

JCT NEWS

THE JCT CONTRACTS UPDATE FOR THE CONSTRUCTION PROFESSIONAL

70 ST MARY AXE “THE CAN OF HAM”

70 St Mary Axe, otherwise known as “The Can of Ham” due to its recognisable curved design, is the latest high-rise to join an increasingly visually competitive City skyline. Prizing open the lid reveals some unique features and a design that demanded absolute precision in its construction to ensure its success. A JCT Design and Build Contract provided the contract solution.

The Can of Ham, designed by Foggo Associates, is a collaboration between contractor Mace and client/developer TH Real Estate. The 21-storey, 28,000m² tower, provides premium office space, with its 50m x 50m plan taking up an entire city block. To achieve the semi-elliptical design that gives it its moniker, each floor is a slightly different size to the ones above and below - the middle being the largest, with the floors tapering below and above, where the cladding wraps around the roof of the building to give it its distinct appearance.

Each of the building's floorplates are column-less. Steel beams span the 12m space from the slip-form concrete core to the faceted steel columns that make up the buildings curved façade. These large steel columns are fitted with an anodised aluminium skin to integrate with the curved façade glazing and give the building its curved, organic design.

At each stage, precision is absolutely essential to ensure that the various elements of the building line up and fit properly, with each stage depending on the previous in order for the fit to be spot on.



Image: JCT Limited

70 St Mary Axe – ‘The Can of Ham’

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The core is built to a tolerance of just +/-12mm, due to the fact that the steel beams span off it, onto which the vertical steel frame is attached. The core has to be exact, because if it is off, the steel spanning beams will be out and the vertical steel structure will not anchor properly. The vertical steel beams also have to be located exactly and have exactly the right curvature, not only so that when at full height they align over the core correctly to create the curved roof structure, but also to ensure that the curved cladding will fit correctly.

Not only is the requirement to build within a very narrow tolerance range a challenge, it also provides very little opportunity for post-correction in the event of any errors. To overcome this, the supply chain, including steelwork subcontractor Victor Bouygues Hollandia and cladding and glazing subcontractor Focchi, was involved early in the project to be able to carry out detailed mock-ups and tests.

The cladding itself presented an additional set of challenges. Due to the curvature of the north and south elevations, cladding had to be installed from the ground floor up, to ensure that it would fit in place correctly. Once again, precision at each stage was vital. Pre-cast concrete fins attach to the core and concrete ribs which sit at the underside of the soffit to line up with the cladding supports. If these are just half a centimetre off, it would show. The cladding is produced from a double skin of cold-curved laminated glass held in place by a curved aluminium frame, which are precisely curved and aligned to fit at each level. The panels were brought to site in 1.5m wide x 3.8m high (storey height)

modules for installation. Cladding subcontractor Focchi prepared a two-storey mock-up of the module arrangement prior to construction that underwent extensive testing to ensure that there would be no problems on site. On the east and west elevations the cladding can be more flexible, where flat-glazed modules are fitted.

To maximise efficiency, the Can of Ham makes extensive use of prefabricated modules and off-site construction. The core houses the services and these were all delivered to site as prefabricated modules and lowered down risers for installation by the services contractor. The office toilets are also located in the core and were completed using components fabricated in Scotland for delivery as flat-packed units which could be fitted on site. The project team aims to use the efficiency and accuracy of off-site manufacture to deliver a high quality, consistent finish. Whilst externally the floor size varies in accordance with the curvature of the building, internally each floor is designed with a 12m wall-to-core dimension which allows tenants maximum efficiency to be able to sub-divide their floors without wasting any space.

Plant for the building is installed in two areas. A basement level contains the heavy plant elements including the domestic water and sprinkler storage tanks, electrical distribution boards, and large oil tanks to power back-up generators. The basement also includes 35 shower units to cater for cyclists using the 360 bicycle parking spaces.

The main plant room is held in the top two floors of the building which presents another one of its most interesting features. Housing cooling towers, air handling units and two generators, the plant levels are exposed to the elements. The structural steel arches over the roof space, but the fins support a perforated mesh cladding, instead of glazing, to help with cooling. This perforated mesh is coloured to look like glass and will reflect light the same way during the day, but the plant room will be lit at night along with the rest of the building, making the plant levels a feature. Much of the plant is also prefabricated and needs to be craned in before the arching roof structure is complete. It is given a uniform colour scheme so it doesn't detract from the form of the building. To further prevent the plant rooms from detracting from the curved form, the cleaning cradle is housed within its own structure on the 21st floor. The roof has two 12m x 4m glass butterfly doors that open up, allowing the cleaning cradle to emerge, sci-fi-like, automatically from the building.

70 St Mary Axe joins its neighbour The Gherkin, as well as The Shard and Heron Tower, as the latest of London's iconic buildings to be built on a JCT contract. The Design and Build Contract in particular is suited to large complex projects with close collaboration between designer, client and main contractor. There might be taller skyscrapers competing for attention in the City, but with its elegant curves, ultra-precise construction, high-level finish and unique features, 70 St Mary Axe – The Can of Ham is the understated highlight of London's high-rise picnic.

70 ST MARY AXE – THE CAN OF HAM: PROJECT INFO

Client	TH Real Estate
Architect	Foggo Associates
Contractor	Mace
Cost	£135m
Contract.....	JCT Design and Build
Start Date	May 2015
Completion	December 2018
Demolition	Keltbray
Excavation and concrete superstructure	Morrisroe
Steelwork.....	Victor Bouygues Hollanda
Cladding and Glazing	Focchi



'THE QUESTION OF QUALITY'

Chairman's Letter



Richard Saxon CBE

When a construction client signs a contract to deliver a project, they usually have three targets in mind: to deliver the required facility on budget, on time and to required quality. Cost and Time have proved relatively manageable, with objective evidence and increasingly clever tools with which to manage. Quality has never been so simple. There is a perceived degree of subjectivity about it and it is quite hard to monitor the progress of work to ensure that all standards are being maintained. The result has been that whenever there is pressure on cost or time, it's usually quality that suffers. Value Engineering has become an ironic term as it usually means cost reduction by reducing the quality that delivers required value.

For that is what quality is. Qualities are the product characteristics which enable the delivery of the value which the client requires. Value definition is a subtle business, needing the client to state a proposition of why the project is needed and what outcomes it must deliver. What does good look like? That question will have answers in three main areas: functionality, impact and build quality. Functionality will define how the facility should work; impact will embrace what it means to owners, users and the wider public, including image, economic, social, environmental and cultural value. Build quality will set out the technical criteria that should go with all this, to achieve physical comfort and performance requirements and the planned operating and maintenance costs.

You will notice that I have not majored on architectural quality. It's just one of the several quality strands in the overall mix. Different projects will have varied priorities. As an architect, I worry about my profession's over-emphasis on aesthetics and under-emphasis on practical qualities. It's one reason why architects have mostly been moved from the central role of ensuring project quality. When I started in the profession it was normal to use a traditional contract, with the architect standing between the client and contractor to be the arbiter of progress and quality. Clerks of Works watched the daily progress of the job, demanding rework when things were not as they should be. Progressively this independent role has been downgraded,

to give contractors a single line of responsibility to clients. Contractors have also argued that quality supervision should be left to them, as it is in manufacturing where quality systems enable very high reliability.

Now we have the recent failure of the PFI schools in Edinburgh and the awful disaster at the Grenfell Tower, both drawing attention to the serious lack of quality control in today's industry. Reports on both events, by John Cole¹ and Dame Judith Hackitt², draw attention to the reality. The quality of new houses is also under fire from an All-Party Parliamentary Group³. There are many issues to face as a result, but one that has already been looked at is the management of quality in projects.

The presidents of the RIBA, RICS and CIOB signed a memorandum of understanding in March 2018 to work together to tackle the quality issue. The result is an initiative called Building in Quality which is now out for 'beta testing'. A system has been published for firms to trial and feedback from the trials will lead to a final product later in 2019.

The product is the Quality Tracker⁴. This spreadsheet-based tool follows the stages in the RIBA Plan of Work, asking questions against a series of headings related to risks to quality. Users of the tool, client, project lead, design lead and main contractor, agree to follow the routine of assessing the state of these risks at each RIBA Stage, marking up the chart with green, amber or red colours to denote 'yes', 'partly' and 'no' answers to the risk questions. This RAG 'traffic light' approach seemed to the working group to be simple to use but effective in flagging concerns. The Quality Tracker is intended to be shared across the team as each new joiner arrives.

The scheme depends on the integrity of its custodians to be effective and there is much to learn about how actions will lead to quality experienced in use. Occupier actions, beyond the team's control, are not factored into this approach. Nevertheless, The Quality Tracker seems worth a try, to help ensure what can be called 'legacy quality', the long-term asset strength which delivers the original client value proposition.

¹ John Cole's report on Edinburgh Schools: http://www.edinburgh.gov.uk/info/20074/schools/1423/independent_inquiry_into_school_closures_published/1

² Dame Judith Hackitt's report after the Grenfell Fire: <https://www.gov.uk/government/publications/independent-review-of-building-regulations-and-fire-safety-final-report>

³ APPG report on housing quality: <https://policy.cio.org/wp-content/uploads/2016/07/APPG-Final-Report-More-Homes-fewer-complaints.pdf>

⁴ Building in Quality tool: <https://www.architecture.com/knowledge-and-resources/resources-landing-page/briefing-template-and-tracker>



CONCURRENT DELAY: ALLOCATING THE RISK

MARK WILKINS – FENWICK ELLIOTT

Concurrent delay is an issue which continues to be a topic of much debate. **Marc Wilkins** explores how recently, the spotlight has turned to the enforceability of clauses which seek to allocate the risk of concurrent delays.

In last year's Annual Review Jeremy Glover reported on the decision of Mr Justice Fraser in *North Midland Building Limited v Cyden Homes Limited*¹. In July of this year the case came before the Court of Appeal².

The dispute concerned a contract based on a heavily amended 2005 edition of the JCT Design and Build standard form, under which Cyden Homes had engaged North Midland as contractor on a project to design and build an exceptionally large home, together with substantial outbuildings, for members of the Dyson family.

The works were delayed for various reasons, and a dispute arose between the parties as to North Midland's entitlement to extensions of time. A major point of dispute related to whether a bespoke amendment, which incorporated a new sub-clause 2.25.1.3(b) into the extension of time machinery, took effect to exclude North Midland's entitlement to an extension of time for delay where Relevant Events were concurrent with delay events for which North Midland was responsible. Sub-clause 2.25.1.3(b) stated as follows:

"any delay caused by a Relevant Event which is concurrent with another delay for which the Contractor is responsible shall not be taken into account".

Essentially, the intention of this new clause was to reverse the accepted position under the unamended JCT extension of time provisions, which was to maintain the contractor's entitlement to an extension of time in the event of concurrent delay (a position which has obtained judicial approval).³

In the Part 8 proceedings before Mr Justice Fraser sitting in the TCC, North Midland had sought two declarations. First, that the effect of sub-clause 2.25.1.3(b) was to render time "at large" in circumstances where a delay caused by a Relevant Event is concurrent with any delay for which North Midland is responsible. Second, that in such circumstances, North Midland's obligation was to complete its works within a reasonable time, thus rendering the liquidated damages provision void.

North Midland sought to rely on the doctrine of prevention, arguing that it had been prevented from completing its works by Cyden Homes, and therefore time had been set at large. In dismissing this argument, Mr Justice Fraser held that the prevention principle simply did not arise and that this case was purely concerned with the correct construction of the clause in issue. As to the meaning of sub-clause 2.25.1.3(b), Mr Justice Fraser found that it was "crystal clear".

Mr Justice Fraser made clear that save in certain specific cases such as illegality, parties are free to contract on whatever terms they choose, and such terms will override any

common law doctrine such as the prevention principle.

North Midland appealed that decision on two grounds: (1) that the clause allocating risk in relation to concurrent delay is contrary to the overarching principle of law or public policy and is of no effect, and in the alternative (2) that a term ought to be implied which would prevent Cyden Homes from deducting liquidated damages in respect of periods of concurrent delay. Here, we are interested in the first ground of appeal.

The Court of Appeal Decision

Whilst Mr Justice Fraser's judgment was received positively by most, there were some who expressed doubt about it. However, the Court of Appeal unanimously upheld Mr Justice Fraser's decision, confirming that clauses which seek to allocate the risk of concurrent delay to the contractor are, in principle, valid and enforceable. The lead judgment, which was given by Lord Justice Coulson, provides a useful reminder of the principles of freedom of contract and prevention. It also provides some helpful comments in relation to concurrent delay.

- **Clear and unambiguous terms**

Lord Justice Coulson held that clause 2.25.1.3(b) of the contract was unambiguous, and agreed with Mr Justice Fraser that it was "crystal clear". Its meaning and effect was that on the happening of two concurrent delay events, one being a Relevant Event, and the other being an event for which North Midland was responsible, there would be no entitlement to an extension of time.

- **The prevention principle**

In light of the clear and unambiguous nature of clause 2.25.1.3(b), and in the absence of express or implied terms which might have assisted North Midland (there were none on the facts), the only way North Midland could have avoided the effect of the clause was to persuade the Court that the clause was rendered inoperable by reason of some overarching principle of law or legal policy.

North Midland argued that the prevention principle was a matter of legal policy which would operate to prevent Cyden Homes enforcing the clause. However, North Midland's arguments in this regard were rejected by the Court of Appeal.

In addressing this argument, Lord Justice Coulson provided a useful reminder of the origins of the doctrine of prevention and its operation. He noted the importance of the decision of Jackson J in *Multiplex Constructions (UK) Limited v Honeywell Control Systems Limited (No.2)* [2007] BLR 195, referring to Jackson J's neat summary of the ambit and scope of the prevention principle in that case, i.e. that (1) legitimate actions by an employer under a construction contract which cause delay to completion may be characterised as prevention; (2) where the contract provides

for an extension of time in respect of those events, time will not be set at large, and (3) any ambiguity in the extension of time clause should be construed in favour of the contractor.

Lord Justice Coulson held that here the prevention principle was “*not engaged*” as there was no contravention of either of the first two principles identified by Jackson J in *Multiplex*. He noted that among the list of Relevant Events identified at clause 2.26, was “*any impediment, prevention or dispute, whether by act or omission, by the Employer ..*” which gave rise to an entitlement on the part of Cyden Homes to an extension of time. Accordingly, time would not be set at large by the occurrence of those events. In relation to the third principle, Lord Justice Coulson said this was not triggered since the meaning of the clause in question was “crystal clear”.

In any event, Lord Justice Coulson made clear that the prevention principle does not have the status of an overriding rule of public or legal policy, and that it can only operate by way of implied terms. As such, the prevention principle is not capable of overriding an express term of the contract.

- **Freedom to allocate risk**

Lord Justice Coulson made clear that the most important reason for rejecting the first ground of appeal was that clause 2.25.1.3(b) was a term which had been expressly agreed between the parties.

Having examined the authorities, Lord Justice Coulson confirmed the position (as stated by Mr Justice Fraser at first instance) that the parties were free to contract out of some or indeed all of the effects of the prevention principle. In effect, that is exactly what North Midland and Cyden Homes had done, in terms that were crystal clear.

Concurrent delay

Whilst the question of whether there was in fact concurrent delay was not an issue to be decided in this appeal, Lord Justice Coulson addressed briefly the issue of concurrent delay. In doing so he gave the Court of Appeal's approval to the definition of concurrent delay put forward by John Marrin QC in his article “Concurrent Delay” published in the *Construction Law Journal* in 2002⁴ and again in his 2013 SCL paper entitled “Concurrent Delay Revisited”.⁵ That definition is as follows:

“A period of project overrun which is caused by two or more effective causes of delay which are of approximate equal causative potency.”

Lord Justice Coulson left open the debate about whether or not an employer could be said to have prevented completion by the contractor in circumstances of concurrent delay, given that the contractor would have been in culpable delay in any event. Although it was raised in the proceedings, a finding on this question was considered unnecessary for the purposes of disposing of the appeal, and unwise without hearing full submissions on the point.

Comment

This decision confirms the already accepted position that absent any specific public policy grounds which might justify a departure from the express agreement of contracting parties, the principle of freedom of contract will prevail. Therefore, a clearly worded agreement which seeks to remove a contractor's entitlement to an extension of time in the event of concurrent delays will be valid and enforceable. From a practical perspective, the judgment is helpful in that it effectively approves a form of wording that would achieve this aim in a contract based on the JCT forms, and which could easily be adapted to suit other standard and bespoke forms of construction contract.

It is worth mentioning that as well as reversing the accepted position in respect of the unamended extension of time machinery in the JCT standard form, clauses such as the one in this case will also be in conflict with the approach adopted in the Society of Construction Law's Delay and Disruption Protocol (2nd edition) in relation to concurrent delay. However, there has for a while been a growing trend towards amending standard form contracts to provide certainty in relation to how the risk of concurrent delay is allocated. This trend is already starting to feed into standard forms, albeit with neutral wording which simply highlights the issue of concurrent delay, leaving it to parties to include special conditions allocating the risk.⁶

The financial consequences of clauses such as the one in this case will be plain to contractors: where there is a period of concurrent delay to completion, the contractor will no longer be entitled to loss and expense for that period and will face deductions or claims for liquidated damages. Therefore, employers may well find contractors are reluctant to accept such clauses or, if they do, the additional risk will be reflected in their price. That said, whilst concurrent delay is an issue that is often raised on delayed projects, true concurrency of the type defined by John Marrin QC rarely occurs.

This article was first published in Fenwick Elliott's Annual Review 2018/2019

¹ Neutral Citation Number: [2017] EWHC 2414 (TCC).

² Neutral Citation Number: [2018] EWHC Civ 1744.

³ See *Walter Lilly and Co Limited v Giles Mackay and Another* [2012] EWHC 1773 (TCC).

⁴ 18(6) *Canst. L.J.* 436.

⁵ SCL Paper 179, February 2013, available at <http://scl.org.uk>

⁶ See for example the 2017 FIDIC forms of contract.



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JCT POVEY LECTURE 2018: TECHNOLOGY, GOVERNANCE AND IMAGE ESSENTIAL TO MEET FUTURE INFRASTRUCTURE CHALLENGES

Embracing technology – in particular the power of data, concentrating on whole-life cycle sustainable outcomes, fostering a new culture through smart governance, and promoting the industry through positive projects are key to meeting the construction and infrastructure challenges of the future, according to Richard Threlfall, Head of Global Infrastructure, KPMG, addressing construction industry delegates at the sixteenth annual JCT Povey Lecture on Thursday, 8th November 2018.

Richard Threlfall showed in his presentation, “**Collaborative, Connected and Cool: How technology and governance could transform the impact, efficiency and image of the construction industry**”, that we will build more in the next 40 years than we have in the last 4000.

With the demands on the industry increasing, more modern, innovative solutions will be required, increasingly relying on the industry’s ability to integrate advances in technology, utilise the power of data and analytics, and employ governance across the industry that encourages investment.

Richard demonstrated the significant impact that the value of data is having on the way infrastructure is being procured, built and managed.

Data use is informing not only the investment into infrastructure projects, but is informing modern construction techniques – using off-site manufacturing and BIM for example, and is also pivotal in managing the asset post-construction phase and maximising the end-user experience.

Richard also explained how a governance change, focusing on whole life cycle and sustainable outcomes instead of the current tendency towards short-termism is also a factor to future success, in particular placing the responsibility for investment with the owners of the projects, as the principal agents in procuring new infrastructure.

With infrastructure and the construction industry playing a vital role in delivering the mechanisms and services of a functioning society, concentrating on the final outcome of a project and looking at the number of inspiring projects is important in promoting the industry and enabling it to be seen as an attractive prospect for future generations.

“Data and analytics is allowing us to plan, build, maintain and operate infrastructure far more efficiently than ever before.

“[However] we’re trying to use a short-term industry to build long-term outcomes. It just doesn’t work [...] It’s not just



Richard Threlfall, Head of Global Infrastructure, KPMG

about the asset creation; it’s about the asset over its whole life. But to make this stick we need governance reform.”

“It’s about focusing on the ultimate outcomes of what we’re trying to achieve in societies [...] Construction is an industry that designs, builds, and maintains the infrastructure that delivers those public outcomes. So what we do as a construction industry has a huge impact on society”.

Highlights from Richard Threlfall’s Povey lecture are available to view on the JCT website at: corporate.jctltd.co.uk/jct-povey-lecture-2018

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JCT TRAINING – BOOK YOUR PLACE ON OUR 2019 COURSES

Our range of JCT Training courses are available to book for 2019. We have added new dates for the full range of our courses, including:

- JCT Contracts 2016 - The Legal Perspective
- JCT Intermediate Building Contract 2016
- JCT Standard Building Contract 2016
- JCT Minor Works Building Contract 2016
- JCT Design and Build Contract 2016
- Deciding on the appropriate JCT contract 2016
- For 2019 we also have a brand new course...
JCT Sub-Contracts 2016.

JCT Training is the most in-depth, detailed and authoritative training package on JCT contracts currently available - developed with experts involved in the creation of the JCT 2016 Edition of Contracts.

“Really useful guides on Selecting Contracts, in depth discussions on various clauses stressing importance and relevance of each.”

“Excellent overview of the JCT Suite of Contracts and some helpful guidance on interpretations of clauses.”

“How to use JCT Contracts to ensure smoother working.”

AVAILABLE COURSES

March 2019

13/03/2019	JCT Minor Works Building Contract 2016
19/03/2019	JCT Intermediate Building Contract 2016
21/03/2019	JCT Contracts 2016 - The Legal Perspective
28/03/2019	Deciding on the appropriate JCT Contract 2016

April 2019

03/04/2019	JCT Standard Building Contract 2016
30/04/2019	JCT Sub-Contracts 2016

May 2019

01/05/2019	JCT Design and Build Contract 2016
TBC	JCT Contracts 2016 - The Legal Perspective

June 2019

12/06/2019	JCT Intermediate Building Contract 2016
19/06/2019	JCT Minor Works Building Contract 2016

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INSURANCE AND JCT CONTRACTS

**DAVE CAHILL – SENIOR PARTNER, DIVISIONAL BUSINESS DEVELOPMENT LEADER,
JLT SPECIALTY LIMITED**

Introduction

The construction industry has returned to the headlines recently with the fires at the Glasgow School of Art and the London Mandarin Oriental Hotel. These incidents occurred either during or immediately after refurbishment works. Thankfully the losses were restricted to property damage and disruption with no loss of life. Nonetheless these events do serve as a powerful reminder of the different risks presented when working in existing structures.

The JCT suite of contracts has for many years sought to address the different risk positions presented by new build and refurbishment/extension projects. Fundamentally, JCT contracts recognise that working within existing structures, particularly when the project value is at the lower end of the spectrum, can create a risk/reward imbalance skewed against the contractor. This risk of damaging the existing structure and disrupting the employer's ongoing operations can be much greater than the potential profit from the project. Even if this risk is partly or wholly insured, the contractor carries the risk of increased insurance premiums, either from an increased risk perception or as a result of increased claims payments. This subtlety is not reflected in the other major UK forms of contract.

The Background

Refurbishment or extension work has a very different risk profile to new build projects. The enhanced risks relevant to this discussion involve damage to the existing structure and its contents. From the employer's perspective there will be an increased risk to the property and where applicable, ongoing commercial operations. The contractor will be concerned that despite its best endeavours, significant damage and disruption can occur.

JCT's Standard Solutions

Different project types have been catered for over the years by three alternative insurance options in JCT contracts. The first and second deal with insurance of the works for new build projects and are quite straightforward; either the contractor or the employer takes responsibility for insuring the works. These different positions, known as JCT Options A & B respectively, are well understood and provided for on a regular basis in the industry.

The third route, Option C, intended for works in or extensions to existing structures is more complex. This option provides that the employer arranges insurance on behalf of the contractor for the following risks:

- Damage to the works against "all risks" – this can be a misleading term as, naturally, it does not cover for all risks!
- Damage to the existing structure and its contents for

"specified perils" – the terms "all risks" and "specified perils" are defined in the contracts but the former is broader than the latter.

It is worth emphasising that all of these Options (A, B & C) create an obligation to insure up to the date of practical completion.

There are a number of reasons why this solution was chosen by JCT and we have summarised the key factors below:

- It is inequitable for a contractor, typically working to very slim margins, to carry the increased risk of damage to the existing structure and contents. The risk of negligent damage may be covered under its third party liability (TPL) insurance, but there will be an excess (or perhaps some other form of self-insurance), possibly uninsured costs and, if there is a significant claim, the prospect of increased premiums in future years. Importantly, the value of existing structures may exceed the level of insurance available to the Contractor.
- In the event of damage to the works and the existing structure, there could be a very difficult practical challenge in determining which policy responds and to what extent. This problem can be overcome by the employer insuring the works and existing structure with the same insurer or, even better, under the same policy.

So What's the Problem?

There are a number of issues that can arise. For example, the employer under the building contract is frequently a tenant in the building in which the works are being carried out and not the landlord. As a result the employer may have no influence or control over the insurance policy for the building. The landlord or his insurers may object to the inclusion of the contractor under the property policy (even for specified perils only) and this will make Option C an inappropriate solution.

Alternatively, it is always possible that the employer is the building owner and for whatever reason he or his insurer may have similar objections to those described in the first scenario above.

JCT's New Solution

This is not a new conundrum for those involved in the industry and for some time it has been recognised in JCT contracts which include constant reminders that the parties should take independent insurance advice before signing their contracts.

In the JCT 2016 Standard Building Contract (SBC) however, JCT has gone one step further than in previous editions by introducing a new option referred to as the "C.1 Replacement Schedule". This provides that the parties

and their advisors draft a bespoke insurance schedule which reflects the approach taken on the project and its specific circumstances. We are starting to see replacement schedules drawn up under JCT SBC 2016 but it is still early days and time will tell how the replacement option is put to use on projects.

In the meantime we have included some ways in which the existing clauses have been modified as an alternative to drafting a full replacement schedule.

1. Contractor to Provide TPL Insurance

Insurance of the works could be provided through adoption of either Option A or B (see above) and rely upon the contractor's TPL insurance for losses arising from negligence as per existing clause 6.4. Of course, this may be unacceptable to the contractor given the increased risk under its TPL programme. In addition, this could leave the employer vulnerable to claims for damage to the existing structure (and contents) not attributable to the contractor's negligence. Not forgetting that the employer may not be the building owner, this may require a more extensive TPL policy for the employer or perhaps some form of revision to the property damage indemnity provision in clause 6.2.

A variation of this solution involves the contractor taking out a project specific policy so that the impact of any adverse claims can be ring-fenced away from the annual policy. This arrangement can also be extended to cover any potential liability of the employer.

A further variation includes the contractor agreeing to take this risk under its TPL insurance (either annual or project specific) but only to a pre-agreed limit. Losses in excess of this limit would remain the responsibility of the employer, the

landlord or the insurer. The limit would need to reflect the specific circumstances but there would be little difficulty in procuring specific TPL insurance on this basis to a limit of, say £10,000,000.

Where reliance is being placed on Public Liability insurance, care must be taken to ensure that such policies do not contain 'care custody or control' exclusions that would exclude damage to the existing structures.

2. Contractor to Provide Existing Structure Insurance

This is an unusual solution which normally only occurs in very specific circumstances. The reasons why this is not acceptable really mirror the concerns that the employer or building owner may have about insuring the contractor under the building insurance. In cases where the contractor is providing insurance via its annual construction all risks (CAR) programme there may be legitimate concerns raised by the insurer about the nature of the risk. After all, CAR insurance is intended to cover construction works and not completed buildings. The contractor may also have concerns over the impact of losses on future cover and premiums.

However, this can form a more realistic solution in cases where the contractor is procuring a project specific insurance policy for the project and the risk is ring-fenced away from the annual programme.

Where Do I Start?

These are complex issues that will require experience and expertise in this specialist sector. Always make sure you engage at an early stage with a specialist construction insurance broker who will be able to offer advice on practical solutions and support during the contract negotiations.



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<http://corporate.jctltd.co.uk/jct-network-sign-up/>



JCT INTERVIEWS...



SUZANNE REEVES

**Partner, Head of Construction, Wedlake Bell
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.

Suzanne heads up the Construction team at Wedlake Bell and has been instrumental in its growth to a current team of 10 lawyers. She has acted for most sectors of the industry and in recent years has acted principally for developers. Suzanne has over 25 years' experience in the construction industry involving a wide range of projects large and small, such as hospitals and care homes, residential, office and retail development, manufacturing plant, sports stadia and infrastructure.

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

I became involved through the National Specialist Contractors Council (now Build UK). I wanted to become involved because JCT contracts were and are widely used and respected and I deal with them on a daily basis. I consider it important that all users, whether professional or the parties to the contracts, contribute to keeping up JCT contracts relevance to the market.

JCT: Can you tell us about any specific work you're currently doing with JCT – in particular your role with the JCT Drafting Sub-Committee, for example?

The work of the Drafting Sub-Committee is a continuing and on-going process and it is constantly looking to update and improve the contracts as well as to fill any gaps in the contract suite. I was involved in the last (2016) edition, and before that the (2011) edition both of which were major but well received updates.

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?

The great thing about working in the industry is being able to see tangible results as buildings of many kinds are brought to life – I have had a small part to play in some impressive buildings! It is an exciting industry to work in and an important one for the economy. However in my view it is undervalued. I believe that the low profit margins for which contractors and some consultants work makes little allowance for the inherent risks involved in a construction project - that is the source of many disputes and contributes to the industry's adversarial reputation.

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

See above! There is likely to be even more pressure on margins and prices due to labour and material shortages in an increasingly competitive market due to reduced investment whatever the outcome of Brexit.

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

Yes, I always think that it is the United Nation for construction, by nature a collaborative body used to balancing the interests and views of the industry sectors.

JCT CHAIR'S 'GOING DIGITAL' BIM GUIDE FOR CLIENTS PUBLISHED

'Going Digital: A guide for construction clients, building owners and their advisers', authored by JCT chair, Richard Saxon CBE, has been published by the UK BIM Alliance.

Richard Saxon, who originally published the book 'BIM for Construction Clients' in 2016, has revisited the topic to further update and simplify it, providing this new, eight-step, plain language guide that enables construction clients and building owners to see the long-term value of a shift to a digital way of working, and to take practical measures within their own businesses.

The first four steps – Becoming Aware, Strategy Making, Equipping the Client Office, and Formalising the Use of Digital Working – are considered an essential starting point, with optional steps to follow.

The guide recognises that different clients have different needs and will take the steps most relevant to them. The guide's incremental approach means that appropriate steps can be taken both by clients procuring smaller-scale or one off projects and by private and public bodies who regularly procure building works and retain their assets.

The guide also helps clients to understand the long-term benefits of digital methodology and helps them to build the business case and understand the value of investment in BIM.

Further, optional steps in the guide include an overview of

how productive BIM-based teams are formed, what decision support information is useful and what asset information could be delivered.

Finally, it looks at the creation of standards digital models of elements which repeating clients might need.

JCT chair, Richard Saxon CBE, said:

"Digital methods offer a step-change in value and productivity for clients. But these methods are not yet being adopted by mainstream private and public clients because they don't perceive that value.

"This guide focusses on the message to clients and to their advisers. It sets out a path for clients into the use of BIM and its related techniques. It uses plain language rather than the jargon which has sprung up amongst suppliers. It demonstrates the return on investment available and the nature of the investment required by clients."

To download the Going Digital guide, visit www.ukbimalliance.org and go to Resources.

The UK BIM Alliance is a campaign by all who want to see BIM become business-as-usual. Richard Saxon was assisted in the writing by Kester Robinson of Deploi: BIM Strategies, a consultancy where Richard also works, and by lawyer May Winfield, an authority on the legal side of BIM.



Met Office has teamed up with JCT to offer a comprehensive range of location-based reports, designed to help minimise the impact of weather on projects and support extension of time claims.

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The logo for JCT TRAINING, featuring the letters 'JCT' in white on a black rectangular background.The word 'TRAINING' in white, bold, sans-serif capital letters, positioned to the right of the 'JCT' logo.

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New training courses on JCT contracts, directly from the construction professionals involved in creating the JCT suite of contracts.

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