

# NEC4 COMPENSATION EVENTS

## A PRACTICAL GUIDE

### INTRODUCTION

Last year at Oraculum, we helped Contractors recover £1,400,000.00 in compensation events that had reached a complete impasse. The difference? A structured approach that combined technical expertise with relationship management.

What is a Compensation Event ? When a Contractor enters into a contract, they agree to provide a defined scope of work and take on agreed defined risks. If there is a requirement to change this scope or change the risk profile then it follows that the Contractor should be compensated for that change.

Sounds straightforward, doesn't it? Yet experience shows that contractors typically leave unrecovered compensation events on the table worth £ tens of thousands if not more.

The real problem is not entitlement, it's execution. Follow this guide to discover how to approach your compensation events to dramatically increase your odds of a successful outcome.

### KNOW YOUR SCOPE

Probably the most important step in knowing when you have a compensation event is first of all knowing what Scope you have actually signed up to deliver.

Sounds simple, right? Well not always - it's quite common for a Contractor to price a tender thinking they are pricing one thing and the Client's understanding is something else. Remember whatever is written in as Scope is what you have to deliver, so if your tender clarifications are not written in to the Scope document, then they will likely be worthless.

Take time to truly understand what is written into your Scope and what you are obliged to deliver.

### COMPENSATION EVENTS



### TIME BAR

The NEC4 states that any compensation event notified by the Contractor must be notified within eight weeks of becoming aware of the event.

This time period is frequently modified in the Z clauses, so check them for alterations and make sure you give timely notifications.

*"Strong relationships are based on trust and communication. But if there is no communication, there can be no trust."*

**Simon Sinek**

## KNOW YOUR RISKS

The NEC in its standard form is a relatively fair contract. It is however very common to amend the NEC form with 'Z' clauses.

Z clauses will usually alter the risk profile in favour of the client. This isn't necessarily a problem as long as you are aware of the revised risk profile when you tender the contract. This is why you should always get a contract professionally reviewed before signing.

You should review your risks before deciding if you have a compensation event. For example your Scope maybe to construct 600mm deep foundations, then ground conditions dictate they need to be 1000mm deep. If the Z clauses remove physical conditions - 60.1(12) - from your contract, you may still not have a compensation event.

## KNOW YOUR CLAUSE

For a compensation event to be valid it must fit into one of the specified reasons shown in clause 60 or in any amended clause.

Check the list of compensations events in clause 60 and decide which one your compensation events falls under, for example:

*60.1 (1) - The Project Manager gives an instruction changing the Scope* - If the Scope said you were to construct 100m<sup>2</sup> of concrete slab and then the Project Manager gave an instruction to construct another 50m<sup>2</sup> of concrete slab, this would likely constitute a change to the Scope hence provide a compensation event.

*60.1 (6) - The Project Manager does not reply to a communication from the Contractor within the period required by the contract* - If the lack of response from the Project Manager caused the Contractor additional costs or delay then it would likely form a compensation event under this clause.

## COMPENSATION EVENTS



## PROGRAMME

Your programme is the key to evidencing any sort of delay. Clause 31 details what information is required in the programme but don't stop there, think about what you need from the client and put milestones in the programme for them, such as:

- Access to areas - break this down, so it's not just broad sectional completion areas but individual rooms/areas.
- Design information - state key dates you need designs providing by.
- Approvals - Insert milestones for when you need approvals.
- Material / product order - state when items have to be agreed to enable you to place orders or when the client needs to place orders if applicable.

Your programme is used to assess delay to planned Completion, so make sure its always up to date, impacted and accepted.



## INSTRUCTIONS

Only the Project Manager can give an instruction changing the Scope, the Supervisor has some limited powers to ask for search for defects which may result in a compensation event.

If you are getting instructions direct from the Client, the site QS, the foreman, the engineer then make sure these are backed up by an instruction from the Project Manager.

## RECORDS

Knowing you have a compensation event and providing adequate back up to justify the quantum are two different things. Successful record keeping relies on a few factors:

- Contains the relevant information.
- Easily accessible.
- Folderised or categorised for efficient reviewing.

**What should you include?** Firstly speak with your commercial team and gain their input on what is needed. Consider such items as:

- Resources used.
- Stoppages / delay reasons.
- Instructions or requests.
- Weather conditions.
- Additional works.
- Key decisions.
- Sequence of works.

**Accessibility and file structure** - Do not leave vital information stuck in emails! It makes it so difficult (and costly in time) to retrieve easily. Work with you team or office manager to agree a filing structure and where the files are kept. Even better, consider investing in a database type system such as [www.gatherinsights.com](http://www.gatherinsights.com)

## RELATIONSHIPS

For successful compensation events, there needs to be two elements:

- Clearly identified entitlement.
- The paying party being open to paying you.

Now you could say that as long as you have entitlement you do not need the later, however, without the later you are going to have a much harder time, so whilst you may eventually get it, it'll be hard won and that may not be considered a good definition of a successful compensation event.

Bring the client on the journey of the compensation event and craft it as a story, Include the following:

- Why this event needs to happen.
- How it is their risk.
- What you have done proactively to help them and minimise the impact.
- How this event will bring them value in the life cycle of the project.
- Find out what they need to satisfy their governance procedures.

Then beyond that make sure you communicate regularly with your client (phone call or better still, in-person) so your phone calls aren't always associated with 'bad news'.

Remember: People respond to stories not clauses.

## NEED HELP?

Oraculum specialises in helping contractors manage their projects effectively. We are here to support you with compensation events, NEC advice or project strategies - think of us as one of your team.

Don't let poor compensation event management or strategies cost you £ thousands. Book your free consultation today