
*On 24 November 2017, the CIOB Leeds Hub and the event sponsors, Galliford Try and G4C, brought together four distinguished professionals with a wealth of experience in many sectors of the construction industry and from differing perspectives to provide a 360-degree review of the NEC Contract. The conference provided the attendees with a practical and legal review of the use of the NEC ECC from the perspective of the **Client** (Anne Chamberlain Group Manager Building Design East Riding of Yorkshire Council), the **Contractor** (Damian Wilkinson Director Quantum Expert Solutions), the **Consultant** (Neil Earnshaw Director NE Consult) and the **Lawyer** (Phil Morrison Partner & Head of Construction Shulmans). The conference was a great success. The questions and answers are summarized below.*

Question 1: Will the move to NEC4 increase the risk to the Client or the Contractor? *There was a consensus of the panel in relation to the first question. The view was that there is little difference or increased risk to Client or Contractor from the move from NEC3 to NEC4. The changes were viewed as an evolution of the existing provisions that do not generally alter the allocation of risk between the parties. The panel considered one area of potential increased risk to the Client was the introduction of provision providing that programmes are treated as accepted in the event of the continued failure of the Project Manager to reply to a submitted programme after notification by the Contractor. However, this change was introduced to encourage Project Manager's to act in a timely manner, which they should do in any event.*

Question 2: Now that NEC4 has been published what will happen to the NEC3 contracts and does it affect our current projects? *All the panel agreed that the publication of NEC4 will not affect current projects. The introduction of NEC4 will only affect future projects should Clients chose to adopt it. Indeed, in current projects the NEC3 should continue to be used as there is no mechanism to switch to NEC4 and there is no need to do so. In relation to long-term framework contracts that include works contracts that have not been executed, then subject to the terms of the framework agreement these contracts could be let under NEC4.*

Question 3: How should a Contractor deal unresponsiveness of the Project Manager? *The panel considered two approaches to this issue; firstly, by using the contract and secondly by direct approach to the Client. The contractual approach will depend on what the Project Manager isn't responding to. If the lack of response is in relation to compensation event notifications and quotations, then issue reminders and force deemed acceptance if necessary. If the lack of response relates to payments then Contractors can adjudicate, whereas other matters may result in compensation events for the Project Manager's failure to reply and Contractors can notify these as compensation events. The Project Manager is essential in*

promoting the NEC's processes and behaviours, and the second approach, engaging directly with the Client and explaining the consequences of the Project Manager's lack of response and the potential for increased costs and delays may be all that is needed to remedy the situation.

Question 4: What do you think the critical success factors are for an NEC contract? *The panel all agreed on this question. To achieve the advantages of proactive risk management, open communication and the willingness to work together to solve problems, the parties must embrace the philosophy of the NEC. It is essential that the correct team is assembled, that is experienced and conversant with the contract and any skills gaps are addressed with training, coaching and mentoring.*

Question 5: Based on your experience of NEC contracts what do you think is the biggest cause of disputes? *The panel had differing views on the single biggest cause of disputes. However, they all agreed that badly drafted Works Information, Z clauses that changed the allocation of risk and a lack of understanding and / or failure to administer the contract correctly were the key causes of dispute.*

Question 6: A number of years ago the Office on Government Commerce recommended the use of NEC. Do you agree with this approach? *The panel were split on this question. On the one hand it was felt that the recommendation of the OGC was a huge stimulus to industry, and without it the use of NEC in the public sector wouldn't now be as ubiquitous. Whereas, on the other hand it was felt that the recommendation was premature as the required skills, particularly in relation to the role of the Project Manager did not exist at that point in time.*

Question 7: Should I be amending the NEC contract and if so what amendments should I make? *There was a range of opinion on this question from both extremes. The one extreme was that no changes should be made to the conditions of contract and certainly none that change the allocation of risk as this was considered a key cause of disputes. Whereas the other extreme was that the conditions require amending to introduce improvements to enhance legal precision to ensure that the clauses really mean what they are intended to. A pragmatic view was that amendment to the conditions of contract may be necessary to accommodate the inclusion of provisions that have been mandated by Client corporate governance, but any amendments should be limited to such corporate governance.*

The CIOB wishes to thank the sponsors and speakers for their valuable contribution in making this event a great success. The CIOB gives particular thanks to Damian Wilkinson of Quantum Expert Solutions for organising the conference with Zoe Popple.