

JCTNEWS

THE JCT CONTRACTS UPDATE FOR THE CONSTRUCTION PROFESSIONAL

HOUSE LESSANS, COUNTY DOWN, NORTHERN IRELAND

This family home, built on the site of a small farmstead in County Down, Northern Ireland, used basic materials but a high level of attention to detail to create an outstanding quality building on a very modest budget. Designed by McGonigle McGrath Architects, with Hans Crosby as main contractor, it was winner of both the RIBA and Grand Designs House of the Year 2019 and was built on a JCT Intermediate Building Contract.

The brief for this project was to create a simple property to accommodate a semi-retired couple and their adult children, who were occasional visitors. Beyond providing a suitable home, a connection to place and the existing surroundings was a key requirement. The site, set on a small farmstead in the drumlins of County Down, Northern Ireland, contained an existing barn and shed with a double yard. The approach to the property, via an overgrown lane, conceals the enclosure created by the yards and the low walls, as the view of the drumlins beyond is predominant from the road.

Traditional Northern Ireland barns feature curved tops clad in corrugated steel, atop a simple masonry structure. The property echoes the barn in design, with its pitched roof resting on a brick-built structure. It comprises two simple elements, arranged in relation to both the existing barn and landscape. A more domestic scale is provided through material choice however, swapping the corrugated steel for a zinc roof and white-rendered



Image: Aidan McGrath

House Lessans, County Down

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Image: Aidan McGrath



concrete walls for the structure. The rooms are arranged within the two elements according to function and requirements for light, privacy, and view. The first element contains the bedrooms and is positioned so that it creates a sloping arrival yard and enclosed space to the rear. The second element is oriented to maximise the view and contains the larger living spaces, whose generous volumes echo the barn interior. Large windows are carefully positioned to frame views that connect the building to the landscape and courtyards. The window frames are embedded within the wall reveals to further convey the barn-like feeling of openness towards the landscape.

The link between the internal and external is reinforced by the line created where the roof and the walls meet. This not only provides a fixed point where walls and windows stop and roof begins, but also a consistent line, inside and out, between rooms and external spaces at different levels, helping to embed the building within the landscape.

The fact that the building structure and form has been derived from the language of the local agricultural landscape has enabled the project to be completed on a modest budget. Cheap materials, such as concrete and brick, and basic construction methods – the pitched roof and masonry construction for instance – enables cost to be kept at a minimum. Other cost saving measures include using large windows that are fixed throughout with openings for ventilation – a much more cost-effective option than moving windows or sliding glass doors.

Whilst materials and construction methods have been deliberately chosen to minimise budget, expense has not been spared in attention to detail and the quality of finishing, which is precise and restrained. The concrete blocks are rendered outside but painted inside with flush mortar joints to leave a perfect finish. The careful use of cheaper construction materials has opened the door for more options in the final look of the building – swapping steel for zinc in the roof for instance, or the use of terrazzo and robust joinery. This has further linked the house to its surroundings by maximising the craft and expertise of specialist local contractors.

House Lessans is an example of a project which simultaneously respects, reflects, and enhances its surrounding landscape. The physical embedding of the property within the site to reduce its impact from the road creates a quiet presence that opens up to the landscape beyond the yards formed in relation to the neighbouring barn. From its entrance, between the two functional living elements, either the view orientation or enclosed orientation can be accessed, consolidating the sense of place. The building successfully respects its history, surroundings, and function in its design and construction, but the quality and attention to details provide an appropriate and attractive domesticity which enhances its environment. The use of the JCT Intermediate Building Contract echoes this project theme, in providing a familiar contract on a traditional procurement method, that is also able to offer a range of options to cover complexity and consideration in design and construction.

HOUSE LESSANS PROJECT DATA

PROJECT START
November 2017

PROJECT COMPLETION
April 2018

FLOOR AREA
235m²

COST
£335,000

CONTRACT
JCT Intermediate Building Contract

CLIENT
Private

ARCHITECT
McGonigle McGrath

MAIN CONTRACTOR
Hans Crosby

QUANTITY SURVEYOR
MJ Donnelly Quantity Surveyors

STRUCTURAL ENGINEER
MWL Consulting Engineers

TOWARDS VALUE-BASED PROCUREMENT

Chair's Letter



Richard Saxon CBE

I return to this topic again as it advances continuously. Government struggles with its procurement policy as forces pull in opposite directions. On the one hand, established practice is to seek lowest capital cost for design and construction in order to spread available resources over the most constituencies possible. On the other hand, there is growing awareness that processes seeking lowest first cost tend to produce poor value. Value is not just price, but a more complex concept embodying benefits and costs created for stakeholders over the life of an asset. These benefits can be economic, but also social and environmental. Lowest first cost can be at the expense of whole-life cost as so-called 'value engineering' downgrades specification to hit Capex targets or make more profit than is possible at the bid price. Low capital cost can also be at the expense of environmental performance standards, with building regulations still being a low bar to cross and nowhere near 'Net-Zero'. Social value is increasingly a focus in procurement, defined as benefit to the community in which a development is planned, creating local jobs, skills and amenities.

The form of a policy is emerging which seeks to square these opposing forces: Value-based Procurement. It seeks to buy design and construction based on a broad definition of value rather than lowest price, but at the same time it encourages modern methods of construction, with standard, manufactured elements to reduce time and first cost at source.

The idea of an 'Investment Value Index' is being defined. The IVI would set parameters for public procurement which include whole-life economic, social and environmental requirements for any project to deliver. The weighting of a whole series of factors would be variable but within limits common to the public estate. The weighting concept is like that of a 'graphic equaliser' in sound recording: a set of sliders to balance the sound levels gathered from all microphones and pickups. Competing proposals could thus be marked consistently and not subject to the common failing of judging quality then moving separately to price, with the lowest bid usually outscoring others with higher quality content. A data-driven process is envisaged, minimising subjectivity.

At the same time the Association for Consultancy and Engineering, ACE, has published work on the future of consultancy. It aligns with the government shift of emphasis to seek outcomes, not outputs. This simple phrase raises a multitude of issues however. Outcomes are the results achieved by the occupier in the facility, like better exam results, faster recovery from sickness or lower recidivism. Outputs are square metres at desired cost and time. The ACE thinks that consultants should change from being rewarded for time spent to deliver outputs to a share of the benefit from delivered outcomes. That is too idealistic in my view: not only would reward follow too long after work is done, but the success of an outcome is merely enabled by the facility, not delivered directly. The occupier organisation is crucial to success.

I therefore like the Investment Value Index concept. It creates proxy outcomes by defining the balance of value that the client seeks, a mix of value propositions that are thought by the client to enable the delivery of the desired outcomes but are measurable at design stages, at handover or at in-use evaluation.

A challenge for Value-based Procurement comes from the difficulty of assembling an integrated project team before any substantive design is available. Public clients are used to selecting designers, choosing a design, then tendering for contractors who price the design. Value-based Procurement assumes that teams are formed first, to include constructor input to the emerging concept, especially necessary if it includes a manufacturing approach. With nothing to price, clients are going to need to rely on the qualitative abilities of their IVI tool to judge competing teams, then move on to selecting the best-scoring option produced by the selected team after interaction with the stakeholders. Cost, both capital and whole-life, will be just one of the benchmarks in the IVI, as a brief initially, then as a criterion for judgement.

It is quite likely that competing teams will be drawn from framework agreements which pre-qualify bidders and set standards for collaborative working and technology use. There is a lot to learn before teams can play this new way and the selection process for the framework will be one preparatory method.



ALLIANCING WITH EXCELLENCE

PETER HIBBERD



Peter Hibberd

Those involved with construction frequently berate themselves and others for its poor performance; often rightly. However, there remains a failure to recognise fully what can be done to improve. The tendency to concentrate simply on improving efficiency is not enough because one can be efficient without creating value. What must be improved is quality and productivity as these will create project life value for the client and a better return to the participants without increasing costs disproportionately.

Those two objectives are achieved through appropriate procurement processes but evidently there are differences of opinion as to which process. Whatever procurement process is adopted, none will work effectively in delivering a successful whole life asset without leadership, management skills, design and technical competence and an appropriate legal framework. Even then, for those requirements to be successful there must be collaboration, which in turn is dependent upon trust, fairness and honesty. Behavioural capabilities and motivation should not be underestimated in the part they play in creating relationships that deliver superior outcomes. In recent years alliance arrangements for contracting, which some would suggest is a form of partnering, have emerged and these are similarly dependent.

What then is different about an alliance? Recently King's College Centre of Construction Law suggested the contractual principles that support a 'successful' alliance were; shared objectives, transparent performance measurement, aligned commercial interests and collaborative governance, which collectively underpin shared risk management. Indeed, much the same as partnering. Obviously, such issues have the greatest potential impact where a series of projects are involved rather than a one off; scale is a major factor but not necessarily the determining one. An umbrella such as a framework agreement partly meets those requirements but something more is needed because for each contract called off under a framework agreement there is often a need for an underlying contract such as JCT's Constructing Excellence.

Some observers believe that legal requirements get in the way of partnering type arrangements, which rely on trust and good faith, and that if you need such an

agreement then the approach has failed; however, that view is too simplistic. A more frequent complaint about partnering, collaboration and alliancing is the lack of an effective legal agreement; they are too touchy feely and lacking in teeth. The reality is that participants endeavour to establish shared objectives and work with absolute good faith within a legal framework that not only supports these but provides a mechanism in the unfortunate event of breakdown.

An alliance arrangement, like partnering, is not a specific procurement method but rather a concept that can be used with or incorporated into many forms of contractual arrangement albeit some better than others. That is where JCT's Constructing Excellence Contract (CE) together with its Project Team Agreement (PTA) come in: no need to start devising further documentation. CE is an established means that fulfils all the specific requirements identified for an alliance and much more. It embraces early involvement of those involved in sponsoring, delivering and promoting open relationships which work to provide the best solutions that properly take account of sustainability and in turn reduce waste. It not only underpins collaborative working but also promotes the formation of integrated teams, transparency in all things, including risk, and shared objectives. CE's overriding principle is working together and it operates throughout the supply chain using a series of bi-lateral contracts. That together with each party's primary obligations concerning communication, collaboration (which includes consultation) and transparency are the drivers that improve the outcome both in terms of productivity and quality.

CE, as with any partnering or an alliance approach, requires a different mind set for creating the cultural shift where positivity flourishes and blame becomes redundant. But for this to arise it is also necessary, in addition to establishing clear objectives, to establish the basis for fair payment that properly takes account of the project's risks. In this regard one must choose the appropriate payment option (section 7), provide a risk register and determine the risk allocation schedule (section 5). A valuable attribute of CE is that it deals with all the important requirements of a project and provides a precise framework for completion by the parties. It does not shy away from areas such as insurance, copyright, termination and dispute

resolution, which are equally necessary for alliance type arrangements. The contract also provides specifically for health and safety and sustainability and for measurement of performance using key indicators. CE is an effective legal framework that recognises the statutory framework within which construction operates yet avoids making liability overly complex.

The PTA is a supplementary agreement to CE and is for bringing together the members of the project team in a multi-party agreement. Its objective is to guide the successful delivery of the project through both its design and construction. This is done by working transparently using well defined processes and may, optionally, adopt risk and reward sharing arrangements by taking into account the project

final cost and its previously agreed target cost. Like the contract, this agreement also requires early involvement of matters that might lead to disputes and the project team is tasked with conciliation so as to maintain good working relationships.

There is little doubt that those engaging in an alliance are presented with much the same issues that must be addressed as those entering any other contractual arrangement. Success does not come by avoiding issues but by embracing them and in so doing working together to build the alliance that delivers quality and productivity gains. JCT's Constructing Excellence is ready made to support that objective. It is familiar yet remains novel: it is flexible yet provides discipline.



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CONSTRUCTION CONTRACT MISTAKES: THAT WASN'T QUITE WHAT WE MEANT

VICTORIA PECKETT – CMS

When rectifying contracts to fix drafting mistakes, what happens if the parties disagree on what was meant?

Construction contracts are often so voluminous that it can be easy for mistakes to creep in when putting them together and for the executed contract not to reflect what the parties think they have agreed in all respects. Often these mistakes can be sorted out by agreement — either the parties will amend the erroneous parts in manuscript before dating them, or if necessary they can sign up to a variation agreement to sort them out.

But what happens if the parties don't agree that there's been a mistake, or how it should be resolved? The aggrieved party can apply to the courts for rectification of the contract. Rectification allows a court to amend a legal document if, because of a common mistake, it does not reflect the intention of the parties.

What does the aggrieved party have to show? What standards are applied when deciding whether there's been a common mistake?

And will the courts look at the parties' actual state of mind (a subjective test) or will they judge the issue objectively?

The Court of Appeal recently looked at this issue in *FSHC Group Holdings Ltd vs GLAS Trust Corporation Ltd*.

FSHC entered into a complex corporate acquisition in 2012. Due to an oversight, the assignment of the benefit of a shareholder loan was omitted from the documents effecting the acquisition. This was subsequently spotted by FSHC during a review in 2016. At that point, FSHC agreed to correct this omission, and did so by signing up to two deeds that acceded to two pre-existing security agreements. These agreements contained onerous additional obligations. FSHC claimed that all parties involved had intended that these deeds would do no more than provide the missing security and that no one intended that these additional obligations would apply. When GLAS disagreed, FSHC applied to the court for rectification.

At first instance, the judge decided that no one involved in the transaction at the time had reviewed the pre-existing security agreements, and therefore no one had recognised that the accession deeds would have the effect of binding FSHC to the additional obligations. He held that this result was both objectively and subjectively unintended, so that it did not matter whether the objective or subjective test was correct. He therefore granted rectification of the accession deeds so as to exclude the additional obligations.

GLAS appealed on the basis that the correct test was objective and that an impartial observer would have concluded that the parties intended the additional obligations to be binding on FSHC.

After a detailed review of previous case law, the Court of Appeal decided that there could be two different scenarios in which rectification might apply:

- **Contract to execute a further document:** if the parties make a binding contract that requires them to execute a document containing particular terms, but the document they eventually execute mistakenly contains different terms, then the court can rectify the executed document. The court decided that this should be treated as a type of order for specific performance of the agreement to execute the document – and as a result the usual objective contractual test should be applied.
- **No prior contract:** if a document is executed without a prior contract, but by mistake the parties' common intention at the time of executing the document is not reflected in its actual terms, then the court can rectify the document based on the equitable principle of good faith. The test in this case is subjective, since good faith is ultimately concerned with a party's conscience. However, the parties must not merely have had the same subjective intention, but must have communicated that intention to each other. Only if the parties understood that they had a shared intention would it subsequently be unconscionable to take advantage of the common mistake.

On the facts of this particular case, the Court of Appeal held that there was no prior contract, so the applicable test was subjective. Based on the findings at first instance, there had been a shared subjective intention as to the legal effect of the supplemental deeds that had been communicated by FSHC to the lender. As a result, the judge's order to rectify the contract would stand and the appeal would be dismissed.

The court acknowledged that the need in the “no prior contract” scenario to prove the parties' state of mind creates a significant obstacle to rectification. However, the court saw this as a positive feature, on the basis that the written words of a contract should have primacy except in rare circumstances.

The court's insistence that rectification should be rare and not easily granted is a reminder that parties should closely scrutinise contracts they intend to sign. While this may not be an appealing step to take when everyone is keen to start work, it may be invaluable in avoiding the cost and difficulty associated with rectification applications.

Victoria Peckett is partner in, and co-head of the construction and engineering team at, CMS UK.

This article was first published in Building Magazine on 5 September 2019.

DIGITAL TECHNOLOGY WILL CHANGE THE CULTURE OF THE CONSTRUCTION INDUSTRY

A vision for the future of the construction industry and society as a whole was shared by Professor Alan Penn in delivering the JCT Povey Lecture 2019, entitled “Our digital future: space and place in a digital world”.

Professor Alan Penn delivered his lecture to JCT delegates at 18 Smith Square, London on Wednesday, 20 November 2019.

Professor Alan Penn showed that throughout human history, developments in technology have impacted the way in which we have developed our built environment, and how we have orientated ourselves in urban spaces over time.

Tracing back towards the development of the first human dwellings around 10,000 BC, through to innovations such as written language, the development of legal and political systems, trade, currency, the emergence of large cities and the impact of the industrial revolution, through to the technological developments in transport and communications, Alan Penn demonstrated not only how our spaces have been shaped by these events, but also how human behaviours have developed within them over time.

Considering the digital age, Alan Penn showed how we are now in another era of rapid development, and reflected that digital, rather than being something that is happening to us, is in fact a product of our own invention, which creates a number of opportunities and challenges.

Specific to the construction industry, the more we can understand the impact of digital technology on our relationship to place and space, the better we make a real and positive difference to the actual development of our construction.

One impact of technologies such as Internet of Things, biometric identity, blockchain and distributed ledger technologies, AI, among others, could be to culturally engender more trust throughout the industry by making accountability and responsibility more transparent.

“Digital is a human invention. We can’t separate out the digital world from our human universe and say it’s happening to us because we have made it and it is our product.”

“We’re now in another period of rapid development with technology such as sensor nets Internet of Things, robotics, AI, biometric identity, etc.

“Using digital technologies such biometric identity to gather real data and build trust could transform culture – both in construction and society”.



Professor Alan Penn, JCT Povey Lecture 2019 speaker

Alan Penn is professor of architectural and urban computing, The Bartlett, UCL, and chief scientific advisor to the Ministry of Housing Communities and Local Government.

He was chair for the Research Assessment Exercise in 2008 and the Research Excellence Framework in 2014 for the subject area of architecture, built environment, and planning – the quinquennial review of university research in the UK.

He is a founding director and chair of Space Syntax Limited, a technology firm that uses advanced computing to assist in urban and building design and masterplanning projects.

He has recently founded the Construction Blockchain Consortium, an industry academic collaboration which is investigating the application of distributed ledger technologies in built environment applications.

The JCT Povey Lecture is an annual event, where an eminent person is invited to give their thoughts on significant matters that are relevant to the construction and property industry. The purpose of the lecture is to stimulate thought and encourage ways of continuing to improve the quality and value of construction output. The event was inaugurated in 2003 to acknowledge and pay tribute to Philip Povey, who served JCT for fifty years.

Video highlights of Professor Alan Penn’s Povey Lecture can be viewed at <https://corporate.jctltd.co.uk/jct-povey-lecture-2019/>.



WORKING WITH BIM AND JCT CONTRACTS

MARK PANTRY – FENWICK ELLIOTT

In May 2019, JCT introduced a new Practice Note, *BIM and JCT Contracts*. JCT says that the aim of the Practice 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. Mark Panty explores the extent to which JCT have achieved this.

The construction industry continues to make progress with the implementation of digital technology in construction projects. It is, however, widely accepted that the construction sector significantly lags behind other sectors in capitalising on the benefits of digital technology.

The construction industry's approach to digital technology has been dominated by Building Information Modelling ("BIM") and the implementation of BIM on projects looks to be increasing year on year.^[1] While this yearly increase may be true in relation to the technical implementation of BIM it does not appear to have been matched by the contractual application, with some building contracts not accurately reflecting the BIM activities being undertaken in practice. This perceived gap in understanding of the legal and contractual implications of BIM is the focus of the Joint Contract Tribunal's ("JCT") new Practice Note – *BIM and JCT Contracts* (the "Practice Note").

JCT has previously published similar practice notes and supplements on the contractual integration of BIM into its contracts but the 2016 suite of contracts introduced standard (albeit optional) BIM drafting to coincide with the UK Government Construction Strategy of May 2011, which required a minimum level of BIM on all centrally procured public sector projects by 2016. Drafting of the Practice Note was provided by the team at the UK BIM Alliance.

While the Practice Note assumes a base level of understanding of BIM, it is intended to be a practical guide, using the JCT's most popular contract, the JCT Design and Build Contract ("JCT DB"), as the basis for its discussion of the relevant clauses. However the guidance provided should be applicable to the other forms of JCT Contracts being used on a BIM-enabled Project.

The Practice Note is split into two parts. Part A is a detailed commentary on the provisions in the JCT DB that are, or could be, relevant where BIM is implemented on a project. The relevant clauses of the JCT DB which are discussed in Part A are provided as extracts in Appendix 3 to the Practice Note. Part B is a BIM Protocol checklist, suggesting a non-exhaustive list of main topics which may be covered by a BIM Protocol.

A similar list of topics for the drafting of the Exchange Information Requirements at pre-tender stage is set out at Appendix 1 to the Practice Note.

In an area dominated by acronyms and definitions (the meaning of some having been changed following the introduction of BS EN ISO 19650), Appendix 2 to the Practice Note contains a helpful glossary of BIM terms.

The Practice Note's commentary raises some interesting points on the provisions of the JCT DB which may be impacted by BIM being used on a project:

- **BIM Protocol** – the BIM Protocol must be specifically identified in the contract particulars; it does not automatically apply where a BIM Protocol is included in the contract documents without reference in the contract particulars. JCT does not publish a form of BIM Protocol and the parties must agree the form of BIM Protocol to be used on a project during the pre-contract stage. The chosen BIM Protocol should be reviewed to ensure that, from both a technical and contractual perspective, it does not contradict the terms of the contract or the other contract documents. The checklist at Part B of the Practice Note is a useful tool for reviewing a BIM Protocol for use on a project.
- **Precedence of Contract Documents** – the BIM Protocol is a "Contract Document" under the JCT DB; if there is any conflict between the BIM Protocol and the contractual terms of the JCT DB then the contractual terms prevail. This contradicts some model BIM Protocols, including the Construction Industry Council's ("CIC") BIM Protocol, 2nd edition, which states that the protocol will prevail. When using the CIC BIM Protocol with the JCT DB, the parties should consider which document, the BIM Protocol or the JCT DB, should prevail where there is a conflict and amend the documents accordingly.
- **Design Submission Procedure** – it is often overlooked that a BIM Protocol replaces the design submission procedure set out in Schedule 1 of the JCT DB. The parties should make sure that the BIM Protocol sets out agreed procedures and timings for the submission and approval of designs. Most contractors will be comfortable with the procedure set out in Schedule 1 of the JCT DB (the Employer marking information A, B or C) and some BIM Protocols use similar digital processes.
- **Access to the common data environment** – following the decision in *Trant v Mott MacDonald*,^[2] the parties should consider who has control of the common data environment ("CDE") and how access is monitored and facilitated. The parties should also consider in which circumstances access to the CDE could be restricted.
- **Relevant Events and Relevant Matters** – the Relevant

Events and Relevant Matters in the JCT DB make no reference to BIM but the parties should consider which, if any, BIM-related events should entitle the Contractor to an extension of time and/or loss and expense. For example, if the BIM Protocol was amended by the Employer during a project, would the Contractor be entitled to additional time? Similarly, if unauthorised persons uploaded data to the CDE incorrectly, will the Contractor be entitled to recover its time and costs in rectifying the CDE?

- **Practical completion and defects** – the BIM Protocol should set out what is to be provided prior to practical completion of works. The Employer's proposed use of the information should also be stated; if an Employer was intending to use the information to form an Asset Information Model ("AIM"), then the Employer's specific requirements in this regard should be clearly detailed in the BIM Protocol.
- **Changes** – the parties should consider how Changes are instructed and whether the instruction of any Changes will affect the operation of the BIM Protocol.
- **Insurance** – contractors should review their professional indemnity insurance policy or speak with their insurance brokers to determine whether their policy covers the delivery of BIM under a project. If a contractor is hosting

a CDE that is the target of a cyber attack, does it have sufficient insurance in place?

- **Termination** – the BIM Protocol should include sufficient detail on the procedures following termination of the contract. The consequences of termination may depend on the reason for the termination but it is likely that both parties will require some access to the CDE following the contract being terminated.

Conclusions

The increased use of BIM in construction projects is welcomed as part of the wider uptake in digital technology. With the technical and practical implementation of BIM increasing, the contractual position should not be forgotten and the parties to a contract should give sufficient consideration to the operation of BIM within the underlying contractual provisions.

With BIM and the JCT DB this is centred on the BIM Protocol, and the JCT's Practice Note is a helpful starting point for parties who want their contract to adequately incorporate what they have agreed on BIM for a particular project.

Mark Pantry is an Associate at Fenwick Elliott, the UK's largest specialist construction and energy law firm.

References

^[1] <https://www.building.co.uk/focus/bim-survey-2018-the-rise-and-rise-of-bim/5096188.article>

^[2] <https://www.fenwickelliott.com/research-insight/annual-review/2017/uk-bim-trant-mott-macdonald>



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THOMSON REUTERS

JCT INTERVIEWS...



CHARLES EDWARDS

**Head of Chambers and Barrister at
New Temple Chambers**

**Fellow of the Chartered Institution of
Civil Engineering Surveyors**

**Member of the JCT Council,
ICES representative**

**Member of the Contracts and Dispute
Panel and the CMPC of the ICES**

**Member of the Technology and
Construction Bar Association
(TECBAR)**

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.

Charles Edwin Edwards is a practising Barrister and a Fellow of the Chartered Institution of Civil Engineering Surveyors, specialising in construction and engineering law. He read interdisciplinary design in the built environment at the University of Cambridge (Departments of Engineering and Architecture) with research on UK construction contracts. At King's College London, the Centre of Construction Law, Charles reviewed and analysed the law of costs in relation to adjudication, arbitration and construction litigation.

Charles specialises in both contentious and non-contentious construction matters, advises and acts for contractors, subcontractors, developers and consultants. He has a track record in successfully advising from inception to completion on major construction projects. These include the following sectors: building, industrial, infrastructure, office, rail, residential, mechanical and electrical, sports.

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

CE: I became a member of the JCT Council through my

involvement with the Chartered Institution of Civil Engineering Surveyors (ICES), Contracts and Dispute Resolution Panel of which I am member.

With over 24 years of commercial and legal experience in the construction industry dealing with, amongst other things, JCT contracts, I have acquired comprehensive expertise in dealing with the complex, contractual arrangements on major construction projects and also in the resolution of disputes. All of this experience enables me to effectively represent the ICES on the JCT Council as well as contribute to the work of the JCT Council.

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

Since joining the JCT Council in September 2019, I have been involved with the JCT Council in considering and discussing key issues in relation to the future development of JCT contracts.

JCT: Do you have any personal career highlights?

I have been fortunate to have been involved with a wide cross section of major construction projects, including the relocation works involved with the London 2012 Olympic Games, ExCel Exhibition Centre, and Crossrail. One of the many highlights of my career related to a JCT contract I drafted and amended for an employer which was challenged in arbitration and then on appeal in the High Court (Technology and Construction

Court). It was found by the High Court with the amendments I made to be robust and very clearly allocated the burden of unforeseen or unknown risks.

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

First of all, I have a keen interest in architectural history and design. I am proud of the construction industry in the way in which it manages to evolve, transform lives and deliver world-class buildings which are increasingly sophisticated and smart whilst at the same time environmentally sustainable.

With regards to improvement, in my opinion the two major areas which need improvement are the adoption of collaborative working within the construction industry with the increased use of BIM and better payment practices.

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

CE: I consider the main challenges for the construction industry over the coming years to include the effective use of smart technology, health and safety in the work place, and addressing poor payment practices.

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

JCT contracts are one of the most widely used in the construction industry in the UK and on that basis, it is important that the JCT contracts continue to evolve with new case law, modern methods of construction including off-site manufacturing, promote best practice, encourage prompt payment, and provide the necessary provisions in the contract to encourage an environment of collaborative working.

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April 2020

Wednesday, 1st April: JCT Minor Works Building Contract 2016

Thursday, 2nd April: JCT Standard Building Contract 2016

Thursday, 21st April: JCT Contracts 2016 - the Legal Perspective

May 2020

Wednesday, 13th May: JCT Design and Build Contract 2016

Tuesday, 19th May: JCT Sub-Contracts 2016

June 2020

Tuesday, 9th June: JCT Contracts 2016 - the Legal Perspective

Wednesday, 10th June: JCT Minor Works Building Contract 2016

Wednesday, 18th June: JCT Intermediate Building Contract 2016

Find out more about JCT Training, visit:

jctltd.co.uk/jct-training



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