

Insights

TIME FOR THE CORONATION?

Apr 24, 2023

SUMMARY

In this BCLP Insight, Thomas Haller considers whether the Coronation may entitle contractors to an extension of time under the JCT form of contract.

This year, there is an extra bank holiday on Monday 8th May 2023 to celebrate the coronation of King Charles III.

Whilst some will be preparing for the big day by unravelling the bunting and researching how to cook the Coronation Quiche (warning: spinach, broad beans and tarragon expected to be in short supply), those involved in construction projects may be asking themselves if the extra bank holiday should entitle the contractor to claim an extension of time. A client recently asked this in the context of a JCT Design and Build Contract that they had entered into.

THOUGHTS

In case you missed it, I blogged on this same issue last year in the [context of the Platinum Jubilee](#).

The JCT includes a list of 'Relevant Events' which entitle the contractor to claim an extension of time. The Relevant Events most pertinent to an event such as the Coronation include:

- Force majeure – this is not defined in JCT, but is generally considered to be an unforeseen event which is beyond the control of the parties and prevents them from fulfilling their contractual obligations.

For contracts entered into after the bank holiday was formally approved (by the Privy Council on 9th November 2022), it will be hard for a contractor to argue that the bank holiday is a force majeure event because the contractor would have known about it and should really have allowed for it in their programme.

- The JCT also entitles contractors to claim an extension of time if the UK Government or local or public authority exercises a statutory power that directly affects the execution of the works after the Base Date (an agreed date stated in the contract, often linked to when the price and programme were fixed).

If the Base Date is after the bank holiday was proclaimed, the contractor would have no entitlement. If the Base Date is before the proclamation, in my mind it remains arguable as to whether the extra bank holiday 'directly' affects the works – particularly as there is no general right for employees to take annual leave on a bank holiday (this is dictated by a person's individual employment contract) so it does not automatically follow that the works are unable to proceed as a result of the bank holiday.

It is also worth remembering that even if the contractor is able to argue that the extra bank holiday is a Relevant Event, they will still need to demonstrate that the event has caused the works to be delayed beyond the Completion Date. This may be difficult to do given that we are talking about a single day.

The unamended JCT does not contain grounds entitling the contractor to claim loss and/or expense as a result of either of the above events. Therefore, any relief granted for the extra bank holiday would be time only (not money).

On a separate (but related) note, it is also worth remembering that under the JCT, bank holidays are excluded when calculating the relevant number of 'Business Days' for the purposes of the payment regime and service of formal notices under the contract. Just something for those administering contracts over the next month to keep in mind.

And finally, if you are thinking about a coronation gift in the form of a notice of adjudication (or if you are unlucky enough to receive one), remember that the extra bank holiday might be relevant when counting time periods for the purpose of the adjudication timetable. The Housing Grants, Construction and Regeneration Act 1996, section 116 (which considers the reckoning of periods of time), specifies that "Where the period would include ... a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales or, as the case may be, in Scotland, that day shall be excluded."

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MEET THE TEAM



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