



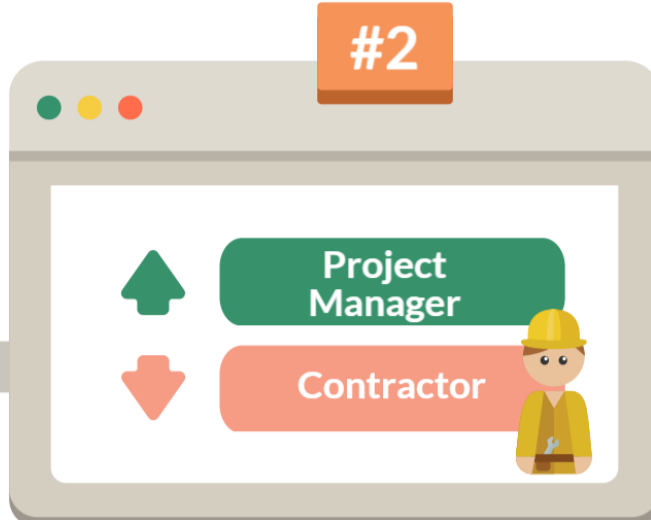
# THINGS YOU SHOULD KNOW ABOUT NOTIFYING A COMPENSATION EVENT

**UNDER NEC3**



## Get the right reason...

A compensation event needs to 'hang' on one of the nineteen events listed in the core clauses of the contract (60.1(1)-(19)), so make sure you refer to your chosen listed event when notifying the other party



## Get the right person...

Some of the nineteen potential events should be notified by the Project Manager, such as changing the Works Information; others require the Contractor to notify of the event, such as issues relating to weather and physical conditions



## So who should do what?

The PM should notify events which are: (1) Changes to the Works Information, (4) Instructions to stop or not start works, (7) Objects of interest, (8) Changing a decision (10) Searches for defects, (15) Take over before completion, (17) Correction of an assumption

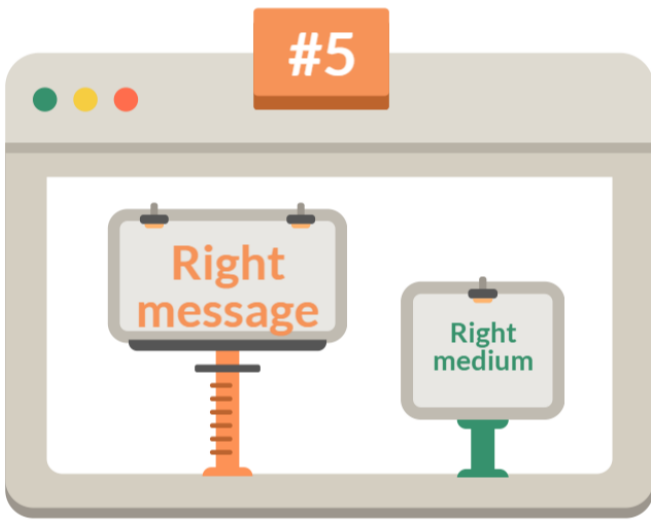
The Contractor is likely to need to notify events such as: (2) Failure to give access, (3) Failure to provide, (5) Failure to work within the times, (6) Failure to reply to a communication, (9) Withholding an acceptance, (11) Tests & inspections causing delay, (13) Weather, (14) Event at Employer's risk, (16) Failure to provide materials, etc, (18) Breach by the Employer, (19) Happening not caused by any party



## How long have we got?

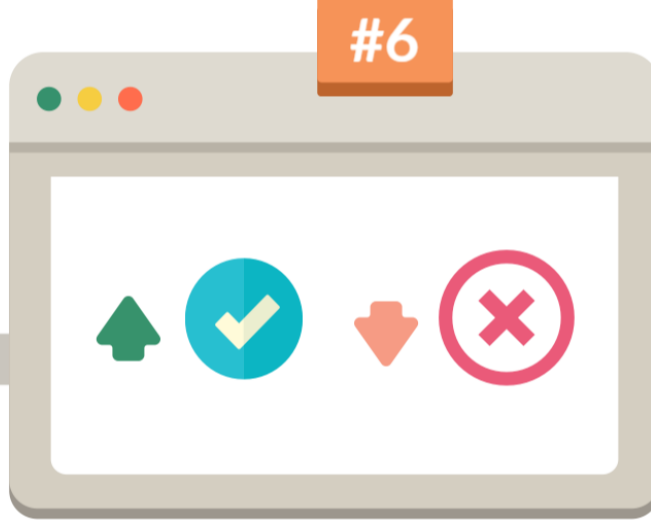
The Contractor has eight weeks (63.1) to notify events which have or are expected to happen (unless the Project Manager should have notified)

Most commentators consider this requirement to be a condition precedent to entitlement; in other words, if he fails to notify within the prescribed eight week period, he may lose his entitlement to a change to the Key Dates, Completion Date and Prices



## Communicate correctly

Compensation event notifications must also comply with the requirements of clause 13, so they must be in a form that can be read, copied and recorded, communicated separately from other communications and sent to the last address notified by the recipient or the address stated in the contract data.



## Right to a reply...

Once in receipt of the notification, the Project Manager has up to one week to decide whether it's a compensation event in principle, or whether to reject the notification if he decides that it:

- arises from a fault of the Contractor
- has not happened and is not expected to happen
- has no effect upon Defined Cost, Completion or meeting a Key Date or
- is not one of the compensation events stated in the contract.



## Watch out!

Contractors beware - if the Project Manager decides that the event is not a compensation event, the Contractor's only recourse is Adjudication. Contractor's notifications should include an adequate level of detail and supporting documentation to enable the PM to make the right decision first time around.



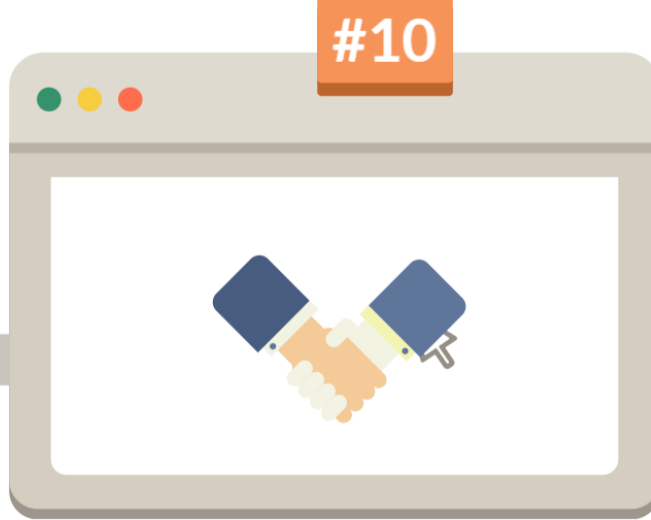
## Get the rules right

If the PM decides that the event is a compensation event, he instructs the Contractor to provide quotations. At the same time he should state any assumptions that may be needed by the Contractor to make a fair quotation, and at this stage he should tell the Contractor if he has failed to give an early warning previously. In these circumstances he should also tell the Contractor what he would have done differently (although note that this is not stated expressly in the contract) had he received a timely early warning, so the Contractor can take that into account when producing his (presumably lower value) quotation.



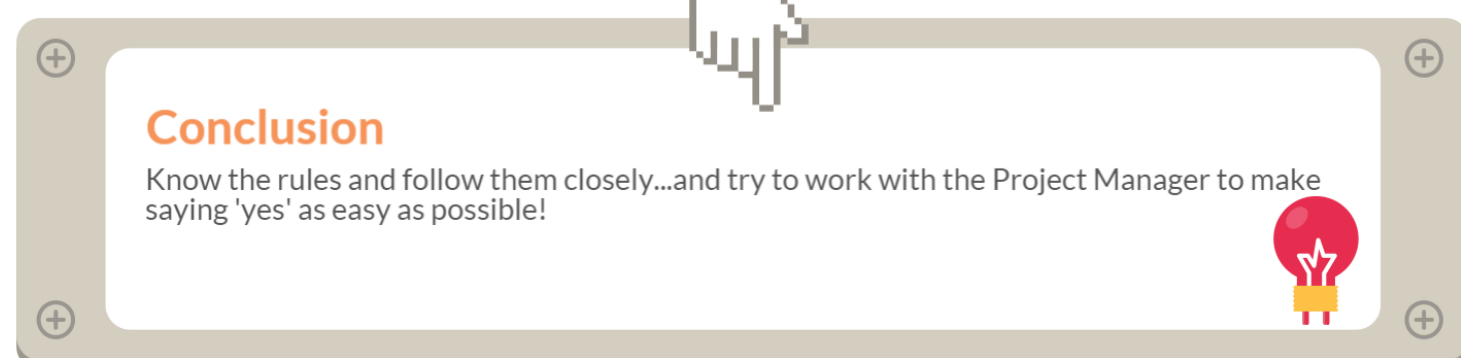
## Contract tools to use when there is no reply...

If the Project Manager hasn't provided his reply within his allotted week slot, the Contractor can write to him and remind him. All Contractors should adhere to this simple step, because if the Project Manager still ignores his responsibility to make a decision within a further two weeks, the Contractor can assume the compensation event notification is accepted. This has to be a welcome inclusion in NEC3 - but I wonder how many Contractor QS's are using the option to best advantage?



## Build relationships...

Final note on the notification process is that whilst you may think that eleven weeks to reach conclusion on whether the Project Manager accept the notification is excessive, these are maximum timescales and there is no reason why an efficient integrated project team shouldn't be able to conclude this process in less than a week.



## Conclusion

Know the rules and follow them closely...and try to work with the Project Manager to make saying 'yes' as easy as possible!