

IMPEDIMENT TO CONSTRUCTION

What is an impediment to construction, and what do I need to take into consideration and do?

Construction contracts often do not include clear enough agreement in writing regarding the calculation of the tradesman's projected schedule for the construction process. Then work comes to a halt and the big question is, when is it appropriate to provide notification of an impediment to the services being rendered.

For example, if I want to lay floor tiles in the ground floor of the four-storey building I've been hired to work on, and the plasterer's scaffolding is making it impossible for me to do the work, this represents an impediment in that area. If I notify the client's site manager of the impediment, I often get the reaction, "You can work in another area, though, so that doesn't constitute an impediment." In principle that's true, But then you end up with set-up times and other additional expenses that are difficult to claim for.

A work schedule with deadlines for specific areas, included in contract negotiations and usually agreed with the client in the form of a sub-schedule, can help with this. For example:

Building	Level	Area/room	Start of work	Completion of work
Building 4	Ground floor	Hall	01/02/2018	01/03/2018
Building 4	First floor	Hall	02/03/2018	01/04/2018
Building 4	Second floor	Hall	02/04/2018	01/05/2018
Building 4	Basement	Hall	02/05/2018	01/06/2018

If the client either cannot or is not willing to prepare a sub-schedule like this, as an alternative you can obtain the schedule for the whole property, pick out the deadlines for your own work and incorporate them into your quote or the contract.

Contractors are often afraid to put their signature to schedules because there are generally so many unknowns in the construction process that can jeopardise deadlines and risk triggering contractual penalties. But in our experience, exactly the opposite is the case. If I agree clear sub-deadlines for the construction process, I oblige the client to ensure I am able to work and deliver my services within the agreed time frame. And if the areas in question are "blocked" by other work during the agreed time frame, I have a clear basis for submitting a notification of impediment to construction, and I have a better chance of claiming additional expenses for set-up times, etc. in relation to any change of area.

This kind of situation often ends up with the compromise that I work in the impeded area anyway and can't be properly effective due to "friction" with other work. If this happens, I can also claim additional expenses on the grounds of inefficiency.

The claims mentioned above can all, as usual, only be made if all the right documentation is in place from the start of the build.

To that end, here are a few useful, highly abridged, TICOT tips from LETUSWORK europe:

When am I impeded in carrying out my work?

When I cannot carry out the work agreed with the client within the agreed deadline in the area specified, or can only carry it out partly or am prevented from doing so.

What should I do if my work is impeded?

You should provide the client with written notification of impediment to construction, including the following information as relevant:

- Clear indication of area
(Building, level, area or room)
- Description of impediment:
(...*“plastering work in the interior requires rolling scaffolds to be placed and moved around on the unfinished floor”*) and explanatory photos
- What specific part of my work is being impeded?
(*e.g. levelling and priming of unfinished floor*)
- What is the effect/impact of the impediment on my work?
(...*priming for tiling is not possible, and therefore tiling cannot take place*)
- What impact does the impediment have on your deadlines?
(...*“the agreed time frame for completion of work in this area will be extended for the period/duration of the impediment and will delay the overall completion date”*)
- Action required – what does the customer need to do – with deadlines:
(...*please coordinate construction work so that the above area is immediately available for the work described to be carried out, e.g. unfinished floor to be unimpeded and freely accessible, e.g. unfinished floor to be cleaned thoroughly, etc... by xx/xx/xxxx. If no action is taken by this date, we may be forced to interrupt our work...*)
- Notification of claim for additional costs:
(...*as a precautionary measure, we should point out that we will submit a claim to you for all additional expenses resulting from the above impediment, e.g. set-up times, temporary storage of tools and materials, staff downtime or waiting time etc...*)

Written notification should be given in a formal letter with consecutive numbering and delivered to the client in a verifiable form. (Impediment to construction no. xx/yy dated xx/xx/xxxx)

Is it sufficient to provide notification of the impediment? – Is there anything else I need to do?

Please note that your obligation to cooperate requires you to minimise damage, for instance by undertaking repeated inspections of the impeded area to check whether the impediment notified is still there. If it is no longer there, you should notify the client of this as quickly as possible.

This is also important for ensuring that any impact on deadlines or additional logistical expenses arising as a result of the impediment are documented in good time.

It often happens that general contractors/clients accept the impediment without comment and send you a notice of default after it has been removed, including a request for remedy, and you then have difficulty proving that the impediment existed, possibly until the day before the notice of default was issued.

However, it is also quite easy to deal with this in a formal letter with proof of receipt saying:

(...we hereby notify you that the impediment to construction documented in our notification no. xx/yy dated xx/xx/xxxx ended/was removed on xx/xx/xxxx ...)

How do I determine the impact of an impediment on deadlines and incorporate it into the overall schedule? And how do I claim for the costs/additional expenses of an impediment to construction?

We'll come back to this in our next TICOT tip.