

# Legal protocol helps limit disputes



**The protocol is controversial and does not have absolute answers, warns solicitor Hamish Lal.**

The issues addressed in the protocol are controversial and do not have absolute answers, said solicitor in law firm Freshfields Bruckhaus Deringer, Hamish Lal.

"The protocol is not intended to be a contract document," said Lal. "Nor does it purport to take precedence over any express terms of a contract or be an authoritative statement of the law." Instead, according to the SCL, the protocol "represents a scheme for dealing with delay and disruption issues that is balanced and viable".

In practice, "this means that if the parties agree with the philosophy and methodology of the protocol then they must make their own contractual provisions to include it", Lal added.

While the protocol provides model clauses dealing with the preparation, submission, update and revision of the contractor's programme, it does not provide a full set of standard clauses dealing with the core principles.

Drafting committees of the standard form contracts may decide to amend their contracts to reflect the core principles, but in the meantime, parties wishing to make use of the core principles will need to make significant amendments to the widely used standard forms, or to draft

## Protocol principles

The Delay & Disruption Protocol consists of 21 core principles relating to time and money payable where there is delay and disruption. Significantly, the assessment and award of time are separated from the cost and compensation. The main principles are:

- The programme determines extensions of time (EOTs) and the time for which compensation is due to the contractor. The contractor must prepare a programme showing the manner and sequence in which it plans to carry out the works, and update it to show actual progress and any EOTs granted.

- To ensure EOTs are dealt with quickly, even when the full effect of a delay cannot be accurately predicted, an extension is granted and reviewed at intervals as the actual impact unfolds.

- Float in the programme is not for the contractor to use as he sees fit. It belongs to the project and is used up on a first come first served basis. Where there is remaining float in the programme at the time of a delay which is the

responsibility of the employer, an EOT would only be granted if the delay will push the float below zero.

- Any event or delay for which the contractor is responsible does not reduce any EOT already due to the contractor.

- The likely effect of variations should be pre-agreed between the employer and the contractor, and a fixed price agreed.

- If an employer delay stops the contractor completing the works by its own planned completion date, costs caused by the delay would be paid regardless of whether there is delay to the contracted completion date.

- If caused by the employer, disruption gives the contractor a right to compensation. Disruption is defined as "disturbance, hindrance or interruption to a contractor's normal working methods, resulting in lower efficiency".

- Compensation for delay is not paid for anything other than actual work done, time spent, or loss/expense suffered by the contractor.

bespoke construction contracts.

Lal expects uptake of the protocol to be driven by clients, as they will ultimately bear the increase in costs associated with it. The protocol recommends that a sum be built into the contract price, payable to the contractor on provision of a

proper programme, with further payments for proper updates.

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**Dealing with delays and issues arising from the protocol will be tackled in the first of NCE's series of legal seminars to be held next spring (see page 20).**

Central Lancashire, Preston. 7pm. Contact Andy Muirhead (01524) 593 078.

**7 Nov:** Restoration of the Pennine Ring, Manchester. 6.30pm. Contact Paul Williams (01925) 828 987.

**11 Nov:** The expert witness and rules of evidence. Liverpool Moat House Hotel. 6pm. Contact Dave Haddon (07968) 320 982.

**13 Nov:** Lane rental. County Hall, Preston. 5.30pm. Contact David Boyer (0151) 233 4149.

**13 Nov:** British Geotechnical

Association touring lecture: Geotechnical challenges in Celtic soils. Renold Building, UMIST. 6pm. Contact David Morrow (0161) 962 1214.

### South East

**6 Nov:** CTRL 440 - Build the team, deliver the project. Qadwood House, Maidstone. 7pm. Contact Anne Qualters (020) 8289 6444.

### South West

**8/9 Nov:** AME autumn conference

and exhibition. Includes AGM.

Toorak Hotel, Torquay. Contact Trevor Still (01684) 310584.

**12 Nov:** Rural traffic management. 5pm. Contact Trevor Still (01684) 310584.

### Thames Valley

**6 Nov:** Great Western Main Line. **POSTPONED.**

**7 Nov:** Vision for future of transport in the UK. Reading Town Hall. 7pm. Contact Sally Ellis (01344) 770 023.

### Wales

**11 Nov:** Retired engineers group. Welsh National Pool project, Swansea. Contact Graham Copus (01656) 662370.

**13 Nov:** Things that go rot in the night: the biodeterioration of materials of economic importance. Cardiff University. 5.30pm. Contact Denys Morgan (029) 2063 0561.

**14 Nov:** Geotechnical challenges in Celtic soils. University of Wales, Swansea. 6.15pm. Contact David Naylor (01792) 233755.