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Lifting the fog on Provisional Sums

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Introduction & Agenda



- The Trouble with Provisional Sums
- What is a Provisional Sum?
- Defined vs Undefined
- Valuing a Provisional Sum
- Forms of Contract
- Dissatisfaction with Outcome
- Q&A

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The Trouble with Provisional Sums

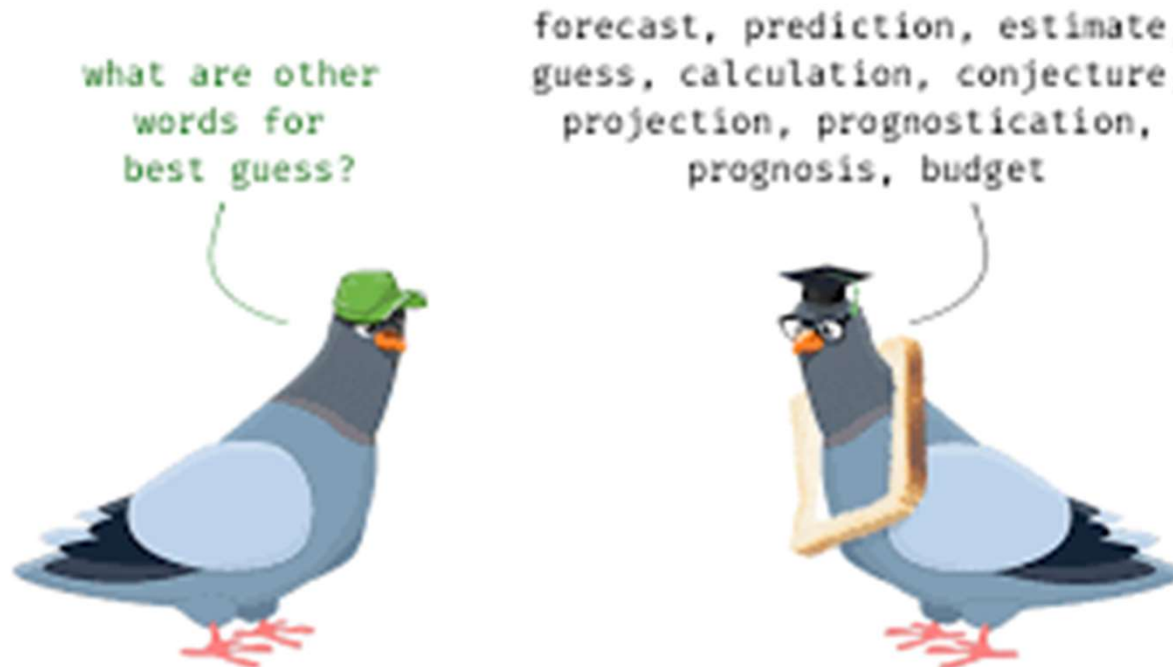


No Formal Definition

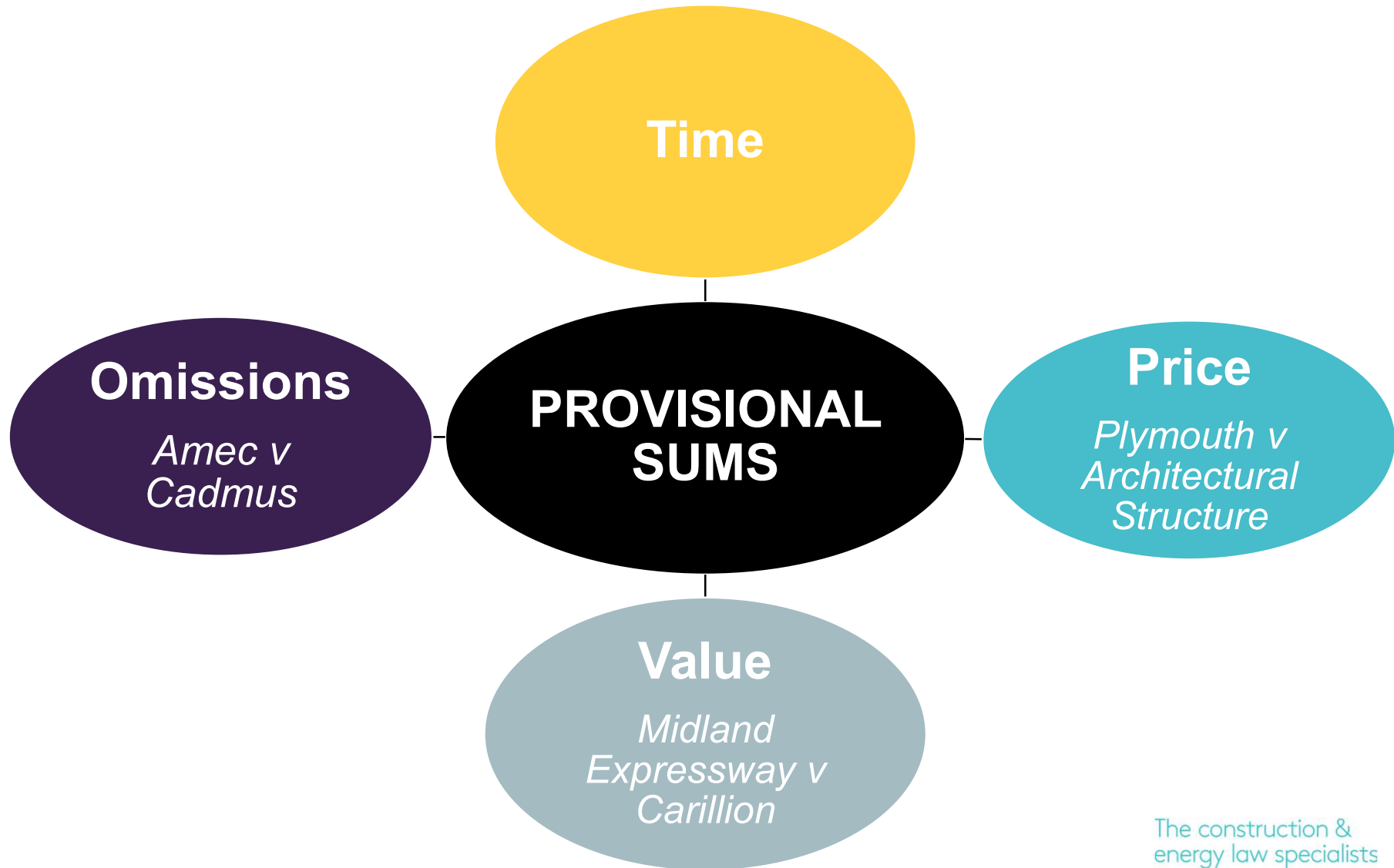
There is no formal definition of provisional sum.

Midland Expressway v Carillion:

Provisional sums are *“used in pricing construction contracts to refer either to work which is truly provisional, in the sense that it may or may not be carried out at all, or to work whose content is undefined, so that the parties decide not to try to price it accurately when they enter into their contract. A provisional sum is usually included as a round figure guess.”*



Uncertainty



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What is a Provisional Sum?



What is a Provisional Sum



- Codified or ad hoc
- *“...a sum provided for work... within the meaning of... the Measurement Rules.”*
- It is inserted in the Contract Bills and is a component part of the Contract Sum

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Defined vs Undefined



Defined vs Undefined



- For the Provisional Sum to be regarded as “Defined”, certain information has to be given;
- Must state: (a) the nature and construction of the work; (b) quantities indicating the scope and extent of the work; (c) where the work is to be fixed and what is to be fixed to it; and (d) “*any specific limitations*”;
- If information so stated, Contractor deemed to have allowed for it in the planning/programming and pricing of preliminaries;
- If the information falls short of the above then the Provisional Sum is treated as “Undefined”;
- If “Undefined”, Contractor does not allow for planning, programming and preliminaries implications.

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Valuing a Provisional Sum



Valuing a Provisional Sum



- It can be spent in whole, or in part or not at all
- Provisional Sums valued like Variations
- Ambit of valuation
- Contract Bills can override the JCT Conditions.

Valuing a Provisional Sum



AMBIT OF VALUATION			
Category	Defined PS	Undefined PS	JCT Clauses
The work itself	✓	✓	5.6 to 5.10
The effect of the work on other work	✓	✓	5.9
Preliminaries	x	✓	5.6.3.3
Overheads & Profit	✓	✓	See note below
Extension of Time (Relevant Events)	x	✓	2.29.1
Loss and Expense (Relevant Matters)	x	✓	4.22.1 and 4.22.2.3

Note: Paragraph 2.11 of NRM2 requires that the Contract Bills allow for the overheads and profit to be separately priced by way of a percentage addition which can then be applied to, amongst other things, preliminaries and work resulting from the expenditure of provisional sums. This creates an interesting dichotomy in that a Defined Provisional Sum deems that the Contractor has priced for the Preliminaries yet not any overheads and profit that may be applicable to those preliminaries – this is because paragraph 2.9.1.6 of NM2 says that Provisional Sums are exclusive of overheads and profit. This is a wrinkle which could expand into a topic in its own right

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Forms of Contract



Forms of Contract

JCT

- Includes for Provisional Sums to be instructed.
- NRM2 applies (SBC)

OTHER

- May include for Provisional Sums to be instructed
- May refer to NRM2 or not

FIDIC

- Includes for Provisional Sums to be instructed
- Does not refer to NRM2

NEC

- No mention of Provisional Sums
- Change is managed through risk register and CEs

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Dissatisfaction with Outcome

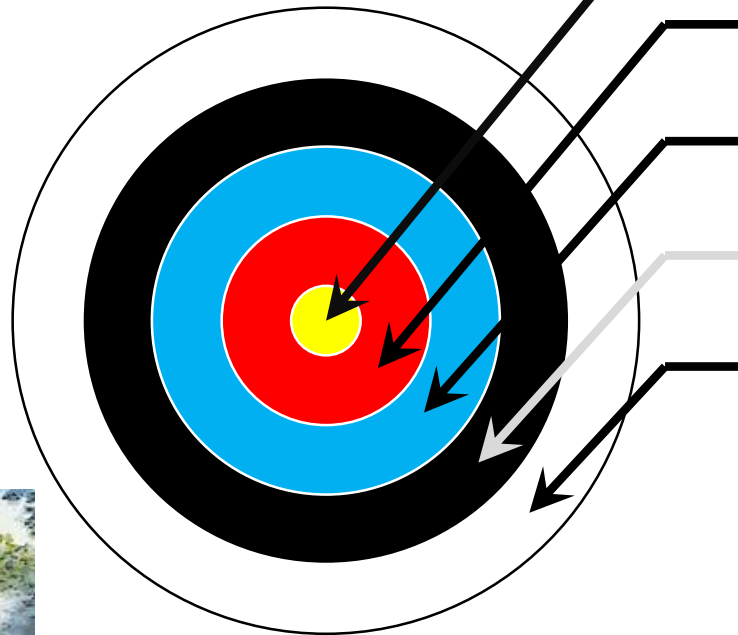


Dissatisfaction with Outcome



1. Why have the Provisional Sum in the first place?
2. Was a bad situation made worse?
3. Was the Provisional Sum set at the right level?
4. Were the Defined vs Undefined consequences understood and managed?
5. Don't Variations cost more anyway?

Stealing from the rich giving to the poor!



The work itself - £100K

Effect on other work - £10K

Preliminaries - £15K

Overheads & Profit – £10K

Prolongation and Disruption Costs – £25K

Total £160K

Not at all... simply allocating the monies to where they are due.



Dissatisfaction with Outcome



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Q & A



Q&As



1. Regarding the associated preliminaries for a provisional sum item, how do you make a fair and reasonable valuation when insufficient information has been provided?
2. Can the contractor claim additional labour costs for unexpected installation difficulties when carrying out provisional sum works?
3. What happens to the contractor's profit if any provisional sum item is omitted from the contract?
4. Who is liable for delay caused by the late instruction of a provisional sum?

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Thank you

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