



ARTICLE

# Under the microscope: the impact of COVID-19 on construction and fabrication projects

COVID-19 has caused disruption and delays to a wide range of industries - and construction is no exception. Late instructions, restricted access or supplies, and piecemeal working to overcome supply and labour shortages are a few examples of the disruptions that have occurred.

*“Less than 50% of our respondents confirmed that COVID-19 had been accepted as a compensation event on their project”*

Since the start of the pandemic, the importance of maintaining clear project records has never been more important. Ultimately, disruption and delays affect the project’s milestones and can significantly impact the project’s financial health.

## Where are we now?

FTI Consulting conducted an online survey in April 2021 to investigate the current state of affairs on project management one year after the work stoppages and local lockdowns began.

The respondents worked on construction and manufacturing projects across a wide range of sectors, geographic locations, and forms of contracts (see charts 1- 3).

CHART 1. WHICH SECTOR ARE YOU WORKING IN?

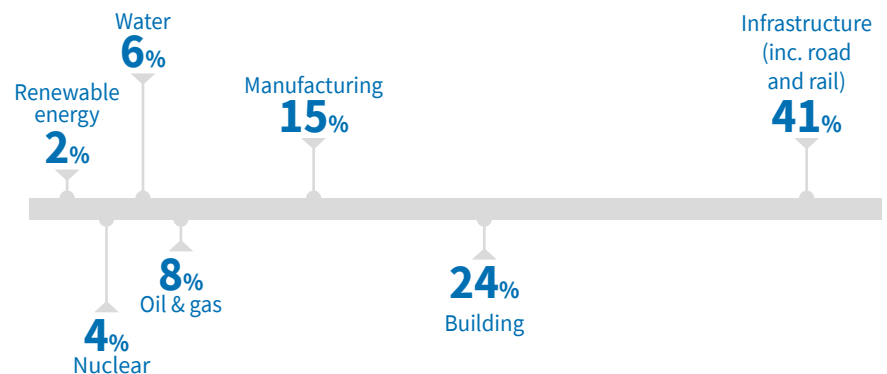


CHART 2. PROJECT LOCATIONS

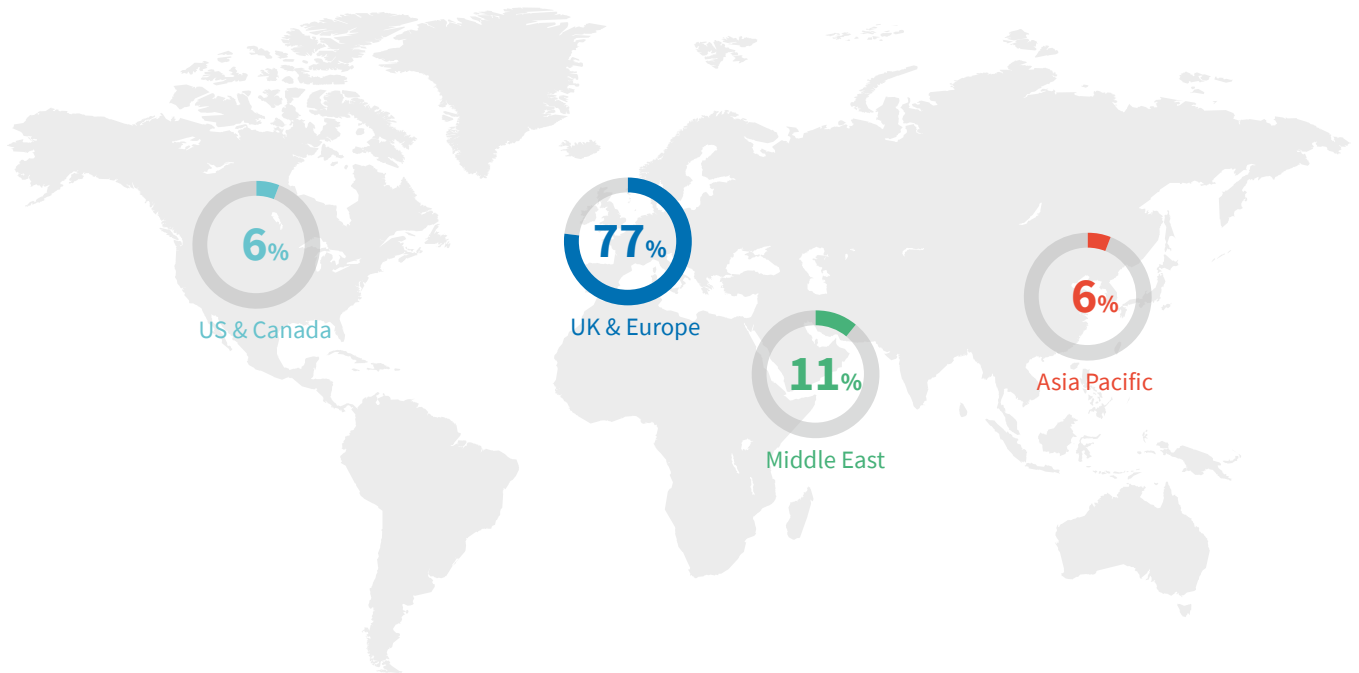
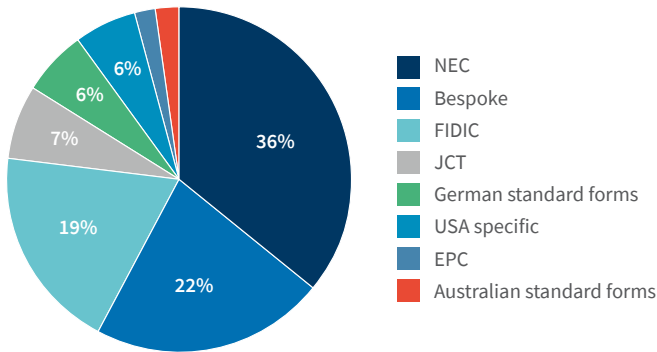


CHART 3. FORM OF CONTRACT USED



**What COVID-19 impacts were reported?**

The key impacts reported were:

- late starts
- prolonged activities
- lack of resources
- shortage of materials, goods, and manpower
- travel restrictions
- delayed or cancelled projects
- loss of employment
- additional activities to comply with the updated site or manufacturing rules.

In particular, the impact of COVID-19 disruption on long-lead items was painfully recognised by 60% of respondents, caused by the modern-day dependency on cross border trade and just-in-time production.

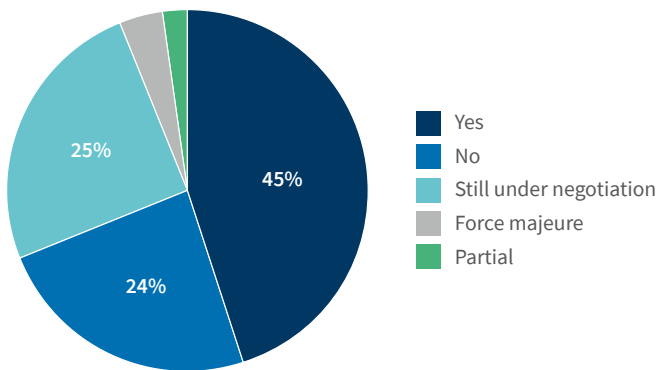
**Has COVID-19 been formally recognised as a compensation event?**

Due to the disruption caused, many activities could not be carried out as planned, resulting in a loss of productivity and additional costs, which may give rise to an entitlement for compensation under the contract. Surprisingly, less than 50% of our respondents confirmed that COVID-19 had been accepted as a compensation event<sup>1</sup> on their project, and almost half (49%) stated that negotiations were still ongoing on their project, or that a formal recognition was denied.

<sup>1</sup> Compensation event, Compensable event, Relevant event, depending on the contractual language/form of contract

*“Having a COVID-19 specific compensation event or booking code provides a traceable allocation which may help to substantiate a claim based on contemporaneous records.”*

**CHART 4. COMPENSATION EVENTS**



The high formal recognising of COVID-19 as a compensation event could have been due to the high number of responses from individuals with projects located in the UK & Europe, where COVID-19 related government legislation made it easier for the parties to agree that the pandemic is a compensation event in principle.

**Records, records, records - how have companies recorded loss of productivity?**

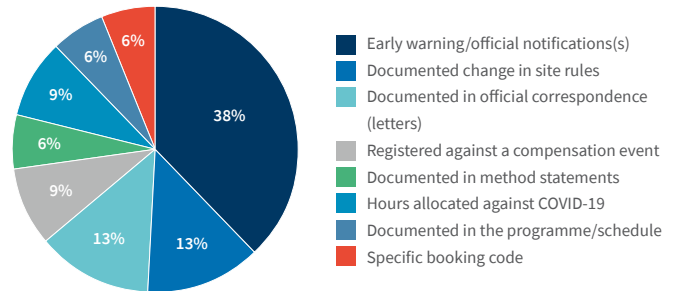
Undoubtedly, the responses show that significant disruption occurred. Yet one key issue remains: disruption needs to be demonstrated.

In construction projects, the importance of keeping detailed records and embedding systems that make it easy for disruption and delay events to be notified and recorded at the time they occur cannot be over-emphasised.

Our survey respondents used official notifications and correspondence to record COVID-19 impacts on their project, which indicates compliance with the relevant notification provisions as stipulated in many contract forms. Documenting the change in site working patterns and conditions and keeping time and production records will be supportive in demonstrating changes in the work sequence and additional resources, under-utilisation, and lower production rates brought about.

Having a COVID-19 specific compensation event or booking code provides a traceable allocation which may help to substantiate a claim based on contemporaneous records. Logging the hours lost in combination with a traceable allocation could be a vital record to establish before and after the event impacting productivity.

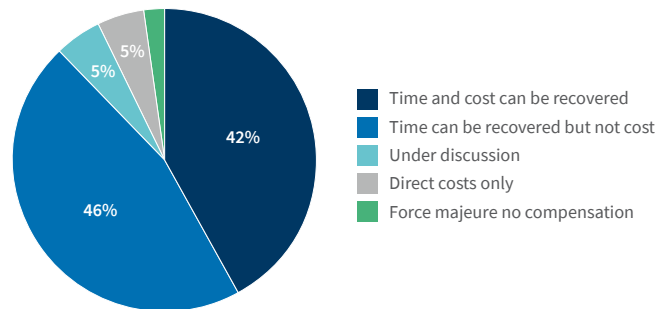
**CHART 5. RECORDING COVID-19 IMPACTS**



**So, what’s the problem?**

Chart 5 indicates that COVID-19 documentation in project programmes<sup>2</sup> has been somewhat neglected as only a few participants included it in their responses. However, for projects where COVID-19 was formally agreed as a compensation event, the majority reported that time is recoverable.

**CHART 6. OUTCOMES FOR COMPENSATION EVENTS**



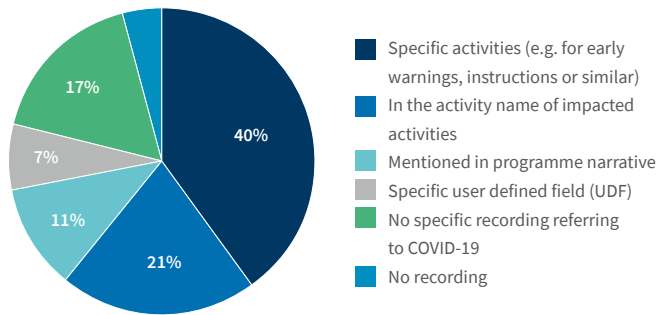
As a tool to organise and plan the execution of works, monitor progress, assess delays, and to assist with contract administration, there is no question that programmes are highly important – and are often contractually required documents in construction and manufacturing projects.

Programme software offers multiple features to store and analyse data from records; it is often a database that contains tables, Gantt charts and even functions to attach specific documents to activities.<sup>3</sup> But in practice, the software is often not utilised to its full potential.

<sup>2</sup> Sometimes called time schedules  
<sup>3</sup> For example, Primavera

In fact, almost ¼ of our survey respondents highlighted that they do not use programme software for COVID-19 specific recording. This could adversely affect the credibility of records and consequently, reduce the ability to recover time in a claim or dispute due to a lack of contemporaneous evidence.

CHART 7. COVID-19 RECORDING



**Is there any good news?**

Despite the significant challenges faced, many respondents indicated that they’ve made an effort to establish a proactive reporting structure and that agreements were reached between all project stakeholders to minimise the disruptive impacts and adapt to a new way of working.

Reduced journey times, less emissions and an increased drive towards a more resilient, diversified procurement and supply chain strategy were also recognised across the board as positive side effects of the pandemic.

**What’s the future outlook?**

A surge in COVID-19 related claims and disputes is expected to continue in the months ahead. However, the pandemic will not result in entitlement for additional time, loss and expense for all projects.

To prove COVID-19 related time claims, the availability of contemporaneous records to establish cause and effect in accordance with the terms of the relevant contract is crucial.<sup>4</sup> In particular, the notification of disruption attributed to COVID-19 is not an opportunity to excuse oneself from unrelated project delays and inefficiencies such as late design. Identifying and segregating COVID-19-related issues from other unconnected issues is essential to address any counterarguments.

Two key ingredients emerge as being essential for a successful COVID-19 claim:

- 1. Either possessing or being able to establish a robust baseline prior to the event(s):** in other words, records which show the planned activity or activities, methodology and sequence of work, duration, resources, and output.
- 2. Detailed record-keeping:** capturing either the additional work undertaken or loss of productivity brought about by COVID-19 measures.

*This article was originally published in ICES Construction Law Review 2021 (25th Anniversary Issue) and has been reprinted with kind permission.*

<sup>4</sup> <https://www.fticonsulting.com/emea/insights/articles/proving-covid-19-related-time-claims>

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