

INTRODUCTION

The COVID-19 pandemic has had a seismic impact on the health, economy, freedom of movement and working practices globally and many of us are still adapting to these changes with challenges to overcome that we have never experienced before in our working lives.

The Job Retention Scheme (JRS) was introduced by the UK government in March, and has been extended until October 2020. Although the scheme has brought many benefits to the construction industry, it has also caused a challenge for some of our clients who wish to continue specialised work, but unable to do so as some highly specialised consultants may be on the scheme.

As an independent consultant working across the built environment we can provide guidance and support around the Party Wall, Etc Act 1996 and related services. This includes initial advice, preparation and service of notices and statutory appointment roles in connection with dispute resolution for both building owners and adjoining owners.

THE IMPACT OF COVID-19 ON THE PARTY WALL, ETC ACT 1996

The COVID-19 crisis has imposed some serious challenges around the Party Wall, Etc Act 1996 (PWA) but it is important for all those associated with party wall work to be aware that the Coronavirus Act 2020 makes no specific reference to the PWA or the procedures set out therein.

Section 7 (5) of the PWA does however state, "Any works executed in pursuance of this Act shall - (a) comply with the provision of statutory requirements."

This indicates that any work undertaken should be done strictly in accordance with government regulations and guidelines relating to COVID-19, with particular regard to 'social distancing', having proper regard for the individual circumstance of owners and also to The Health and Safety Act Work Act 1974.

What does this mean for the status of statutory surveyors who have declared themselves incapable of acting? The Party Wall, Etc Act 1996 allows appointed surveyors to deem themselves incapable of acting. This can have significant impact on programmes of work and could occur for a number of reasons; illness due to contraction of COVID-19, shielding or self-isolation and/or an employee being subject to the Government JRS, resulting in them being furloughed. Given the current pandemic, the first two situations are self-explanatory. The third circumstance requires that they do not undertake work for their employer. This is essential to protect their employer's right to obtain the requisite grant from the government to protect jobs within their business.



HOW TO DEAL WITH THE PROCESS OF PARTY WALL DISPUTE RESOLUTION

Depending on the arrangements for appointments under Section 10 of The Act – Dispute Resolution, there are a number of mechanisms that can be adopted to deal with the process of dispute resolution.

SCENARIO 1:

In a situation where a surveyor, agreed and appointed, under Section 10 (1), (a) by both parties, to resolve a dispute, becomes or deems himself incapable of acting as Section 10 (3),(b) of The Act, then The Act states, “...the proceedings for settling such dispute shall begin de novo”.

OUTCOME:

The process must start again, from the beginning.

SCENARIO 2:

In a situation where either one or both surveyors appointed by one or both of the parties to the dispute under Section 10 (1),(b), become or deem themselves incapable of acting then Section 10 (5) instructs, “...the party who appointed him may appoint another surveyor in his place with the same power and authority.”

OUTCOME:

Subject to written appointment this allows any newly appointed surveyor to pick up on matters where the surveyor incapable of acting has left off. It is important to understand that there is no obligation to appoint a replacement surveyor and the use of the word “may” indicates that there are circumstances where such appointment would be inappropriate. For example:

1. Where owners believe a dispute is substantially settled
2. Where the surveyor’s appointing owner is content to rely on the remaining surveyor and the third surveyor to deal with matters.

It is important to note that Section 10 (5) of the Act refers to the specific purpose of replacement of a surveyor incapable of acting and cannot be used by an appointing owner to replace a willingly active surveyor. Equally, Section 10 (5) states that it cannot be used by appointed surveyors who are unwilling or are refusing to act, as a means of extracting themselves from their statutory appointment.

Other available options that could be considered to ensure the progress of dispute resolution in the instance of a declaration of inability to act by a surveyor appointed under Section 10 (1)(b), might be:

- **A.** For the individuals on furlough, appointed surveyors’ duties must be delegated to an employee of the same company who is not subject to furlough to deal with matters. These delegated duties however, must not amount to substantive work under the award. It is also important to understand that delegation of work may not be possible where an award has not been agreed and replacement of the surveyor would be necessary.

Or

- **B.** Make a direct appointment of the furloughed surveyor outside of the their position as an employee and proceed on that basis subject to the surveyor demonstrating they have the necessary Professional Indemnity Insurance (PII) in place and with the appointment being accepted on the understanding that at no point would the surveyor’s employer seek reimbursement for the work undertaken by the individual.

COVID-19: IMPACT ON PARTY WALL AGREEMENTS

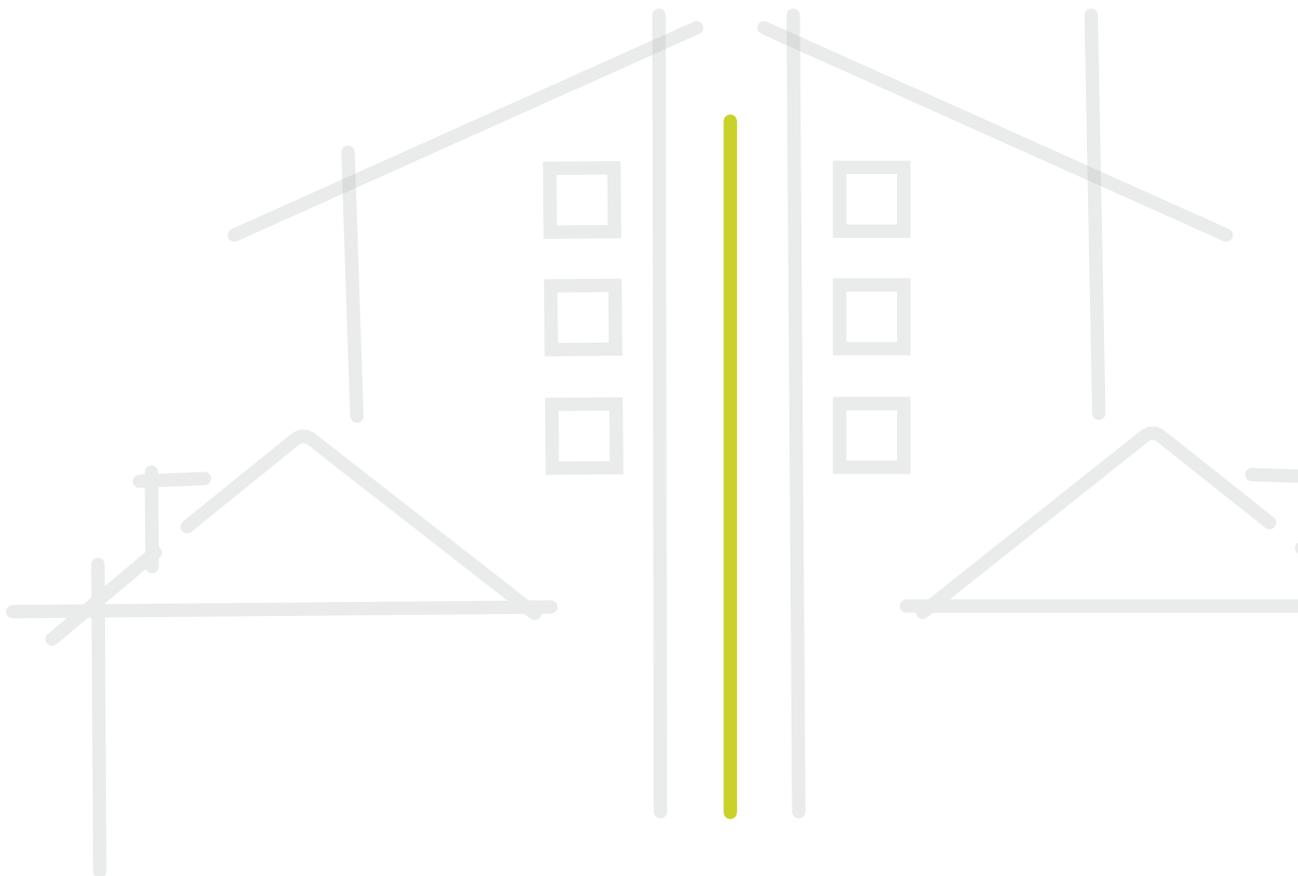
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CONCLUSION

In the case of statutory party wall appointments our specialist team of party wall surveyors have provided resolution for appointing owners. This includes being insulated from delay issues around replacement of surveyors who have been furloughed by replacing them with in-house, non-furloughed staff or delegating non-substantive work post award to non-furloughed staff. This legal understanding and approach to agile working has minimised impact on our appointing owner's programmes and budgets by transferring and retaining appointments within our organisation.

As a practice with national coverage and an extensive resource pool of expert party wall professionals Rider Levett Bucknall is best placed to offer clients advice on party wall matters and accept appointments to replace statutory surveyors appointed by way of Section 10 (1)(a) or Section 10 (1)(b), who have become incapable of acting or have deem themselves incapable of acting.



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