

# JCTNEWS

THE JCT CONTRACTS UPDATE FOR THE CONSTRUCTION PROFESSIONAL

## BATTERSEA DOGS & CATS HOME, LONDON

Since its founding in 1860, Battersea Dogs & Cats Home (BDCH) has cared for more than 3.1 million dogs and cats. Starting in 2014, a major redevelopment of the BDCH site, which sits adjacent to Battersea Power Station, adds not only a new assessment centre and intake kennels, but an eye-catching eight-storey veterinary hospital, training and administration building - creating a landmark facility for the organisation. For a building that needed to house a number of specialist services, and overcome a number of structural and spatial challenges, a JCT Construction Management contract provided the solution.

The £18m redevelopment of BDCH's headquarters commenced in 2014 and came about as a result of a close relationship between the client and project architects, Jonathan Clark Architects, who had been working on one of BDCH's other sites in Windsor. Recognising the need to foster a long-term working relationship in order to deliver buildings that meet the needs of the specialist services BDCH provides, JCA have been working on the redevelopment of the Battersea site, which is due to add further buildings in the coming months.

First completed in 2015 however, was the new assessment centre and 165-metre long intake kennel block with dog paddocks for training on the site's western end. The entire roof is covered with

a wildflower meadow blanket, which is designed to improve thermal efficiency, support city wildlife and add visual identity. The roof, alongside a number of other sustainable measures, including solar control, a natural ventilation system, high thermal mass, and a photovoltaic canopy, has gained the building top BREEAM rating. Load-bearing, block-work walls with pre-cast concrete are used throughout the kennels, whilst a combination of steel-frame and load-bearing walls is used for the intake centre. The external façade is faced with self-colour STO render. The coloured sections, moving from blue to green, to yellow and orange help to break up the length and give identity to the different sections. The intake centre entrance fascia and blade structure are clad with Trespa panels.

The newest and by far the largest addition to the development is the state-of-the-art hospital and administration building. Rising eight storeys above a basement level on the eastern end of the site, it sits just 3.6m from the rail tracks. The building is striking in both the design and colour of the façade, with a pixelated pattern of blues, representing BDCH's corporate colours, rising from a grey-clad plinth. The blues fade to lighter shades and, eventually, pale cream at the top, giving the impression that the building blends into the sky. The cladding material - vibrant and colourful glazed terracotta - has a shimmering



Jonathan Clark Architects Ltd and Hufton + Crow

Battersea Dogs & Cats Home

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quality and is also a reference to the masonry of the local Victorian buildings.

The main entrance is situated in a plaza which is held on the left by an angled extension to the ground floor. This contains the public waiting area and has a double height entrance canopy, which is topped by south-facing terraces serving the higher floors. The entrance leads to a double height lobby with timber slats lining the upper walls and ceiling.

The complex set of the building's functions – from cubicles for handling cat-flu cases to a corporate fund-raising suite – are arranged neatly on top of one another. The ground floor contains the hospital (above a basement level plant room and staff showers), laboratory, laundry, and hospital administration offices. Above that is a floor containing training and conference facilities, followed by four floors dedicated to administration, including fund raising, marketing, operations and HR. The central internal corridor that links the services on the lower levels forms a service spine for the upper levels. This allows for naturally ventilated open-plan offices with spectacular views courtesy of strips of floor-to-ceiling glazing. The top floor contains a boardroom and multi-use

function area which can seat 190-230 people depending on the configuration, typically lectures or fund-raising events. The function room opens out to an external terrace.

Building to a height of eight storeys above a basement level that sits tightly between a low-level goods rail line to the north-east and a Southern Rail line to the west presented a significant set of challenges in terms of construction. A structural solution was devised that would maximise efficiency and make best use of space within the confined footprint. Due to poor ground conditions it was decided to build the foundations on a piled raft basement slab. This required the installation of 180 piles 20m deep, which also provided enough rigidity to guard against movement caused by northern line extension tunnelling works which were also taking place close to the site.

Above ground, the reinforced concrete superstructure consists of flat slabs spanning up to 8.3m between reinforced concrete walls and columns. To overcome the challenge of having limited vehicular access to the site, the concrete structure was constructed in-situ, to reduce the need for delivery of larger building components.

The flat slab system provides flexibility in the arrangement of partitions and services and was also beneficial in the construction of the open-plan office spaces on the upper levels.

Another challenge to overcome was the materials and specification of the external cladding, which needed to consider the site's restricted access, the potential corrosion from ferrous particles due to the proximity of the train lines, ease of maintenance, and durability. In choosing the glazed terracotta, reflection studies and simulations also had to be carried out to ensure that train drivers would not be affected by the sunlight reflected on the tiles.

With such a degree of specialist services to provide, as well as a number of technical construction challenges to overcome, the JCT Construction Management contract is the ideal solution for this type of project – which requires close collaboration and teamwork, and the need to have works carried out by a number of specialist practitioners. Considering that BDCH is a charity and funding for the project would have to be planned very carefully, the JCT Construction Management contract keeps the project on a tight leash.

## BATTERSEA DOGS AND CATS HOME: PROJECT SUMMARY

**Start:** November 2014

**Completion:** July 2016

**Size:** 4,000m<sup>2</sup>

**Cost:** £18m

**Contract:** JCT Construction Management contract (CM)

**Client:** Battersea Dogs and Cats Home (BDCH)

**Architect:** Jonathan Clark Architects

**Main contractor:** Sir Robert McAlpine

**Structural engineer:** Fluid Structures

**Quantity surveyor and cost consultants:** PT Projects

**M&E services engineer and sustainability consultant:** Mendick Waring

**Acoustic engineer:** Sandy Brown Associates

**CAD software:** Vectorworks

**Annual CO<sub>2</sub> emissions:** 17kg/m<sup>2</sup>



Jonathan Clark Architects Ltd and Hutton + Crow

## IS THERE A BLOCKCHAIN IN OUR FUTURE?

Chairman's Letter



Richard Saxon CBE

The digital transformation of construction rolls onwards, adding yet more ideas. After BIM, GIS, IoT and 3D Printing comes Blockchain. This financial technology (fintech) concept is the power behind Bitcoin, the shadowy cryptocurrency that currently oils the wheels of nefarious businesses across the world. So, why would this be a relevant idea for our industry? I'm not going to attempt to explain how blockchain works, but it essentially allows all parties to a trade to access an incorruptible record of transactions. It allows trust in a business that lacks it. All business done in a blockchain environment is recorded many times in the servers of all those given access, so nobody can break into the record and alter it without it being obvious. The term 'distributed ledger' is sometimes used to describe it, with each block of data solidly linked to all others in a chain of blocks.

The other useful ability of blockchain is that it can be used to make automatic payments when instructed by a computer program that is satisfied that a transaction has been completed as required. The idea of so-called 'Smart Contracts' is that as tasks are completed the agreed payment is made, all without human bureaucracy or manipulation. The algorithm which guides the process uses computer code to replace the legal code of a contract. Both forms of code seek to describe what should occur if a circumstance happens: 'If this, then that'. The enthusiasts for smart contracts sometimes say that 'code is law, as law is code'. Trusted intermediaries are not needed to administer smart contracts and blockchain can be used to record everything and to make payments right down the supply chain.

The availability of an undisputable record of actions and facts supports dispute avoidance and resolution. Even without blockchain, online services are available to manage disputes through algorithmic methods looking

at an audit trail. Blockchain would make the record even more trustworthy than, say, that in a project common data environment. The fact that all actions are recorded should also make team members admit to errors sooner, as they will be found out. Hugh Thomas of Foster and Partners believes that 'Blockchain is going to change everything'.

There is considerable interest in the potential of smart contracts and blockchain, in academia, in government and in some digitally-aware businesses. There is also scepticism, with many of the functions required, like online payment systems, being available already without using blockchain. The question of how actions are verified in construction presumes human judgement, though some could be automatically validated, such as a delivery of goods to site or of data to a client. Also, blockchain is currently an expensive technology, using a lot of computing power and energy. It may pay off in financial services transactions, but in construction?

Work going on in this area includes that by DotBuiltEnvironment, the former BIM 2050 group. They are looking at rewarding data provision as delivered, and at automatic payment for work. University College London (UCL) has formed a Construction Blockchain Consortium to bring together the university's fintech experts with digital construction experts. Visit [www.constructionblockchain.org](http://www.constructionblockchain.org) and log in as CBC123 to see what is going on. The University of the West of England (UWE) plans a seminar in September on Smart Contracts at which I shall be speaking.

It could be that blockchain enables our adversarial industry to collaborate properly. BIM thrives on collaboration but most contract forms drive players into transactional behaviour rather than lasting relationships. If criminals can trust each other via Blockchain, surely our hardened practitioners could benefit?



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## JCT STUDENT COMPETITION 2017: ADDRESSING SKILLS SHORTAGE THE TOP PRIORITY



Skills shortages was the overwhelming category of choice for students taking part in the JCT Student Competition 2017, with the overall winner and both runners-up providing unique and interesting takes on the topic.

Creativity, original tone of voice, and clarity of ideas were all on show, whether using the written word, photography, visual graphics or designs, highlighting the depth of talent and broad range of skills of the students who enter each year.

The 2017 competition ran from September 2016 to March 2017 with judging taking place in May. Students from a number of high-level institutions from around the UK, including Queens University Belfast, Oxford Brookes University, University of Bath, University of Wolverhampton, and others entered

the competition, continuing the high level of interest and value that the competition generates for construction students.

Categories for this year included: skills shortages, sustainability, collaboration, BIM, technology, and health and wellbeing. In line with the creative and open nature of the competition, students submitted traditional essays, journalistic articles, photographic essays, architectural designs and drawings, graphic essays, and presentations.

The JCT student competition continues to be a success. JCT is committed to improving the understanding and learning of construction contracts and the competition is an important feature to enable us to provide contact and support to students, strengthening our profile with future JCT contract users. As the

competition has become established, it has also evolved over time, recognising the different ways in which construction students learn and the various industry backgrounds and disciplines from which students are drawn.

The JCT Student Competition aims to provide a significant boost to construction students, to assist with their studies, and provide development opportunities. This year a winning prize of £1,000 was awarded, with £250 prizes for runners-up. The winners were announced on Thursday 8 June via press release, and on JCT's social media pages.

The winning entries can be read below, and are also available to view in full on the JCT website at: <http://corporate.jctltd.co.uk/initiatives/education-students/jct-student-competition/>.

### JCT Student Competition 2017: Winners

#### OVERALL WINNER

**Mirona Tomala, Oxford Brookes University, MSc Project Management in the Built Environment**

*"Confessions of a female conversion MSc student: an essay addressing the factors contributing to skills shortage in the UK construction industry, focusing on the poor industry awareness and draconian expectations."*

#### RUNNER-UP

**Paul Winfield, UCEM, MSc Quantity Surveying**

*"Addressing the construction skills shortage: Is education enough? An essay addressing the skills shortage in the UK construction industry, analysing data to encourage the reformation of the UK education model amongst additional broad-based measures."*

#### RUNNER-UP

**Arran Christopher Peters, Oxford Brookes University, MSc Project Management in the Built Environment**

*"Brick Laying in Brogues: how Project Managers can increase their on-site construction knowledge to better manage skilled labour shortages"*

## SKILLS SHORTAGE: CONFESSIONS OF A FEMALE CONVERSION MSC STUDENT

MIRONA TOMALA – MSC PROJECT MANAGEMENT IN THE BUILT ENVIRONMENT, OXFORD BROOKES UNIVERSITY

*An essay addressing the factors contributing to skills shortage in the UK construction industry, focusing on the poor industry awareness and draconian expectations.*

### **Much ado about nothing**

The status of the skills shortage in the industry is well and widely known; reports published, solutions identified, and yet there is still a lack of visible improvements in many aspects. It almost seems that every time the industry takes a step forward, it takes two steps back.

Arcadis' Talent Scale (2017) research found the industry needs to recruit 400,000 people every year for the next 5 years in order to deal with the skills shortage. The deficit of skilled trades people varies throughout the UK, depending on the regional constructing activity, with the three top regions in need being South East, London and East of England.

Although measures need to be taken to inspire, attract and train the new generation of construction workforce, education itself will not resolve the issue of skills shortage short term. It takes time to amend curriculum, train people and let them naturally come through into the industry.

### **The Great Expectations**

Upon discovering the statistics around the skills shortages in construction worldwide, and the professions available, I decided to enter the industry. I hoped to improve my career prospects, contribute to the society, and the development of the industry. As a young female, I have come across various responses. Most of them positive, welcoming and supportive. It's clear that much has been done to improve the diversity of the construction workforce and its attitude towards women.

Unfortunately, whilst the skills shortage is reaching record high levels, many young adults are struggling to gain full time employment due lack of relevant work experience. What follows are my observations and suggestions for tackling the skills shortage both in short and long term.

### **Pride and Prejudice**

There seems to be a disconnect between what schools encourage and what employers seek. At one point, vocational courses became second class choices; looked down upon by education providers and the population alike. Schools continued to push academia onto their students ever since, regarding those less academically gifted as destined for failure, and subsequently increasing the divide between academia and industry. The industry on the other hand values practical experience, which cannot be learnt in a classroom. This results in disinterested and undervalued young people, who go through vocational training out of obligation and driven and smart young adults, who study unavailing subjects and are met with harsh reality of not being able to find employment upon graduation due to lack of relevant experience and valuable knowledge.

Whilst considering a career in construction, I researched entry pathways, contacted recruiters, looked at job postings etc. Ultimately, I decided to apply for a postgraduate conversion degree, believing it was my best choice to get the right qualifications. Soon after starting the course, applying and interviewing for graduate positions, the reality hit me. Although not stated as essential requirement in job descriptions, relevant work experience counts for a lot more than theoretical knowledge. I was determined to find work experience for the duration of my course, or at least something before the summer holidays. Whilst scrolling through pages and pages of advertisements for mainly labouring jobs, I struggled to find one which didn't require years of previous experience and a valid CSCS card. It is understandable that some regulations need to be in place to protect workers, ensuring health and safety on site, however sometimes this results in a lack of clear entry to new talent. This poses the question of whether the industry should deter a willing workforce at such critical time for not having valid certifications, or should it help with provision of adequate training and



a semi-long term contract in order to pay back for the initial investment? Is it really better for employers to wait, hoping that somebody with adequate experience turns up, or employ somebody and train them the specific set of skills that they need to do the job? The latter would secure a win-win situation, where employers are able to get the workforce faster, complete the jobs and the new employees would get the certifications and experience necessary to enter the industry.

Although there is a number of internships and work experience placements, there just aren't enough opportunities for everyone. Many internships take place over the summer, and are aimed for penultimate year students. This means students in 1<sup>st</sup> year of undergraduate degrees, as well as postgraduate students are either unable to apply or are given less priority. Of course, it's possible to apply speculatively and find shorter placements, however in the current economy such placements are hard to come by. Whilst students understand the importance of experience, many cannot afford to accept unpaid work experience placements, and simultaneously they're not experienced enough to gain paid work in unskilled professions, all at a detriment to their future career prospects.

Despite being necessary for survival, money remains an uncomfortable subject of conversation with potential employers. Many apprenticeship trainees aren't being paid a living wage, having to rely on support from their parents for housing and food. Starting at £3.80/hour (National Apprenticeship Service, 2016), it's not surprising why people would feel undervalued. Many older candidates don't choose to do an apprenticeship for two main reasons – first being the low pay rates, and second the perception of not being eligible due to target audience being 16-18 year olds.

Finally, although graduate schemes exist, many of which advertise themselves as being open to non-cognate, non-experienced applicants, given the choice the company will always choose the applicant with a cognate degree and previous experience in the industry. And, why shouldn't they? Recruiting more able and experienced candidates, saves money and time on extensive training and allows companies to capitalise on new talent. This inadvertently causes the unexperienced candidates fall through the cracks; rejected from the industry that desperately needs more people.

### **The Odyssey**

The solution to the problem of skills shortage is a journey, not a sprint. Many measures will need to be undertaken simultaneously to treat the cause, rather than the symptom of the problem. The cause in simple terms is the lack of students choosing construction as a

career path, due to lack of awareness, ultimately caused by years of bias in schools, the media and at home, portraying the industry as dirty, unsafe and unskilled.

### **1. Awareness and Image**

A task of changing the image of the industry is not an easy one. The efforts must come equally from education providers and the industry itself, through increasing the awareness in schools. Whilst some improvements can be seen through initiatives such as Open Doors, they need to happen on a much larger scale. It's relatively easy for people already interested in construction to find events to attend and publications to follow, however the aim is to reach those who are not aware or currently interested in a career in construction.

For decades, there has been a bias in schools towards promoting university education. Education providers should inform students on the industries available, including construction and support them in their choices. It's in the best interest of the government to incentivise schools to promote industries with the highest skills shortages, in order to improve the economy and reduce unemployment due to high saturation of particular skills and degrees.

On a more regional and local level, the education sector should team up with local companies and recruitment agencies specifically dedicated to construction. Their job would be to inform the students about exciting developments, both in terms of buildings and structures, as well as technology, such as augmented and virtual reality, drones and robotics. Such presentations could happen during the morning assembly, exposing all students to the industry, targeting both genders and ethnic minorities of young people to ensure a steady pipeline of diverse talent coming into construction. Once the relationship with the local employers is established, there would be an opportunity for additional promotional and educational events such as construction related competitions, testing students' creativity as well as practical skills. The winning team would be given the opportunity to visit a local construction company and shadow them for a day or visit one of their sites. The benefit of competitions on a smaller, local scale is the ability to focus on specific local industry requirements, promoting the professions most in demand in the given region. In terms of funding, the event could be advertised in the local newspapers to attract sponsors and collaboration from other companies, who could benefit from additional work through such positive advertising.

**This is an extract of the winning entry. To read Mirona's essay in full, please go to: <https://corporate.jctltd.co.uk/initiatives/education-students/jct-student-competition/>**

# JCT PAYMENT NOTICES: WELCOME GUIDANCE FROM THE COURT OF APPEAL

BETH CRADICK – ASSOCIATE, CONSTRUCTION, ENGINEERING AND PROCUREMENT, BLP

Construction standard form contracts have a great deal to recommend them. Parties to a contract can save time and cost by starting negotiations with an industry recognised set of terms which deals with all the matters that the parties may have to agree.

But while a standard form provides a good starting point, it needs to be adapted to meet specific project needs. Parties should take great care when doing this because, as the case of *Balfour Beatty Regional Construction Limited v Grove Developments Limited* [2016] shows, in the context of amendments to the payment regime of the JCT Design and Build contract 2011 (JCT DB 2011) the courts are reluctant to step in and save them from the consequences of a drafting slip.

## What happened?

Grove employed Balfour to construct a hotel and apartments at the O2 complex in Greenwich using JCT DB 2011. The contract sum was in excess of £121m.

The parties amended the JCT contract to reflect their particular project requirements. This was fine until they came to the payment provisions. Unamended, JCT DB 2011 envisages two sets of payments being made during the life of a project: monthly payments prior to practical completion (PC) and at intervals of two months after PC.

Rather than filling out the JCT contract particulars with details of the payment milestones, the parties inserted a bespoke schedule of 23 interim payment dates, setting out the payments to be made up to the contractual date for completion. However, they failed to make any provision for further interim payments should the works not be finished by that date.

Following significant delay, the works did not achieve PC by the stipulated date. The parties failed to agree how the interim payments would

continue, and after taking independent advice Grove asserted that Balfour had no continuing entitlement to receive payments.

## Decision

The court at first instance held that Balfour had no contractual right to interim payments beyond those expressly set out in the agreed schedule. In effect, the contractor would receive no further payment until the final account was settled.

Balfour appealed to the Court of Appeal, which dismissed the appeal, ruling that:

- The contract contained neither an express nor an implied term providing for monthly interim payments following the expiry of the schedule. The payment schedule specified interim payments up to, but not beyond, the contractual date for completion. The court would not intervene to rescue a party from the consequences of what it had agreed. There was insufficient ambiguity in the drafting to enable the court to reinterpret the parties' contract in accordance with "commercial common sense". The contractor would receive full payment for its work in due course, but only in the final payment due under the contract.
- The requirement of the Construction Act for periodic payments was satisfied by the amendments the parties had made, even though those amendments might no longer practically work for the parties. Since the contract provisions were Construction Act compliant, there was no scope for the court to imply the Scheme for Construction Contracts (which does provide for continuing interim payments) into the contract.

## Does JCT 2016 circumvent the issue?

JCT 2016 removes the distinction between payments pre and post PC, stating that monthly payments should continue until the issue of the final certificate.

Would the Grove case have been decided differently if the parties had used the JCT 2016 form instead of JCT DB 2011? Probably not. As

a matter of contractual interpretation, the court's decision is entirely legitimate. It is perfectly possible that the parties agreed to divide the contract sum into 23 payments. Why should Balfour be entitled additional interim payments simply because the works were delayed? On this analysis, the argument that Balfour should have to wait until issue of the final certificate for any additional payments is compelling. Put at its very lowest, it is entirely understandable that the court did not feel compelled to imply a contrary term. Against this background, given that the parties agreed to step away from the JCT payment provisions by inserting a bespoke schedule, any underlying change in the standard form regarding frequency of payments would almost certainly be irrelevant.

But while the outcome may have been the same under the 2016 form, arguably the new wording would have alerted the parties that there was no reason for the regular payment flow to end at PC. They may have drafted their payment schedule differently to take account of this – in which case the dispute may not have arisen at all.

## Final thoughts

The real issue in this case was that the parties did not consider what would happen to payments if the works were delayed. The implication in JCT forms prior to 2016 was that substantially all of the contract sum (less only the retention) was certified prior to, or immediately after, PC. But this did not reflect a reality in which substantial sums (typically arising from extra work or claims) often became payable after PC. The 2016 form may be viewed as a closer reflection of what happens in practice, reminding parties that PC is by no means the end of the payment story: they also need to think about what will happen afterwards. As this case demonstrates, if the parties' failure to consider this point results in a bad bargain, they can expect scant sympathy from the courts.



## JCT CELEBRATES SUCCESS OF LATEST EDITION AT PARLIAMENTARY RECEPTION



JCT celebrates success: l-r: Richard Saxon CBE, Victoria Peckett and Neil Gower

JCT's Construction Industry Parliamentary Reception, celebrating the success of the release of the JCT 2016 Edition of Contracts was held on 5<sup>th</sup> May 2017 at the House of Commons, London.

Since its launch, the JCT 2016 Edition has been welcomed positively by the industry, with an unprecedented level of sales through the JCT online store, [www.jctltd.co.uk](http://www.jctltd.co.uk).

Victoria Peckett, chair of JCT's Drafting Sub-Committee and head of construction at CMS-Cameron McKenna LLP, addressed guests, identifying three main areas that were important in the creation of the JCT 2016 Edition and its success:

*"One [area] is best practice, the second is dealing with feedback from users and making the contracts as user friendly as we can, and the third is dealing with legislative changes."*

Victoria outlined some of the key changes under these three main areas that form the 2016 Edition, including:

- Incorporating Fair Payment principles throughout the suite.
- Adding operative provisions to allow for people to call for Parent Company Guarantees and Bonds.
- Providing a model form of particulars for the requirements of Collateral Warranties and Third Party Rights.
- Improving the insurance provisions, particularly those around the insurance of existing structures.
- Streamlining and consolidating the payment and insurance provisions so that the logical flow is more orderly and they are easier to follow.
- Incorporating the CDM 2015 Regulations changes into the suite.

- Including provisions that demonstrate compliance with the Public Contracts Regulations 2015, providing security and confidence to public sector users.
- Including the BIM provisions from the JCT Public Sector Supplement 2011, allowing for the inclusion of a BIM Protocol where it is used as a contract document and amending the provisions dealing with information flow to enable the BIM Protocol to operate where it is being used.

As well as talking about features within the 2016 Edition, Victoria outlined some of the potential areas of focus for JCT in the future:

*"We recognise the increasing importance of looking at assets on a whole life-cycle basis, so we are considering the production of a standard form facilities management contract. We are also looking at the possibility of creating standard form Parent Company Guarantees and Bonds to stand alongside the operative provisions [in the 2016 Edition]."*

*"And [...] we're going to start work on the next edition. So JCT welcomes any feedback you might have on what we currently have and areas where you might like to see changes so we can take that into account."*

Guests were welcomed to the reception by JCT chair, Richard Saxon CBE, who as well as reflecting on the success of the 2016 Edition, was also keen to point to the future.

Richard Saxon CBE said:

*"I will just mention that the completion of the [2016] Edition only starts the road to the next one. Things are already coming in which will form the in-tray of the group considering what the next one will be."*



# JCT DESIGN AND BUILD CONTRACT 2016: SIMPLY FAIR

PETER HIBBERD



Peter Hibberd

At the time of the government's consultation on Building a Responsible Payment Culture I commented on the balance between legislative intervention and the freedom to contract. At that time it was debatable whether further legislative intervention in contractual payment was desirable. Other commentators also expressed doubts. However the driver then, which still prevails, was that the payment process still needs improving. Therefore, it is not wholly surprising that we have seen further legislative change and government guidance as regards fair payment, albeit not as extensive as some may wish.

For payment to work effectively it is necessary for the parties to act properly. Facets of acting include good faith, appropriate skill and knowledge of the payment process. Where these attributes exist, few problems regarding payment should occur. Contract authoring bodies for their part can only specifically address the payment process but the simplicity or otherwise of that process has an impact on the ability for users to understand and apply its rules.

There have been pleas for contracts to be made simpler and this equally applies to their payment provisions. However, simplicity does not necessarily mean short. The shortest way to deal with payment in a contract is to state only the price to be paid and to leave it to the law to fill the gaps: shortest certainly, simplest certainly not. Filling all the gaps requires an understanding of the relevant law so as to achieve compliance. Far better that all relevant law, which in the case of payment constitutes a significant amount of legislation, is distilled into a standard contractual framework which also takes account of fairness and reflects the Government's Fair Payment guidance. That is the purpose of the payment provisions of the JCT suite of contracts, which a user can rely on and which avoids wasting resources.

Some argue that understanding contractual provisions can be quite a task and consequently often look for short cuts to understanding for the purposes of their administrative functions. But that is very different to providing a legally solid legal framework that also reflects fair payment guidance.

So for example, under JCT contracts what is the interim payment process that has been distilled?

The process works on the principle of a common assessment date for all tiers in the contractual supply chain so that the main contractor, sub-contractor and sub-subcontractors are all paid within a 30 day period from that date. The common assessment date is the Interim Valuation Date that applies to both main and subcontracts and which is established at pre-contract stage. It forms the basis of the contractual time framework.

Under the Design & Build Contract (which this article is primarily concerned) the Contractor is required to make an application for interim payment and it is this application

which triggers the payment process. Where there is no Contractor's application no payment becomes due. By contrast under the Design & Build Sub-Contract a selection should be made at sub-contract stage as to whether or not the subcontractor is required to submit an application for payment: where there is no such requirement, although the sub-contractor may still do so, the Contractor must issue a Payment Notice to the subcontractor regardless.

Where the Contractor's application is received not later than the Interim Payment Date the due date for each interim payment is 7 days after that Interim Valuation Date. Where the application is received after the Interim Payment Date the due date is 7 days after its receipt by the Employer.

One of the consequences of adopting a common assessment date is that stage payments need to be dealt with differently than they have in the past. This now entails a monthly Interim Payment regardless as to whether Alternative A (Stage Payments) or Alternative B (Periodic Payments) applies. The difference between them lies in the calculation of the assessment (Gross Valuation) for that payment. For Alternative A, it includes completed stages and variations whereas for Alternative B it values works in progress together with site materials.

The Interim Valuation Date is distinct from the due date for interim payment. The Interim Valuation Date is the date at which the Gross Valuation is calculated whereas the due date for interim payment establishes the point at which time runs for the issue of a Payment Notice by the Employer and for establishing the last date by which payment must be made. A Payment Notice should be issued within 5 days of the due date and payment must be made within 14 days of the due date.

The amount stated as due in the notice is the Gross Valuation calculated as set out in clause 4.12 (Alternative A) or 4.13 (Alternative B) less, in both cases, the amounts referred to in clause 4.14 (e.g. retention, previous Interim Payments). The resulting amount must be paid within the 14 day period unless the Employer issues a Pay Less Notice in respect of that amount not later than 5 days before the final date for that payment. Where the Employer issues such a notice the payment due is not less than the amount stated in that notice.

Should the Employer fail to issue a Payment Notice the amount payable is that stated in the Contractor's application. Nevertheless the Employer still has an opportunity to issue a Pay Less Notice so long as it is issued not later than 5 days before the final date for that payment.

Legislation and guidance increases the complexity of contracts but the use of the JCT process is still very much simpler than ploughing through vast tracts of legislative text to see what needs to be done.



## JCT INTERVIEWS...

**JANE PADDEY****YPO**

**Member of the JCT Council  
Member of the JCT Drafting  
Sub-Committee**

In this series we shed some light on some of the key people who are involved with or give their time to support JCT, to ensure that all areas of the construction industry are represented and can contribute to the development of our contracts. We will look at how our interviewees contribute to JCT specifically, and gain their views on JCT's wider role within the industry.

I qualified as a Fellow of the Chartered Institute of Legal Executives in 2005 although I have worked in a legal background since 1991, seventeen years of which has been in the Public Sector. My first exposure to construction was at Hammond Suddards in Leeds working in the Construction Litigation Team.

During my time at Doncaster Metropolitan Borough Council I became responsible for the completion of JCT contracts and supporting the Quantity Surveyors and Architects with their projects as well as drafting other contractual legal documentation. As part of my role included drafting contracts for tenders I became involved in procurement and in 2013 qualified as a Member of the Chartered Institute of Purchase and Supply.

I currently work as a Contracts Manager for YPO, a Central Purchasing Body that specialises in procurement and this position allows me to bring both the legal and procurements elements together.

**JCT: Jane, how did you first come to be involved with JCT? Why do you think it is important to be involved?**

JP: I first become involved with JCT following a request from the Local Government Association for Members that would be interested in representing them on the JCT Committee. My employers were fully supportive so I put my name down and here I am! I think it is important to be involved as we are able to represent the members of the Local Government Association and more importantly work with all the other members to be able to mutually agree contract drafting that is beneficial to all.

**JCT: Can you tell us about any specific work you're currently doing with JCT – through any boards, groups or committees, for instance?**

JP: I am currently on the JCT Council and the JCT Drafting Sub-Committee.

**JCT: Do you have any personal career highlights? What are you most proud of about the construction industry as a whole and where do you think it most needs to improve?**

JP: My personal career highlights involve supporting a number of major projects in the Doncaster area during my time at Doncaster Council that have helped to improve the commercial and economic environment of the area for instance the Marina, My Place Building and Cultural Civic Quarter as well as supporting work on bridges and infrastructure. I also enjoyed working on the smaller projects, for local Schools and

refurbishing listed buildings that whilst they might have not been multi million pound projects they have had a positive impact on the people of Doncaster.

I think the thing that I am most proud in relation to the construction industry as a whole is their resilience and spirit. It doesn't matter what gets thrown into the mix, they always seem to take it in their stride, find a way to address it and carry on.

The area where I think it most needs to improve is more in relation to the procurement aspects of construction, ensuring sustainability, meeting environmental criteria and providing social value (you can tell I work in an office!) as these are big areas that Local Government Customers are targeted to meet.

**JCT: What do you see as the main challenges for the construction industry over the next five years?**

JP: I feel the challenges to the Industry will come from outside of the UK, either as a result of Brexit and anticipated material and labour price increases or the provision of cheaper materials like the steel from China or the provision of pre-fabricated buildings.

**JCT: Does JCT have a wider role to play in the industry beyond producing contracts?**

JP: Definitely, JCT are a body made up of representatives from all sectors of the Construction Industry whose remit is to safeguard and support the Industry. JCT have specialist members with extensive knowledge and experience that they are willing to share that can be harnessed for the benefit of others. This is a solid base for any construction venture that JCT might wish to undertake in the future.

## JCT NETWORK CELEBRATES ANNIVERSARY WITH FLASH SALE FOR NETWORK MEMBERS



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JCT has celebrated the first anniversary of the JCT Network – the exclusive community for JCT users to get early updates about JCT products and services, the latest JCT blogs and news, exclusive event invites, and product discounts.

To thank JCT Network members for their support over the past year and in celebration of reaching well over 1,000 members in its first year, JCT Network members were able to receive a 10% discount on any JCT 2016 Edition contract in a special flash sale.

If you are not already a JCT Network member, you may find joining our community a useful and informative resource, especially as we work to bring further benefits to JCT Network members in the future. Don't forget, as a JCT Network member, you will always be first to know about any new JCT developments.

We encourage you and your colleagues to join by visiting: <http://corporate.jctltd.co.uk/jct-network/>





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