



## Record keeping - such a hassle!

**“A party to a dispute, particularly if there is arbitration, will learn three lessons: the importance of records, the importance of records and the importance of records.” - Max Abrahamson.**

Max Abrahamson’s statement typifies the industry ideal: to have contemporaneous records. There are many reasons for keeping contemporaneous records which I will consider in part below, but more importantly in this article I will look at the legal implications of failing to maintain adequate records.

### Problem with keeping records

Records, or lack of them, are an all too familiar problem for contractors, sub-contractors and employers. The basic function of these records is to provide proof that A should pay B X and not Y. On the one hand paper based records have been used with mixed success over the years but they need constant administration in order to remain contemporaneous as one day of missed records can mean all parties incur unnecessary costs. However, if properly completed, they can benefit from having signed authentication. On the other hand a computer based gate entry system can provide more accurate records as these are logged automatically onto a database. Whilst in theory this may sound great most computer sign in entry systems have a costly set up fee and also have to constantly be maintained.

### Why important to keep records?

In a sense records are ‘the memory of the project’ from the daily sign in sheets to the end of shift reports. In *National Museums and Galleries on Merseyside Board of Trustees v AEW Architects and Designers Ltd* (also known as The Liverpool Museum case) the High Court had to consider whether an interim payment on account of costs should reflect a cost management order made in April 2012. The case related to design problems identified during the course of construction. The museum here had not kept records in order to allow an assessment of management time spent on the issues to be made. The defendant here sought to have the quantum claim rejected because there were no records to indicate the amount of management time spent on the claim, with the result that quantum could not be accurately estimated. However the judge believed that the quantum claim could be justified as it was “supported by other witness evidence and expert evidence” but he did reduce the time awarded.

So does this case mean an end to contemporaneous records? The fact that in some respects the Liverpool Museum case rejected the accepted norm of accurate records cannot be viewed as a precedent; it must be viewed in its own right. In this case secondary data such as the staffs’ diaries and the CEO’s witness testimony was used to

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substantiate the quantum. However had the data been in a primary form, such as a project plan or a structured time allocation system, I believe that the time awarded would not have been reduced. In order to gain the quantum claimed records are essential, but as this case shows any form of records are better than none.

### A new way forward

So what is the answer? As already mentioned there are inherent problems with the old paper based system and a modern gate entry system. Given the increased use of smartphones an app could make more sense and would offer the advantages of low cost set up, central database storage and easy access to the records. The difference between this and a gate entry system is that while the latter requires a database to be managed by the contractor, the former outsources the facility which reduces the start-up and maintenance costs. I believe that apps like this will be the future and such innovations will revolutionise record keeping and consequently the industry.

### Conclusion

The Liverpool Museum case cannot be viewed as a new precedent in English law because it must be seen in light of its circumstances. In this case there was no primary records kept but instead secondary records were used as evidence to justify the quantum claimed. As previously stated this does not mean an end to contemporaneous record keeping, nor a re-statement of the courts attitude to accurate records. What it does mean however is that some records are better than none.

There are several solutions to the problem of keeping contemporaneous records. Paper based systems are unreliable and prone to loss. Computer based entry systems while providing more accuracy can incur large set-up costs as well as constant maintenance. The answer, I believe, lies in something far simpler and easily accessed: a site diary app. It will be interesting to see how the industry takes to innovations ideas such as this, but one thing is for sure the three principles remain the same: “the importance of records, the importance of records and the importance of records.”