

# InFocus

Issue No. 10 - Summer 2025



Insights into the construction industry with Pyments Periodical



# InFocus

In this issue...

This 10th Edition of 'InFocus' continues with our team of experts preparing articles which provide their own unique insights into the construction industry.

InFocus provides thought-provoking articles which both inform, and encourage best practice, on a wide range of specialist construction issues.

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How we help our clients with expert construction advice and guidance.



To learn all  
about our  
services,  
*please scan  
the QR Code*

# Sink or Swim?

**As with previous issues of InFocus, this issue provides another fine selection of industry-relevant articles prepared by our in-house team of experts, as well as an introduction to one of the recently new members of the Pyments team.**

This issue of InFocus has seen me reflecting on all that our industry has faced in recent years and, it's fair to say, this 'world' of construction that we know and love, has spun through more fundamentally impactful changes in the last five years than I can recall during any other period of my (not-insignificant) time in this industry, yet still we (you and I, dear reader) are driven to move forward, and still we seek to make a change and a difference.

As a firm, our role on construction projects brings with it many lasting and enjoyable relationships with colleagues in a great many diverse and different organisations across this industry... including with those who design, those who build, and those who occupy, use or develop the buildings, estates and environments we operate in. It is deeply satisfying then, to contribute to the successful outcomes we share with client teams and, contrary to popular belief (where too many still believe the 'contract' lives in an unlit corner of a high and distant shelf), we have seen more of our client teams engage in the delivery of Pyments structured training and CPD activity, in the last 18-months, than at any other time in the last decade... including in all things contract, change management, programme delay, risk management, dispute prevention and resolution, etc., where these and other matters all sit alongside the necessary and careful

management and administration of the projects we deliver.

So why are we seeing this; is there a progressive (perhaps generational?) shift in how we seek to develop the next generations entering this world of construction, or; is the risk of failure and the consequences that flow from such failure, simply too great a burden to bear for those already slim margins evident within this industry? I would of course wish to say it has more to do with a focussed and intentional drive to shape and develop our youth of today into the leaders of tomorrow, and there clearly is something of that within many of the groups we work with; however, the reality is that the primary driving force to such development activity, is the deeply challenging risk profile which too often prevails across the projects we deliver.

Regardless of the "why", the net effect is that the "sink or swim" approach of too many of our yesterdays, has now given way to a structured and focused development of our next generations, across many of the client teams we engage with.

You may then ask, that age-old question of academia vs experience. The answer, in my experience, is neither one nor the other, but much more a blend of both. Academic study in

most of our careers is heavily weighted in those early years when we're living on the steepest edge of the career-learning curve we've chosen, whereas; the lifelong learning offered through experience, is pock-marked by both moments of learning, and those very necessary experiences that teach us and shape us.

Whether you're starting out on your career, or have as many (or more) years than yours truly in this wonderful world of construction, I do hope you find this issue of InFocus to be both informative and thought-provoking. And, whether you build, design, procure, use or develop the projects we deliver....

**If you'd like to talk about how to challenge that project risk profile I mention, then pick up the phone, and let's have a conversation!**

An introduction from Gordon Connell,  
Managing Director of Pyments



*Gordon Connell*  
Managing Director

# The Benefits of Subtitles

## Industry Insight

Research shows that incorporating subtitles in training videos and safety materials can increase retention rates by up to 40%, especially in high-noise environments like construction sites.

## Did You Know?

Subtitles aren't just for entertainment—they enhance accessibility, boost team understanding on multilingual sites, and improve documentation clarity across global projects.

Since recently purchasing a new television, I find myself wasting considerable amounts of time struggling to operate the thing properly. As part of the deal, I've become the proud owner of two different remote controls, one of which I've not yet used and am unlikely to master in the lifetime of the television. Thanks to some wizardry that I find completely incomprehensible, I understand that it's possible to shout commands at either one of the remote controls and whatever you're watching on the screen changes to something else, as if by magic.

The remote controls, or at least one of them, also enable subtitles to appear at the bottom of the picture. Someone in my household (I'm pretty sure I know who the 20-year old culprit is) seems to think it's a cracking good idea to watch a programme featuring English actors, all speaking English, with subtitles which are also in English. Annoyingly, that person can't be bothered to switch off the feature when they've finished viewing.

Which incoherent ramblings bring me on to construction-related matters and specifically, situations when I consider subtitles could be of great benefit to contractors and subcontractors alike.

I'm talking about unjust or overwhelmingly one-sided contract conditions. These can be bespoke conditions, or amendments to the conditions in standard forms of contract or subcontract, such as 'Z-clauses' in NEC conditions.

**Here are a few examples on the next few pages. I have helpfully added my own 'subtitles' (in bold font) to help explain what the contractor or subcontractor is being asked to sign up to.**

Please turn over/view next page to see the examples of why subtitles would be so beneficial.



# Example 01

## The Benefits of Subtitles

The following conditions were tucked away at pages 32, 33 and 34 of a developer's standard (75-page) Trade-Contract.

(A)

*(Whenever he feels like it, the Employer can make you stop work without giving you any notice whatsoever. He can make you demobilise at your own cost and then you'll have no work to carry out and no income to help cover your labour costs. When he's ready, the Employer can make you re-mobilise at your own cost. It's all going to cost you a lot of money and you agree to bear all of those costs yourself).*

(A)

*"The Employer may at any time by notice in writing to the Trade-contractor forthwith require the Trade-contractor to suspend performance of all or part of its obligations under this Trade-contract and the Trade-contractor shall have no claim against the Employer as a result of such a suspension.*

(B)

*The Employer may in addition to any other right enabling him to terminate the employment of the Trade-contractor under this Trade-contract serve notice on the Trade-contractor at any time terminating the employment of the Trade-contractor under this Trade-contract.*

(C)

*Upon any termination of the Trade-contractor's employment or suspension of the whole or any part or parts of the Trade-contract Works howsoever arising, the Employer shall not be liable to the Trade-contractor for any loss of profit, loss of contracts or any indirect or consequential losses and/or expenses arising out of or in connection with such termination or suspension.*

(B)

*(Whenever he feels like it, the Employer can kick you off the site and tell you not to come back and he can do so without giving you any notice whatsoever and without telling you why).*

(C)

*(Whatever havoc the Employer causes your business, either by making you stop work or by kicking you off site permanently for no good reason, you will never be able to get paid for any of the resulting costs or for any loss of profit).*

# Example 02

## The Benefits of Subtitles

The second example comprises amendments to a standard JCT form of contract. Under the standard (unamended) JCT conditions, if the contractor is delayed or disrupted by the Employer (for example because the Employer instructs additional work) the contractor is entitled to an extension of time, so that liquidated damages for delay cannot be charged, and is also entitled to payment of loss and/or expense incurred by him because he is delayed and disrupted by having to carry out the additional work. The new clauses (amendments to the standard JCT conditions) were as follows:

(A) "It shall be a condition precedent to the Contractor's entitlement to any extensions of time under clause 2.25.1 that the Contractor shall have given the Employer:

1. the information required by clauses 2.24.1 and 2.24.2 within thirty (30) Business Days after the circumstances for such a claim became known to the Contractor..... and
2. all other notices, particulars, estimates and further information required pursuant to this clause 2.24."

(B) "It shall be a condition precedent to the Contractor's entitlement to any loss and/or expense under clause 4.20 that the Contractor shall have given the Employer:

1. the information required by clause 4.20 within thirty (30) Business Days after the circumstances for such a claim became known to the Contractor.....and
2. all other information and details required pursuant to this clause 4.20."

(Even though the Employer and / or the Employer's professional consultants know very well that additional work has been instructed and the additional work has caused programme delay or disruption to the progress of your work, they're not going to award you any additional time and can wriggle out of having to compensate you for your delay costs.

They're fully entitled to act in this way because you signed up to the condition agreeing to forego any entitlement whenever your staff forgot to give the notice, or gave that notice one day late.

To rub salt into the wound, the Employer is going to require you to pay delay damages, because you also signed up to paying the Employer a considerable sum of money for each week beyond the original completion date, which due to no fault of your own, you have failed to achieve).

# Freedom of Contract

'Freedom of contract' is a basic principle of English law which allows contracting parties the freedom to include whatever terms they wish in any contract. The courts will not interfere with a contract to release one of the contracting parties from having agreed to a bad bargain. Thus, it is absolutely essential to ensure you do not accept unjust or overwhelmingly one-sided contract conditions (a bad bargain).

In summary, we would always urge you to come to Pyments for advice before agreeing to what might otherwise turn out to be a bad bargain. Pyments ethos is "prevention is better than the cure" and so early engagement is always highly recommended.

Don't sign up to amended conditions unless you understand exactly what they mean, and don't assume an adjudicator or the court will later treat you sympathetically simply because you have signed up to onerous, unfair conditions.

And finally...

**Beware the onerous, unjust or overwhelmingly one-sided contract conditions (they don't always come with the benefit of subtitles).**

The Benefits of Subtitles by Chris Kevis,  
Senior Consultant of Pyments

*Chris Kevis*  
Senior Consultant



Chris has extensive commercial and contractual experience having been employed in senior roles, predominantly for main contractors, for more than 30 years. During this period Chris has gained comprehensive practical experience of what he refers to as the muck and bullets' issues routinely encountered in the construction and civil engineering industries.

[chris.kevis@pyments.co.uk](mailto:chris.kevis@pyments.co.uk)



# We Are Recruiting!

We're always on the lookout for great talent.

## Current Opportunities:

Pyments are one of the **UK's leading** construction consultancies.

### ( 01 ) Consultant / Senior Consultant

Are you a commercially strong individual with a keen interest in developing your experience in the specialist field of dispute resolution? We have an expanding Dispute Resolution and Claims Management team and provide great opportunity for career progression.

### ( 02 ) Expert Witness

Are you already working in the role of Assistant or Expert in Quantum or Programme Delay? We have a growing team of Experts supporting industry-leading clients across all sectors of the property and construction industry, we work with many of the leading contracting, developer and employer teams in the UK. If this interests you, please get in touch.

### ( 03 ) Delay Analyst / Senior Analyst

An exciting opportunity exists for an experienced programme delay analyst/planner to develop their skills with our industry leading Delay Expert team. We are hard-wired to supporting our people achieve their goals; if you're ambitious and wish to work towards an Expert role supporting industry-leading clients we would love to hear from you.

If this sounds like the environment you would like to work in, please contact [Gordon.Connell@pyments.co.uk](mailto:Gordon.Connell@pyments.co.uk)





# A Return to the ‘Orthodoxy’

In April 2024 the JCT published its long-anticipated JCT2024 Design and Build contract. The Liquidated Damages provisions included a new sub-clause 2.29.5; this new clause addressed the application of liquidated damages in the event of contract termination and is drafted to reflect the approach taken in the Supreme Court case of *Triple Point Technology Inc v PTT Public Company Ltd* [2021] UKSC 29.

The case went all the way to the Supreme Court and had several ‘twists and turns’ to the correct approach to take to liquidated damages in the event of contract termination.

## Background of the Case

Triple Point Technology Inc (Triple Point) entered into a contract with PTT Public Company Ltd (PTT) to provide software and related services. The contract included a liquidated damages clause, which stipulated that Triple Point would pay PTT liquidated damages for each day of delay. The project faced significant delays, and due to nonpayment by PTT, Triple Point suspended works and left site before it fully delivered the software.

The liquidated damages clause read as follows:

*“If [the] Contractor fails to deliver work within the time specified and the delay has not been introduced by PTT, [the] Contractor shall be liable to pay the penalty at the rate of 0.1% of undelivered work per day of delay from the due date for delivery up to the date PTT accepts such work...”*

## The Dispute

PTT claimed Triple Point’s suspension of works constituted a repudiatory breach and terminated the contract. Triple Point sought recovery for the non-payment of outstanding sums, and PTT counterclaimed for its entitlement to liquidated damage and consequential losses arising out of the termination. The case was heard in the Technology and Construction Court.

PTT argued that it was entitled to recover liquidated damages that had accrued between the contractual completion date and the date of termination (and general damages after that). Triple Point argued that on termination, the liquidated damages entitlement fell away in relation to work that was uncompleted at termination, and PTT was only entitled to general damages for the delay and no liquidated damages accrued prior to termination.

The dispute hinged on whether liquidated damages applied to the period of delay up to the termination date, or whether it only applied to work completed and ‘accepted’ by PTT.

The Judge followed the generally accepted ‘orthodox’ rule and determined the liquidated damages clause applied up to the date of termination, irrespective of whether or not such work had been completed or accepted, and that general damages were recoverable thereafter.





## A Return to the 'Orthodoxy'

### The Court of Appeals Decision

The case went to the Court of Appeal where, on the same issue, the ruling on liquidated damages changed. The ruling was that liquidated damages applied, entitling PTT to liquidated damages in respect of Phase 1 (which had been completed by Triple Point and 'accepted' by PTT), but not in respect of the Phase 2 works (which had not been completed by Triple Point nor 'accepted' by PTT). Damages were therefore in effect 'at large' in respect of Phase 2.

In its ruling the Court of Appeal said that case law in England and Wales provides for three possible interpretations of liquidated damages clauses:

- 1) the liquidated damages clause does not apply at all;
- 2) the clause only applies up until the termination of the contract; or
- 3) the clause continues to apply until a replacement contractor has completed the works.

On that basis the Court of Appeal decided that the wording of the clause, 'up to the date PTT accepts such work', means liquidated damages did not apply to Phase 2 because Triple Point did not complete the works and PTT did not accept the works.

This decision caused concern to many in the construction industry as it had the potential to materially change the operation of liquidated damages clauses if the Employer terminated the contract. In such circumstances the Employer potentially loses its rights to recover liquidated damages in respect of any works not completed and handed over. Furthermore, Contractors are potentially liable for liquidated damages after the termination date and until a replacement Contractor was found and the works were completed. This decision steps away from the generally accepted 'orthodox' rule.

### The Supreme Court's Decision

The case went to the Supreme Court where, on the same issue, the ruling on liquidated damages changed again. The decision hinged on the express wording and interpretation of the liquidated damages clause and the intentions of the parties at the time of contracting. The key points of the decision are as follows:

#### 1. Interpretation of Liquidated Damages Clauses:

The Court emphasised the importance of the precise wording of liquidated damages clauses; such clauses must be interpreted in accordance with their plain meaning and the context in which they were agreed upon.

#### 2. Application to Terminated Contracts:

The Court held that liquidated damages clauses can apply up to the termination date. As a consequence, liquidated damages are not applicable after the termination date.

#### 3. Purpose of Liquidated Damages:

The Court reiterated that the purpose of liquidated damages is to provide a pre-agreed measure of compensation for delay, rather than to penalize the breaching party. Therefore, the enforceability of such clauses should be assessed based on their compensatory nature.

In its ruling the Supreme Court unanimously allowed PTT's appeal and in overturning the Court of Appeals ruling, held that Triple Point was also liable to pay liquidated damages for incomplete sections of work up to the date of termination. The Supreme Court determined the Court of Appeals interpretation of the liquidated damages clause was inconsistent with commercial reality and the accepted function of liquidated damages.



# Implications for Commercial Contracts

The Supreme Court's decision in *Triple Point Technology Inc v PTT Public Company Ltd* has several important implications for commercial contracts, particularly in relation to liquidated damages clauses:

## ( 01 ) Clarity in Drafting:

The ruling underscores the need for clear and precise drafting. Parties should ensure that the wording of such clauses explicitly addresses the application of liquidated damages in the event of contract termination. A position now adopted in the JCT 2024 suite of contracts.

## ( 03 ) Enforceability:

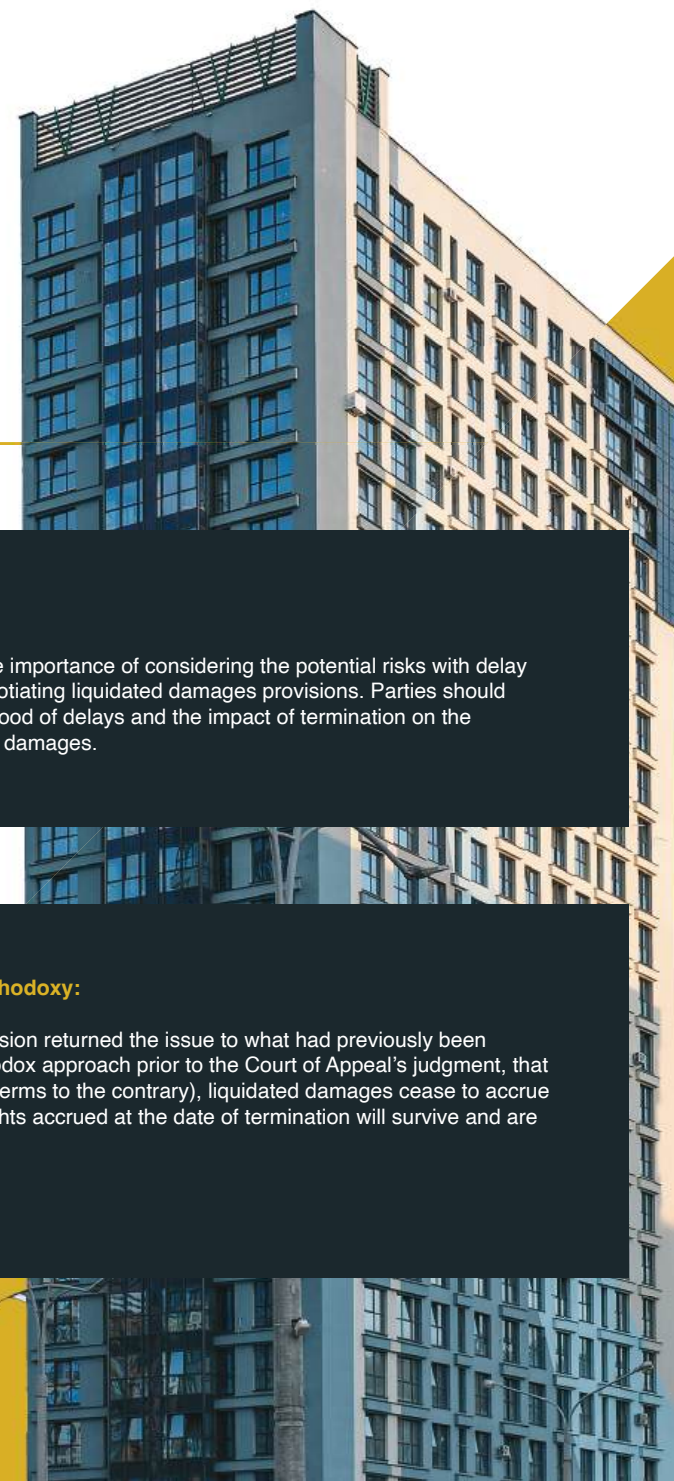
The ruling establishes liquidated damages clauses can be enforced for periods of delay leading up to the termination date of a contract. The Supreme Court more importantly ruled that, while the Court of Appeal was right in identifying three potential interpretations of liquidated damages clauses, it is to be expected that, unless the clause expressly provides otherwise, a liquidated damages clause will apply to any period of delay in completing the work up to, but not beyond, the date of termination of the contract.

## ( 02 ) Risk Management:

The decision highlights the importance of considering the potential risks with delay and termination when negotiating liquidated damages provisions. Parties should carefully assess the likelihood of delays and the impact of termination on the enforceability of liquidated damages.

## ( 04 ) A Return to the Orthodoxy:

The Supreme Court's decision returned the issue to what had previously been understood to be the orthodox approach prior to the Court of Appeal's judgment, that (subject to clear, express terms to the contrary), liquidated damages cease to accrue on termination, but any rights accrued at the date of termination will survive and are enforceable.



## A Return of 'Orthodoxy' by Allan J. Chesworth



*Allan J.  
Chesworth*  
**Senior Consultant**

Allan provides specialist advice and support across a wide range of complex commercial and contractual matters, including in the preparation of claim particulars, liability and quantum analysis, and in developing and implementing strategies to deliver successful outcomes.

### Conclusion

The Supreme Court's decision in *Triple Point Technology Inc v PTT Public Company Ltd* [2021] UKSC 29 provides valuable guidance on the interpretation and application of liquidated damages clauses in commercial contracts. By clarifying that such clauses can apply to periods of delay up to the termination of a contract; the ruling enhances the enforceability of liquidated damages provisions and underscores the importance of clear drafting and risk management in commercial agreements.

The Supreme Court favoured an orthodox approach, which holds that liquidated damages apply to delays up to the point of termination, after which the employer can claim general damages. This approach contrasts with the Court of Appeal, but the Supreme Court's ruling made it clear this was confined to its specific facts of the case and its ruling did not create a special rule applying to liquidated damages clauses.

As a consequence, the JCT 2024 Design and Build contract has responded to the *Triple Point v PTT* case by providing clarity with the insertion of clause 2.29.5, thus confirming a 'Return to the Orthodoxy' regarding liquidated damages at termination (well, as long as the contract clause is not amended of course!).

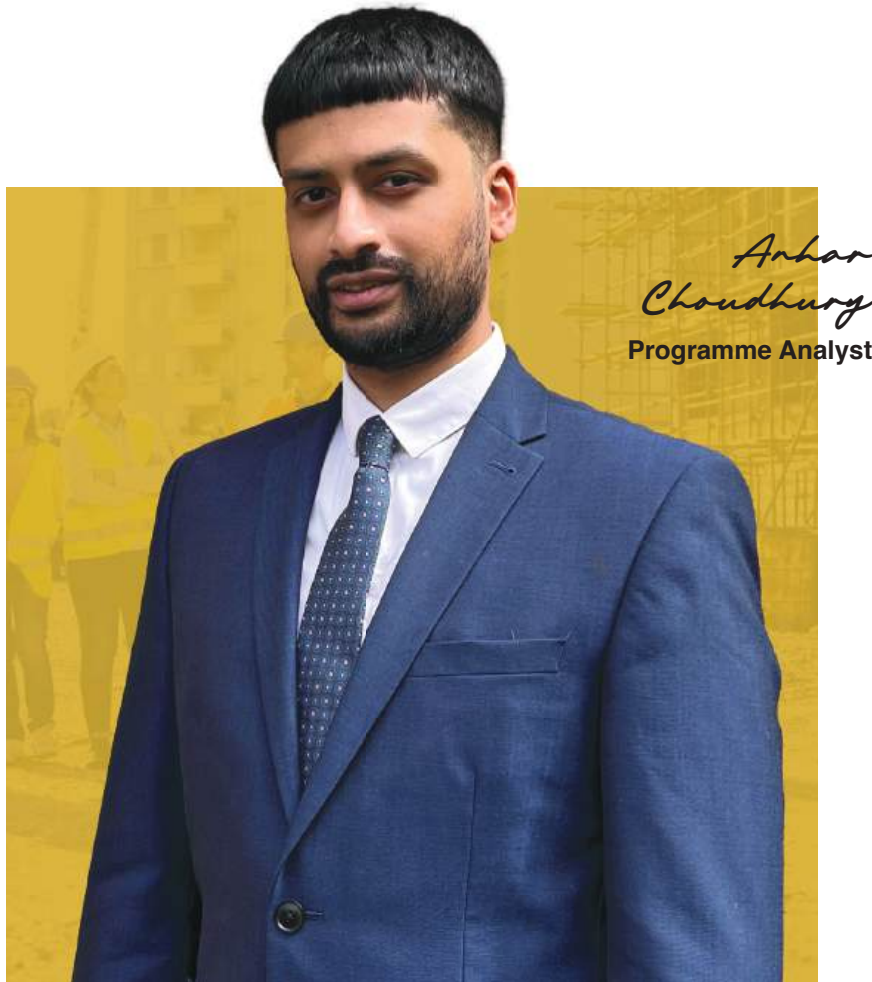
**- Allan J. Chesworth**



# Questions and Answers with Anhar Choudhury

Anhar's experience working on multi million-pound projects within the Defence, Health, Commercial, Education and Leisure sectors provides the backbone to his programming and planning skills.

Anhar joins Pyments as an experienced Programme Analyst working primarily in the demonstration of delay and disruption and the preparation of EOT entitlement submissions.



## ( 01 ) When did you join Pyments?

I joined Pyments in August 2024 as a Programme Analyst working within the Programming and Delay Analysis division.

## ( 02 ) What does your job involve?

My role here at Pyments requires me to forensically interrogate the Programme both on a retrospective and prospective basis. Analysing the forecasted and actual critical path is key to assessing and demonstrating delay and disruption.

More often than not I am required to analyse why a project is behind programme, or finished late, and ultimately determine the responsibility and impact of delays on a construction programme.

I will also undertake programme verification exercises and provide pragmatic and proactive advice and recommendations for developing a programme suitable progress monitoring tool on 'live' projects.

### ( 03 ) When do you like about Pyments?

I enjoy the dynamic nature of the job—no two projects are ever the same, which keeps things varied and challenging. It's like a never-ending puzzle where you're constantly solving problems, adapting, and learning. Additionally, working with different clients means I get to wear multiple hats (metaphorically, of course—I'm not a magician... yet). The collaborative environment, the sense of calm amidst challenges, and the satisfaction of delivering effective solutions make it a truly rewarding experience.

### ( 04 ) Favourite Food?

There are too many to choose from! I love pizza and chips on the weekend, different curry dishes and pies also make an appearance. But if I had to pick just one dish, it would have to be a perfectly cooked rib-eye steak with chunky chips and a rich mushroom sauce!

### ( 05 ) What were you doing before Pyments?

In advance to joining Pyments, I was working as a Construction Planner for Tier 1 Contractors, securing tenders and managing the planning/ programming of live projects ranging in value between £10m- £140m. I was working in this role for 7+ years after obtaining my BSc (Hons) in Construction Project Management from Aston University.

### ( 06 ) What do you do away from work?

When I'm not at work, I spend a lot of time with my family. I'm the oldest uncle among my siblings, and I have two nieces and a nephew who keep me busy—I love spending time with them! When I'm not with family, I like to unwind by watching TV series. Right now, I'm binge-watching Yellowstone on Netflix. I also try to stay active—I play 7-a-side football on Thursdays and Sundays, and go swimming on the weekends when I get the chance.

### ( 07 ) What might someone be surprised to know about you?

Most people are surprised to learn that I'm a certified rock-climbing instructor! Before entering the construction industry, I used to teach people how to climb rock faces. One of my most memorable experiences was being featured on BBC Radio while leading climbing sessions for children with special needs. Helping them conquer a 12-meter wall was just as rewarding as any project I've worked on in my career!

### ( 08 ) If you could offer one piece of advice to someone looking at a similar career, what would it be?

My advice would be to embrace continuous learning and stay adaptable. The construction industry is always evolving with new technologies, methods, and challenges. Being open to new ideas, seeking feedback, and pushing yourself to grow will help you not just keep up but thrive. Don't be afraid to take on a variety of roles and projects early on—each experience will teach you something valuable.

## Questions and Answers with Anhar Choudhury





# About Pyments

Pyments is a firm of commercially and contractually minded construction experts offering multi-disciplinary services to an extensive range of *clients all across the United Kingdom.*

Pyments has celebrated 35 years within the construction industry and continues to go from strength to strength enjoying continuity of leadership throughout, and benefitting from a long-serving and exceptionally talented and experienced team.

Working with Main Contractors, Sub-Contractors and Employers, the company has acquired extensive knowledge and understanding of how to represent the 'best interests' of its clients. The Pyments team pride themselves on their ability to provide pragmatic contractual advice, which married with their commercial expertise, allows repeat business through successful results.

The company enjoys the trust and longevity of many 'first tier' clients who entrust Pyments to deliver on high value and complex projects and issues.

These relationships have developed because of Pyments hard work and dedication to ensure the highest levels of client service and satisfaction to all of its clients and in all of its instructions.

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( 01 )

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