

Q. Who are Clients under CDM 2007?

A. A client is an organisation or individual for whom a construction project is carried out. Clients only have duties when the project is associated with a business or other undertaking (whether for profit or not). This can include for example, local authorities, school governors, insurance companies and project originators on Private Finance Initiative (PFI) projects. Domestic clients are a special case and do not have duties under CDM2007.

Domestic clients

Domestic clients are people who have work done on their own home or the home of a family member, that does not relate to a trade or business, whether for profit or not. It **is** the type of client that matters, not the type of property. Local authorities, housing associations, charities, landlords and other businesses may own domestic property, but they are not domestic clients. If the work is in connection with the furtherance of a business attached to domestic premises, such as a shop, the client is not a domestic client.

Sometimes groups who would otherwise be domestic clients form companies to administer construction work. A common example of this is a company formed by leaseholders of flats to undertake maintenance of the common parts of a structure. In such a case, the company is not a domestic client, and will have duties under the Regulations.

Domestic clients have no client duties under CDM2007, which means that there is no legal requirement for appointment of a CDM co-ordinator or principal contractor when such projects reach the notification threshold. Similarly, there is no need to notify HSE where projects for domestic clients reach the notification threshold. However, designers and contractors still have their normal duties as set out in Parts 2 and 4 of the Regulations and domestic clients will have duties under Part 4 of the Regulations if they control the way in which construction work is carried out.

Designers and contractors working for domestic clients have to manage their own work and co-operate with and co-ordinate their work with others involved with the project so as to safeguard the health and safety of all involved in the project. The requirements in Schedules 2 and regulations 25-44 and other health and safety law still apply.

Insurance and warranty claims

An insurance company arranging for construction work to be carried out under the terms of an insurance policy is the client for the purposes of CDM2007. However, where the insured arranges the work and the insurance company reimburses them, the insured is the client. If the latter is a domestic client they attract no duties under CDM2007.

If the insurer specifies designers or contractors for certain aspects of the work, then the insurer is responsible for establishing that they are competent.

It is common, with insurance-related work, for agents to be appointed to act on behalf of either the insured or insurer. These agents resolve claims and may coordinate the remedial works. Such agents may legally be clients with all the relevant duties.

Where remedial work is carried out under a home warranty scheme, such as those provided by the National House Building Council (NHBC), it is the provider of the warranty, for example NHBC, who is the client for the purposes of CDM2007.

Developers

In some instances, domestic clients may buy a house or flat before the whole project is complete, for example where house builders develop a site with a view to selling a number of homes. In such cases the purchaser may have an interest in the property, but it is still the developer who arranges for the construction work to be done and they are legally the client.

Builder-developers are often both client and principal contractor, although they may appoint another contractor as principal contractor. They may also be a designer or CDM co-ordinator. They must comply with CDM2007 in all their roles.

PFI, PPP and similar forms of procurement

Project originators are legally the client at the start of the project, and should ensure that a CDM co-ordinator is appointed and HSE notified during the early design and specification phase. The project originator cannot wait until someone else, for example the Special Purpose Vehicle (SPV), takes over the client role.

The role and responsibilities of the client can transfer from one party to another as the project proceeds. This is normally the case when the SPV is appointed to carry out detailed specification and delivery of the project. Any such transfer should:

- Be clear to, and agreed by all those involved;
- Be clearly recorded;
- Provide the practical authority to discharge the client's duties.

If the project originator does not wish to remain a client in respect of the Regulations after the SPV has been appointed, they should make use of the election facility in regulation 8. Without such an election, *the project originator* may retain some client responsibilities

In some circumstances it may not be immediately obvious who is legally the client and there can sometimes be more than one client involved in a project. **To avoid confusion, this needs to be resolved by those involved at the earliest stage possible** taking into account who:

- Ultimately decides what is to be constructed, where, when and by whom;
- Commissions the design and construction work (The employer in contract terminology);
- Initiates the work;
- Is at the head of the procurement chain;
- Engages the contractors.

If there is still doubt, then all of the possible clients can appoint one of them as the only client for the purposes of CDM2007 (see regulation 8). Someone will always be the client. It is in the interests of all possible contenders to identify who it is. If not they run the risk that all will be considered to carry the client's duties under the Regulations.