded.

MW instructed Premier to provide labour, plant and materials on a unit rate basis, as and when required by MW. MW signed off Premier’s timesheets which recorded how much time its operatives had spent on the project.

1 Attorney General for the Falkland Islands v Gordon Forbes Construction (Falklands) Limited 2003 BLR 280 at 33, relating to Clause 53 of FIDIC Red Book 4th Edition

2 Thomas Young, Fenwick Elliott, Changes to the claims provisions in the 2017 FIDIC Red Book, International Quarterly 25.

3 Premier Engineering (Lincoln) Limited v MW High Tech Projects UK Ltd [2020] EWHC 2484 (TCC).

Premier charged MW the time spent on the project using agreed hourly rates. The time recorded on Premier's timesheets was different to the time recorded by a turnstile system. MW explained that it signed off Premier's timesheets to maintain its cash flow and "keep the peace", however, apparently MW intended on clawing back any overpayment later on in the project.⁴

The court found that the parties had agreed to use a biometric reader and not rely on turnstile data, as there were instances where turnstiles were unreliable and Premier had labour off-site undertaking certain works, which would have been recorded by the turnstile as off-site.

The lesson from this case is that simply signing off timesheets (the phrase "rubber stamping" has been used) without proper checks is not a good idea. Timesheets are likely to be considered as primary evidence by the courts. This could mean that hours recorded on timesheets will be taken to be accurate unless other evidence proves otherwise. It would be useful to implement a process of meaningful checks by the receiver of the timesheets so that checks can be done contemporaneously and not after the fact.

Contract requirements that don't help

Under the NEC 3 Engineering and Construction Contract and the Engineering and Construction Subcontract, nothing is specified for the recording of time. The definition of 'Defined Cost'⁵ could be used to request and assess timesheets that were seen to be excessive or did not include sufficient works information. If a subcontractor is appointed on a time and material basis and no system is in place to verify the accuracy of the information recorded by the subcontractor, a situation may occur whereby you defend costs or are unable to recover costs due to a lack of specific information being recorded.

Under the JCT Design & Build 2016 contract, the Valuation Rules, clause 5.5 Daywork, the following is noted with regard to 'vouchers':

"Where the execution of additional or substituted work cannot be valued in accordance with clause 5.4 [Measurable Work], the Valuation shall comprise: 1) the prime cost of such work issued by the Royal Institute of Chartered Surveyors...and 2. At All-Inclusive Rates stated in the Contract Particulars...Provided that in any case vouchers specifying the time daily spent upon the work, the workmen's names, the plant and the materials employed

shall be delivered for verification to the Employer no later than 7 Business Days after the work has been executed."

The Daywork clause includes vouchers (a timesheet could be construed as a voucher) if the valuation of additional or substituted work cannot be valued according to Clause 5.4. [Measurable Work].

The JCT contract does not require specific works information to be recorded on vouchers. A record or time with no specificity leaves gaps in important information, an omission that may come back to hurt you when needed.

Finally, under a FIDIC Red Book 1999 contract, clause 20.1 [Contractor's Claims] requires *"the Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or another location acceptable to the Engineer...the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records."*

Whilst the term 'contemporary records' was clarified in the AG Falkland Islands v Gordon Forbes case, the phrase *"such contemporary records as may be necessary to substantiate the claim"* within clause 20.1 means that it is left to the contractor (and subcontractor) to decide what records it will provide. That may not align with what an engineer would request, leaving a dispute about the records not being sufficient to prove your claim. This issue is a common source of disputes under the FIDIC contracts.

If you encounter issues on a project, you want to avoid the risk of a reduced entitlement or having to create (or add to) records after the fact, to comply with the requirements of clause 20.1. It is therefore wise to pre-empt this, setting up a system that creates and delivers the detailed records (don't forget timesheets) from the early stages of your project.

The new age timesheet

The increased use of technology to record what takes place on construction projects is on the rise. The industry should be further ahead with the use of technology, but that's not the case. I have yet to see an electronic timesheet system download that includes the specific details of work undertaken by labour working on the project. It appears that the same issues are occurring on the new age timesheets that occur on the historical 'paper' method – a failure to record the specific details of work and any issues affecting productivity.

⁴ John Miller, Fenwick Elliott, Timesheets, Turnstile Records, Biometric Data and (potential) Agreements made in Stairways, (2020) Lexology.

⁵ Clause 52 in both NEC3 contracts.

Regardless of which new age timesheet system is in place, be that a turnstile system, biometric data, microchip fixed on hardhats, or apps on phones, recording the specific work information to complement the time spent on projects should be looked upon as necessary and not a waste of time.

What should a timesheet include as a record?

Looking back at the quality and information included within the thousands of timesheet records provided by the subcontractors in the example above, and the frustrations we had as reviewers and assessors of these documents, the list below outlines the minimum information that timesheets should include for them to be a truly useful and helpful primary record:

The obvious information to record:

- date
- project
- company name
- signature area
- skilled labour name
- ID number.

The specific information required:

- The activity(ies) undertaken
- Time spent on each activity
- Where the activity is located on the site
- What plant and equipment was used and for how long
- Any issue(s) affecting the activity (e.g. delay, disruption), is the work defective work or measured work?
- The quantity of work carried out each day.

If you submitted timesheets (in whatever format) that included the above information, it would be difficult to argue against the accuracy of that information, or not have a court look upon this information as a primary source to be used in valuing a claim or entitlement.

I look back on a discussion I had with a former colleague of mine – a well-known and experienced quantum expert with over 40 years in the industry. We were tasked with assessing a large disruption claim relating to limitations on-site entry/exit and work areas not being available as planned. These issues caused labour and equipment to be standing and caused a significant loss of productivity.

It was obvious that the contractor had incurred disruption to its productivity and the employer had increased security to the site which caused entry and exit delays. There were pictures of hundreds of workers queuing to enter the site at midday. However, not a single timesheet produced by the contractor (or its many subcontractors) had supported the disruptions claimed. My colleague said that there is a stigma in the industry - that it's not good to write on a timesheet all the things that are going wrong in the day, such as "4 hours standing around waiting for access to the site. No work done" or "8 hours not working, as Subcontractor X is delayed, causing areas A and B to be unavailable".

The issue with timesheets was similar to the recent case mentioned above, where time was only being recorded for the labour being present with little other information recorded. The timesheets would simply say "A Joiner, pipefitter, 8 hours, 12 May 2018."

Similar in some respects to the issues faced in the industry about speaking out about mental health, it is clear that there is a similar reluctance when it comes to recording the facts on contemporaneous records. It should never be an issue to record the issues faced on projects, or the specific work details on timesheets, but so often the psychology behind doing so prevents the simple truth from being recorded.

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