

Contractual Issues Arising from the National Mourning Period

Following the death of Her Majesty Queen Elizabeth II, the country entered a period of National Mourning until the end of the day of her State Funeral on Monday 19 September 2022. Whilst the Government's [National Mourning guidance](#) states that 'there is no obligation on organisations to suspend business during the National Mourning period', construction sites may have experienced delays due to events taking place or the national bank holiday declared for 19 September.

Can I claim additional time and money if progress on site is affected by the National Mourning period?

As is always the case, this will depend first and foremost on the terms of the contract which need to be reviewed as a priority. If progress of the works is, or is likely to be, directly affected due to labour, material or other shortages, delayed deliveries or transport problems, then the party concerned should immediately give notice of that and the likely effects to the other party to the contract. When giving such notice, it is important to comply with the precise requirements in the contract.

If there are not express notice provisions in the contract, it is still advisable to inform the other party of any delays or other effects and to work collaboratively to mitigate them.

If the delay and associated cost cannot be mitigated and an extension of time and any loss and expense attributable to it are sought, the claiming party should carefully consider (and if necessary take advice on) the relevant terms of the contract to see if such a claim is possible in accordance with those terms.

Given the circumstances, the focus of all parties should be on working together to resolve any challenges that have arisen in the most time and cost-effective manner, ensuring that any costs incurred are distributed fairly.

Will the Queen's death amount to force majeure?

In this situation, unamended standard JCT force majeure provisions are **unlikely** to apply. If there is a non-standard force majeure clause in a contract, its application should be considered, but such clauses are very strictly interpreted by the courts and it is difficult to see that the relatively short National Mourning period and/or the additional bank holiday would generally suffice to persuade the courts to invoke them.

What are the specific considerations under JCT contracts?

- Only delays that affect the Completion Date will qualify, that is those which are on the critical path to completion.
- Is the event a Relevant Event as defined in the contract? The Relevant Event worthy of consideration is the exercise after the contract Base Date of statutory power, which includes the 'UK Government, or any Local or Public Authority' and which directly affects the works. However, the National Mourning period does **not** appear to be an exercise of such power. Arguably, the declaration of the bank holiday under the Banking and Financial Services Dealings Act 1971 is an exercise of a statutory power, but that only accounts for one day.
- It is worth considering any knock-on effects. In this context, whether employees are entitled to take a bank holiday as holiday will depend on their employment contracts, so a shortage of labour may not be relevant in this situation. However, consideration should be given to any statutory changes to transport, such as road closures near certain sites, that cause difficulty for site labour and deliveries to access the site and how that impacts on progress.

- Contractors are obliged to use their best endeavours to prevent delay in the progress of the works and in the event of delay to do all that is reasonably required to proceed with them. In practice this means seeking to mitigate anticipated delays to the contractual Completion Date (as may be extended).
- The contract administrator/employer's agent is obliged to review the Completion Date and whether any Extension of Time(s) should be granted after Practical Completion.

The above can only be regarded as general advice and does not seek to give legal advice or to be an exhaustive statement of the law. Specific advice should always be sought for individual cases where necessary.