

# CLC TASKFORCE: COVID-19 CONTRACTUAL GUIDANCE



Published 21 October 2021  
Version 1.0

## 1: OVERVIEW AND DIRECTORY OF GUIDANCE

### SUMMARY

- **The importance of responsible and fair behaviour for existing and future construction contracts in response to COVID-19.**
- **CLC and others have produced a suite of contractual guidance to support collaborative discussions during these unique circumstances.**
- **Existing documents have been updated and new guidance added.**

## 1. INTRODUCTION

- 1.1. The COVID-19 pandemic had and continues to have a significant impact on UK construction and the sector's finances but the industry has responded. Prompt, collaborative, and creative action has shown that both individuals and businesses can restart and reset on the path to sustainable recovery.
- 1.2. However, early in the pandemic, the Construction Leadership Council (CLC) expressed a real concern that without fair and reasonable administration of construction contracts, parties may become embroiled in costly and long-running disputes over the effects of COVID-19 on projects. This concern still remains today.
- 1.3. Over the last year, the Council has emphasised the importance of responsible and fair behaviour in both existing and future contractual arrangements to support the performance, and viability of contracts and supply chains. Extensive contractual guidance for COVID-19 has been published and has been positively received by the industry.
- 1.4. This guidance has included a suite of documents covering contractual best practice and record keeping to help achieve collaborative settlements, and future-proofing JCT / NEC amendments to new contracts yet to be entered into. Summary guidance, easy to use templates and further references were also published. Further support was provided through the COVID-19 Cost Assessment Toolkit – to provide a methodology for assessing and reporting the cost implications of disruption due to the pandemic.
- 1.5. The industry continues to recover in a unique and evolving environment, and therefore it is timely to review, update and add where appropriate to the suite of contractual guidance. The aim is to:
  - bring all documents into one place, in an easy-to-use format for reference;
  - provide a range of guidance to support those at different stages of their contract – whether ongoing pre-pandemic contracts, contracts reaching settlement or new contracts.

## 2. RESPONSIBLE AND FAIR BEHAVIOUR IN CONTRACTUAL ARRANGEMENTS

- 2.1. The CLC asks that industry works together to support the long-term health of our sector. It is everyone's responsibility to ensure payments flow down the supply chain, and vital that all businesses play their part by maintaining payment and by managing current and future contracts responsibly to preserve industry competence, capability and capacity.

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2.2. This can be done by:

- Constructively resolving all remaining contractual claims and disputes arising from the contracts entered into pre-pandemic;
- Collaboratively working to administer contracts and manage existing contracts in a reasonable manner;
- Keeping an accurate record of all contracts entered into and the negotiations; and
- Collaboratively working to ensure contracts fairly and responsibly recognise and proportionately share the risks associated with the pandemic.

2.3. Ensuring contracts balance the risk of providing a safe and secure working environment against the risks posed by disruption, which have proven to be outside the control and plans of all parties.

## 3. DIRECTORY OF GUIDANCE

3.1. All guidance, templates and wider information are summarised in the following table. Links are provided for all content and documents may also be accessed directly via the [CLC website](#).

3.2. 5 new pieces of guidance have been added, along with this directory. These are:

- CLC COVID-19 Impact Assessment Toolkit;
- NEC and CLC Guidance for Dealing with the Effects of COVID-19 under NEC3/4 Contracts (as published on 26 July 2021);
- CLC Deed of Variation under JCT 2016 D&B (based on the document previously included in the Policy Procurement Note - PPN02/20);
- CLC Deed of Variation under NEC 3 ECC (based on the document previously included in the PPN02/20); and
- CLC Settlement Agreement.

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Guidance					
Ref	Title	Descriptor	Version	Date	Link
1	CLC - Overview and Directory of Guidance	Summary of CLC guidance on contractual best practice on dealing with the impact of COVID-19.	1.0	21/10/21	<a href="#">Click here</a>
2	CLC - Contractual Best Practice	Guidance as to how to open negotiations to settle issues arising on contracts entered into pre-pandemic, whilst preserving the contractual framework.  See also templates A-I.	3.0	21/10/21	<a href="#">Click here</a>
3	CLC - Record Keeping	Supplementary guidance on the need for good record keeping to support collaborative discussions.	2.0	21/10/21	<a href="#">Click here</a>
4	CLC - COVID-19 Impact Assessment Toolkit	Simple toolkit to demonstrate the high-level impact of COVID-19 disruption.  <b><u>Only to be used in the context of collaborative negotiations.</u></b>	1.0	21/10/21	<a href="#">Click here</a>
5	CLC – Future-Proofing: JCT/NEC Contract Amendments	Guidance on future-proofing new contracts (in particular JCT and NEC forms).	2.0	21/10/21	<a href="#">Click here</a>
6	NEC and CLC - Guidance for Dealing with the Effects of COVID-19 under NEC3/4 Contracts	Guidance on approach to the impact of COVID-19 under NEC3/4 contracts.	1.0	26/07/21	<a href="#">Click here</a>
7	CLC - Contractual Disputes and Collaboration – Summary Guide	Summary guide of the CLC – Contractual Best Practice.  <b><u>This document has not been updated since 2020 but still provides useful information.</u></b>	1.0	14/07/20	<a href="#">Click here</a>

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Templates					
Ref	Title	Descriptor	Version	Date	Link
<b>Managing implications of COVID-19 under existing contracts</b> (See document 2 - <a href="#">CLC - Contractual Best Practice</a> )					
A	CLC - Supplier Dialogue Letter	A template letter for use by Suppliers to discuss the impact of COVID-19 on the project and the contract.	2.0	21/10/21	<a href="#">Click here</a>
B	CLC - Employer Dialogue Letter	A template letter for use by Employers to respond to any Supplier Dialogue letter received.	2.0	21/10/21	<a href="#">Click here</a>
C	CLC - Contractor Notice under JCT 2016 D&B (Note: the JCT suite of contracts refers to the Supplier as 'Contractor')	A template letter for use by contractors to give notice under clause 2.24.1 by a Contractor of delay to progress.	2.0	21/10/21	<a href="#">Click here</a>
D	CLC - Employer Response to Contractor Notice under JCT 2016 D&B	A template letter for use by Employers to respond to a Contractors notice of delay to progress.	2.0	21/10/21	<a href="#">Click here</a>
E	CLC - Contractor or Project Manager Notice under NEC3/4 ECC Pricing Option A (Note: the NEC3/4 suite of contracts refers to the Supplier as 'Contractor')	A template letter to give notice under clause [61.1/61.3] by a Contractor/Project Manager for a Compensation Event.	2.0	21/10/21	<a href="#">Click here</a>
F	CLC - Project Manager Response to Contractor Notice under NEC3/4 ECC Pricing Option A	A template letter for use by a Project Manager to respond to a Contractor Notice under NEC 3/4 for a Compensation Event.	2.0	21/10/21	<a href="#">Click here</a>

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Ref	Title	Descriptor	Version	Date	Link
G	CLC - Deed of Variation under JCT 2016 D&B	A template Deed of Variation to allow the parties to a JCT to record their collaborative agreement as a change to the ongoing contract.	1.0	21/10/21	<a href="#">Click here</a>
H	CLC - Deed of Variation under NEC 3 ECC	A template Deed of Variation to allow the parties to a NEC to record their collaborative agreement as a change to the ongoing contract.	1.0	21/10/21	<a href="#">Click here</a>
I	CLC - Settlement Agreement	A template settlement agreement to be signed by the parties to a concluded contract – to record their collaborative settlement.	1.0	21/10/21	<a href="#">Click here</a>
<b>Managing implications of COVID-19 under new contracts</b> (See document 5 - <a href="#">CLC – Future-Proofing: JCT/NEC Contract Amendments</a> )					
J	CLC – Future-proofing amendments	Simple approaches to amending a JCT or NEC Contract to allocate the risk of disruption caused by a pandemic.	2.0	21/10/21	<a href="#">Click here</a>
<b>Useful References</b>					
Ref	Title	Descriptor	Version	Date	Link
i	CLC – Statement on Payment and Contracts	Management of payment in the supply chain, and not invoking contractual clauses to the detriment of other firms.		08/04/20	<a href="#">Click here</a>
ii	CO – Responsible Contractual behaviour in the performance and enforcement of contracts impacted by the COVID-19 emergency	Sets out guidance and recommendations for contractual behaviour where impacted by the COVID-19 emergency.	2.0	30/06/20	<a href="#">Click here</a>

# CLC COVID-19: CONTRACTUAL DISPUTES & COLLABORATION GUIDANCE

Ref	Title	Descriptor	Version	Date	Link
iii	CLC – COVID-19 Cost Assessment Toolkit	A methodology for assessing and reporting the cost implications of disruption due to the pandemic.		21/07/20	Click <a href="#">here</a>
iv	HMG – The Construction Playbook	Sets out key policies and guidance for how public works projects and programmes are assessed, procured and delivered.	1.0	08/12/20	Click <a href="#">here</a>
v	CLC – Site Operating Procedures	Measures based on Government guidance for working safely during COVID-19.	7.0	07/01/21	Click <a href="#">here</a>
vi	Pre-Action Protocol for Construction and Engineering Disputes	<p>Applies to all construction and engineering disputes.</p> <p>To exchange sufficient information about the proposed proceedings. Broadly to allow the parties to understand each other’s position and make informed decisions about settlement and how to proceed.</p> <p>To make appropriate attempts to resolve the matter without starting proceedings and, in particular, to consider the use of an appropriate form of Alternative Dispute Resolution (ADR) in order to do so.</p>	2 <sup>nd</sup> Edition	17/02/17	Click <a href="#">here</a>
vii	CIC Low Value Disputes Adjudication	Low Value Disputes Model Adjudication Procedure (CIC LVD MAP) - streamlined adjudication procedure for Low Value Disputes, and, by linking the Adjudicator’s fee to the amount claimed, provides certainty as to how much the Adjudicator will be paid for making an Adjudicator’s Decision.			Click <a href="#">here</a>

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Ref	Title	Descriptor	Version	Date	Link
viii	RICS Low Value Dispute Adjudication - 15 days service	In collaboration with CIC, developed a low-cost adjudication procedure to resolve disputes where the sum claimed is less than £50,000 and does not involve multiple or complex issues.			Click <a href="#">here</a>
x	Conflict Avoidance Pledge	Collaborative working and the use of early intervention techniques throughout the supply chain, to try to resolve differences of opinion before they escalate into disputes.			Click <a href="#">here</a>

## 4. CONCLUSION

- 4.1 It is hoped that this overview document and directory of guidance will provide helpful support to those parties at any stage of their construction contract.
- 4.2 It is recognised that the situation is still evolving in 2021, and as such, this or any supporting documents will be revised if necessary.
- 4.3 This is a suite of general guidance and templates. Nothing in this document constitutes legal advice. A party's contractual rights will depend on the wording of its particular contract and the factual circumstances on its project. If in doubt, advice should be sought.
- 4.4 If you have any comments or feedback please email:  
[construction.enquiries@beis.gov.uk](mailto:construction.enquiries@beis.gov.uk)

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*The Construction Leadership Council would like to express their thanks for the contributions made to the development of this guidance under the leadership of ECA by: Build UK, The Building Engineering Services Association, Civil Engineering Contractors Association, Mace, Osborne, RICS, Rider Levett Bucknall, Skanska, Tideway, U+I and Margot Day together with the Infrastructure and Projects Authority and the Department for Business, Energy and Industrial Strategy. Specific thanks goes to Andrew Croft of Beale & Company Solicitors LLP, Jon Miller of Fenwick Elliott LLP, Theresa Mohammed of Trowers & Hamlins LLP, Rob Driscoll of ECA and Debbie Petford of BESA for their invaluable insight and technical contributions.*

*The Council also thanks:*

*Simon Rawlinson of Arcadis, Nick Rowe of Gardiner & Theobald, Paul Beeston of Ryder Levett Bucknall, Mark Williams of Mace and Malcolm Clarke of Baxall Construction for the development of guidance document 4.*

*Peter Higgins of pdConsult and Ian Heaphy of IN Construction Consulting on behalf of NEC for the development of guidance document 6.*