

Insights

MACE V BALTIC – KEY ISSUES

May 29, 2026

SUMMARY

Judgment in the case of Mace Construct Ltd v Baltic Investment Holdings Ltd [2026] EWHC 976 (TCC) was handed down on 28 April 2026.

This case is particularly interesting for two main reasons: it deals with priority of Contract Documents in the JCT form, with a particular focus on whether a Schedule of Derogations (contract clarifications) takes precedence over the Schedule of Amendments; and it appears to endorse a prospective approach to delay analysis for extension of time (EOT) claims pre-dating completion.

WHAT HAPPENED?

Mace Construct Limited (the claimant contractor) brought Part 8 proceedings seeking declarations as to the proper construction of a contract for the refurbishment of the Baltic Exchange Building, London. Baltic Investment Holdings Limited (the defendant) was the employer.

The contract was based on an amended JCT Design and Build (DB) contract 2016 form and incorporated the Employer's Requirements and the Contractor's Proposals which included a Contract Sum Analysis, a Tender Queries document, a Schedule of Derogations and a programme.

On 24 December 2024, the EA granted extensions of time totalling 7 weeks and 5 days in relation to three events, mainly arising from design changes in the Employer's Requirements and the need to obtain further planning approvals and listed building consents – none of which was held to be within Mace's contractual responsibility.

Baltic challenged the EOTs in adjudication. The Adjudicator concluded the extension was not binding on him and reduced it to zero. Mace did not accept the decision and brought proceedings solely to obtain declaratory relief.

ISSUES

The Court addressed seven declarations across four areas:

- Whether the Tender Queries document and Schedule of Derogations were incorporated into the contract.
- Whether the Schedule of Derogations and Tender Clarifications were overridden by the Schedule of Amendments.
- Whether Mace bore full design responsibility for the "Derogation Items" from 2 February 2024, or only upon receipt of formal instructions from Baltic.
- Whether Mace assumed risk for planning delays not reasonably foreseeable at the contract date.
- Whether an adjudicator (or court) could fix a completion date earlier than one previously fixed by the EA under clauses 2.25.4 and 2.25.5.2.

JUDGMENT – KEY POINTS

Does the Schedule of Derogations form part of the contract?

The court held that it was common ground that both the Tender Clarifications and the Schedule of Derogations had been incorporated into the contract.

Does the contract override the Schedule of Derogations?

Here, the court focused on interpreting the amended JCT priority of documents provision at clause 1.3 of the Schedule of Amendments (set out below and marked up to show the changes from the unamended JCT DB 2016):

"i. The Agreement and these Conditions are to be read as a whole.

ii. Nothing contained in any other Contract Document or any Framework Agreement, irrespective of their terms, shall override or modify the Agreement or these Conditions or the Schedule of Amendments.

iii. In the event of any discrepancy between (a) the Agreement, the Recitals, the Articles, the Contract Particulars, the Conditions and/or the Schedule and (b) the Schedule of Amendments, then the provisions of the Schedule of Amendments shall prevail.

iv. In the event of any discrepancy between (a) the Schedule of Derogations and (b) the Employer's Requirements, the Schedule of Derogations shall prevail."

The court held that the Schedule of Derogations prevailed. It did not "override" or "modify" the JCT terms within the meaning of clause 1.3(ii). Instead it explained and supplemented these terms by clarifying how Mace was to perform its design obligations. Further, clause 1.3(iv) expressly gave primacy to the Schedule of Derogations over the Employer's Requirements.

When did Mace's design responsibility begin?

The Schedule of Amendments provided that Mace was to carry out and complete the design of the works and confirmed and warranted that it was fully responsible and liable for the entire design of the works regardless of whether it had been prepared by or on behalf of Mace. However, the Schedule of Derogations stated that Mace was unable to take design responsibility for the listed items until the initial design development period was complete on 2 February 2024, and would only do so once derogations had been concluded, approval obtained, and a formal instruction from Baltic had been received.

Baltic argued that Mace bore full, unqualified design responsibility from 2 February 2024 regardless of whether a formal instruction had been issued. The court rejected this, holding that the whole point of a "derogation" is the partial abrogation of an obligation, and ignoring the conditionality in the Schedule of Derogations would leave key agreed provisions without effect.

Did Mace assume risk for planning delays not reasonably foreseeable at the contract date?

The court declined to grant the declaration sought by Mace, holding that responsibility for planning delays was highly fact-sensitive and adequately addressed by detailed express contractual terms. Granting the declaration would either merely paraphrase those terms or venture into factually complex territory inappropriate for Part 8 proceedings.

Can an Adjudicator reduce an extension of time already granted?

Mace argued that because clause 2.25 (unamended in the contract) requires a prospective exercise, neither an adjudicator nor a court could retrospectively reduce an extension already granted. The court disagreed and refused the declaration. It held that paragraph 20(a) of the Scheme for Construction Contracts empowers the adjudicator to "open up, revise and review any decision taken or any certificate given" unless stated to be final and conclusive. The adjudicator must "stand in the shoes" of the Employer/Agent and carry out the prospective exercise required by

clause 2.25.1. The difficulty of travelling back to the time of the original notice is a matter of evidence and procedure, not a principled objection to the adjudicator's reviewing function.

THOUGHTS

This case will be of interest not only to JCT users but to construction contract users generally, as the principles it discusses are universal.

At its simplest, this case underlines the care that needs to be taken when incorporating additional documents into a contract. Such documents should be checked against the other contract terms to identify any potential conflicts, and the priority clause must make clear which terms will prevail should a conflict come to light once works are underway.

Design responsibility is a key aspect of construction projects, and this case shows the importance of parties understanding exactly who has responsibility for what, and from when. Employers must have clear processes in place for issuing instructions promptly, and contractors should ensure that instructions are actually issued as contractually required before accepting that design risk has passed.

For litigators, the case confirms that adjudicators acting under the Scheme have full power to open up and revise extensions of time previously granted – including reducing them. The prospective nature of the clause 2.25.1 exercise is a matter for the adjudicator to manage evidentially; it is not a bar to review. Contractors should not assume that an extension already granted is immune from downward revision in adjudication.

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