

FAILURE TO NOTICE COULD LEAD TO A FAILED NOTICE

- ▶ The significance of contractual notice provisions.
- ▶ The risks of failing to comply with notice requirements.
- ▶ Practical tips on how to comply with notice requirements.

What's it about?

Complying with notice requirements in construction contracts is a relatively straightforward process and yet disputes surrounding failures to issue compliant notices are common. It is well established in case law that if service of a valid notice is a precondition to some contractual entitlement, no additional relief can be claimed without such a notice. The clear consequence of this is that the employer could have a complete defence to a claim.

Why does it matter?

Notices have two effects; firstly, they protect the interests of the employer who is informed about any impending claims. Secondly, if a contractor fails to give notice in accordance with the contract requirements, this can jeopardise its entitlement to additional time or payment. A simple mistake, for example miscalculating business days or serving notice to the wrong location, can be a bar to recovery of an otherwise legitimate entitlement. This is true whether or not, in practical terms, the notice had its desired effect i.e. the employer was made aware of the impending claim.

By way of example, the following provision within NEC3 makes recovery conditional upon notice: "if the contractor does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled...". This clause effectively operates as a bar to any claim should the contractor fail to give notice as required. Problems surrounding failed notices are preventable; do not allow your claim to fail because of an easily avoidable mistake.

Now what?

There are several practical ways you can ensure that your legitimate claims are not denied as a result of failed notice:

- ▶ Know your contract.
- ▶ Comply strictly with the provisions and calculate the number of days accurately. Are business days defined? Does the relevant period include bank holidays?
- ▶ Where the timing is not stipulated, notice should be given as soon as the effect of the event becomes clear.
- ▶ In the absence of any contrary provision, in the UK, notice should be sent to the registered address of the business.
- ▶ Do not rely on any previously unchallenged (but invalid) methods of providing notice.

The team at Addleshaw Goddard LLP will be happy to discuss the above with you. Please contact Joe Wilkinson or Jennifer Meakin.

Who to contact

JOE WILKINSON

Partner

0113 209 2332
07775 586366



JENNIFER MEAKIN

Associate

0113 209 7795
07860 779323



10-6545658-1

addleshawgoddard.com

Doha, Dubai, Hong Kong, Leeds, London, Manchester, Muscat, Singapore and Tokyo*

*a formal alliance with Hashidate Law Office

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