

JCTNEWS

THE JCT CONTRACTS UPDATE FOR THE CONSTRUCTION PROFESSIONAL

WILTON'S MUSIC HALL, LONDON

A JCT Standard Building Contract was behind the curtain at Wilton's Music Hall – a conservation project of such sensitivity that the works behind the scenes were vital to keeping this piece of East End history as authentic as possible...

For local Stepney residents, and the wider theatre-going community, Wilton's Music Hall is a treasure – one of only very few purpose-built music halls, built in London from the 1830s, to have survived in anything like its original form. Since its reopening as a concert hall and theatre 18 years ago, part of its charm has been the fact that it remained in some state of dereliction – a patina representing its many years as a focus for theatrical and East End history. Far from a museum piece though, Wilton's is a living, running theatre, concert hall, and public bar, presenting a large number of plays, opera, puppetry, classical music, cabaret, dance and magic shows, alongside a year-round programme of education and heritage activities, such as workshops, talks and tours. Given Wilton's extensive programme of activity, by 2004 the building's structural and technical issues needed to be addressed. This however did not detract from the trepidation felt by those involved that Wilton's unique atmosphere would be erased.

Wilton Music Hall's life as a venue began in 1839 following the construction of a concert room behind a complex of five houses, including a large ale house. Its present layout (and name) was established through the acquisition of the site by the impresario John Wilton in 1859. A series of alterations and reconstructions throughout the 1860s incorporated the concert room, houses and ale house into one complex. In 1877, a serious



Wilton's Music Hall

fire left just the four walls and the 10 barley-twist columns that still support the balcony today. Wilton's was eventually closed in 1881 for failing to comply with the fire safety regulations of the time. Rebuilt along the same lines, Wilton's passed into the ownership of the East London Methodist Mission as a base from which to assist with the extreme poverty and squalid living conditions that had become prevalent in the East End at the end of the 19th Century. The mission remained open for 70 years, through some of the most testing periods of the East End's history, including the London blitz of World War II.

Eventually Wilton's faded into dereliction, and was scheduled for demolition by the 1960s. A campaign, led by the poet, John Betjeman, helped to save the building and it was Grade 2* listed in

1971. The foundation of the London Music Hall Trust in 1982 has helped to maintain its status as a thriving theatre and community space since.

The underlying priority for the restoration has been to make the building safe, sound and usable – whilst adopting a conservative, sensitive and careful approach to repair works. This has meant preserving and retaining all the historic fabric where possible, avoiding misleading or out-of-place restoration, and using great care in the application of new materials. Addressing the problems of structure, fire, sound, heat and access, and making the building safe and usable, whilst retaining the building's sense of history, has presented some unique challenges.

Everything that was possible to preserve and

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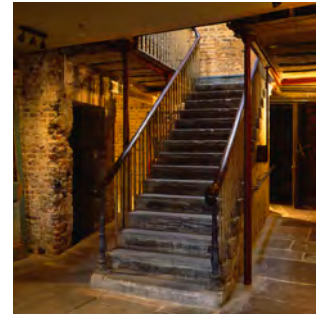
New London Architecture Restoration Award 2016

New London Architecture Ashden Sustainability Award, Commendation 2016

reuse was done so: broken fireplaces, Georgian brickwork, window frames, fragments of plaster, disused roofing materials, part of an old railway track that was built into the works in 1859, pulleys and cables from a doorbell mechanism, ceramic electrical fittings, pipes for gas lighting, wooden mountings on walls, fragments of old staircases that lead nowhere have been retained, even abandoned bird's nests and holes deemed to be aesthetically pleasing. Where possible, brickwork has been stabilised with the use of dowels rather than being completely rebuilt. Floor and ceiling boards where removed, numbered and returned to their original locations.

In recognising that it was not possible for the new works to take on the same quality of texture and character that comes with age, it was chosen to adopt the materials and building techniques of the original building without any attempt at artificial ageing. Instead of 'pretending to be old', the use of the same materials and methods has ensured that major contrasts have been avoided. Among the new works included the reconnection of adjacent walls that had come apart, providing a new stone and timber stairway, installing new partitions, windows, doors and openings, strengthening public loadings by using double joists and introducing steel beams mid-span, reconstruction of hearths and the hall floor, stiffening roof trusses in the hall that were forcing the wall to collapse, and providing acoustic ceiling linings for the lobbies and hall.

In addition, front-of-house facilities have been significantly expanded. The terrace area previously fronting the hall which could only be partially occupied now has full use. This has been able to establish a series of connected bars on the lower floors of three of the properties. Upstairs, previously derelict rooms have been renovated, providing a new rehearsal room and more bar and entertainment areas. A new workshop is in place



© Photos: Helene Binet. Design: Tim Ronalds Architects

in a now damp-proofed basement. The fourth property now houses the artists' changing rooms. A new lift increases access dramatically, but the characteristic difference in floor levels between the once-independent properties remains.

Another series of major upgrades – which were able to be installed discretely, without detracting from the building's appearance – were the opportunity to upgrade the services, ventilation and acoustics. All services were renewed, including sound insulation, fire-proofing, heating and ventilation, performance systems in the hall, AV in each of the properties, fibre-optic and Cat6 data installation, plug-in points for lighting rigs, air handling for the hall and studio, new boilers, radiators, fire and security alarms, and CCTV.

In total, Wilton's has gained a ventilated and acoustically separated hall, new bar space, exhibition room, chilled cellar, basement workshop, commercial kitchen, lettable rooms,

offices, and learning and participation room, dressing rooms, new showers and WCs, and most importantly, the ability to safely access and use every part of the building.

As a result of the restoration, Wilton's Music Hall has achieved a remarkable feat: almost looking exactly the same as it did before. Achieving this – allowing the building to still tell its story, keep its sense of mystery and character, whilst providing a complete update of structure and services, and providing new facilities – is challenging and requires the careful co-ordination of a myriad of skills and disciplines to ensure that the philosophy underpinning the works and the desires of the client is carried through. The use of the JCT Standard Building Contract helps to underpin this ethos – it is a contract that has been tried and trusted through history, yet is always contemporary, and can take centre stage when the demands of a project are as complex and unique as they were here.

WILTON'S MUSIC HALL – PROJECT SUMMARY

Start date:	July 2012 (phase 1) July 2014 (phase 2)
Completion:	February 2013 (phase 1) September 2015 (phase 2)
Gross internal floor area:	675m ² (phase 1) 845m ² (phase 2)
Cost:	£740,000 (phase 1) £1.95m (phase 2)
Contract:	JCT Standard Building Contract Without Quantities
Client:	Wilton's Music Hall Trust
Architect and CDM co-ordinator:	Tim Ronalds Architects
Main contractor:	Fullers Builders (phase 1) William Anelay (phase 2)
Structural engineer:	Cambridge Architectural Research
M&E consultant:	Max Fordham
Quantity surveyor:	EC Harris (phase 1) Bristow Johnson (phase 2)
Theatre consultant:	Carr & Angier
Acoustic consultant:	Ramboll
Access consultant:	All Clear Designs
Conservation plan:	John Earl
Project manager:	Richard Maidment (client's adviser)
Approved building inspector:	London Borough of Tower Hamlets

AN ILL WIND?

Chairman's Letter



Richard Saxon CBE

Britain has a massive, long-term housing problem, with market-driven supply not nearly equalling demand and major skill shortages preventing any increase in that supply in the short term. The country also has a set of policies in place which hamper alternatives from making a contribution by seeing home-ownership as the people's ideal. It may be the aspiration of the majority but it's an impracticable one: home ownership rates are falling.

But now we have another national crisis to worry about: Brexit. Whatever the rights and wrongs of the policy and how it came to be, the result is a period of uncertainty for investors and consumers. Could it be that this crisis helps with the other one? The Chinese characters for 'crisis' are two: 'danger' and 'opportunity'. Brexit may well deflate demand for housing for sale, along with demand for commercial space. The uncertainty could last for over two years as we negotiate our new trade relationships with the EU and with other countries. During that time there will be a need to stimulate the economy to avoid recession. Public investment, at very low interest rates, is back on the agenda. The government is already signalling that there will be a priority on investment in infrastructure and that the target of a million new homes by 2020 will be maintained or even increased. So could the end of austerity policies allow us to tackle the housing crisis? The Autumn Statement should reveal all.

It's possible that the Brexit-induced deflation of demand could free some of the trade skill capacity to move from commercial building to housing. But it's going to be necessary to alter policies that see the only good way to house people as home ownership. Housing costs and incomes are now so far apart that the majority of future households have no prospect of ownership. Incomes have fallen whilst house prices have risen. Student loan repayments crush the ability of many young families to find a deposit or service a mortgage before they are 40. Demand for housing to buy is thus going to falter even with 'Help to Buy' and 'Starter Homes'. As housebuilders build at the rate that they can sell, slowing down is inevitable. It is significant that housebuilders prefer traditional construction to modern methods as it allows the rate of building to be varied up and down easily.

Rental housing, on the other hand, is capable of being built quickly and in quantity as tenants have no need to borrow. Buildings are usually filled rapidly. The new concept of institutionally-funded build-to-rent is offering high quality homes on longer term leases. The reason it has yet to become a mainstream supply is because of the priority on home ownership. Development for sale produces faster and larger returns on capital and can therefore pay more for sites than build-to-rent. Build-to-rent aims rather to produce long-term income streams to fund pensions. Any deflation of demand for build-to-sell can thus open up sites for rental housing, leading to faster supply.

One further reason for hope is that rental housing can be built in the teeth of skill shortages. By not being tied to traditional construction, rental development can exploit offsite construction methods. These use factory-based people and often machine-led manufacture. The factories offer indoor work in safety and with social hours compared to building sites, attracting a diverse labour force without trade skills. Modern methods of construction involve capital investment in factories plus a constant flow of orders to service the investment. This flow has proved difficult to achieve in recent, sale-led markets. It could do better when competition from sales weakens.

Factory based construction is better quality than site-based home building. The recent All-Party Parliamentary Group report on housing quality¹⁾ is scathing on the effects of weak quality control and poor terms of contract for buyers. The current weaknesses are partly the result of skill shortages and partly come from the unequal power balance between buyers and sellers in a grossly undersupplied market. Renters are protected by the building owner's power to achieve quality of construction and finish.

We are not just talking about private build-to-rent as the source of rental supply. Local authorities and housing associations need to be re-energised to build, not punished with right-to-buy policies and forced-down rents. Borrowing should be part of the counter-recessionary investment plan, with public land made available for affordable development, not sold for highest achievable price. The fear of monolithic public housing estates reappearing has to be countered by mixing tenure. Partnerships between institutional rental developers, housing associations and public authorities, building to sell and to let at market rates and subsidised, can create 'tenure-blind' communities, as has become normal in New York City.

Finally, a sector almost absent from the UK needs to be encouraged: self-build. People modify their houses all the time but whereas on the continent and in the USA building your own home is common, here it is rare. Planners just don't allow for it. Small builders and manufacturers of kit houses are excluded from the new-build market by this blind spot. So capacity could be released by creating parcels for self-build in the town extensions being planned. The essential regeneration and densification of our interwar eight-to-the-acre suburbs is also a major opportunity for self-build, as demonstrated by the recent report *Supurbia*²⁾. Individual houses can be redeveloped into small blocks of flats; pairs of semis go further; back-land plots can be opened up.

So it's an ill wind that blows nobody any good. Brexit might just help us tackle the housing crisis and establish more balanced policies. We await the Autumn Statement to see.

1. 'More homes, fewer complaints': All Party Parliamentary Group for Excellence in the Built Environment. July 2016.
2. *Supurbia*: a study of urban densification in outer London. HTA. February 2014.



JCT 2016: MINOR WORKS SUITE PUBLISHED

KAREN CLARKE AND CHRISTOPHER DICKSON – CMS CAMERON MCKENNA

The JCT launched its much awaited new suite of building contracts with the publication of its revised Minor Works family. The Minor Works building contracts (with options for contractor design or not) and a form of sub-contract that can be used in conjunction with the main form (also making provision for sub-contractor design) together constitute the first three agreements in the JCT's new 2016 edition ("JCT 2016").

The 2016 editions of the remaining agreements will be rolled out during the second half of the year and into next year too (these will also be labelled '2016') with the next instalment due out after the end of the summer holidays. As yet, the Scottish Building Contract Committee has not released details of its planned dates for publishing its Scots Law versions of the JCT building contracts, but it has confirmed that the SBCC contracts will be issued in the same order as the JCT new forms.

The new JCT 2016 suite is the JCT's third edition in little more than decade. Ten years ago, a wholesale revamp of the entire family of contracts coincided with the JCT's 75th anniversary. Five years ago, the 2011 edition made changes to its agreements to make them compliant with the updated Construction Act.

Looking at the Minor Works agreements and anticipated changes to the suite as a whole (based on press statements released by the JCT), the new edition incorporates some interesting new features and noteworthy changes.

- JCT 2016 reflects the Public Contracts Regulations 2015 and includes provisions for use by public bodies, contractors and sub-contractors on public sector projects. The 2015 Regulations replace the previous UK public sector procurement regime and aim to make public procurement more accessible to small businesses.
- It is almost 15 months since the CDM Regulations 2015 came into force (click here to view our detailed webinar on CDM 2015). The new forms incorporate the JCT's own 2015 amendments (previously published as Amendment 1) to make the building contracts CDM-compliant.
- In 2011, the JCT published a 45 page document entitled Public Sector Supplement. Aimed primarily at public sector clients and their contract administrators (although the amendments proposed could also be used by private sector clients keen to ensure that the principles covered apply in their agreements and supply chain too), the document dealt with three issues – BIM, "Fair Payment" and "Transparency". JCT 2016 incorporates into the new suite certain provisions from this supplement:
- BIM – The UK government mandate was that all centrally procured public sector projects be undertaken implementing BIM, Level 2 by April this year (Scottish public sector projects are to adopt BIM Level 2 by April next year). JCT 2016 now makes express provision for BIM or other communications protocols to be included in the Contract Documents.
- Transparency – In 2013, the government published a policy paper 2010 to 2015 government policy: government transparency and accountability. The JCT Public Sector Supplement includes a model clause authorising disclosures by public sector clients in accordance with the Freedom of Information Act 2000. JCT 2016 now includes this clause within its Supplemental Provisions Schedule.
- Fair Payment – In 2007, the OGC launched its Guide to Best Fair Payment Practices (which included a Model Fair Payment Charter – intended to apply to government contracts entered into on/after 1 January 2008). The publication was supported by both government and industry. In 2013, Construction 2025, the government's long-term vision for the construction industry, cited equitable financial arrangements and certainty of payment as critical to success for the industry. In 2014, the government launched a Construction Supply Chain Payment Charter to build upon the payment provisions of the Construction Act (as amended), the Late Payment of Commercial Debts Regulations, the Fair Payment Charter and Prompt Payment Code. JCT 2016 incorporates a number of changes designed to reflect these principles including Interim Valuation Dates

which will operate at main contract, sub-contract and sub-subcontract levels.

- The revised payment provisions have also been simplified more generally with clearer Construction Act notice requirements, a procedure for prompt assessment of loss and expense claims and flexibility in relation to fluctuations provisions.
- Under the interim payment due date provisions, the monthly cycle of payment due dates now continues to apply after practical completion, up to the due date for the final payment; this is consistent both with the new loss and expense ascertainment procedure and Fair Payment principles.
- In the new JCT building contracts for larger works (to follow), there will be an extension of Insurance Option C (Insurance by the Employer of Existing Structures and Works in or Extensions to them) to allow for alternative solutions to the problems typically encountered by tenants (and domestic homeowners) in obtaining existing structures cover for contractors. This approach is reflected within Section 5 itself of the new Minor Works forms. In addition, JCT 2016 consolidates (within the conditions) general provisions applying to Insurance Options A, B and C (evidence of insurance, insurance claims and reinstatement work).
- In the new JCT building contracts for larger works (to follow), JCT 2016 will include provisions for the grant of performance bonds and parent company guarantees and extend the optional provisions for obtaining collateral warranties from sub-contractors to include (as an alternative) the granting of third party rights by sub-contractors.

Finally, the new suite includes sundry changes to make the contracts more user-friendly and improve functionality. JCT 2016 aims to be fit for the future and provide greater clarity and flexibility.

For further information please contact Karen Clarke, Partner, London (Email: karen.clarke@cms-cmck.com, Tel: +44 (0) 20 7367 2448) or Christopher Dickson, Senior Associate, Glasgow (Email: Christopher.dickson@cms-cmck.com, Tel: +44 141 304 6284).

WELCOME TO THE JCT 2016 EDITION OF CONTRACTS...



LAUNCHING FAMILY BY FAMILY

WHAT ARE THE MAIN NEW FEATURES OF THE 2016 EDITION?



We have incorporated the provisions of the JCT Public Sector Supplement 2011 that relate to Fair Payment, Transparency & BIM.



We have made adjustments to reflect the Construction (Design & Management) Regulations 2015.



We have incorporated the provisions of the JCT 2012 Named Specialist Update.



There's now an extension of (Works) Insurance Option C to allow alternative solutions for tenants and domestic homeowners to obtain Existing Structures cover for Contractors. In addition, we've consolidated within the main text some of the general provisions relating to evidence of insurance, insurance claims and reinstatement work that were previously in each of Insurance Options A, B & C.

WE'VE REVISED AND SIMPLIFIED THE SECTION 4 PAYMENT PROVISIONS, INCLUDING;

Introducing a procedure for prompt assessment of Loss and Expense claims.

Establishing (for Fair Payment purposes) Interim Valuation Dates that apply to main contract, sub-contract levels.

Increased flexibility in relation to fluctuation provisions.

Introducing a sub-section to consolidate the notice requirements of the Housing Grants, Construction & Regeneration Act 1996.

We've included provisions for the grant of Performance Bonds and Parent Company Guarantees.

We've extended the optional provisions for Collateral Warranties from sub-contractors to include Third Party Rights. We've also changed the way the requirements for Collateral Warranties and/or Third Party Rights are set out – removing part 2 of the contract particulars and replacing it with a separate document, the Rights Particulars.

DOES A FAILURE TO SIGN MEAN YOU'RE OFF THE HOOK?

MARC HANSON AND HELENA SAVVA – BLP LAW

JCT forms include comprehensive guidance on execution, in addition to standard provisions allowing the parties to execute the contract under hand or as a deed. However, what they do not include are terms providing that the contract will not be binding unless both parties execute it.

So, what if the parties amend their JCT form to include such a term and then one party doesn't sign? Surely, the answer must be that the contract won't take effect? Not necessarily, held the Court of Appeal in the recent case of *Reveille Independent LLC v Anotech International (UK) Ltd* [2016]. While this is a commercial case, the ruling is of relevance to construction contracts.

This case centred around whether a licensing agreement had been entered into between the claimant, Reveille, and the defendant, Anotech, relating to intellectual property rights in connection with products to be used on the US version of the television series MasterChef.

Following negotiations in January 2011, Anotech returned a signed, amended version of a deal memo which stated that it was not to be binding until signed by both parties. The deal memo was intended to be replaced by detailed long form agreements, but negotiations subsequently broke down.

In July 2012, after Anotech failed to pay Reveille's invoices, Reveille wrote to Anotech treating the contract as repudiated on the basis that the deal memo constituted a binding contract. Anotech's main argument was that the deal memo it had executed was not signed by Reveille and so there was no binding contract between the parties.

The High Court found in favour of Reveille stating that there was a binding contract based on the deal memo, since Reveille had communicated acceptance of the contract by conduct. Anotech appealed this decision.

The Court of Appeal dismissed Anotech's appeal. Applying the classic contract law principles of offer and acceptance, the court held that the initial deal memo

sent by Reveille was an offer. When Anotech signed and returned the amended form of deal memo, that was a counter-offer which required acceptance by Reveille. The court then considered whether Reveille had effectively accepted this counter-offer.

The court held that where a signature is the prescribed mode of acceptance, a party (in this case, Anotech) will still be bound by the contract if it waives that requirement and acquiesces to a different mode of acceptance, so long as that party is not prejudiced by the failure of the other party (in this case, Reveille) to sign. The only prejudice to Anotech of Reveille not signing was the commercial uncertainty as to whether it was bound by the deal memo. The court said that this paled into insignificance when Anotech was receiving all the benefit of Reveille's performance of the memo's terms. Objectively, Anotech could not have thought that it was prejudiced when from the outset it actively facilitated Reveille's performance of the deal memo's terms.

Therefore, the High Court was right to focus on whether there were clear and unequivocal acts on Reveille's part, which Anotech knew about, to constitute acceptance by conduct of Reveille's counter-offer. The court felt that there was clear evidence of such acceptance by conduct, in which Anotech was closely involved.

The conduct of the parties is of crucial importance in determining whether a contract is enforceable. Parties can still be contractually bound even if they do not comply with an express requirement that the contract must be signed to be binding.

This is particularly pertinent in a construction context because parties often start work before contracts are signed. As this case shows, just because you don't sign a contract does not mean that should a dispute arise later on, you can argue that the mere fact of failure to sign means a contract is not in existence. If you complied with the contract's terms then the likelihood is that the court will hold that you entered into the contract, regardless of whether you have signed it or not.



JCT INTERVIEWS...



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.



JUSTIN PERRY

JCT Director, NSCC
JCT Council Member
Member of the JCT Payment Review Working Group

Justin Perry is an independent construction consultant specialising in providing contractual and project management support both in the UK and internationally. Justin has spent 30 years in construction, primarily in specialist foundation businesses as both commercial director and managing director.

Justin is now Managing Director of Perry Vale Associates Limited, based in Oakham, Rutland and provides support to clients across the UK and, more recently, in Canada and the USA. Notable UK projects include Wembley Stadium, The Shard, Heathrow T2, Westfield London and Westfield Stratford. Internationally, Justin has drafted a bespoke partnering agreement for a diamond mining project in Canada and has successfully negotiated a settlement agreement on a dam remediation scheme for the United States Federal Government.

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

JP: I first became involved in industry representation when I joined the Contracts Committee of the Federation of Piling Specialists (FPS). They asked me to represent them at the National Specialist Contractors Council (NSCC) who in turn asked me to represent them on JCT Council. I attended my first Council meeting in 1999.

I subsequently became chairman of the NSCC contracts Committee and in consequence I became a Director of JCT in 2001.

JCT produces contracts for use across the construction industry from domestic home improvements to high profile towers and stadia and these contracts become the benchmark for all of the contractual relationships that these projects generate. Even though the forms are often heavily amended at all levels of the construction team, it is vitally important that all industry stakeholders engage in development of the standard forms to ensure that the starting point represents a fair balance of risk and responsibility.

Each of the JCT colleges represents thousands of members of all sizes, many of whom do not have access to in-house legal and contractual expertise. It is absolutely crucial that colleges are able to confidently advise their members that if they use an unamended JCT Form of contract, appropriate to the work they are performing, then both they and their client will have a contract that protects their interests and supports performance of their obligations.

JCT: You are a member of JCT's Payment Review Working Group, can you tell us about your role in the group and what the priorities have been in preparing for the new 2016 edition?

JP: The Payment Review Working Group was originally established to update the JCT payment provisions across the suite to reflect the changes that were made to the Construction Act in 2011. Since then, the Group has served as a vehicle to keep all payment related matters under review and to respond to changes in industry practice.

Most recently, the Group has focussed on re-organising the existing payment provisions to make them flow more logically and to make them easier to understand. In particular, the timings of notices at Main Contract and Sub-Contract level have been adjusted to allow higher tier stakeholders to receive their notices before they are due to issue the equivalent notices to lower tier stakeholders. The overall periods for payment at each tier have not changed but the process of giving notices is now more reflective of what happens in practice in the market.

This is an example of JCT contracts trying to reflect the "real world". The fact is that sub-contract payment terms are routinely amended and the timing of notices is often given as a reason for doing this. There is now no need to make such amendments as the industry practice is now in the standard forms and it is hoped that this will encourage higher tier stakeholders to make more use of standard forms.

There is always work to do on the issue of payment and I expect further developments as the Prompt Payment code and the Fair Payment Charter become more established.

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: Having come from a quantity surveying, rather than an engineering background, becoming Managing Director of an industry leading ground engineering specialist was a particular highlight. I was also very privileged to have been able to take a leading role in the specialist contracting sector's contributions to various industry reforms such as the Latham Review of the Construction Act and Fair Payment initiatives.

JCT: What do you think makes JCT unique? What are the benefits of the way in which JCT contracts are produced?

JP: JCT is the only contract drafting body that

represents all of the major stakeholder groups in the industry. It also allows parties that do not have a direct interest in a particular contract to raise issues and suggest improvements that can prevent unintended consequences. Another, often undervalued, JCT asset is the fact that the language and the concepts have been tried and tested in the courts and users have certainty as to what clauses mean and how they should be operated.

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

JP: In my view, the single biggest issue over the coming years will be whether the industry can really embrace BIM and realise its potential. There appears to be a lot of focus on what the technology can do but not enough on how the risks of managing a shared model should be allocated. One of the greatest opportunities that BIM provides is the ability to virtually build the project and foresee interface sequencing clashes ahead of time and take action to prevent them. However, design and build procurement routes do not easily lend themselves to this because the multiple parties providing input into the design do not have any contractual mechanism to resolve clashes between themselves; two or more designers may well have complied with their brief for their part of the design but the two briefs might be incompatible and so there will be disputes as to who is responsible for devising and paying for the solution. Quite often one part of the design may be much more advanced than another so that it is too late to change it, which limits the range of solutions available.

The whole point of BIM is to see clashes in advance and produce the solution that is the most effective for the project; what it does not address is who pays for the changes in design or sequence that are needed to solve the issue. It is quite common for standard JCT clauses to be amended to make each individual contractor and specialist responsible for integrating their design with the design of others but this doesn't solve the problem, it just creates potential for disputes.

Individual specialists often do not have access to a model when they are bidding and the other specialists with whom they will interface may not even have been selected. It is therefore impossible for them to know precisely how their best value offer will interact with other best value offers for other parts of the work. It is vital that, as BIM protocols and contractual provisions begin to develop and become standardised, mechanisms are devised to encourage individual expert specialist designers to develop innovative proposals while protecting them from being penalised if they are not compatible with



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other work elements over which they have no control.

Traditional procurement routes are far easier to manage, because they have a single point of responsibility for design. Some means of carrying the concept of a single owner of the model needs to be developed for design and build procurement routes, whilst retaining the benefits of being able to attract the innovation and development that specialist providers can bring.

Another huge potential that BIM provides, that does not seem to be getting much attention relates to safety. BIM allows you to model time as well as activity so you can see when different trades will be physically competing for space; which is one of the single biggest causes of accidents on construction sites. People are very aware of the hazards of their own trades, but are often not as aware of the hazards presented by the trades around them. Being able to sequence operations to minimise multiple concurrent activities will have an enormous benefit in terms of health and safety.

BIM technology has the potential to transform the construction industry in terms of safety, quality and predictability of cost and delivery, but there is a risk that it could become little more than a high tech means of producing the same inefficiencies and risks that have dogged the industry for decades. BIM needs to be at the heart of construction to be used effectively, not bolted on as a design tool – and to do this, the industry has to be willing to change its approach to risk management on construction projects.

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

JP: Absolutely. I believe that JCT should setting the

standards for the way the industry stakeholders deal with each other and with the wider public. JCT, as an organisation, should have a clear, publicly stated position on what are acceptable ethical, environmental and social standards for construction industry participants. These positions should then be reflected in their contracts.

JCT contracts are intended to be capable of being used by parties who do not necessarily have access to specialist legal advice or who are not especially familiar with the workings of the construction industry. As such, they should be a model that JCT can promote as being a fair and reasonable set of procedures and risk allocations that are reflective of what the industry currently considers best practice.

The contracts therefore should act not only as tools to administer projects but as a benchmark for how people should behave and expect to be treated. JCT has the ability to develop and encourage best practice as well as to reflect it.

For example, if JCT decided to publicly support the aspiration for removing retentions from construction by 2025, it could change the default retention amounts in all its standard contracts to 0%. Individual companies could continue to insert higher figures if they chose to but in doing so they would have to be showing a positive desire to do the opposite of what the industry is committed to achieving. This is much more difficult to justify than simply using a default of 3 or 5%.

By forcing individual companies to have to consciously decline to follow best practice, JCT can influence behaviours and help the industry to move towards the more collaborative model that all its stakeholders desire.

DATES FOR YOUR DIARY

10 November 2016 – JCT Povey Lecture,
The Building Centre, Store Street, London

This year's lecture 'Collaboration: how Argent developed its successful way of working' is to be given by Anthony Giddings.

9 November 2016 – SBCC Annual Conference
2016, Scottish National Gallery, The Mound,
Edinburgh

For further information, please contact Janet Nixon
(Email: info@sbcconline.com, Tel: 0131 221 7507).
For the full programme see www.sbcconline.com

JCT STUDENT COMPETITION 2017



JCT's annual student competition will be running for 2017, opening in October 2016 and closing in March 2017.

Once again, the overall winner's prize will be £1,000, with two runner-up prizes of £250 also available.

Following the success of last year's competition, this year's competition will continue the same focus on creativity and innovation.

In recognising the different learning requirements of construction courses and disciplines, the competition will be open to receiving entries in a variety of media, including video, photography, photographic essay, drawings or designs, written essays, articles or any other creative format.

However they present their submission, students must base their entry on one of the following topics:

- **Skills shortages** - A huge issue facing the industry, particularly in economic uncertainty, is how demand can be met with the current

level of skills shortage. What does this hold for the future of the industry? Can this be addressed through education alone?

- **Sustainability** - Construction has a vital role in meeting the challenges of sustainability and climate change. Do you have an idea to improve waste management, reduce fossil fuels, increase the use of renewable energy, conserve or re-reuse materials, or improve building performance?
- **Collaboration** - Inefficiency and inflexibility in working practices can have a negative impact on project management, time-scales, cost and morale. With the industry under increasing pressure to improve its efficiency, what are your ideas on how the industry can be more collaborative?
- **BIM** - The UK government has mandated that all centrally procured projects should reach BIM level 2 by 2016. However it still faces many challenges in order to be used effectively including standardised software, ownership, and the impact on smaller firms.

What are your ideas to take BIM forward?

- **Technology** - Developments in technology have had a large impact, particularly with off-site construction, and robotics which are being used to take on a range of roles such as brick laying. How can technology continue to assist in the construction process, what technology ideas do you have to improve construction efficiency? What will the impact of technology be on jobs in the future?
- **Health and Wellbeing** - Health, safety and well-being are of paramount importance for all those involved in the construction process, be it workers in offices or on sites, or the local community. What ideas do you have to improve effectiveness, performance and reduce potential risks through the promotion of health and well-being initiatives?

Students can enter the competition at <http://corporate.jctltd.co.uk/initiatives/education-students/jct-student-competition/>, which includes all the information about the competition, including the brief, helpful hints, entry form and terms.

WRITE FOR THE JCT NEWSLETTER

JCT is looking for new contributors to provide articles and blogs for the JCT Newsletter and JCT website.

The JCT Newsletter provides readers with a variety of information relating to contractual issues and wider construction topics.

Share your knowledge

If you have an article or would like to write a piece on your specific field of expertise, we would be happy to hear from you. If your article appears in the JCT Newsletter or as a blog on the JCT website you will have a unique opportunity for your name and business to reach a broad audience of construction professionals.

Contact stanform@jctltd.co.uk if you are interested in writing or submitting articles.



THOMSON REUTERS

JCTNEWS

JCT DESIGN AND BUILD 2016 OUT NOW

The 2016 Edition of the Design and Build Contract family is out now and available from jctltd.co.uk and JCT stockists.



Contracts available:

- JCT Design and Build Contract 2016 (DB)
- JCT Design and Build Contract Guide 2016 (DB/G)
- JCT Design and Build Sub-Contract Agreement 2016 (DBSub/A)
- JCT Design and Build Sub-Contract Conditions 2016 (DBSub/C)
- JCT Design and Build Sub-Contract Guide 2016 (DBSub/G)
- JCT Design and Build Contract Tracked Change Document 2016
- JCT Design and Build Sub-Contract Agreement Tracked Change Document 2016*
- JCT Design and Build Sub-Contract Conditions Tracked Change Document 2016*

Buy your copies of DB 2016 from JCT's Online Store www.jctltd.co.uk today

*Available from the document delivery service:
trluki.admincentral@thomsonreuters.com

What new features are included in DB 2016?

- We've incorporated the provisions of the JCT Public Sector Supplement 2011 that relate to Fair Payment, Transparency & BIM.
- We've made adjustments to reflect the Construction (Design & Management) Regulations 2015 and the Public Contracts Regulations 2015.
- We've made the works and existing structures insurance provisions more flexible.
- We've revised and simplified the Section 4 Payment provisions, including:
 - Establishing (for Fair Payment purposes) Interim Valuation Dates that apply to main contract, sub-contract and sub-subcontract levels
 - Increased flexibility in relation to fluctuations provisions
 - Consolidating the notice requirements of the Housing Grants, Construction & Regeneration Act 1996.
- We've included provisions for the grant of Performance Bonds and Parent Company guarantees.
- We've extended the optional provisions for Collateral Warranties from sub-contractors to include Third Party Rights.
- We've changed the way the requirements for Collateral Warranties and/or Third Party Rights are set out.

The views expressed in the articles in JCT News are those of the author(s) and do not necessarily reflect JCT's views.