

Insights

DOES THE PLATINUM JUBILEE BANK HOLIDAY ENTITLE A CONTRACTOR TO AN EXTENSION OF TIME?

May 09, 2022

An additional bank holiday has been created in the UK this year to celebrate the Queen's Platinum Jubilee. Does this entitle a contractor to claim an *extension of time*? A client recently asked this question in the context of a project using the *JCT Design and Build Contract 2016*. It certainly throws up a number of issues.

IS IT A CHANGE IN LAW?

Section 1(3) of the *Banking and Financial Dealings Act 1971* allows the Queen to proclaim a "special day" to be a bank holiday. For the Platinum Jubilee, the Queen used this right to proclaim that Friday 3 June 2022 would be a bank holiday, which was then approved by the Privy Council on 11 November 2021. It is unlikely that the Queen's proclamation is, in itself, a change in the law (as there has not actually been a change in the underlying legislation). However, even if it were, for a contractor to claim additional time or money under JCT, it would typically still need to demonstrate that the change:

- Arose after the Base Date (which is unlikely to be true for contracts recently entered into given that the Base Date will need to pre-date the Privy Council's approval); and
- Necessitates an alteration or modification to the works (which seems even more unlikely as it is hard to see how the bank holiday would result in a need to alter the works themselves).

Therefore, it seems unlikely to me that a contractor could successfully claim time and *money* for a change in law.

IS IT A RELEVANT EVENT?

Typically, the JCT entitles a contractor to an extension of time if, after the Base Date, the UK government or any local or public authority exercises a statutory power that directly affects the execution of the works. The proclamation is clearly the exercise of a statutory power, but it is hard to see how it "directly affects" the works and, given that neither the Queen nor the Privy Council are part of the UK government, it is arguable as to whether or not they fall into the other category of a

“local or public authority”. It’s possible that they do (if this wording is construed widely), but it is by no means certain.

The JCT also typically entitles a contractor to an extension of time for force majeure events. *Force majeure* is not defined in the JCT contract. However, for any contracts entered into after the Queen’s proclamation on 13 November 2020, it seems unlikely that a contractor could successfully argue that the extra bank holiday is a force majeure event that it could not have allowed for at the outset.

Even if a contractor is able to argue that the extra bank holiday is a Relevant Event, it would still need to demonstrate that the works will be delayed beyond the Completion Date. This is likely to be very difficult to demonstrate given that we are talking about a single day.

ARE EMPLOYEES OF THE CONTRACTOR ENTITLED TO TAKE HOLIDAY ON 3 JUNE?

There is no general right for an employee to take holiday on a *bank holiday*. Whether they can do so will depend on the terms of their *employment contract*. If the employment contract lists out the particular public holidays the employee is entitled to take, they most likely won’t be entitled to the extra Jubilee bank holiday. However, if the employment contract says more generally that they are entitled to take a number of days’ holiday “plus public holidays”, it is likely that 3 June will qualify as an extra day’s holiday. Nevertheless, under the terms of the building contract, this remains the contractor’s risk.

SO WHAT IS THE CONCLUSION?

The extra bank holiday may not be a change in law but, even if it is, it seems unlikely that this will translate into a successful claim based on typical JCT drafting. In limited circumstances, it may also be a Relevant Event but, again, there are likely to be significant hurdles to translating this into a successful claim, given that we are only talking about one day of delay. It’s also worth remembering that a typical JCT contract requires the contractor to notify the employer “forthwith” if it becomes apparent that the works are likely to be delayed which, given that the Jubilee bank holiday has been public knowledge for well over a year now, may be difficult to do.

This article first appeared on the Practical Law Construction blog dated 4 May 2022.

MEET THE TEAM



Thomas Haller

London

thomas.haller@bcplaw.com

+44 (0) 20 3400 4211

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bcplaw.com) as the responsible attorney.