



NEC3 Practical Perspectives

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NEC3: A consultant's perspective

Jeremy Dixon



NEC3: A consultant's perspective

- Where is a construction consultant involved in NEC3?
 - 1) **Acting for a head client**;
 - 2) Acting for a D&B contractor.
- 1) The Consultant's roles:
- A designer and/or tender document production (ECC3)
- Works Information / Site Information preparation
- ECC3 tender appraisal matters
- Post contract: *Project Manager, Supervisor* roles

NEC3: A consultant's perspective

- Where is a construction consultant involved in NEC3?
 - 1) Acting for a head client
 - 2) Acting for a D&B contractor
- A design appointment;
- Advice / assistance on ECSC3 (sub-contract) administration issues?

NEC3: A consultant's perspective

- Where is a construction consultant involved in NEC3?
 - 1) Acting for a head client
- Procurement issues:
- Strategy and getting the Works Information to match!
- Works Information drafting / consensus – a fine art?
- Contract Data inclusions and “Z” clauses

NEC3: A consultant's perspective

- The affect of “Z” clauses applied to ECC3
- A) *Employer* specific, wholly additional (stand alone) conditions of contract;
- B) Express terms which purport to be ‘stand alone’ but in fact conflict with / cut across the ECC3 core clauses; and
- C) Employer specific provisions which expressly amend the ECC3 core clauses.
- The consequences of A) – C) for the *Project Manager* and/or *Supervisor*

NEC3: A consultant's perspective

- *Project Manager* – just how extensive a role?
- *Supervisor* – an easy role?
- Can an ECC3 contract be applied retrospectively?
- The consultant's appointment terms and staffing resource proposal
- Is delegation of duties as between the *Project Manager* and *Supervisor* a good idea?
- When might the ECC3 be inappropriate for a project?

NEC3: A consultant's perspective

- *Project Manager* – ensure consistency of resource under professional appointment to match the contract administration burden.....!
- *Project Manager* – what areas of ECC3 typically fall outside the expertise of the consultant?
- Sub-contract conditions acceptance [Clause 26.3];
- insurance policy documents scrutiny and acceptance [Clauses 85.1, 87.1];
- A legal overview of a performance bond [Option X13].

NEC3: A consultant's perspective

- *Supervisor* – ensure consistency of resource under professional appointment to match the contract administration burden...!
- *Supervisor* – what elements of the role require certainty?
- Precisely what 'tests and inspections' does the Works Information state?
- Is checking / verifying of off Site materials vesting required?

NEC3: A consultant's perspective

- Where is a construction consultant involved?
 - Acting for a D&B contractor
- Consensus on NEC PSC3 content
- “Scope” issues to match ECC3 Works Information
- PSC3 Contract Data and back-to-back “Z” clauses

NEC3: A consultant's perspective

- Where is a construction consultant involved?
 - Acting for a D&B contractor
- Post contract [ECC3] advisory issues



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The NEC Contract

A Legal Perspective

Shy Jackson

Introduction

- Background to the NEC Contract
- The legal framework
- Specific issues
- Conclusions

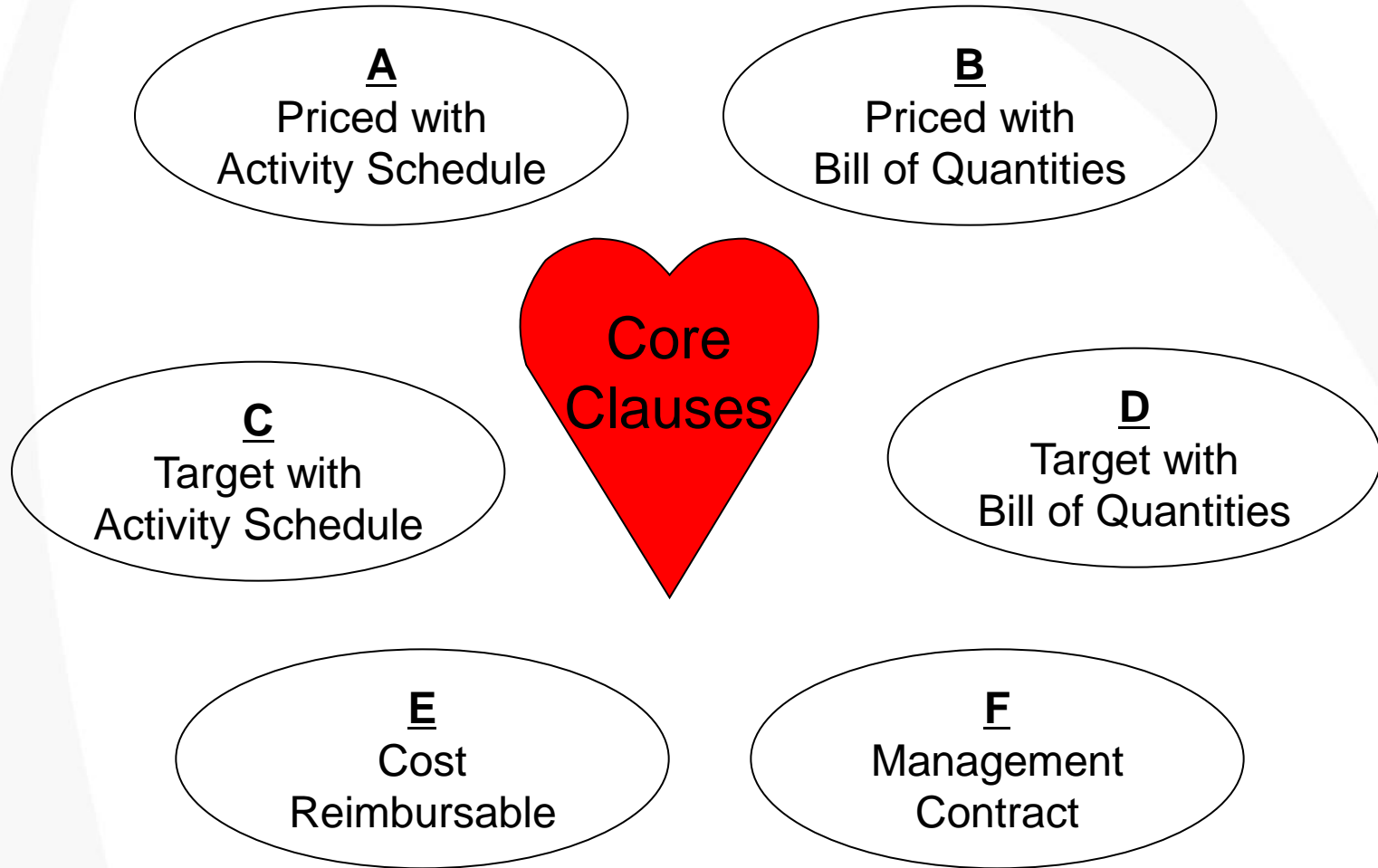
Introduction

- Introduced in the early 1990s
- A move away from traditional forms of contract
- Based on collaboration, transparency and communication
- Used on high profile projects e.g. Terminal 5, Olympics and Crossrail
- Endorsed by the OGC, ODA and ICE

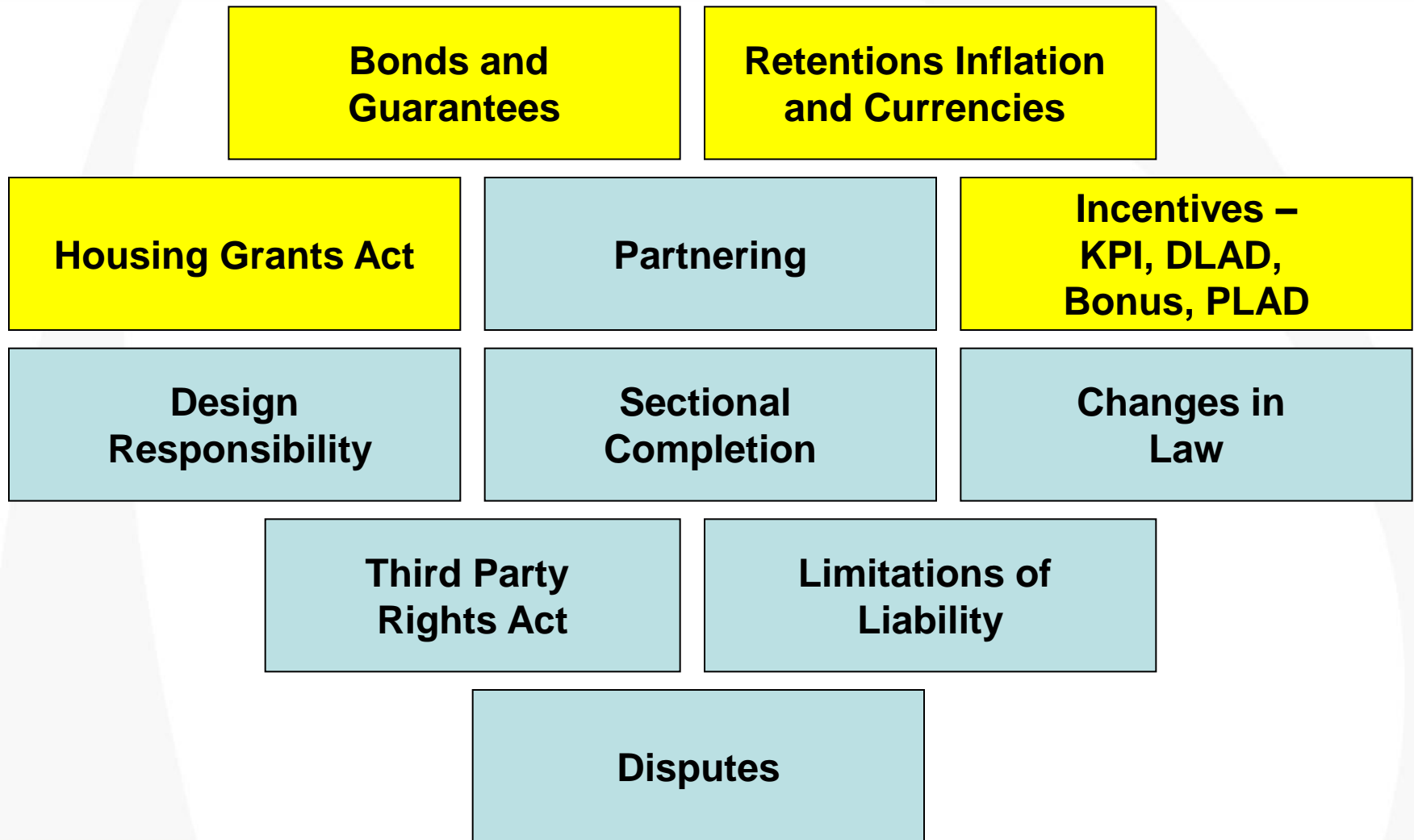
Legal Framework

- Complete Suite of Contracts
- core clauses, main option clauses, secondary option clauses, z clauses, contract data and works information
- Guidance notes – not part of the contract and “...*should not be used for legal interpretation of the meaning of the ECC.*”

Shopping basket



Secondary Option Clauses



Common Issues

- Mutual trust and co-operation
- Programme
- Payment
- Compensation Events
- Completion

Core Clause 1

“10.1 The Employer, the Contractor, the Project Manager and the Supervisor shall act as stated in this contract in a spirit of mutual trust and co-operation.”

- What does this mean?
- How does it work in practice?

“25.1 The Contractor co-operates with Others in obtaining and providing information which they need in connection with the works.”

The Programme

- 31.2 sets out the programme contents in detail, including:
 - Method statements identifying equipment and resources
 - order and timing of work by Employer and Others
 - Dates for completing works needed for Employer and Others to do their works
 - Float, time risk allowance, contract procedure
 - Effects of implemented Compensation Events and Notified Early Warnings
 - Ways of dealing with delays and defects
 - Any proposed changes
- Acceptance process and grounds for rejection
- Sanction in clause 50.3 - 25% of payment withheld
- How does this work in practice?

Payment – Option C

During Works

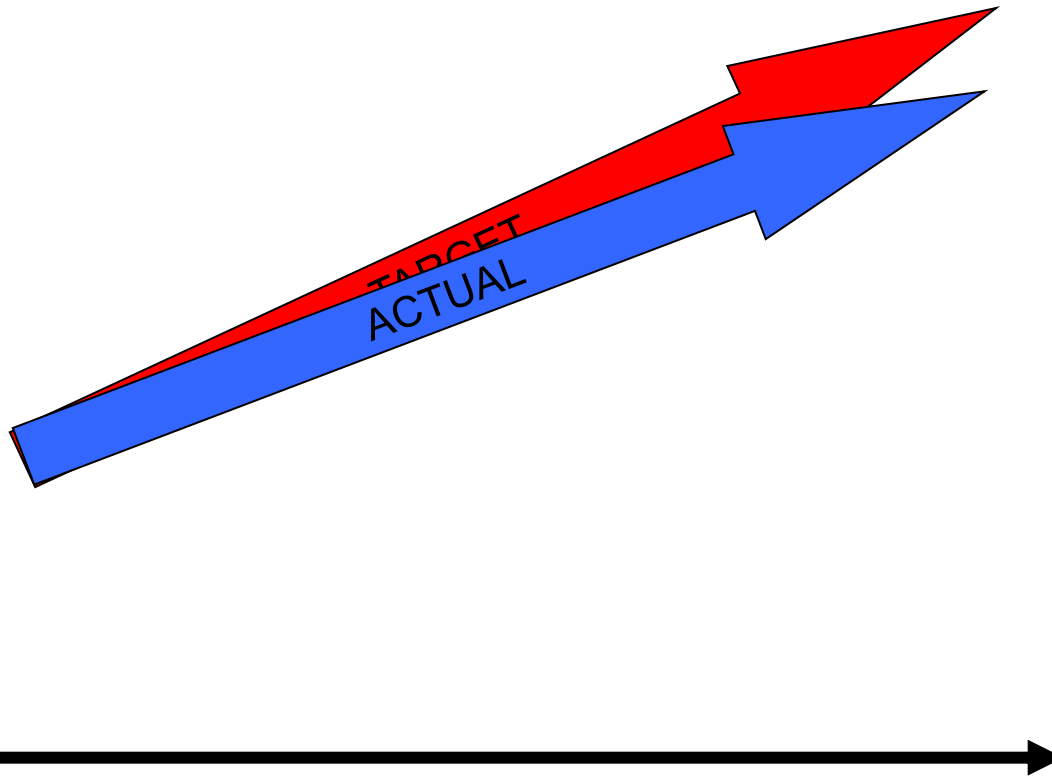
- Payment based on actual costs less Disallowed Costs
- Prices/Targets are only adjusted based on Compensation Events

On completion

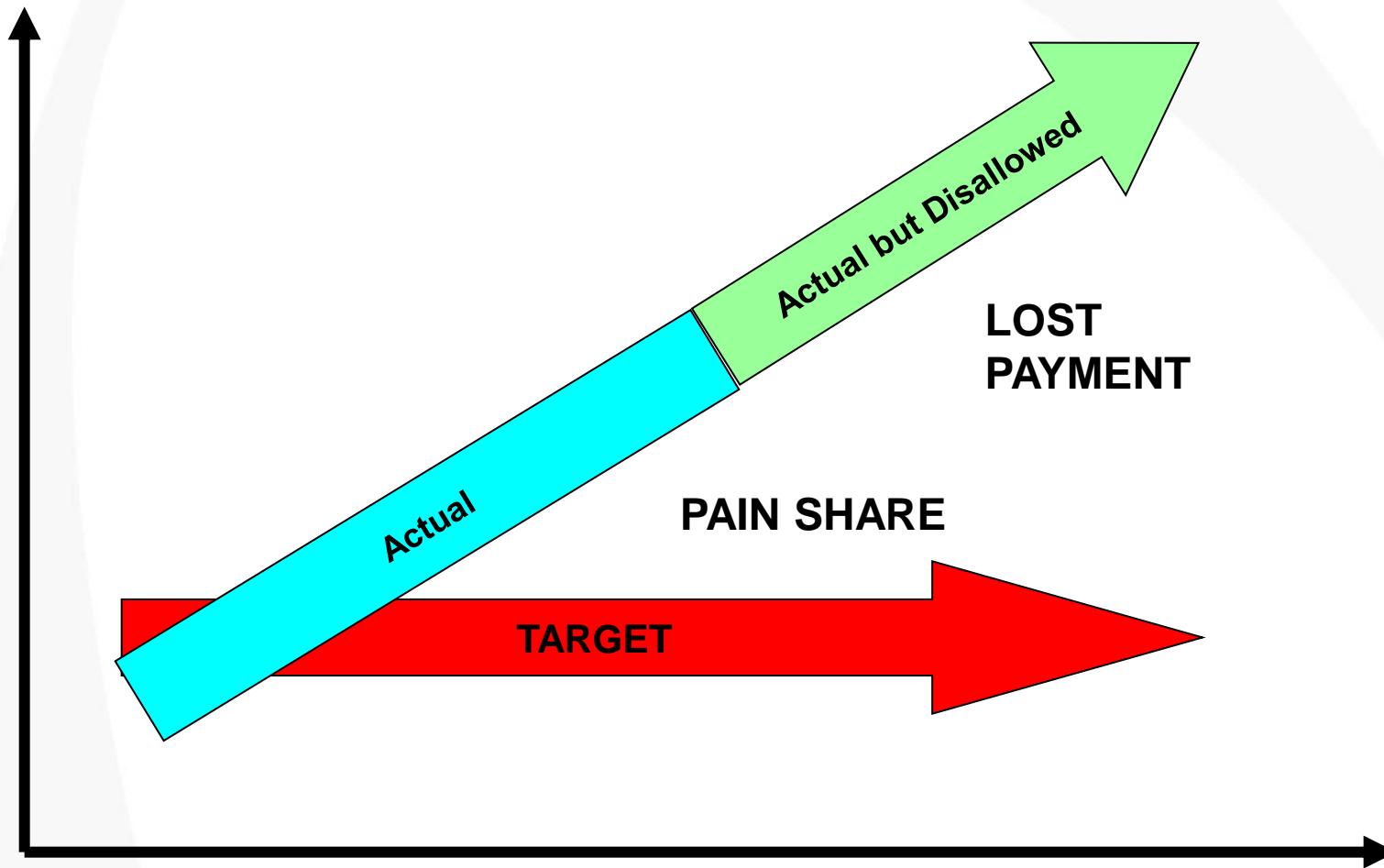
- If actual cost exceeds the target – Pain is shared
- If actual cost below the target – Gain is shared

Pain and Gain

TARGET COST AND ACTUAL COST



Pain and Gain



Payment – Option C

Therefore:

- Understand what are Disallowed Costs
- Assess and implement Compensation Events correctly
- The key is educating the entire team

Compensation Events

- Intention to deal with delays and cost increases as they happen, looking forward
- No separation between time and money provisions
- Contractor's risk if an accepted quote is inadequate
- Exhaustive but wide list of Compensation Events
- Procedure for submitting and accepting quotes

Notification of Compensation Events

Notification – clause 61.3

- When the Contractor believes the event is a compensation event

Time bar – clause 61.3

- Notify within 8 weeks of becoming aware of the event or no entitlement
- How does this work in practice?

Completion

11.2(2):

“Completion is when the *Contractor* has

- Done all the work which the Works Information states he is to do by the Completion Date and
- Corrected notified Defects which would have prevented the *Employer* from using the works and Others from doing their work.

if the work which the *Contractor* is to do by the Completion Date is not stated in the Works Information, Completion is when the *Contractor* has done all the work necessary for the *Employer* to use the *works* and for Others to do their work.”

Conclusions

- Read and understand the contract as early as possible and consider the practicalities
- Operate the NEC correctly to obtain the benefits
- There are practical solutions to any difficulties
- If in doubt ask questions
- Education, Education, Education

Questions?

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Questions & Answers

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