

Profile's COVID19 Practical Advice & Support

This short paper aims to provide advice to our friends and colleagues across the construction sector, relating to:

- solicitors advising their clients
- employers/clients concerned about their sectional/project completions and the impact to site progress
- main contractors managing employers requirements and their supply chain
- sub-contractors working to comply with the changing conditions/scenarios and the sourcing of labour and materials.

Profile can assist with some practical advice and best practice principles to adopt in regards to what you need to be doing to safeguard yourself, manage your business, understand your contractual obligations and maintain project continuity during this difficult time.

PROFILE DELAY SUPPORT SERVICES

Profile is a team of professional planners, claims consultants and experts with key knowledge and vast experience in time and cost related claims with project rescue experience, we can assist you in each of the above areas, which we describe in more detail below.

We have been remote working for several years now and for us it is business as usual, it is critical you maintain project control measures and identify the risks/impacts for your given project at this point in time. We strive to provide you with the expert advice you need and the practical solutions you can implement to assist you in the current climate, we will look at your particular situation and provide you with the best possible outcomes to fit your individual needs, circumstances, risks and budget. These are unchartered times for the whole of the construction sector and it is our aim to assist our clients through these difficulties to a successful conclusion.

Our office lines remain active and our staff are accessible daily via video conferencing. If you want some advice please just pick up the phone or schedule a video/skype call, we're here to help you through this.

Above all this is a humanitarian crisis and as an industry we hold a responsibility to work together to keep each other safe, whilst also trying to protect as many jobs and businesses that we can.

Material Matters

Our current supply chains are being hugely impacted and affected in a number of ways, in particular materials transferred in from overseas from such key locations as China that have reduced or stopped production completely. Local suppliers have been interrupted, such as Travis Perkins which have had to close down their operations. There are those that are still in difficult circumstances trying to remain open and operating as business as usual, but most will or are expecting to see certain supplies to dwindle. This in turn impacts critical progress onsite, it is key to liaise with your suppliers understand their issues such as their availability of required materials, delayed timescales and labour specialist

installations etc. This then poses the question “what works can be progressed and is the impact to the completion of the project in its entirety?”. As clearly stated in the contract all parties have a duty to try to mitigate these delays to their best endeavours, it is then important that you try to resequence the works to progress other areas where these materials are not required or where other materials that are freely available are then undertaken, this has to be considered and discussed with all the other parties within your contract and informed across the site. Communication is another key factor to helping facilitate any foreseeable issues.

Record Resources

The potential impacts to resources at present can be considered through self isolation, illness, home schooling and limitations on travel, these are just some of the major issues that may be effecting your staff and their ability to attend site or offices to undertake their duties such as progressing of the works and assessing impacts/risks to the project. This will also affect non site staff, such as clients, designers, managers, procurement teams, etc.

Your resources are critical, they are what drive your productivity. The importance of keeping accurate and timely records is now even more so key, in terms of what resources are currently available, the number of resources available and who is able/unable to attend site. This will be valuable data to establish the productivity of the resources should a disruption claim be required.

You should undertake a review of your resource levels for a defined time slice period within the works, initially identifying a period when things were running as required and calculating what volume of production or value was achieved at that point in time. This can then act as your benchmark or baseline for the project production levels, which can then be utilised to establish what was achievable, matching this information against the resource levels at the time of the relevant event – the findings of this can be used as the basis for your disruption claim. Alternatively, if your tender was based on productivity rates, were these rates based on previous related project data or are they otherwise verifiable as reasonable?

Progress, Progress, Progress

Project progress on all sites needs to be maintained at all times, on some sites this has been maintained, but on others there is significant impact from the lack of materials, resources or imposed restrictions due to the current circumstances. Records of progress will be crucial in establishing any potential extension of time requirements, it is therefore critical this is undertaken on a routinely basis. These progress records should then be utilised as evidence by employers, main contractors and sub-contractors alike to develop and prove their claims for extensions of time and any potentially related cost associated, where such costs may be compensable.

You should utilise your contract programme at the point the relevant event impacts the works, If you do not have an updated progress programme, this can be generated and updated based on the current progress or other timely records such as progress reports, meeting minutes or valuations etc. There are a number of systems that have been developed to assist you providing progress drop lines, either from your smart phone or other automated systems. Even if your planner is unable to do a progress site walk around, the site progress information can be passed to them and updated off site remotely.

If you don't have a planner or they are unable to work due to the current situation or any other reason, Profile can step in to fill this void as and when required.

Visual Verification - Photos, Videos

Visual progress capture, why not? A picture speaks a thousand words! Are you onsite today? If so, snap some pics or better yet take a video. A time stamped picture or video can be relied upon to demonstrate progress more clearly. This will be crucial in evidencing the progress at the point of delay and how works were able to progress during this difficult time.

If you can take a site walk once a day or as a minimum once a week (where safe and reasonable) following the same route with some voice commentary - this would provide you with your digital site diary and can be backed up to cloud storage systems on smart phones/tablets. This will enable your team to gain access remotely to the information, in order for them to substantiate any delays and provide supporting analysis or review of those submissions from employers or main contractors to those further down the supply chain. If you cannot undertake this, Profile can do this for you, we can even model this information and show visually through our BIM/4D services exactly where the problems arose and the impact to the project as a whole.

If you're an employer/client you need to undertake your own records to be able to assess the validity of submissions you receive. If you or your representative does not already maintain independent records, now's the time to start the process.

Back me up baby! - Data back up

All data is key and the more detailed the better - Please remember that it does not store itself, move all data stored on C drives of computers or tablets onsite to a network drive or another form of back up. This is so that it is not lost and should an individual be unable to come in to work their information is still accessible by others - If we store the information correctly and in an orderly fashion all can access what they need. Consider implementing an automated back up system or cloud service to help here going forwards.

Show me the money - Payments

Money makes the world go around, with struggling economies and companies there always comes instances where parties are unable to pay due to a number of reasons. There are provisions for all parties within the contract that should the other fail to comply with their payment obligations. Should you find yourself in this situation you should consider if you can try to reach an agreement on a payment structure or whether there needs to be a suspension of the works until things can be resolved between parties. There are different subsidies being discussed and implemented by the government to assist businesses and help keep the economy going, you need to research what current and potentially new funds are available to you, that you can apply for now and how these can assist in keeping you afloat to maintain your own payment obligations. If you need advice or assistance with your options please contact Profile.

Communication is King - Notifications

First port of call is to check your contract and the details, especially if your project is an NEC contract as notification clauses are typically condition precedent, most contracts expressly require notification or early warnings and these can be simple to submit. The full effect of any impact cannot be known instantly without having to ascertain the cause and events that surround them first, at the point in time when the event occurs notification is critical. This can be stated in any notice and the updates that are required to follow, the actual potential effect and its circumstances can be determined at a later date. Any effects upon your progress needs to be recorded appropriately and then you can make a start on your analysis with the submission for any EOT or disruption submission.

Let the other party to the contract known you're doing this in advance to maintain the relationship and work together through this unprecedented scenario. Profile can provide support and assistance in all these matters from advice to formulation of EOT and claims.

Its all in the Detail - The Contract

Its what you signed up to, Depending on what has happened in your circumstances and whether you're an employer/developer, main contractor, sub-contractor or supplier - you will each have different contractual conditions applicable to you and different contracts for each relationship and project. Now's the time to read what your contract says, if you're in any doubt or need some advice then please contact us – we will review your requirements and make sure you at least do not fall foul of your obligations. In our experience, two well informed parties following an agreed contractual procedure are less likely to fall out and form a dispute, than two parties that rely upon what they think should happen which can lead to personal clashes. The building industry thrives and survives on teamwork and everyone having an understanding each other's role within the project - Now's the time to keep that going and follow the procedures both parties agreed to at the start of the project.

When it comes to the submission of your documents or the reviewing of any claims from another party it needs to be understood, which contractual clauses are being relied upon as different clauses change how time and costs are shared between the parties – this is critical to your claim and needs important consideration. For example:

- Suspension by the employer
- Changes in legislation
- Insolvency of a party
- Pandemics, force majeure, etc.

Some will be entitled to TIME and MONEY, others may only be entitled to TIME but not MONEY, with bespoke forms of contract or changes to standard forms that will likely have their own allocations of risk.

What are the Alternatives?

We should remember that a number of these issues will affect all in the supply chain, therefore we suggest this could be the time to talk (by video conferencing where possible) to come to mutually beneficial agreements for the whole of the chain. If materials or supply chains are causing issues or there is a lack of labour or cash flow, what else can we do - could the project as a whole consider a



slower progress rate or can we resequence the programme to provide another alternative solution? Can vesting certificates be enacted to cover the payment of materials off site not previously payable under the contract to help keep a supply chain member afloat and the project going? We have to consider all possible solutions, this is where Profile come into their own and can assist you in finding the right solution for your project both in time and contractually.

Other options that are open to us are all parties agreeing to amend the contract to accommodate the issues, changes to the scope of work to be completed or contract conditions. This should all be recorded in writing, so that they can be referred back to as necessary. Seeking advice from a professional like Profile where needed is critical, to make sure you can achieve your required outcomes.

If you break it can Bob fix it! - Insurance

We all love that magic word INSURANCE, don't we! We all pay for insurance, now is the time to review each of your specific or companywide insurances, to assess what cover you may have to assist with costs and the risks due to the current events. Always check the small print, after all its where all the important stuff is. Speak with other related parties that are involved, especially those that are part of the contract and project, as there may be an overall Project Insurance in existence that you were not aware of. In order to be successful in an insurance claim you will need to have various records to substantiate and support your claim, the advice above should be followed to put you in the best possible position to recover any sums or time, should you be able to.

Profile are here to help.