Claims

1. Common law claims
   • These arise from causes which are outside the express terms of a contract.
   • They relate to breaches by the Employer of either implied or express terms of the contract, e.g. if the Employer hindered (delayed/held up) progress of the works, or if the architect were negligent in carrying out his duties, resulting in loss to the contractor.

2. Ex gratia claims
   • No legal base, but are claims which the Contractor considers the Employer has a moral duty to meet, e.g. if he has seriously underpriced an item whose quantity has been increased substantially because of the variation which will cause him considerable loss.
   • The Employer has no obligation to meet such a claim, but may be prepared to do so on grounds of natural justice or to help the contractor where otherwise he might be forced into liquidation.

3. Contractual claims
   • These arise from express terms of contract and they are the most frequent kind of claim.
   • They may relate to any or all of the following:
     - (a) fluctuations,
     - (b) variations
     - (c) extension of time
     - (d) loss and/or expense due to matters affecting regular progress of the works.

(a) Fluctuations claims
   • These relate to increases in the costs of labour, materials and plant and to contributions and taxes, which the contract provides for the contractor to be reimbursed.
(b) Claims arising from variations

- The surveyor may have priced at bill rates variation items which are apparently similar to bill items but which were not executed under similar conditions to those envisaged at the time of tendering.

- For example, an Architect’s Instruction changing the kind of facing bricks may affect the time taken for laying the bricks, and may lead to more sorting if there is a higher proportion of misshapen bricks or of they are more susceptible to damage in handling.

- The Contractor would be entitled to an increase over the bill rates.

(b) Claims arising from variations

- It may be claimed that in consequence of a variation, the conditions under which other work is carried out has changed and therefore the bill rates for that work should be adjusted to reflect the changed conditions.

- Thus, a variation changing the part of the foundations of a building from concrete deep strip to short-bored piles would reduce the total volume of concrete required for the rest of the deep strip foundations that the bill rates for the concrete would no longer apply.

- If this argument can be substantiated, the rates should be adjusted.

(c) Claims for extension of time

- Generally, in all different contracts, the contractor shall complete the Works on or before the Date for Completion stated in the Contract.

- If the Contractor fails to do so, he becomes liable for liquidated damages, which the Employer is entitled to deduct from payments due to the contractor at the rate stated in the Contract for a period between the date when completion should have taken place and when it actually took place.

(c) Claims for extension of time

- The rate of liquidated damages stated in the contract, should be a genuine pre-estimate of the likely loss to the Employer due to the time overrun.

- The purpose of granting extension of time is to relieve the contractor of liability to pay liquidated damages for the period of the extension.

(c) Claims for extension of time

- The Contractor must give prompt written notice of such actual or likely delay
  - Stating the cause
  - Identifying any relevant events
  - Giving particulars of the expected effects
  - Stating the estimated extent of the delay in the completion of the Works.

- The architect/engineer should notify the contractor as soon as is reasonably practicable whether or not an extension of time is to be granted but within a specified period (12 weeks for JCT Contracts)

(d) Claims for loss and/or expense due to matters affecting regular progress

- They are the claims for which the Employer is responsible.

- The loss and/or expense, to be recoverable, must have been a direct consequence of the matter referred to in the claim.
### (d) Claims for loss and/or expense due to matters affecting regular progress

- Thus, if the Employer fails to provide materials for the Works which he has agreed to provide and the contractor is asked to obtain them, then the contractor is entitled to recover the expense incurred in so doing, as well as the loss due to delay in obtaining them.

- The contractor is much more likely to succeed in his claim if he makes a clear presentation of the data.

### (d) Claims for loss and/or expense due to matters affecting regular progress

- Heads of claim may be:
  
  - (a) Insufficient use of labour and/or plant
    It refers to men or plant standing idle or working at a reduced level. The contractor shall produce evidence of the estimated levels of output used in preparing his tender and records of the actual output during the disruption period.
  
  - (b) Site running costs- these relate to site staff costs, offices etc. Prolongation of a contract could result in some of these items being required for a period in excess of that for which the contractor allowed in his tender.

### (d) Claims for loss and/or expense due to matters affecting regular progress

- Heads of claim may be:
  
  - (c) Head office overheads
    These include costs for maintaining head office etc. Because of a delay and disruption, the contractor is prevented from taking on other projects, thereby reducing his turnover and subsequently his recovery on overheads.

  - (d) Loss of profit
    Because of prolongation of one contract, the contractor was prevented from taking on another. If he could prove this, he would be entitled to reimbursement.

- It should be noted that acceleration costs, i.e. additional costs incurred due to speeding up progress of a contract in order to meet the Completion date are not recoverable.