

COVID-19 and UK Construction Contracts: Force Majeure or Not?



The construction industry is coming to terms with the way that COVID-19 is dictating new ways of working, delaying many projects. Many surveyors, though, are having to deal with the contractual implications – the RICS reports. Some contracts can excuse failures and potential breaches of contract that arise as a result of force majeure. Surveyors therefore need to know how and when force majeure may apply, and may be asked to make decisions about whether, for example, a contractor is entitled to extend the date for completion.

Significantly, force majeure only applies if there is a force majeure clause in the contract – it is not a general legal principle of universal application. Many JCT contracts contain a force majeure provision, whereas NEC contracts contain the equivalent of a force majeure

regime.

Is COVID-19 a Force Majeure Event?

There is no simple legal definition of what constitutes force majeure as this always depends on the wording of the contract. Both the wording of the force majeure clause and the contract as a whole need to be looked at to decide the legal effect – if any – of COVID-19.

Some construction contracts contain a list of potential force majeure events such as epidemics or acts of government that may or may not be beyond the parties' control. A clause that only gives relief when force majeure 'hinders' or 'prevents' the carrying out of the works will be treated differently from another that refers to performance being 'impossible' – the latter will be more difficult to prove.

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