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Section 1

Basic principles

In this Section:

- *Who decides on the initial contract period? When can the works commence? What happens at completion?*
- *Does the extension of time clause always apply? Time at large. Making time of the essence*
- *What if the contractor fails to complete on time? Are there any rules about how progress is to be made during the works? What if the contractor wants to finish early?*
- *Liquidated damages*
- *Does a subcontractor have the right to work to a fixed programme?*
- *Domestic subcontractors. Named subcontractors*

Introduction

Time is one of the three crucial elements of a construction contract. The other two are quality and cost. A perfect project would be carried out on time and within budget and be of high quality. It is commonly said, however, that whereas two out of those three can often be achieved, three out of the three cannot. Because of the complexities involved in a construction contract, and in particular the many different trades and professions that are commonly involved in them, construction projects are susceptible to considerable pressure on the 'time' element.

The difficulty is that the parties to a construction contract may have conflicting aspirations. Both employer and contractor can usually maximise their potential profit on a project if completion can be achieved early. The sooner the building is finished, the sooner it can be occupied by the employer, or let in order to generate rental income. The sooner the contractor can move people and

materials off site, the greater their profit will be where they are working to a fixed-price contract (the most common situation) and the sooner they can begin to earn money on another contract. However, if the project runs into delay for any reason (which is also common) the parties are immediately in potential conflict. The employer will want to offset the costs of their inability to occupy or let the building; the contractor will want both more time to complete and to be paid for the extra expense caused by the delay.

Prevention principle

The prevention principle provides that where one party to a contract has, by any act or omission, prevented the other party from performing a particular obligation under the contract, they cannot insist upon the performance of that obligation by the other party. Therefore, where an employer is responsible for any delay to the project (referred to as an 'act of prevention') they cannot hold the contractor to the previously agreed date for completion unless the contract states otherwise.

If there is no written contract between the parties, the position can be unfavourable to the employer. If, in those circumstances, the project suffers delay due (either entirely or in part) to any act or omission of the employer, the prevention principle means that they cannot insist on completion by the agreed date. Unless the terms of any oral contract to the contrary can be proved, the contractor merely has an obligation to complete within a reasonable time, and the employer has no means of forcing the pace. The employer could make time of the essence

See: *Making time of the essence*, page 10

but often it is not a good idea to do so. If there is a contract, however, it can contain a mechanism by which time can be managed effectively for both parties. This mechanism is the *extension of time* clause.

The extension of time clause works in the following way. Assume that the contract specifies a fixed date for completion. If the contractor fails to complete by that date, they are liable to pay so-called *liquidated damages* to the employer. This compensates the employer for the contractor's delay.

However, there may be delay to the project that is not 'at the risk of' the contractor: that is, not something for which the contractor has taken on

responsibility (typically an act of prevention by the employer such as a variation to the works). In this case, the contractor can apply for an extension of time to complete, if the contract allows for this (the employer's right to liquidated damages is then preserved, but postponed by the length of the extension granted). Liquidated damages are covered below (see page 15) and in Section 2.

If there is no extension of time clause, the contractor may claim that time is at large and that they have the obligation only to complete within a reasonable time. If time is at large, the employer will lose any right they might have had to liquidated damages. Time at large is explained below.

See Does the extension of time clause always apply? Time at large, page 9

If the contract, unusually, states that 'time is of the essence' a different set of rules apply.

See Making time of the essence, page 10

Time of the essence

Making 'time of the essence' in a contract means that if the contractor fails to complete on time the employer can say that the contract is at an end and sue for damages for the contractor's failure to complete on time.

The extension of time clause therefore sets out which of the parties takes the risk when there is delay on a construction project for a particular reason. If the employer takes the risk of that delay, an extension will be granted; if the contractor takes the risk, it will not be.

As highlighted by the judge in *Multiplex v. Honeywell* (2007), extension of time clauses exist for the protection of both parties. The contractor benefits in that time can be extended for completion of the project where they are not responsible for any delay that has occurred, while the employer can proceed safe in the knowledge that they will not fall foul of the prevention principle in the event that they cause any delay.

This guide focuses on the extension of time clause in more detail, and in particular on how that clause works in the JCT forms. There is also a chapter on how extension of time operates under the New Engineering Contract (NEC).

First, however, the points introduced so far are expanded through a brief look at the basic shape of a construction contract.

Who decides on the initial contract period?

Most construction projects have two phases: the *design* and the *work on site*. Early in the design phase a decision should be made about the appropriate form of construction contract. Before the tender documents are sent out, the time period needed to complete the project should be assessed. This is usually done by the quantity surveyor and the architect, who try to come to a realistic assessment, based on the design itself and on their experience. The client, of course, is likely to want an early date for completion.

The information about the length of the construction period is sent out to contractors as part of the tendering process. The aim of this process is to provide contractors with information about the project on which to base their price. It is good practice to have the contract agreed and executed, with the date for completion inserted, before work on site begins. The contract will usually set out either a date for completion or the length of the construction period.

The contractor will also usually be informed at the tender stage of the anticipated date for starting work on site. This, together with the contract period, will be important in calculating the tender sum, because of the need to assess possible rises in the cost of labour and materials and to ensure that both can be made available at the appropriate dates.

A reasonable time period should be set for completing the works. If the period is short considering the amount of work to be done, the employer should expect the tenders submitted to be higher, and quality standards may also suffer.

In practice, the design phase will generally overlap with the construction phase. In recent years, in particular, there has been an increase in the use of contract forms that are *fast track* (that is, which shorten the overall period from starting design work to practical completion), and this is generally achieved by overlapping the design and construction phases. This does, of course, leave the problem that speed is not always compatible with quality, and it is certainly not compatible with tight financial constraints. Even where traditional forms are used, such as SBC2005, design and construction will often overlap, which can cause delay to the contractor.

When can the works commence?

Once a contractor has been selected, they will need possession of (or at the very least access to) the site in order to start work. Where the work is to be carried out in sections, they may only be given possession of those parts of the site that relate to the first section. Where the contract is carried out in phases or sections, the date on which the contractor is expected to start each of the phases or sections should also be recorded. See Section 2, page 20 for further discussion of sectional completion.

Deferring possession

Under the JCT forms, apart from MW2005 and MP2005, the employer is entitled to defer the contractor's possession of the site for up to 6 weeks beyond the contractual date of possession. In MP2005 the contractor is given access but not possession.

Where the project is notifiable under the CDM Regulations (likely to last more than 30 days or involve more than 500 person days on site), work cannot start on site until the client, as defined by the Regulations (usually the employer), has agreed that the construction phase plan is ready and there are suitable welfare provisions in place, as required by Schedule 2 of the CDM Regulations. It is now therefore more likely than in the past that the date of possession will be recorded as part of the administration of the CDM Regulations.

It is important not to commit the employer contractually to a start date until the construction phase plan and welfare facilities are, in fact, ready. The start date can be stated in the contract as ' [date X] or the date on which the construction phase plan is ready for work to start on site and the Schedule 2 requirements have been met, whichever is the later'. The contractor is responsible for preparing the construction phase plan and organising welfare facilities, and should therefore take the risk that they may not be ready on time. This can be achieved, in the example above, by calculating the date for completion by reference to date X, and not to the date on which the contractor actually starts work on site, if delay in producing a satisfactory construction phase plan and non-compliance with Schedule 2 is the reason why the start on site is later than anticipated.

The tender information should state the date on which it is anticipated that the contractor can gain possession of the site.

The date on which the employer is ready to give possession can be later than the date in the tender documents for many reasons: for example, failure to obtain the necessary planning permission or delays in the tendering process. This is part of the reason why contractors usually state in their tender that it is open for acceptance for a certain number of weeks.

If the date of possession is later than the date given in the tender documents, the actual date of possession should be recorded.

The date of starting on site may be important for various reasons. The date for completion may be calculated by reference to the commencement date (for example, the contract may state that completion shall be 'X weeks from commencement on site'). Also, the operation of the extension of time clause usually depends on an undisputed initial contractual date for completion.

The date of possession should also be distinguished from the date on which off-site work commenced, such as prefabrication or the ordering of long delivery items.

It is quite common for the contractor to be allowed on site 'early' in order to set up site huts, etc. and, again, it is helpful if there is some record of whether this period is to be considered part of the contract period.

Ideally, the construction phase plan (if the project is notifiable under the CDM Regulations) should be ready some days before work is due to start on site. The contract can then be completed with the date for possession inserted, and the contract documents signed by both parties before work starts on site. This ideal is not always achieved. The work on site might start on the basis of a letter of intent or it might just start without either a signed contract or a letter of intent. It is good practice to have, at the very least, a letter of intent before work starts on site, and preferably a signed contract. If there is a letter of intent, the architect should check whether any start date set out in that document is the same as the date on which work actually started on site. If the dates are not the same, or if there is no date in the letter of intent (or no letter of intent at all), the architect should make sure that a written record is made of the correct date. This can either be by letter or in the minutes of the next site meeting. It is important that the date is recorded as soon as possible after work has started on the site, to avoid arguments later on.

What happens at completion?***Contract administrator***

Most of the JCT forms refer to the person administering the contract as 'the architect' or 'the architect/the contract administrator'. In this guide the term 'architect' is used. In DB2005 the employer's agent undertakes the functions of the architect in relation to extensions of time, unless the employer has said that the employer will carry out this function, so references to the architect include the employer (or the employer's agent) for those functions under DB2005. In MP2005, the employer's representative is similarly entitled to carry out all the employer's functions, and references to the architect include the employer and the employer's representative under that form.

There will of course be circumstances where the architect will not be appointed to provide a 'full service' and their role will not include that of contract administrator. Nevertheless, the architect should still be aware of 'time' and programming issues as they will still be relevant in other respects, such as the timely provision of information.

The completion date is the date on which the project should in fact be ready for handing over to the employer. The architect will inspect the work and issue a certificate or statement of practical completion, which indicates that the work is substantially complete and the building can be handed over to the employer. This is a significant point in the construction process and can give rise to much contention, because it can affect the contractor's liability for liquidated damages: see *Liquidated damages*, page 15 and Section 2.

Practical completion

There is no definition of this term in the JCT forms, nor in most other contracts. Judges, for example in *H.W. Nevill v. Wm Press* (1981), have attempted to give some guidance. In that case Judge Newey said that it meant there were only 'very minor de minimis works' still to be carried out, and no visible defects. The JCT forms make no reference to the use of snagging lists of works outstanding at practical completion, yet such lists are almost invariably compiled. Despite what Judge Newey said, the phrase is usually understood to mean that the work is sufficiently complete

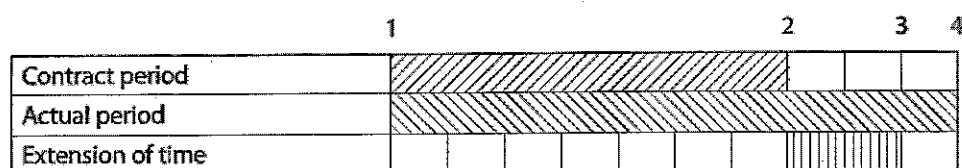
to allow the employer to take possession, either to occupy the building or for the purposes of fitting it out, and that there are only minor snagging items left to complete, which can be carried out while the employer is in possession. If the employer, or the architect with the employer's agreement, intends that practical completion will be interpreted differently from the usual standard, for example that completion will not be certified until a somewhat higher standard is reached, or until certain items have been fully completed, this should be made clear in the tender documents and the building contract.

For present purposes, the main significance of the completion date is that it indicates that the time allowed for the construction period has been fixed: the contractor will either pay liquidated damages if the date is missed, or apply for an extension of time under the contract if it is likely to be missed (or both).

The basic rule is that if the contractor fails to complete by the completion date, the employer has a remedy against the contractor in liquidated damages (see Section 2).

If, however, the employer is responsible for, or has taken the risk of, events that delay completion of the works, then in order to preserve the right to liquidated damages for any delay apart from employer's risk items, the contract gives the architect the power to grant extensions to the time period specified for construction. The contractor will not be liable to pay liquidated damages during the period for which an extension of time has been given (see Figure 1.1).

FIGURE 1.1: *Impact of extension of time on liquidated damages (LDs)*



Notes

Period 2 to 3 No LDs in this period because an extension of time has been granted.

Period 3 to 4 Contractor is liable to pay LDs because work is still not completed and no extension of time has been granted.

The circumstances in which such extensions of time are commonly granted under the JCT forms are set out in Section 3.

Does the extension of time clause always apply? Time at large

The employer and contractor do not always fix the time for the construction period in the way explained above. If there is no contractual obligation to complete by a certain date, the contractor's only obligation is to complete the works within a reasonable time, which leaves the employer at risk in terms of meeting any other deadlines that depend on the completion of the works. In these circumstances, time is said to be *at large*.

There are also other occasions when time is said to be at large. For example, where some event has occurred during the course of the contract that is not at the contractor's risk and causes delay to completion but which the extension of time clause does not deal with, time will be at large, and any extension of time clause cannot be used. In this case, if the event in question can be classed as an *act of prevention* by the employer (such as delay in granting possession of the site), its effect will be to invalidate the completion date. If an event does not fall within the terms of the extension of time clause, the architect cannot grant an extension, and the contractor is then under an obligation merely to complete within a reasonable time (*Peak v. McKinney* (1970)). Contractors who are already in delay may look for opportunities to claim that time is at large, thinking that it may assist them, although it may not necessarily do so.

Completion within a reasonable time

In *Shawton Engineering v. DGP International* (2005) the court said that what was a 'reasonable time' in this context 'had to be judged as at the time when the question arises in light of all relevant circumstances'. The relevant circumstances are likely to include any previously agreed completion date in the contract, the full extent of the work including any variations and any other delays that were not within the contractor's control. If the contractor is already in delay because of events that are at the contractor's own risk, such as breakdown of plant, those delays will not be taken into account in calculating the reasonable time for completion.

Example

The maximum period of delay in granting possession of the site to the contractor, under those JCT forms that allow it, is 6 weeks beyond the date of commencement set out in the contract.

- The employer delays granting possession for 7 weeks, which delays the contractor by the same period.
- The architect has no power under the contract to grant an extension of time beyond 6 weeks.
- If the parties do not amend the contract by agreeing a new possession date and a new completion date, time would arguably be at large and the contractor would be required only to complete within a reasonable time.
- This is the legal position even though common sense would suggest that the completion date should be extended by 7 weeks to allow for the delay in commencement on site, with a possible adjustment to the contract sum to reflect later completion.

It should be noted that under the JCT forms (except MW2005) an extension of time for the extra 1 week of delay can be granted under the sweep-up clause – any other impediment or prevention by the employer (see *Any impediment, prevention or default by the employer*, page 34).

Making time of the essence

The time for performance of a contractual obligation can be made *of the essence* by putting express words to that effect into the contract. If this has been done in relation to the date for completion, the contractor *must* complete by that date (subject to any entitlement to extensions of time). Failure to do so will mean that the employer is entitled to treat the contract as a whole as having been *repudiated*. This means that the employer has no obligation to carry out their own part of the contract, and may make a claim in damages.

Repudiation

This term denotes a party behaving in a way that shows they no longer intend to be bound by the contract. This can be by breaching a fundamental term, or *condition*, of the contract (such as the obligation to complete by a specified date where time has been made of the essence) or in some other way depriving the 'innocent' party of substantially the whole benefit which it was intended they should obtain from the contract. If the 'innocent' party accepts the repudiation, they are relieved of the duty to carry out their future obligations under the contract, and can recover damages from the repudiating party.

A construction contract will normally contain an extension of time clause and a liquidated damages clause. This will imply that time is not of the essence in relation to the contractor's obligation to achieve completion by a certain date, because alternative mechanisms for dealing with delay have been adopted.

However, where there is no extension of time mechanism in the contract or it has become inoperable, the employer may wish to make time of the essence as a means of regaining control over the time of completion. If, in those circumstances, the employer believes that the contractor is in breach of their obligation to complete within a reasonable time the employer has the option of either:

1. giving reasonable notice making time of the essence, or
2. treating the failure to complete within a reasonable time as a repudiatory breach.

The latter is an inherently riskier approach for the employer and so making time of the essence is usually to be preferred.

If the employer wishes to make time of the essence, they should serve notice on the contractor requiring completion by a certain date, and – provided this is properly worded and the specified date is reasonable in all the circumstances – it will have the effect of making time of the essence. The notice should be clear and state unambiguously that failure to complete by that date will entitle the employer to terminate the contract. However, any employer considering taking this step should be advised that if the contractor

challenges a subsequent termination of the contract, the employer will have the burden of proving that, at the point that the notice was issued, the contractor was in breach of the obligation to complete within a reasonable time. Making time of the essence should not, therefore, be undertaken lightly and should only be considered after careful thought has been given to the possible consequences.

There are various other reasons why time is not usually made of the essence:

- It will usually be quicker and cheaper to allow the existing contractor to finish the work, albeit late, than to employ another contractor who will not be familiar with the works.
- If the works are completed by another contractor, the original contractor's responsibility for parts of the works, and their liability for defects, could be difficult to enforce, because of the 'interference' by the replacement contractor.
- In most construction contracts, the employer already has a remedy in liquidated damages if the contractor is in delay (provided that the contractor cannot show that the employer has committed any acts of prevention).
- There are many cases where practical completion is not achieved by the completion date, but it is not clear at that point whether the contractor may be entitled to further extensions of time. It would be premature for the employer to allege that the contractor's failure to complete by the completion date was a repudiation of the contract. If time had been made of the essence, the employer could accept non-completion as repudiation, but the architect, an arbitrator or the court might subsequently decide that a further extension was due. The employer would then find that they themselves were guilty of repudiating the contract and that the contractor was entitled to damages for repudiation.

The JCT forms, with their provisions for extensions of time and liquidated damages, are designed to avoid these problems by making it unnecessary for time to be of the essence.

What if the contractor fails to complete on time?

The consequences for a contractor who fails to achieve practical completion by the completion date, described in this section, were set out by the House of Lords in *Percy Bilton v. GLC* (1982) as follows:

- The general rule is that the main contractor is bound to complete the work by the date for completion stated in the contract. Failure to do so will leave the contractor liable for liquidated damages to the employer.
- That is subject to the exception that the employer is not entitled to liquidated damages if by their acts or omissions they have prevented the main contractor from completing their work by the completion date.
- These general rules may be amended by the express terms of the contract.

The House of Lords' judgment here neatly summarises the purpose of the extension of time clause: it preserves the employer's right to liquidated damages, and is therefore for the benefit of the employer, as well as the contractor.

Are there any rules about how progress is to be made during the works?

Under most contracts, although the contractor will usually have a completion date to which they are working, there is a great deal of flexibility in determining the order of work and the exact timing of each individual element. The contractor's obligation is usually limited to the requirement that they should commence the works on the date of possession and thereafter proceed 'regularly and diligently', using their best endeavours to avoid any delay, however it might be caused. If they do that, and complete on time, they will not be in breach of contract even if they do not in fact adhere to their own programme. The exception to this is if their programme is one of the contract documents. Where the JCT forms are used unamended, the programme is not a contract document (except for the design programme in MP2005). However, in NEC forms the programme is a contractually binding document (see Section 9).

It follows that if the timing of the different parts of the works results in added expenditure to the employer, for instance by entitling the contractor to higher rates to reflect increased costs for work carried out later in the contract period, the employer can do nothing about this, and must pay the extra costs incurred. Sometimes employers attempt to control this by making payments on the basis of construction *milestones* being achieved, rather than on a monthly basis. These milestones can be events such as completion of piling, achieving watertightness or end of first fix electrical work.

Example

The firm Cleveland Bridge were employed to manufacture, supply and install the gates and gate arms for the Thames Barrier. The contract set out certain key dates by which various parts of the works had to be completed, and Cleveland Bridge complied with these. At the same time, the employer had to pay more in fluctuations for inflation costs than anticipated, because of the sequence that Cleveland Bridge had adopted for the different parts of the works. The court held that this was not a breach of contract. Cleveland Bridge were entitled to organise the progress of the works as they saw fit (*GLC v. Cleveland Bridge* (1986)).

What if the contractor wants to finish early?

Another common feature of a contractor's programme is that it will show that the contractor plans to finish the work early: that is, before the date for completion. The question then is whether the architect is obliged under the construction contract to supply information, supplementary drawings, etc. in such a way as to enable the contractor to achieve early completion.

Example

This issue was raised in *Glenlion Construction v. The Guinness Trust* (1987). This concerned a JCT1963 contract for the construction of a residential development for the Trust. Glenlion were required by the bill of quantities to provide a programme showing a completion date 'no later than the date for completion'.

A dispute arose, and the court said that Glenlion were entitled to complete before the date for completion and to carry out the works in order to achieve that earlier date. There was, however, no parallel obligation on the architect to provide information to enable the contractor to achieve this early date. If there had been, this would have had the effect of imposing on the employer an earlier date for completion.

Although in some circumstances an employer might welcome early completion, it might equally cause difficulty, for example if funding arrangements had been made on the basis of a longer programme.

Liquidated damages

'Liquidated damages' is the term used to describe the sum (that is, a liquidated amount) that the parties have agreed by contract will be payable where one of them is in breach of contract. (The damages will be *unliquidated* where the figure is not set out in the contract or cannot be calculated from its terms, and has to be assessed by a court or arbitrator.) Generally, the contract will specify a weekly or daily sum that is to be paid or deducted for the period after the completion date has passed until practical completion is achieved.

Further information on liquidated damages is given in Section 2.

Does a subcontractor have the right to work to a fixed programme?

The position of subcontractors on construction contracts is particularly difficult, since they must co-ordinate the timing of their own work with that of the main contractor and other subcontractors. This can result in delay to the project since, subject to the terms of the subcontract, there is no general duty to comply with a contractor's programme. Contractors often put wording in a subcontract stating that the subcontractor must comply with the contractor's requirements as to timing.

Examples

- Kitsons were the insulation subcontractor for Matthew Hall for the construction of Terminal 4 at Heathrow. The order from Matthew Hall stated: 'Works should be carried out in accordance with the dictates of our site management team, to enable the overall mechanical services to be completed and handed over to our client on 18.3.85.' Matthew Hall were obliged to secure availability and access to site areas so far as they were able. Kitsons were late in completing their work and said that was because Matthew Hall had failed to make work available as required by the revised programme. Matthew Hall refused to grant an extension of time. The judge said that both parties must have understood that there was little chance of working closely to a programme and that as long as Matthew Hall tried to obtain access to areas that were needed by Kitsons for their own work, Matthew Hall were not in breach of contract even if Kitsons were sometimes unable to do any work at all because of

lack of access and as a result failed to comply with the revised programme (*Kitsons v. Matthew Hall* (1989)).

- A piling subcontractor claimed for the cost of some piling work they carried out. The main contractor counterclaimed for loss caused by the subcontractor's delay in carrying out the work. The subcontract provided that the subcontractor was under an obligation to complete the subcontract works and to use their best endeavours to prevent delay in the progress of the subcontract works. The judge held that this did not require the subcontractor to plan their work to fit in with the contractor's work or to finish any part of the subcontract works by a particular date so that other parts of the works could proceed. The exact wording of the contract was crucial (*Pigott Foundations v. Shepherd Construction* (1993)).
- A sub-subcontractor carried out the design and installation of a control system for a research facility for British Nuclear Fuels, but there was no contract with the subcontractor, as the parties could not agree on the programme. The court said that there is no duty to comply with the main contractor's programme where this is not a contractual requirement, but that there *is* a duty not to interfere unreasonably with the work of other trades. This amounts to an obligation to be aware of the other trades and to co-operate with efficient working practices so far as this is consistent with the subcontractor's own legitimate commercial interests (*Serck Controls v. Drake & Scull Engineering* (2000)).

A subcontractor can put the whole programme in delay. If this happens, the consequences for the contractor and the subcontractor will depend on the exact terms of the various contracts.

Domestic subcontractors

Contractors who have engaged a domestic subcontractor are entirely liable for them and are not entitled to an extension of time on account of the domestic subcontractor's delay unless that delay falls within one of the express categories set out in the extension of time clause in the main contract, or the contract otherwise allows it. The extension of time clause in a subcontract should be *back to back* (that is, consistent) with the equivalent clause in the main contract,

otherwise problems may be caused for either the subcontractor or the contractor. The named specialists referred to in MP2005 are also the entire liability of the contractor, even though there are restrictions, as their title suggests, on who can be engaged as a named specialist.

Named subcontractors: IC2005 only

The position of named subcontractors under IC2005 is slightly different. Where the main contract provides for work to be carried out by a named subcontractor, the provisions of Schedule 2 of IC2005 will apply in respect of that subcontract. Schedule 2 provides that where the employment of a named subcontractor is terminated either because of insolvency or default, or with the consent of the architect, the contractor will be entitled to an extension of time if they suffer delay as a result.

SUMMARY

- Time, together with quality and cost, are the three crucial elements of a construction contract. It is therefore essential to agree realistic dates for commencement and completion of the works.
- The dates for commencement and completion of the works can be fixed dates or can be set by reference to related events (e.g. completion within 10 weeks after commencement).
- Where a contractor fails to complete the work by the completion date the employer may be entitled to claim liquidated damages.
- Where delay is caused by an event for which the contractor is not responsible, an extension of time clause will provide for the extension of the completion date, thus reducing the contractor's liability to liquidated damages.
- If there is no mechanism for extending time under the contract, in the event of delay for which the contractor is not responsible or at risk, the completion date will fall away and time for completion of the works will be 'at large'.
- If time for completion is at large, the contractor is only under an obligation to complete the works within a reasonable time.
- Time for completion can be made 'of the essence' by putting words to that effect into the contract or, where time is at large, by giving reasonable notice.
- Failing to complete on time where time has been made of the essence can be a repudiatory breach of contract which entitles the 'innocent' party to terminate.