

Commercial Judgement

How to Think Beyond the Clause, Calculation or Immediate Task

The commercially strongest position is the one that protects the whole outcome—not merely the clause or number nearest to you.

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Document Status and Use

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Purpose

A decision manual for weighing entitlement, margin, cash, programme, evidence, precedent, relationship, authority and ethical consequence under uncertainty.

Audience

Contract administrators through commercial managers.

How to Use This Manual

1. Read the relevant chapter before a live conversation, review or decision—not after the consequence has already landed.
2. Apply the method to current project work. The suite is designed to change observable behaviour, not merely increase awareness.
3. Record the decision, action, owner, evidence and review date produced by the exercise.
4. Use the related manuals where the issue crosses career, communication, judgement, leadership or stakeholder boundaries.

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1. See the Whole Commercial Field

A technically correct answer can still be commercially incomplete.

Commercial judgement connects contract, cost, cash, programme, delivery, evidence, precedent, relationship, governance and people. The weight given to each factor changes with the decision.

Commercial understanding connects the contract, programme, cost, cash, client and delivery strategy into one view of the business outcome.

A commercial professional can administer contracts accurately and still fail to understand the business. Commercial understanding begins with how the tender was won, where margin was expected, what assumptions carry the forecast, how work converts into cash and which risks can move from project problem to enterprise consequence.

At senior levels, the question is rarely only whether an entitlement exists. It is what outcome should be pursued given evidence, programme, collectability, relationship, precedent, cost to fight and the wider business strategy. This does not mean surrendering contractual rights. It means understanding their economic value.

What good looks like

16. You can explain the project's margin, cash and principal commercial risks in plain language.
17. You understand the tender qualifications and assumptions behind major packages.
18. Your forecasts separate evidence from optimism.
19. You connect contractual position to operational and client consequence.
20. You know which issues matter to the project and which could matter to the enterprise.

EXAMPLE — THE CLAIM WORTH LESS THAN ITS ENTITLEMENT A team had a credible entitlement but weak contemporaneous evidence, a long dispute path and a client relationship central to future work. The Commercial Manager did not abandon the claim. They separated the defensible core from the ambitious edge, priced the time and collectability risk, and structured a settlement that protected cash and the relationship. Commercial understanding changed the objective from 'win the argument' to 'produce the best business outcome'.

Senior value lies in making sound decisions before certainty arrives.

Professional judgement is the ability to choose an appropriate course when the answer is not obvious, information is incomplete or several legitimate interests conflict. It is the quality managers rely on when they cannot prescribe every step.

In commercial and contracts work, judgement appears in how you frame a risk, choose a negotiation position, decide what to escalate, manage confidential information, read the stakeholder environment and distinguish the merely urgent from the genuinely important. It also appears in how you respond when the convenient course diverges from the right one.

Good judgement is neither blind compliance nor reflexive dissent. It combines commercial awareness with professional integrity. It knows when to challenge, how to challenge and in which forum, and recognises that a technically correct position can still be badly handled.

What good looks like

21. You understand the decision that is actually required before producing analysis.
22. You distinguish facts, assumptions, risks and recommendations.
23. You raise material issues early and in the appropriate forum.
24. You protect information that is not yours to share.

25. You can disagree without making the disagreement personal.
26. You know when to act, when to seek direction and when to stay silent.

Common mistake

Believing that strong judgement means always having an immediate answer. Mature judgement often looks slower: clarifying the objective, testing assumptions, involving the right people and choosing the right forum before committing the organisation to a position.

EXAMPLE — Choosing the forum During negotiations on a contentious variation, a commercial lead disagreed with their project manager's proposed concession. Rather than challenge it in front of the client, they let the meeting close, then raised the exposure privately supporting their position with a first-principles work-up showing the actual downstream cost and the further entitlement exposure found within the tender clarifications schedule in one of the contract Annexures. The position was revised and played with a straight bat, back to the client which strengthened the client relationship, helped the business win another project with the same client in another state, and strengthened the relationship between colleagues because it was handled in the right room.

KEY TAKEAWAY *At senior levels, the organisation is promoting the quality of your decisions and the extent of your foresight, not merely the quantity of your output.*

2. Start With the Decision and Authority

Good analysis answers a decision that a named person has authority to make.

Do not begin with every fact available. Identify what must be decided, by when, under which delegation and with what consequence.

If you cannot state the decision in one sentence, you are not ready to package the detail.

Before opening the spreadsheet or drafting the paper, write the approval sentence: “Approval is sought to...” or “A decision is required on...”. This forces clarity about scope, authority and timing.

Many weak submissions are informative but directionless. They describe the history, attach calculations and explain what happened without stating what the reader must decide. The approver is left to infer the question and may solve a different one.

The Five-Line Approval Brief

Lead with the decision. Put the detail behind it, not instead of it.

27. Decision required and by when.
28. Recommendation.
29. Basis and evidence.
30. Material consequences and alternatives.
31. Remaining uncertainty, control and next step.

Good judgement includes knowing when you can decide, when you can recommend and when you must escalate.

Delegated authority is not administrative decoration. It defines who can commit money, accept risk, issue positions, approve settlements, alter forecasts or bind the organisation. A well-prepared submission states the authority required and does not force the approver to discover that the decision belongs somewhere else.

Thinking like the approver also means respecting the boundary of your own role. You can analyse, recommend and prepare without presenting an unapproved position as though it has already been authorised.

EXAMPLE — *The position issued before approval A draft subcontract position was technically strong but circulated externally before the delegated approver had reviewed it. The problem was no longer only the merits. The business had to manage an apparent commitment, relationship damage and a governance failure. Correct analysis was undermined by the wrong sequence.*

Decision Frame

Field	Question
Decision	What must be decided now?
Authority	Who may recommend, endorse and approve?
Deadline	When does delay change the position?
Consequence	Margin, cash, programme, relationship, precedent and people
Evidence	What would change the recommendation?

3. Entitlement Versus Commercial Outcome

Entitlement defines the defensible boundary; commercial outcome decides how to use it.

A party may reserve rights while solving the delivery problem, negotiate value before every fact is final or reject a technically available argument because the precedent and relationship cost exceeds the recovery.

Operating Checks

32. Separate legal or contractual entitlement from settlement strategy.
33. Identify what can be proved, what can be negotiated and what can actually be collected.
34. Preserve rights without manufacturing certainty.
35. Do not trade a material right casually for short-term calm.

Example — technically right, commercially late

EXAMPLE *A notice position is strong, but insisting on a formal determination immediately would stop access needed for recovery work. The team reserves its rights, agrees a temporary operational protocol and sets a date for the commercial issue to be resolved with the evidence preserved.*

4. Materiality and Proportionality

The level of analysis, control and escalation should match the plausible consequence.

Materiality is not only dollar value. It includes time bars, precedent, safety, confidentiality, client trust, repeat behaviour and the chance that a small issue becomes a systemic one.

Not every issue needs a board paper; every material issue needs enough thought for its consequence.

Approver thinking is not the production of more paperwork. It is the proportionate treatment of risk. A low-value routine matter may need a clear calculation and record. A precedent-setting interpretation, forecast movement, client commitment or major cash decision may need options, legal input, wider consultation and explicit residual risk.

Timing is part of materiality. A small problem can become large when a notice period expires, procurement slips, a forecast closes or the approver loses room to act. Early warning is valuable because it preserves options.

36. How large is the financial or programme consequence?
37. Does the decision create precedent beyond this item?
38. Is the issue reversible after approval?
39. How quickly does the risk grow if no decision is made?
40. What level of evidence and consultation is proportionate?
41. What can be decided now, and what should remain conditional?

Materiality Lens

Dimension	Low / medium / high	Reason
Financial / cash		
Programme / operations		
Contract / precedent		
Relationship / reputation		
Governance / authority		
People / conduct		

5. Recoverability and Evidentiary Strength

A forecast is only as useful as the evidence, causation, counterparty capacity and pathway to recovery behind it.

Test contemporaneous records, contractual link, quantification, mitigation, opposing arguments and the solvency or willingness of the other party.

Evidence is useful when the reader can see what proposition each record supports.

Large attachments can create the appearance of diligence while transferring the review burden upward. Organise evidence around the reasoning. Identify the key record, explain what it proves, and separate decisive material from background.

The record should allow another competent person to reproduce the analysis. Calculations need sources and assumptions. Contractual positions need relevant words and facts. Forecasts need ownership, probability and timing. Verbal directions need an appropriate written confirmation.

Evidence Questions

Do not attach everything and call it evidence. Show the relationship between the record and the conclusion.

42. What proposition does this document support?
43. Is it contemporaneous, complete and reliable?
44. Is there conflicting evidence?
45. Can the calculation be reproduced?
46. Are key conversations recorded proportionately?
47. Can the evidence be located after staff or systems change?

Operating Checks

48. Name what each record proves, not merely that it exists.
49. Expose gaps and conflicting records.
50. Separate assessed entitlement from booked recovery and cash timing.
51. Red-team the case from the counterparty's strongest position.

6. Margin, Cash, Programme and Opportunity Cost

The best nominal result may be inferior once time, management attention, cash and delivery consequence are priced.

A prolonged dispute can consume people, delay closeout and weaken client trust. A quick settlement can also surrender value or create a repeatable precedent. Compare the full cost of each pathway.

The approver is deciding what happens next, not merely what has already happened.

Connect the recommendation to the consequences that matter: cost, margin, cash, programme, procurement, client position, subcontractor behaviour, precedent, resourcing, reporting and reputation. Not every category will matter on every issue; identify the few that change the decision.

This translation is often the difference between task-level and senior-level thinking. The task explains the event. The senior view explains what the business should now do and what changes if it delays.

EXAMPLE — The design issue became a procurement decision A technically worded design query appeared minor until the contracts manager connected it to a long-lead package, identified the final date for instruction and quantified the likely delay cost. The decision moved from “await consultant response” to “choose an interim basis this week or accept the procurement consequence.”

Options and Consequences

Option	Financial / cash	Programme / relationship	Precedent / risk
Hold position			
Negotiate			
Interim protocol			
Escalate / determine			

7. Subcontractor Fragility and Insolvency

A right against a party that cannot perform or pay may not protect the project.

Read payment behaviour, productivity, labour, supplier pressure, security, retentions and market alternatives. Support should be controlled, documented and connected to project outcome—not an unpriced transfer of risk.

Operating Checks

52. Separate genuine temporary cash pressure from failing productivity or unsupported claims.
53. Understand security and step-in rights before the crisis.
54. Coordinate commercial, delivery, procurement, finance and legal response.
55. Do not make side arrangements that bypass authority or create inconsistent precedent.

8. Client Objectives and Political Constraints

The contract is not the only pressure acting on a client decision.

Public accountability, financing, operational continuity, opening dates, stakeholder commitments and reputation can determine which options are viable. Understanding those constraints is not manipulation; it is part of designing an executable solution.

Operating Checks

56. Ask what the client must report and to whom.
57. Identify non-negotiable operational or public commitments.
58. Separate the client's individual preference from institutional authority.
59. Frame solutions that can survive the client's governance pathway.

9. Decide With Incomplete Information

Uncertainty should be bounded, not disguised.

Use ranges, scenarios, reversible steps, decision triggers and review dates. Name the assumption most likely to reverse the position.

Judgement improves when you can recognise the pattern before the consequence becomes expensive.

A useful law or maxim is not proof and it is not a substitute for the contract, programme or facts. It is a pattern-recognition tool: a way to notice the failure mode early enough to change the decision.

60. Goodhart's Law: when a measure becomes a target, people optimise the number rather than the outcome. Test whether the metric can be gamed.
61. Chesterton's Fence: do not remove a clause, process or control until you understand the failure it was built to prevent.
62. Second-order thinking: ask 'and then what?' before granting the small concession, adding the resource or shifting the risk.
63. Brooks, Hofstadter and Parkinson: more people can slow late work; work usually takes longer than expected; and vague time expands to absorb itself.
64. Hanlon's Razor: test overload, error and incompetence before assuming bad faith. Preserve escalation without starting there.
65. Pareto and Little's Law: find the few causes driving most of the outcome, and check whether work is arriving faster than the system can clear it.

Use the model to generate a question, then return to evidence. The full field reference in the Appendix applies the most useful laws and operating maxims to contracts, procurement, programme and project teams.

IF YOU ONLY CARRY FIVE TO THE COALFACE Goodhart. Brooks. Chesterton's Fence. Hofstadter. Parkinson. Add one operating maxim: a problem well-defined is half-solved. These change what you do, not merely how you describe it.

The strongest position is the one that has survived its own best challenge.

If a subcontractor, client, auditor or executive were trying to defeat your recommendation, what would they attack first? Identify it before submission. State the answer honestly and distinguish a manageable weakness from one that changes the recommendation.

Hiding the counterargument may make the first page look cleaner, but it converts a known weakness into a later surprise. Approvers trust people who bring the uncomfortable point into the room while there is still time to respond.

The Red-Team Questions

A disclosed weakness can be controlled. A concealed weakness controls the room when it appears.

66. What fact, clause, calculation or definition is most vulnerable?
67. What would the other party say happened?
68. What evidence would change our conclusion?
69. Are we relying on an outcome that somebody else must deliver?
70. What happens if the assumption is wrong by 20 per cent?
71. Are we applying the same principle consistently elsewhere?

Working Sequence

72. State what is known and unknown.
73. Define the plausible range and critical assumption.
74. Compare action now, staged action and delay.
75. Choose the reversible or containing step where appropriate.
76. Set the evidence trigger and next decision date.

10. Play a Straight Bat

The position should remain defensible after people, pressure and project incentives have changed.

Commercial strength is not aggression. It is accurate evidence, preserved rights, controlled negotiation and ethical discipline under pressure.

Build the strongest defensible position—not the largest number somebody can manufacture

Commercial construction operates in legitimate areas of interpretation. Scope can be ambiguous. Definitions overlap. Causation is contested. Program impacts require judgement. Valuation is rarely a perfect science. Your job is to understand that grey properly and use it well.

A strong commercial position is built through the contract and its defined terms, contemporaneous records, clear scope analysis, evidence of cause and effect, proper valuation, program analysis, consistent assumptions and an interpretation that can survive scrutiny. That is commercial advocacy. It is not fraud.

The line is crossed when value is created through fabrication, concealment or deliberate misrepresentation: changing dates, manufacturing records, knowingly presenting false quantities, hiding material facts, manipulating forecasts or stating certainty where the evidence does not support it.

Short-Term Benefit, Uncontrolled Risk

You may occasionally be pressured to recover a position or produce an outcome that has already been promised above you. The pressure can be subtle: find a way to make the number work; do not put that in writing; carry it this month and fix it later; the other party will never challenge it.

It can feel as though supporting the requested result demonstrates loyalty. Usually, it creates an uncontrolled risk the organisation fears far more than an honestly reported problem.

- 77. Cost-to-complete forecasts, margin and revenue recognition
- 78. Cash-flow planning and payment decisions
- 79. Management, board and governance reporting
- 80. Client, lender, insurer or auditor decisions
- 81. Settlement strategy and the organisation's understanding of its actual financial position

Time Marches On

Conduct that begins in a private conversation rarely remains there forever. Projects deteriorate. Directors change. Employees leave. Subcontractors become insolvent. Claims reach lawyers. Emails are discovered. Forecasts are compared with the underlying records. People who appeared aligned under pressure later protect their own position.

The conversation in the dark corner disappears. Your document, assessment or approval remains.

A VERBAL INSTRUCTION DOES NOT TRANSFER OWNERSHIP A verbal instruction does not transfer ownership of your professional judgement. Nor does recording an improper direction make the resulting conduct acceptable.

What Playing a Straight Bat Looks Like

82. Clarify the requested outcome. Ask what position is being sought and why.
83. Return to the source material. Identify the relevant clause, scope, record, program or valuation basis.
84. Separate fact, assumption and judgement. Do not present one as another.
85. State the strongest defensible position. Use the available grey, but explain its limits.
86. Identify the range and risk. A position can be commercially strong without being certain.
87. Keep claims, forecasts and accounting treatment distinct. An amount claimed is not necessarily an amount recoverable or earned.
88. Do not create or approve a record you know is false.
89. Escalate calmly when necessary. Serious concerns may require legal, governance, ethics or protected-disclosure channels.

Commercial Strength Is Not the Same as Aggression

Playing a straight bat does not mean being passive, generous with somebody else's money or frightened of taking a difficult position. It means being able to explain what you are claiming, why you are entitled to it, what evidence supports it, what assumptions remain, what could defeat the position and what the likely range of outcomes is.

A carefully developed position can be firm, creative and commercially advantageous. Its value comes from surviving scrutiny.

USE THE GREY; NEVER MANUFACTURE THE FACTS The best commercial operators do not avoid the grey. They understand it better than everyone else—and they never need to manufacture the facts beneath it.

Commercial authority grows only while people trust what you will do with information, money, power and pressure.

Commercial roles create access to sensitive forecasts, tender information, claims strategy, subcontractor positions, employee information and delegated authority. A person can be technically excellent and permanently disqualify themselves from senior trust through one serious lapse in integrity.

Ethics is not limited to obvious dishonesty. It appears in whether you manipulate a forecast to postpone bad news, use confidential information for advantage, misrepresent another person's position, approve work outside authority, or allow commercial pressure to become unfair treatment.

The most promotable response to pressure is not moral theatre. It is a calm willingness to name the issue, protect the record, seek appropriate advice and hold the line even when the short-term result becomes uncomfortable.

EXAMPLE — THE FORECAST THAT HAD TO MOVE A project team wanted to defer recognition of a likely loss until a claim position improved. The commercial lead refused to present hope as evidence. They recorded the claim separately, forecast the current probable outcome and explained what would need to occur before recovery could be recognised. The meeting was difficult; their future authority increased because the numbers could be trusted.

Example — unsupported recovery

EXAMPLE A team is asked to book a recovery because the project needs the forecast. The commercial lead records the defensible amount, keeps the additional scenario as upside and explains the evidence required before it can move. The short-term conversation is harder; the organisation is protected from an unreliable position.

11. Build Judgement Through Review

Judgement becomes portable when the reasoning and consequence can be explained, tested and remembered.

After material decisions, record what was known, what was assumed, what happened and what should change in the next decision model.

Judgement Review Log

Decision	Assumptions / weak point	Outcome	Model change

Commitments and Review

Use this page to convert the manual into a small number of observable commitments. A manual has no value if the reader cannot identify what will be done differently, where it will be practised and what evidence will prove the change.

Commitment	Practice ground	Evidence / reviewer	Review date

Related Buildit Manuals

- 90. 02 — Think Like the Approver
- 91. 10 — Recovering a Difficult Package
- 92. 11 — The Commercial Manager's Field Guide

Closing Position

The commercially strongest position is the one that protects the whole outcome—not merely the clause or number nearest to you.

Notes
