



Delay Notices - Top 5 tips

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EXTENSION OF TIME REQUESTS AND SUBMISSIONS ARE BEING SCRUTINISED more than ever. It is therefore important to ensure any delay notices are prepared correctly to record all the necessary information. Failure to do so could invalidate your claim or prevent you getting your full entitlement. What does that mean? Well here are 5 top tips to get you going and help project your commercial position.

1. Make sure your notice relates to the contract

Any delay notice must relate to the provisions of the contract including any bespoke amendments. Each contract will potentially have slightly different requirements in respect of delay notices, what is required, when it's required and even what they are called. One of the worst things you can do is assume that the notice requirements are the same as your previous job. Make sure anyone who is in a position to submit a delay notice knows what the requirements under the contract are.

2. Record as many facts as possible

A lot of time and effort can be expended trying to research the background and facts of a delay notice in 1 or 2 years time after the event. Wherever possible include as many facts and cross references to relevant documents as possible. Will you be able to remember all the issues in say 2 years time? Will you be able to remember what drawing / sketch / part of the building you were referring to? The best approach is often to imagine you know nothing about the project, could you read the delay notice and make an assessment of the impact? If the answer is no then you may need to do some more work.

3. Give the notice on time

If your contract has strict terms regarding time limits make sure you are aware of them and submit the relevant notices within those timescales. Under some forms of contract not providing the necessary notice on time will result in you losing an entitlement to an extension of time. Even under contracts where this is not the case, not providing notice as soon as possible could leave you in a weakened commercial position.

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4. Back up the notice with evidence

Don't rely on the fact that the Contract Administrator knows the job or the delay issue. They might not be the party who ends up making the final decision if the issue gets referred to Adjudication or Arbitration. Wherever possible supply back up information to support the delay notice including a programme showing the effect on the works. By doing this it will help protect your position and also help to expedite any decision from the Contract Administrator. If you can't send back up information at the time then follow it up as soon as you can with further information.



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5. Think carefully about mitigation proposals

If a delay event delays you by 6 weeks think carefully before you say you can mitigate this to 3 or 4 weeks. Can that mitigation actually be achieved? Whilst most construction contracts contain a requirement to mitigate any delays, don't put forward a proposal which actually carries a high level of programme risk.

If you have been delayed by 6 weeks for reasons outwith your contracted

responsibility then so be it, that is the effect. If you can mitigate this, then great, but why say something to the client that is very tight or can't be achieved. It is far better to be upfront and say this is the effect of the delay, we will try and mitigate this if possible. In addition, consideration and care should be given when considering bringing additional resources onto the project. Do you have an express agreement for the recovery of any additional costs? What impact will they really have?

Above all else remember that the aim is to try and demonstrate / describe the effect of a delay issue on the works, be that the end date, a sectional completion date or a section of the programme. Whatever information is provided should be geared to achieving this aim as quickly and efficiently as possible.

Whilst most of these tips may seem like common sense we find that in practice that they are not carried out.

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