

JCTNEWS

THE JCT CONTRACTS UPDATE FOR THE CONSTRUCTION PROFESSIONAL

THE LOOKOUT, LEPE COUNTRY PARK

The Lookout, on the coastal edge of the New Forest National Park, is a new visitor centre and restaurant providing visitors with stylish recreational space in a picturesque setting. Hampshire County Council was both client and designer for this project, which used a JCT Standard Building Contract.

The Lookout at Lepe Country Park is one of the few points that provides easy access to the coastline within the New Forest. It has always been a popular spot with visitors, due to its history and stunning natural scenery. The evidence of Lepe's role in the preparation for the D-Day landings can still be seen; the beach was used to build some of the huge concrete caissons that were transported across the Channel to form the famous Mulberry Harbour, keeping the troops supplied during the invasion. Flanked by trees, the coast looks out across the Solent, with views of the Isle of Wight.

The previous café and visitor facility had become dated and suffered £100,000 worth of damage four years ago, when it was flooded due to a storm that struck the south coast. Plans to build the new café and visitor centre were approved in 2016. The project is part of an ongoing programme of work to improve and regenerate a number of country parks within Hampshire. The county council contributed £1.85m towards the project, which also received a £850,000 grant from the Enterprise M3 LEP Local Growth Fund.



Image: Jim Stephenson

The Lookout, Lepe Country Park

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Work on The Lookout was completed by the council's Property Services arm. The new centre includes a restaurant, visitor information point, offices, and supporting facilities. It aims to attract around half a million visitors each year.

The new design was inspired by inspired by MLTW's Condominium 1 at the Sea Ranch in California and Junzo Yoshimura's summer house in Japan, taking direct inspiration from the coast in its use of open, flowing lines, timber boardwalks, and straight geometries.

Inside, The Lookout comprises of two connected spaces. A simple box design at the rear of the building contains the service areas including offices, a meeting room, a visitor information point and the restaurant's kitchen. The front of the building contains the restaurant's seating area, which is more open and looks out across the beach through a band of large windows. A shallow-sloped pitched roof tops the space, which also houses clerestory windows to provide a view of trees to the building's rear.

The restaurant area connects at either end with east and west-facing terraces that are lined with curving timber balustrades. At the eastern end,

with views looking out to sea, there is a servery with outside tables for al fresco dining.

Whilst a small and relatively simple project, The Lookout did present several challenges for the project team. The site itself is a relatively restricted narrow strip of land. Constructing at beach level was a test of both the planning policy and the expertise and skill of the designers and engineers. It was also important that the ethos behind the project was reflected in the final building. The design and materials used needed to connect and be harmonious with the environment, but also reflect the location's often harsh and brutal conditions. This meant that longevity and robustness were equally important.

To achieve this, the building is elevated 2.5m above the beach to reduce its vulnerability to high water levels and tidal surges due to storms. The row of concrete fins that support the structure are set at a level that is designed to mitigate against rising water levels for the next 100 years. The shallow, mono-pitched roof provides necessary shelter and shading, whilst the use of glazing – the large band of windows facing out from the restaurant and clerestory windows in the roof connect to the sea and land respectively.

The straight lines of the timber boardwalks and roof mirror the coastline and provide a nautical flavour, whilst the looser shape of the timber clad terraces connects to the natural wave of the sea. The timber cladding that wraps the terraces is also used to line the stairs, some of the surface of the two main structural volumes, and a separate toilet block at beach level, further providing protection and an aesthetic link with the surroundings.

Since its original construction there have been further enhancements carried out, including upgrading the parking facilities, new installations of play facilities, and the addition of a sensory cottage garden, which was created with a local community group, the Friends of Lepe.

For a project designed to last 100 years against the elements, it is appropriate that it employs a contract that has been in use for nearly as long. The JCT Standard Building Contract With Quantities – analogous to the project itself – enables the requirement of a robust build and sensitive design to be accurately reflected. Its reliability and signifier of excellence within the industry provides smooth sailing for many a project, and as such, The Lookout will weather a storm for many years to come.

PROJECT SUMMARY

Start date:February 2017

Completion:July 2018

Size:355m²

Cost:£1.7m

Contract:JCT Standard Building Contract With Quantities

Architect:Hampshire County Council Property Services

Client:Hampshire County Council Property Services

Structural engineer:Hampshire County Council Property Services

M&E consultant:Hampshire County Council Property Services

Quantity surveyor:Hampshire County Council Property Services

Landscape consultant:Hampshire County Council Property Services

Main contractor:W Stirland

CAD software:Vectorworks

Annual CO₂ emissions:75kg/m²



Image: Jim Stephenson

THE DIGITAL TWIN: WHY, WHAT AND HOW

Chair's Letter



Richard Saxon CBE

The built environment is officially regarded as an enabler of the economy and of our quality of life. By the 'built environment' I mean the complex of economic sectors which plan, regulate, develop, design and build, operate and maintain the physical fabric of our civilisation, its buildings and infrastructure. These sectors total between 15 and 20% of the total economy and the current government view is that the success of built environment investments should be measured by the outcomes they support for the economy and society.

The Centre for Digital Built Britain set up at the University of Cambridge in 2017 has set out its agenda as to harness digital technology to enable understanding of how outcomes in society are enabled by built environment. By creating and analysing data flows between the public use of services, the organisations who provide them, the operators of the physical environment that houses them and the designers and builders of that environment the plan is to enable continuously improving practice and outcomes. The CDBB uses the term 'Digital Twin' to describe the setting up of a parallel, digital entity of each asset and its dynamic use such that human and machine learning is possible. Eventually, the collation of all available asset Twins would create a National Digital Twin, able to simulate possible actions to optimise outcomes.

But the digital landscape within the built environment is fragmented. Holistic approaches are not yet emerging. I see the complex of sectors as following different paths into digital working. The broad pattern of sectors is threefold: Property, Construction and Facility/Asset Management. Within each are many subsectors or silos, but the broad pattern describes the tripartite, life-cycle arrangement where owners and investors initiate built-asset projects, the design and construction world creates them and the occupiers operate, maintain and adapt them.

The three mega-silos are like an interlocking Venn diagram, as each silo overlaps the others. Owners also act as construction project leaders and asset managers; constructors build new but also maintain assets (half of all spend is repair, maintenance and improvement); facility and asset managers can be part of the owners and/or of the occupiers. Professional services are a big part of the picture and serve all silos.

The Property silo calls its technology applications Proptech. Applications cover analysing, marketing, financing and managing projects and assets. The Construction silo focusses on BIM applications and on 'reality capture' through scanning. The FM silo, slowest

to take up technology, is being marched rapidly into what it calls Smart Buildings, the operation of landlord and tenant space through sensors, analytics and actuators on the Internet of Things.

The silo overlap issue is not much appreciated yet. Developers want to use Proptech to manage projects, but BIM provides a generic platform for this. FM sees Smart as all-powerful but needs the asset model from BIM to complete their toolkit. Constructors are focussed on capital projects and don't yet see that the asset model could be of great value to occupiers. Whole-life appreciation and the study of outcomes is at a very early stage.

The idea of the Digital Twin is to provide a digital representation of something physical so that applications can help to optimise design, smooth creation and facilitate operation, all the while collecting data from in-use performance and outcomes to enable better future facilities. This feedback loop can also improve current asset performance by adjusting systems in situ. So, the Digital Twin is a combination of a data model of the artefact and the sensor/analytics/actuator approach to make the artefact a digital entity on the Internet of Things with a level of awareness, intelligence and adaptability. Software can steer the digital entity, with upgrades delivered down the line. This approach has long ruled in aerospace, is advancing rapidly in automotive technology and is now arriving in the built environment as costs drop dramatically.

The Digital Twin concept has the potential to unify the currently distinct silo approaches to technology use. It probably will mature gradually over the next five to ten years, as the Internet of Things, 5G telephony, Blockchain and other emergent approaches power up. Meanwhile, we have some useful approaches available already:

- A provider of Common Data Environments (CDE) focussed on the in-use phase, provides not just an Asset Information Model for FM but links it to many other data streams, from the building systems and the occupier's workplace management systems to the outputs of the occupier's ERP systems. This enables occupier outcomes to be assessed in relation to facility performance, with ability to optimise.
- An electrical equipment supplier, which already has digital twins for all its components, has linked with a workplace automation firm, to enable interoperation between the Building Management System and the Integrated Workplace Management System. The latter detects all occupants and their utilisation of space, so performance of the building can be adjusted to meet use.

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THOMSON REUTERS

JCT PROVIDES LEADERSHIP & INNOVATION WITH NEW BIM GUIDANCE & DIGITAL CONTRACT TECHNOLOGY

JCT used its annual Construction Industry Parliamentary Reception, hosted at the House of Commons on Wednesday 22 May 2019, to update the industry on two areas where it is providing innovation and leadership - BIM and digital contract technology.

The recent publication of JCT's latest practice note, *BIM and JCT Contracts*, furthers the understanding of BIM related legal and contractual issues, providing practical, clear guidance to project participants and their professional advisers.

The reception, hosted by Eddie Hughes MP, was also an opportunity for JCT to share its developments in digital contract technology and its two digital services, JCT On Demand and JCT Construct.

JCT On Demand enables users to purchase a digital version of a JCT contract and complete the contract in a secure online environment using an intuitive Q&A process. Many of JCT's best-selling forms are already available in this digital format.

JCT Construct builds on this by offering a feature-rich digital subscription service. It includes advanced editing features, enabling users to add their own customised text, as well as other functionality, such as guest sharing for collaborative working, and version-to-version comparison. Attendees at the reception were able to view a video summary, showing the highlights and core functionality of the service.

JCT Construct is currently in its trial stage and notice of its release will be announced to users who are signed up to the JCT Network at corporate.jctltd.co.uk/jct-network.

Both services are set up in a secure, flexible online environment



Image (l-r): Nick Deeming (JCT vice chair and chair of JCT BIM Working Group), Nikola Evans (JCT technical author), Richard Saxon CBE (JCT chair), Andrew Croft, May Winfield, David-John Gibbs (principal authors, *BIM and JCT Contracts*)

that makes working with JCT contracts easy for users. Comparison documents, which are output with drafts and final versions make it easy to see the changes from the published JCT text, ensuring full transparency.

JCT chair, Richard Saxon CBE, said:

"JCT was the first contract authoring body to provide specific guidance on BIM and construction contracts, with the publication of its first BIM practice note in 2016, along with integrating specific BIM provisions into the 2016 Edition of JCT Contracts.

"We are delighted to be able to build on this success with the release of our latest practice note, *BIM and JCT Contracts* which helps to demystify and provide guidance to users working with JCT contracts who want to successfully incorporate BIM into their contractual processes.

"We are also focused on providing leadership and innovation digitally, with the release of our new digital contract services, JCT On Demand and JCT

Construct. Many users have already benefitted from the convenience and ease-of-use of JCT On Demand, and we are very excited to soon be able to offer even more functionality and useful online drafting tools with our JCT Construct service."

There are several resources for JCT users who are looking for more information about our work on BIM. The JCT website has a dedicated page at corporate.jctltd.co.uk/initiatives/bim and the new practice note, *BIM and JCT Contracts*, can be purchased from the JCT online store, at www.jctltd.co.uk/product/bim-and-jct-contracts, where users can also find more information.

In addition, Episode 1 of the brand new JCT podcast explains all about JCT's work on BIM and the creation of the latest practice note. Featuring JCT vice chair and chair of the JCT BIM Working Group, Nicholas Deeming, and JCT technical author, Nikola Evans, the podcast is available at corporate.jctltd.co.uk/podcast.

COURT OF APPEAL CLARIFIES MEANING OF “PRACTICAL COMPLETION”

JOE BENNETT – ASSOCIATE AND ALISTAIR MCGRIGOR – PARTNER, CMS

A Court of Appeal decision in March has provided authoritative guidance as to when “practical completion” of construction works will be achieved. The existence of patent defects which are more than trifling will be sufficient to prevent “practical completion” and the intended purpose of the works is of relevance only in determining whether such defects are trifling. This considerably narrows the approach adopted by the TCC at first instance which allowed greater scope to consider the significance of individual defects and their effect on the intended purpose of the works.

Mears Ltd v Costplan Services (South East) Ltd: a recap

Mears entered into an agreement for lease with Plymouth (Notte Street) Limited (the “Developer”) to take a 21 year lease of two blocks of student accommodation to be constructed in Plymouth. The Developer engaged a contractor to build the blocks under a JCT Design and Build contract and appointed Costplan as its Employer’s Agent.

The building of the blocks was delayed by almost a year and Mears alleged there were a number of defects in the works. Most notably, Mears claimed that around 50 of the student rooms constructed had been built more than 3% smaller than specified in the agreement for lease.

In this context, a dispute arose between the parties as to whether practical completion of the works had occurred. Among other things, Mears sought a declaration that practical completion could not be achieved whilst there were known defects which were “material or substantial”. The TCC declined this declaration and adopted a more flexible approach: defects which were not “de minimis” (i.e. trifling) may or may not prevent practical completion “depending on the nature and extent of [them] and the intended purpose of the building”.

The Court of Appeal

Mears appealed on a number of issues. In relation to practical completion, the Court of Appeal made a comprehensive review of the authorities and adopted a narrower approach than the TCC. In the Court of Appeal’s judgment, the central question was whether a defect was “de minimis” or trifling. If it was, it would not prevent practical completion. If it wasn’t, practical completion could not be certified. In this respect, the court described Mears’ proposed declaration that practical completion could not be achieved whilst there were material and substantial defects as “relatively uncontroversial” (although the court still declined the declaration for other reasons).

In reaching this decision, the court cast doubt on previous cases which had indicated a potentially broader approach (and others which were even stricter). The court also provided helpful guidance more generally as follows:

1. Practical completion is itself difficult to define and there are no hard and fast rules.
2. The existence of a latent defect will not prevent practical completion.
3. It makes no difference whether a defect involves an item of work not yet completed or one that has been completed but is defective.
4. The existence of patent defects will be sufficient to prevent practical completion, save where they are trifling in nature.
5. The ability to use the works as intended may be a factor in considering whether a patent defect is trifling in nature (for example, in this case the fact that the rooms were 3% smaller did not prevent the rooms from being used as student accommodation). However, such an ability does not necessarily mean that the works are practically complete.
6. The mere fact that a defect is irremediable does not mean the works are not practically complete. The question remains whether the defect is trifling in nature.

Conclusions and implications

This is an important Court of Appeal decision which provides significant clarity as to the meaning of practical completion where that term is left undefined in the context of construction works (as is the case with the majority of standard form documents). Whilst practical completion remains “easier to recognise than define”, the Court of Appeal has set the bar at a much higher level than the original TCC decision. Any defects must be “trifling” if practical completion is to be certified. Significant defects cannot be discounted on the basis that they do not prevent the works from being used for their intended purpose.

References:

Mears v Costplan Services (South East) Limited [2018] EWHC 3363 (TCC).

Mears Ltd v Costplan Services (South East) Ltd [2019] EWCA Civ 502.



(UN)SIGNED, SEALED, DELIVERED: ANCHOR 2020 V MIDAS CONSTRUCTION

GEORGE EYRE – HARDWICKE

It is common practice for parties in the construction industry to undertake work under a letter of intent before the contract is formally executed. This practice ensures that design can be undertaken, materials can be procured, the site can be prepared and, ultimately, work can begin notwithstanding ongoing contractual negotiations.

However, letters of intent often form the basis of disputes and their contractual status can be unclear. For example, letters of intent have been:

- held to have no contractual effect (*Whittle Movers Ltd v Hollywood Express Ltd*, where the Court of Appeal held that the appropriate claim for remuneration for work conducted pursuant to non-binding letters of intent was in restitution).
- characterised as interim but binding contracts (see the recent example of *Arcadis Consulting (UK) Ltd v AMEC (BCS) Ltd*).

Uncertainty, and with it disagreement, is plainly likely when contractors perform work in anticipation of a final contract that is never formally executed. That was the case in *RTS Flexible Systems v Molkerei*, where the employer sent a letter of intent containing a draft contract. It also contained a “subject to contract” clause which stipulated that the terms within the letter of intent would not be binding unless executed by both parties, which it was not. The Supreme Court held that the parties had nevertheless entered into a binding agreement: on the evidence, the parties had agreed to waive the “subject to contract” requirement.

The recent case of *Anchor 2020 Ltd v Midas Construction Ltd* raised similar issues to *RTS* but will be of particular importance to the construction industry, not least because the contract in question was a *JCT Design and Build Contract, 2011 Edition*.

Anchor 2020 Ltd v Midas Construction Ltd

Anchor had intended to employ Midas to construct a retirement complex at Yateley, Hampshire under an amended *JCT Design and Build Contract, 2011 Edition*. The parties were not able to agree the final contract before the start date and the works were carried out over a series of letters of intent, the last of which was expressed to expire on 30 June 2014.

On 21 July 2014, Midas signed off on the JCT terms and novation agreements. It also appended a risk register that purported to exclude certain elements from the scope of works. Anchor disagreed with the inclusion of the risk register and did not countersign the contract. The issue of the risk register was not resolved, but Midas nevertheless carried out the works.

A substantial final account dispute arose between the parties and the TCC was tasked with determining the contractual

basis of the relationship as defined by five preliminary issues. Anchor argued that a binding contract was made on the 21st of July 2014. Midas, in order to support a claim for a *quantum meruit*, denied there was such an agreement on the basis that Anchor had never executed the JCT.

The TCC's decision

Waksman J found that there was a binding contract on the essential terms of the JCT agreement.

In his judgment, Waksman J applied *RTS Flexible Systems* and cited Lord Clarke's judgment:

“The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a precondition to a concluded and legally binding agreement.”

This means that the fact that the contract was intended by both parties to be signed, as indicated by the presence of a signature field, and from Midas seeking signatures from Anchor from time to time, was not conclusive against a binding agreement in circumstances where those signatures had not been given. Indeed, *RTS* showed that even when a written agreement intended to be executed by both parties expressly requires a signature, the lack of a signature is not conclusive against their being bound.

Waksman J found that Midas must have accepted it was entering into a contract at the point of its signature because it always insisted on a contract being in place, plainly considered there was one in place when it signed, and would not have continued to perform under the JCT terms until practical completion if it did not consider it was bound to do so.

The evidence showed that many essential terms of the contract had already been agreed between the parties. The only reason Anchor had not signed the contract was because the issue with the risk register had arisen. This did not show that there had not been a contract between the parties in respect of the terms (and specifically the payment terms) of the JCT. Waksman J rejected the submission that the inclusion of

the risk register was a counter offer from Midas and held that, even if there was a difference in substance created by the risk register, it was consistent with Midas seeking a variation.

It followed that on an objective assessment of the parties' communications and conduct, they had intended to be bound on 21 July 2014 at the point of Midas' signature and the payment provisions of the JCT applied.

This being decided, there was no need for the court to consider the arguments in respect of quantum meruit. Nevertheless, Waksman J provided instructive obiter guidance on what he would have decided. In short, Waksman J found he would have decided any quantum meruit claim on the basis of the payment provisions of the JCT, notwithstanding the fact that any quantum meruit analysis necessarily assumed the parties had not agreed that those terms would govern their relationship.

When will there be an agreement?

Just as was the case in *RTS Flexible Systems*, it is clear from *Anchor v Midas* that a lack of execution by one or both parties will not necessarily mean they have not reached a binding agreement.

Both cases demonstrate that, especially where there has been substantial performance by the parties, the courts will not be constrained by technical arguments as to the subjective intention of the parties for their actions to be governed by a legal relationship.

Moreover, *Anchor v Midas* highlights the difficulties involved when letters of intent expire prior to the finalisation or execution of the anticipated contract: "a move from a contractual to a non-contractual" arrangement.

Clearly where there is an interim contract under which a party is performing and a final contract that has not yet been agreed, it is possible for the parties to be in a binding contractual relationship on an interim basis while negotiations are ongoing or where there has been a failure in execution. What terms of the putative final agreement are incorporated into the interim agreement will be a question of fact for each case (see *Arcadis v AMEC*).

Where a letter of intent expires, as in *Anchor v Midas*, and no subsequent contract is executed, then there is a potential contractual lacuna. While the parties' continued performance will often indicate that they continued to be bound by a contract, there remains the more difficult question as to what the terms of that contract would be. In circumstances where the terms of the interim contract and the putative final contract differ, the answer to this question is fertile ground for disputes.

Are the courts picking and choosing when to enforce the parties' requirements?

It is interesting to contrast *Anchor v Midas* with last year's well-known Supreme Court decision in *MWB Business Exchange Centres Ltd v Rock Advertising Ltd*.

In that case, overturning the Court of Appeal, the Supreme Court found that it was possible for the parties to bind their hands as to the form of future variations to their agreements. Giving the leading judgment, Lord Sumption cited with approval the comments of Longmore LJ in *North Eastern Properties Ltd v Coleman*:

"If the parties agree that the written contract is to be the entire contract, it is no business of the courts to tell them that they do not mean what they have said."

Therefore, is it not a starkly different approach for the courts to suggest that parties can be bound when they were ostensibly proceeding on the basis that they would not have an agreement unless it was signed by both parties (as was the case in *RTS*)?

The clearest distinction is to be found in the fact that one situation concerns the pre-contractual understandings of the parties, the other their agreed, post-contractual liberties. As Lord Sumption put it:

"Party autonomy operates up to the point when the contract is made, but thereafter only to the extent that the contract allows. Nearly all contracts bind the parties to some course of action, and to that extent restrict their autonomy. The real offence against party autonomy is the suggestion that they cannot bind themselves as to the form of any variation, even if that is what they have agreed."

This means that where the parties have agreed to a constraint on their abilities, the courts will generally enforce it. It is an entirely different issue to ask whether the parties have agreed at all and, if so, what are the terms of that agreement. When addressing the latter question, it is abundantly clear that the courts will not take the word for it: they will assess the question from an objective, uninterested perspective.

Practically it seems there is still great value in Lord Clarke's (now nearly a decade old) warning in *RTS Flexible Systems* of the:

"... perils of beginning work without agreeing the precise basis upon which it is to be done. The moral of the story is to agree first and to start work later."

This advice is all the more pertinent given Waksman J's obiter comments in *Anchor v Midas* to suggest that parties between whom there is no binding agreement may nevertheless find themselves in effect bound by the very terms they had failed to agree.



JCT RELEASES NEW PRACTICE NOTE – BIM AND JCT CONTRACTS

JCT has released its latest practice note, *BIM and JCT Contracts*, providing up-to-date guidance for using JCT contracts on construction projects where BIM is to be used.

The aim of *BIM and JCT Contracts* is to further the understanding of BIM related legal and contractual issues and suggest ways of approaching such issues in a collaborative and constructive way.

It also provides practical, clear guidance to project participants and their professional advisers.

The practice note focuses on the use of BIM with the JCT Design and Build Contract (DB), as the most popular form of contract on projects employing BIM. It includes a commentary pointing out provisions that may be most impacted by or relevant to a project using BIM and provides suggestions on matters to bear in mind, including preparing and incorporating a BIM Protocol. The specific Design and Build Contract clauses referred to in the commentary are also set out in the document for ease of reference.

Other parts of the practice note include suggestions on the main topics that may be covered in a BIM Protocol, a checklist of typical items to be considered by the Employer and the Employer's professional advisers in formulating the Exchange Information Requirements at pre-tender stage, a glossary of terms, and a bibliography to enable readers to further their knowledge and understanding.

It is produced by JCT's BIM Working Group, specifically set

up to address developments in BIM and its integration with construction contracts. Principal drafting was provided by May Winfield, Andrew Croft and David-John Gibbs.

JCT vice chair and chair of JCT BIM Working Group, Nicholas Deeming, said:

"The recent Winfield Rock report demonstrated the lack of expertise in the legal industry regarding the contractual implications of the drafting of contracts in respect of BIM. We very much welcomed the opportunity to work with May Winfield and her colleagues at the UK BIM Alliance to author some new guidance for those drafting contracts.

"JCT is playing a key role in leading the construction industry and helping to improve the understanding of BIM and its effective reference within the detail of a contract.

"We have based this advice on JCT DB as the most used BIM related contract. The advice may be adapted to other forms of JCT contract with professional guidance."

JCT was the first contract authoring body to provide specific guidance on BIM and construction contracts, with the publication of its first BIM practice note in 2016, along with integrating specific BIM provisions into the 2016 Edition of JCT Contracts. *BIM and JCT Contracts* builds on those developments to provide more guidance for use on projects using BIM.

For more information and to purchase BIM and JCT Contracts, visit jctltd.co.uk/product/bim-and-jct-contracts.

EPISODE 1 – BIM AND JCT CONTRACTS

In this podcast we talk about JCT's work on BIM, including the formation of our BIM Working Group, the publication of our Public Sector Supplement 2011 which considered BIM in relation to construction contracts for the first time, the publication of our first BIM practice note, Building Information Modelling (BIM) - Collaborative and Integrated Team Working, and our work to incorporate the BIM provisions contained in the Public Sector Supplement into the JCT 2016 Edition of Contracts.

Joining us in this episode are Nick Deeming, JCT vice-chair and chair of the JCT BIM Working Group, and Nikola Evans, JCT technical author.

corporate.jctltd.co.uk/podcast



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- Another major electrical engineering group is acquiring one of the core BIM software houses to link modelling capability to dynamic data capture and control.
- A BIM software provider is acquiring companies to enable it to cover Integrated Workplace Management Systems (IWMS), in effect adding awareness and control to asset information management.

I think that we should be alive to the fundamental difference between building-related technologies and occupier technologies. Just as

space is only an enabler of economic, social and environmental outcomes, so built environment technology must not stray into the occupiers' sphere without thought. The technology of medicine, of education, of the office workplace, even of the home, is distinct from that of the facility in which the function happens. Those technologies will evolve separately and rapidly. The built environment needs to support the users with the infrastructure for their purposes but not invade privacy, attract risk or expose itself to overly rapid obsolescence.

There is much to consider as the Digital Twin concept emerges. The Cambridge Centre for Digital Built Britain has set out 'The Gemini Principles' to guide us and a roadmap for the Information Framework needed. What is clear is that whole-life cycle thinking needs to become the norm in the built environment, with players connecting the silos rather than throwing their outputs over walls. It's human nature to limit your horizons to the familiar and short-term. The Digital Twin could help us to transcend that.

BIM and JCT Contracts, Brand new Practice Note for 2019.

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Setting the standard for construction contracts



THOMSON REUTERS

JCT INTERVIEWS...



JOHN LITTLER

BSc. Dip.Adj. MRICS ACI Arb.

Founder and owner, Q-Consult
Construction Consultants

RICS representative, JCT Council

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.

John Littler came into the industry at the age of 18 under a traditional "pupilship", as a trainee QS with John Laing Construction (as it was then). His 13 years in contracting provided valuable practical experience of negotiating and administering main contracts and sub-contracts, mostly JCT forms.

In 2001 John decided to turn to consulting, at first forming a new partnership but then setting out on his own with his practice, Q-Consult, based in the North West. He provides commercial and contractual advice, as well as dispute resolution services, to his contractor and sub-contractor clients.

John is dual qualified as a chartered quantity surveyor and chartered project management surveyor. In 2018 he added a Diploma in Construction Adjudication to his other professional qualifications and has his sights set on becoming an adjudicator.

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

JL: From early in my career I've had a particular interest in contracts – colleagues and clients have pointed out that it's bordering on "un-healthy" – so in 2010 when I saw that

the RICS was advertising for someone to join its Contracts Steering Group I immediately applied. I was invited to join that Group, which also included the three RICS representatives on JCT Council.

The Group received copies of the JCT Council minutes so that it could feed into its Council Representatives, and I became familiar with the matters that Council dealt with. In 2015, one of the RICS representatives stood down from Council and, with the support of the other two, Chris Linnett and John Riches, the RICS gave its approval to me taking the vacant position.

JCT: Can you tell us about any specific work you're currently doing with JCT (e.g. any work with working groups/committees)?

JL: For me, the most interesting part of being on Council is the opportunity to see, consider and comment upon new drafting, as it moves from Drafting Sub-Committee to approval through Council. One of the largest new drafts to be worked on since the 2016 Edition has been the development of a Target Cost Contract. As well as the usual discussions over specific drafting there has been an interesting debate between the Colleges on one or two key principles, with advanced argument and reasoning being put forward by those with opposing views. That is the fascinating thing about JCT and the various Colleges represented on Council - from those opposing views the right balance always seems to be found.

JCT: Do you have any personal career highlights?

JL: During my time at Laing I worked on many interesting and varied large projects but, as a Consultant providing dispute support, the real highlights come from watching the stress and confusion lifting from a client's face as you break down their problem and start to piece together a strategy to fix it.

Most of my contracting days were spent working with JCT contracts, learning how to apply, operate and administer them. Much of my time as a consultant has been spent dealing with contractual problems and the disputes that arise from them. Involvement with JCT offers an opportunity to feed that experience back into the development of future contracts and I hope to become more involved with the Drafting Sub-Committee.

JCT: What are you most proud of about the construction industry as a whole and where do you think it most needs to improve?

JL: Each building project is rarely the same as the last one that you worked on. You usually have to deal with different designs, different locations, a new site team, new consultants and new sub-contractors for each project. It is not like running a widget factory – you don't get time to test out subtle and slight changes to see if the widget quality is improved, or its cost reduced. You have to get it right, first time, and often at speed. To do that you have to be an excellent listener and communicator, pay attention to detail, be able to plan carefully, but also adapt and think on your feet. I'm proud to work amongst those people within the industry who fit that specification – they get the job done properly and efficiently, despite each project being a new challenge.

Where we need to improve is that there are too many within the industry who do not meet that specification.

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

JL: The Latham Report, some 25 years ago, quite rightly opened

the industry's eyes to the need for greater collaboration. That has been echoed in further reports, strategies and reviews since then and great steps have been made, but we are not there yet. The attitudes of people working in the industry is still a huge barrier. In my experience there remains a large proportion of people, at all levels in the industry, who have not yet come to realise the benefits of proper collaboration or who just cannot avoid stepping back into their trench when the going starts to get tough.

The challenge lies in training, not just to change those attitudes but to achieve the highest professional standards that we can. Improving the attitudes and standards of professionals already in the industry has an obvious direct and immediate impact, but it also improves the wider image of those professions and helps to draw in a higher calibre of candidates to become the professionals of the future.

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

JL: Using a JCT form of contract gives parties comfort that they have engaged on a well drafted, even-handed standard form. Its long period of development and historic legal "testing", along with its familiarity in the industry, significantly reduces uncertainty of interpretation. Yet there are still those parties and individuals who adopt the "put it in the bottom drawer" approach and go on to manage their project on what they consider to be good practice or "the way we've always done it".

JCT already provides training, helping users to understand that the contract should be used as a tool kit or rule book with which to run and manage a project. That is an area where I believe JCT can bring real benefits. By improving the skills of those who prepare project documentation, and widening the knowledge and understanding of those who then operate and administer those contracts, JCT could really make a difference. A well drafted contract, properly operated, will go a long way to providing for a smoothly run project.



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