

Defects Liability Period in Nigeria Building Industry: Practice, Problems and Prospect.

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Abstract

The reliance of clients on defects liability period is becoming worrisome in Nigeria building industry. The defect liability period practice in Nigeria compare to other developing countries is a major issue to contend with. In construction projects delivery, construction defects are inevitable and are usually contentious between the contractor or sub-contractors and employer. Most of the defects are due to shoddy jobs and sub- standard materials used during the construction activities. After the expiration of defects liability period and defects appeared, employer's remedy in most cases is limited to pursuing a legal claim in damages. This paper examines the occurrence of defects during and after the defects liability period and the contractual terms of defects liability period. The study was carried out at the Federal University of Technology, Akure, Nigeria as a case study. Findings from the study revealed that 6 months defects liability period practice in Nigeria is not reasonable enough to allow defects to manifest which really poses a major threat to clients and amount to economic loss. The study suggests that the defects liability period should be extended as it is done in other countries of the world.

Keywords: Building industry, Contract, Defects, Liability period, Occurrence

Introduction

Disregard to civil laws which is common in Nigeria also permeate the building industry. This high level of apparent lawlessness finds a fertile ground in non-adherence to the building codes and hasty construction (Ede, 2010). Defects in building occur during construction, during defects liability period and post defects liability period. Most of the defects verified in the in the recent years occurred during construction stage (Ede, 2010). In 2006, the council for the Regulation of Engineering in Nigeria (COREN) recommended the persecution of pharmacist who supervised a collapsed building in Port Harcourt in 2005 in fragrant disregard for the laws that guide the building industry in Nigeria (Olajumoke, et al., 2009).

In building construction projects delivery, construction defects are inevitable and are usually contentious between the contractor or sub-contractors and employer. The unacceptable qualities of a project which can be identified and remedied are the construction defects stage. In construction contracts it is common to require the contractor to warrant that the works upon completion are free from defects and to make good defects which occur during the defects liability period. Practical mechanism provision to the employer for the repair or making good of defects which may not be obvious before completion, without restoring to resolution is the defects liability period (Malleons, 2003). After the issuance of final certificate the liability of the building is passed onto the employer and defects in building components may occur shortly after the defects liability period.

Background Information

Common types of construction defects include: faulty electrical wiring or defective and /or lighting; structural defects resulting in cracks or collapse; inadequate or faulty ventilation; heating; suppression systems/ inadequate fire protection and inadequate heating or cooling systems; inadequate or faulty drainage systems; defective or faulty plumbing and inadequate sound proofing or insulation. (Kenneth, 2002). Building works which fell short of complying with the requirements of contract, specifications or contract drawings, together with conditions of its quality and any implied terms, durability, workmanship, design or performance, aesthetic can be defined as defective building works (Cho, et al,2006). Alan, C .1990, described defects in building works as premature failure resulting from errors of workmanship, design, the use of faulty materials or maintenance.

Hence, most projects are confronted with defective work and possibility of defects, which generally occur in structures that cannot perform their originally intended purposes (Cho, et al., 2006). From the legal aspect, building defect is defined as an element constructed which is not in accordance with the contract, or as some action having consequences not authorized by the contract (Nigel, 1996). As regards this, (Summerlin and Ogborn.,2006) opined that construction defects can be as a result of manufacturing flaw, design error by the Architect, wrong installation of materials or improper use, defective materials, non-compliance to the blue print by the contractor, or any combination thereof. When the standard, materials as specified in the contract is deficient and quality of workmanship is inadequate, the building works is considered as defective. Defects can be viewed and classified into two main categories which are latent and patent defects as submitted by Anon(2007).

Latent defects can be classified as those concealed or hidden defects which would not be discovered by nature of a reasonable inspection (Cama, 2004). Susan, 1996 was of the opinion that a latent defects could not be dictated on such an examination as a reasonably careful skilled man would make. Patent defects are the deficiency in a structure that is apparent to reasonable inspection or the defects which can be noticed upon examination; for example in differential foundation settlement or roof leak (Cama, 2004). Patent defects are

quite obvious to the eyes and the defects are capable of being assessed, inspect and if necessary; rectified. Therefore, patent defects are defects that can be discovered by means of reasonable examination or testing, inspection and the defects are quite apparent. In the case of 'Victoria university of Manchester V. Hugh Wilson & Lewis Wormsley (a firm) and (contractor), it was held that the latent is one which could not be discovered by such an examination as a reasonably careful man skilled in that matter would make. Thus, as stated by its nature, a latent defects cannot be discovered until it becomes patent and yet it may not be discovered immediately since there may be no immediately apparent signs to indicate the presence of the defects' (Construction law Report, 1984)

Certificate of practical completion shall be issued by the architect upon completion of the works to certify that the works have been completed in accordance with the contract (James, B.L., 2001). This marks the beginning of defect liability period. The actual nature of the 'Defects liability period' is a period stated in the construction contract document agreement. During this period, the occurrence of defects is at the contractor's own liability and the contractor shall be called upon to return to site to rectify the defects as necessary.

Methodology

Federal University of Technology Akure, Nigeria (FUTA) was chosen as case studies area for the study. University projects were chosen being public buildings and submissions from the findings are applicable to other buildings.

The Federal University of Technology [Akure](#) (FUTA) was founded in 1981 under the drive to create universities that specialized in producing graduates with practical as well as theoretical knowledge of technologies by the government of [Nigeria](#). It is located in Akure the state capital of Ondo state in the south west Zone of the country. Physical planning unit (PPU) of the university is in charge of project records used for this research.

Three different existing building projects were selected from the case study area to understudy the defects liability period of the projects during and after the defects liability period. The actual period the patent and latent defects manifested were critically observed.

Findings and Discussion

Table I: Selected case studies samples

The survey report on defects liability period of the above building projects were classified into four different categories namely:

Samples	Projects	Country
S1	Administrative building phase II (New build) office complex	Nigeria
S2	School of mines and earth (New build) institutional/ offices	Nigeria
S3	School of Environmental Technology (New build) institutional/offices	Nigeria

- i) Wall, floor and finished defects (Defects 1)
- ii) Doors, windows and fitting defects (Defects 2)
- iii) Sanitary fittings, fixture and toilet cubicle defects (Defects 3)
- iv) Ceiling and roof defects.(Defects 4)

Table II: Contract form and Provisional clause for Defects

Samples	Contract Form	Provisional clause
S1	JCT Design and Build contract 2005	Clause 7.5
S2	JCT Design and Build contract 2005	Clause 7.5
S3	JCT Design and Build contract 2005	Clause 7.5

The entire contract in Nigeria based on above samples uses Joint contracts tribunal (JCT) standard form of contract.

Table III: Analysis of defects during defects liability period

Items.	Nigeria						Percentages of the defects that often occurs during the defects liability period.
	I	II		III			
Samples.	Public building		Public building		Public building		
Type of building	Public building		Public building		Public building		
Type of contract	Design and build		Design and build		Design and build		
Defect liability period(months)	6		6		6		
Commission date	19 th November, 2011		2 nd December, 2006.		17 th December, 2005.		
Type of defects:	Occurrence of defects during defects liability period						
	Nos.	%	Nos.	%	Nos.	%	
Walls, floors and finished defects	3	33.3%	3	37.5%	4	36.36%	
Doors and fittings defects	3	33.3%	2	25%	2	18.18%	25.49
Sanitary fittings, fixture and toilet cubicle	1	11.1%	1	12.5%	2	18.18%	13.92
Ceiling and roof	2	22.2%	2	25%	3	27.27. %	24.82

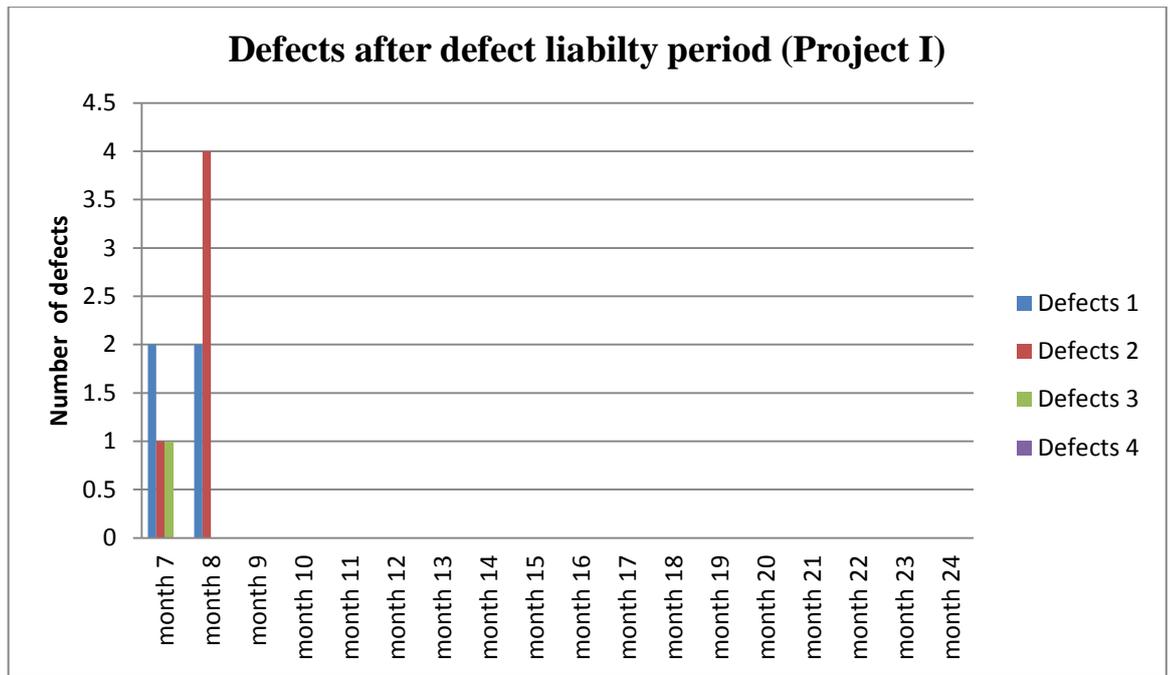
From the above observation, the defects that manifest during the defects liability period in samples I-III were very few and from the above analysis, D1 is the defects that often occur during the defects liability period.

Table IV: Analysis of defects after defects liability period

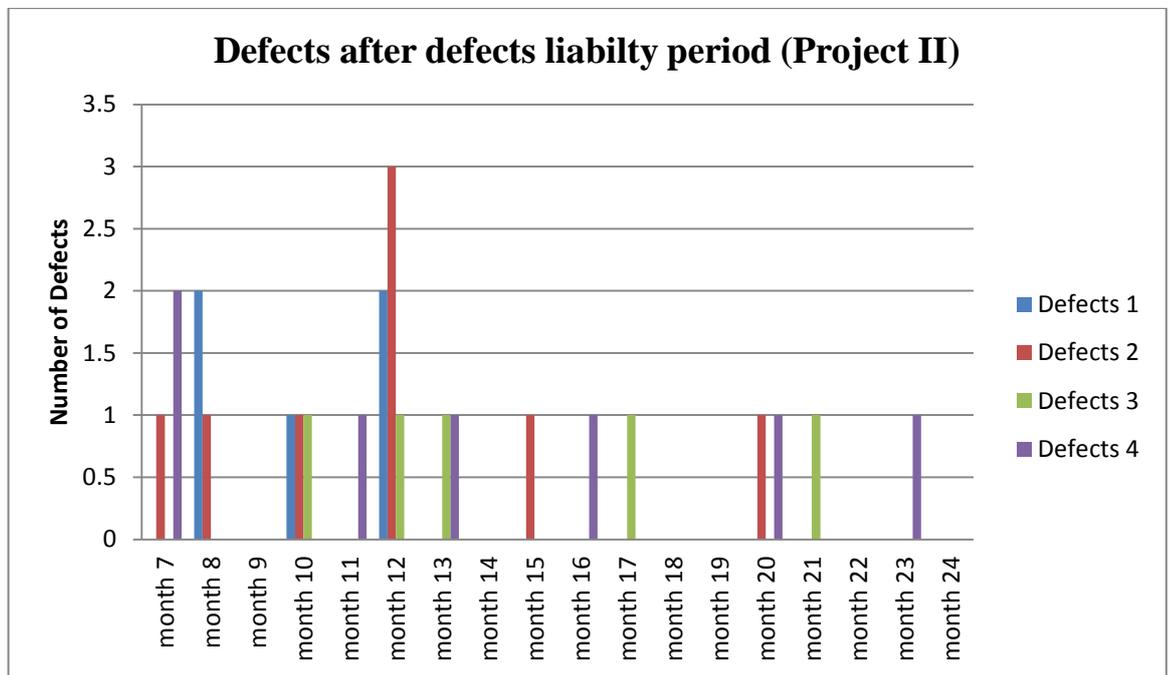
Items.	Nigeria						Percentages of the defects that often occurs after the defects liability period.
	I		II		III		
Project.	Public building		Public building		Public building		
Type of building	Public building		Public building		Public building		
Type of contract	Design and build		Design and build		Design and build		
Defect after DLP (months)	18		18		18		
Commission date	19 th November, 2011		2 nd December, 2006.		17 th December, 2005.		
Type of defects:	Occurrence of defects after defects liability period						
	Nos.	%	Nos.	%	Nos.	%	
Walls, floors and finished defects	4	36.36%	5	20.00%	14	29.78%	28.71
Doors and fittings defects	5	45.45%	8	32.00%	10	21.28%	32.91
Sanitary fittings, fixture and toilet cubicle	1	9.09%	5	20.00%	10	21.28%	16.79
Ceiling and roof	1	9.09%	7	28.00%	13	27.66%	24.28

From the above observation, the defect that manifest after the defects liability period in samples I-III are higher compare to the occurrence of defects during the defects liability period and from the above analysis, D2 is the defects that often occur after the defects liability period.

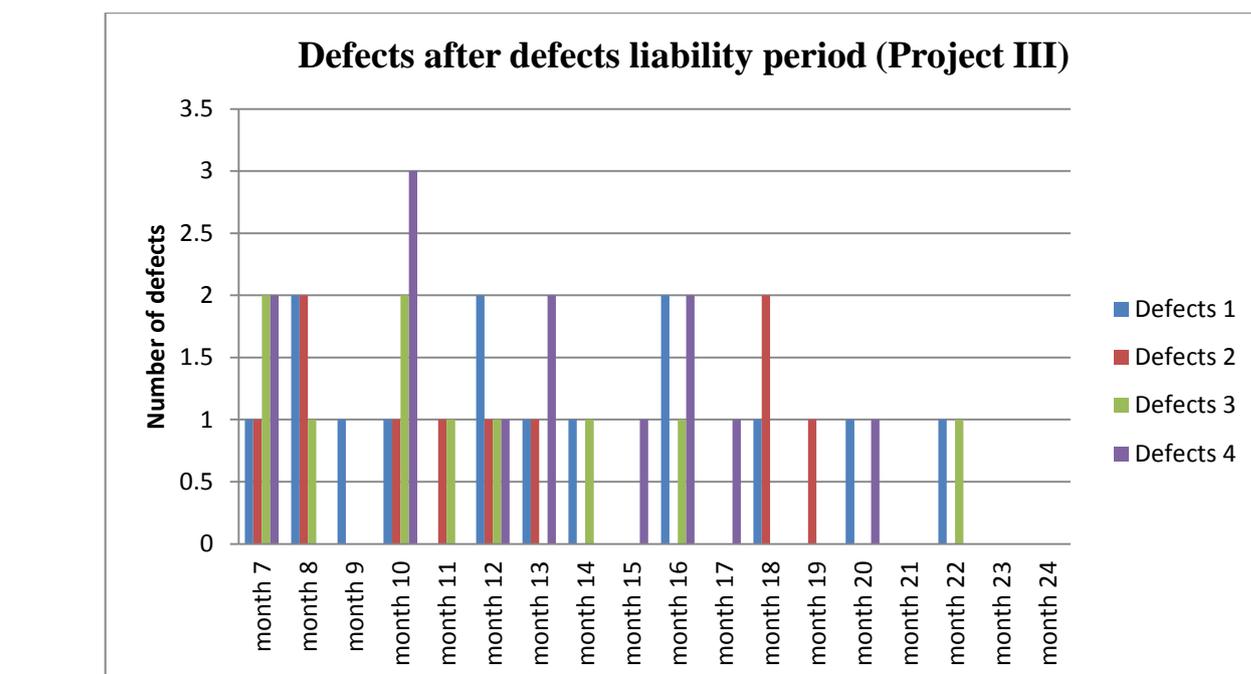
Graphical representation of defects after defects liability period



The occurrence of defects after the defects liability period in project I extended to 7th and 8th months consecutively. D2 was twice D1 and there was no occurrence of D4.



The occurrence of defects after defects liability period in project II was very frequent. The defects cut across the months after the defects liability period. D2 occurrence was very high in 12th month while in 7th, 8th, and 12th months D4, D1 and D1 occurrence were also high consecutively.



The occurrence of defects after the defects liability period in project III spread across the months. D4 was having the highest number of occurrence.

From the above data analysis,

- i. The defects liability period in Nigeria is 6 months.
- ii. During the defects liability period in Nigeria, the occurrence of defects is lower.
- iii. The occurrence of defects after defects liability period in Nigeria is higher.
- iv. The defects liability period being practiced in Nigeria is not good enough for defects to manifest during the defects period.
- v. Hence, the defect liability period practice in Nigeria is not reasonable enough to allow defects (latent or patent) to manifest.

Conclusion

This research has succeeded in bringing to the fore the deficiency of defects liability period in Nigeria: where and when they occur most, the trend of defects during the defects liability period. From the foregoing discussion and analysis, it became apparent that the defect liability period practice in Nigeria is not reasonable enough to allow manifestation of defects. The greatest numbers of claims made by employers are related to defects and employers often pursue legal actions many years after the work was out and it often amount to economic loss.

On this note, defects liability period practice in Nigeria building industry should be extended as it is done in other developed countries in the world. The extension of defects liability period in Nigeria building industry will make the contractors to be more committed and proactive in handling the construction works since they know that they are still liable for any manifestation of defects during the period. Hence, this will improve the standard of workmanship.

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