



Readers will probably be aware that one of the issues that often arises in construction disputes regarding extensions of time is the issue of who owns the contractor's float in his programme. Contractors invariably include a contingency period in their programme of works. This can be either a contingency specific to a particular item on the programme or a general contingency, for example the last two weeks of the programme prior to the contractual completion date. Stephen Homer talks us through how this works under NEC3

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When a contractor applies for an extension of time the architect will often look to use the float to mitigate the delay caused by relevant events. The contractor will often be of the view that the architect is not entitled to do this as the contractor placed the float in his programme for his own use. The contractor will argue that the delay should be measured from the contractual completion date rather than the beginning of the float period.

When considering this issue, the first place to look for guidance is in the contract itself. Although unusual, it is possible for the contract to stipulate how the contractor's float should be used in these circumstances. However, the JCT and PPC 2000 contracts are silent as to contractor's float.

The NEC contract on the other hand stipulates that the programme to be provided by the contractor is to identify float, planned completion and contractual completion dates together with other information.

Whilst under most forms of contract extensions of time are to be measured from the contractual completion date, this is not the case under NEC. Clause 63.3 of the NEC3 Contract states that a delay to the completion date is assessed as the length of time that, due to the

compensation event, planned completion is later than shown on the accepted programme

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shows planned completion 2 weeks earlier than the contractual completion date with 2 weeks float then it is the planned completion date from which delays are measured in granting an extension of time and the contractor keeps the benefit of the last two weeks float period in his programme

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If, on the other hand, float is shown as apportioned to various items of works programmed to take place prior to the planned completion date then this float will be dealt with in the same way as the float under JCT contracts. Whilst every case turns on its facts, the general rule here is that unless the float has already been used by contractor delay, the contract administrator can use the float to mitigate the effect of relevant events (although there has been judicial commentary that if there is then some later delay event, for which the contractor would not be entitled to an extension of time, the architect should then grant an extension for the period of float used previously to mitigate an earlier relevant event). In this way the contractor is not permanently deprived of his float.

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