

	TITLE: <b>Claims from Contractors TPP113</b>	OWNER: <b>Purchasing Manager</b>	LAST MODIFIED: <b>9<sup>th</sup> October 2007</b>	PAGE: <b>1 of 3</b>
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1. **Claims from Contractors:** Claims from contractors should be notified immediately to the Purchasing Manager and the Project Sponsor who will consult the contract, finance, consider admissibility, decide on the need for legal advice and make recommendations. There are different types of Claims that can be made but these usually fall into two main types which the Translink may have to deal with:

### 1.2 An Extra-Contractual Payment

1.2.1 This is a claim made to Translink which, although not legally due under an original contract or subsequent amendments, appears to be an obligation by Translink which the courts might uphold.

1.2.2 Such obligations usually arise from Translink action or inaction in relation to the contract (e.g. failure to comply with some term & condition in the contract - time limits for access to equipment or providing incorrect or inadequate drawings, specifications or other manufacturing information or Translink requests for changes in the contract requirements, where no written amendment to the contract has been made and no extra financial approval has been authorised).

1.2.3 A payment is regarded as extra-contractual even where there is doubt as to whether or not Translink is liable to make the payment (e.g. where the contract provided for arbitration but a settlement is reached without recourse to arbitration). A payment made as a result of an arbitration award is contractual.

1.2.4 NITHC /Translink Financial Memorandum – Final Version 28/07/2006 requirements  
 Appendix 8 - Losses and Special Payments:

CATEGORY	DESCRIPTION	AUTHORITY
<b>Special Payments: Extra-Contractual</b>	(a) where the amount is less than £100,000.	<b>NITHC and DRD</b>
	(b) individual amounts of £100,000 or more.	<b>DFP</b>

### 1.3 An Ex-Gratia Payment

1.3.1 This is a claim made to Translink by a contractor which is one not legally due under the contract or otherwise and usually represents compensation paid to the contractor on grounds of hardship.

1.3.2 A hardship payment may be described as: 'One which is made without any legal obligation to do so. It is entirely discretionary and usually made on grounds of hardship or fair play'

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NITHC /Translink Financial Memorandum – Final Version 28/07/2006 requirements Appendix 8 - Losses and Special Payments:

CATEGORY	DESCRIPTION	AUTHORITY
<b>Ex-Gratia Payments to Contractors:</b>	(a) where the amount is less than £100,000.  (b) individual amounts of £100,000 or more.	<b>NITHC and DRD</b>  <b>DFP</b>

**2. Steps to be taken:**

- 2.1 The Purchasing Manager and the Project Sponsor will consider the admissibility of claims from a contractual point of view, set a timescale for handling the claim, decide on the need for seeking legal advice and make recommendations to the budget holder in cases where it is considered that a payment should be made.
- 2.2 All parties need to act promptly and effectively, if Translink's legal position is not to be prejudiced.
- 2.3 Claims from subcontractors should normally be referred to the prime contractor, unless there are exceptional circumstances.
- 2.4 The Purchasing Manager and the Project Sponsor must decide if Translink has a legal liability in relation to the claim by:
  - a) establishing the facts of the claim as presented by the contractor with the relevant project stakeholders; and
  - b) ensuring that the claim complies with the requirements of the Limitation Act 1980. The Limitation Act 1980 prescribes time limits for bringing legal proceedings for claims for damages or to enforce rights. Subject to certain exceptions the limitation periods are 12 years from the date of accrual of the cause of action for claims arising on contracts under deed and 6 years for claims founded on simple contracts. The majority of Translink's contracts are simple contracts.
- 2.5 Where there appears to be a valid basis for the claim, the amount of compensation must be investigated, followed by negotiation, and the contractor must furnish evidence of the loss he has incurred and to demonstrate that such loss was due to acts or omissions by Translink. Any correspondence or discussion with the contractor regarding the claim and any agreed investigation of his records and accounts should be prefaced with the caveat 'without prejudice' to avoid conveying admission of liability or constraining Translink's contractual rights and negotiating position.

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- 2.6 Consideration should be given to whether the claim could lead Translink to make a consequential claim against a third party (e.g. a contractor supplying the materials, or drawings, or specifications).