FEBRUARY 2023

Setting the standard for construction contracts

JCT NEWS

THE JCT CONTRACTS UPDATE FOR THE CONSTRUCTION PROFESSIONAL

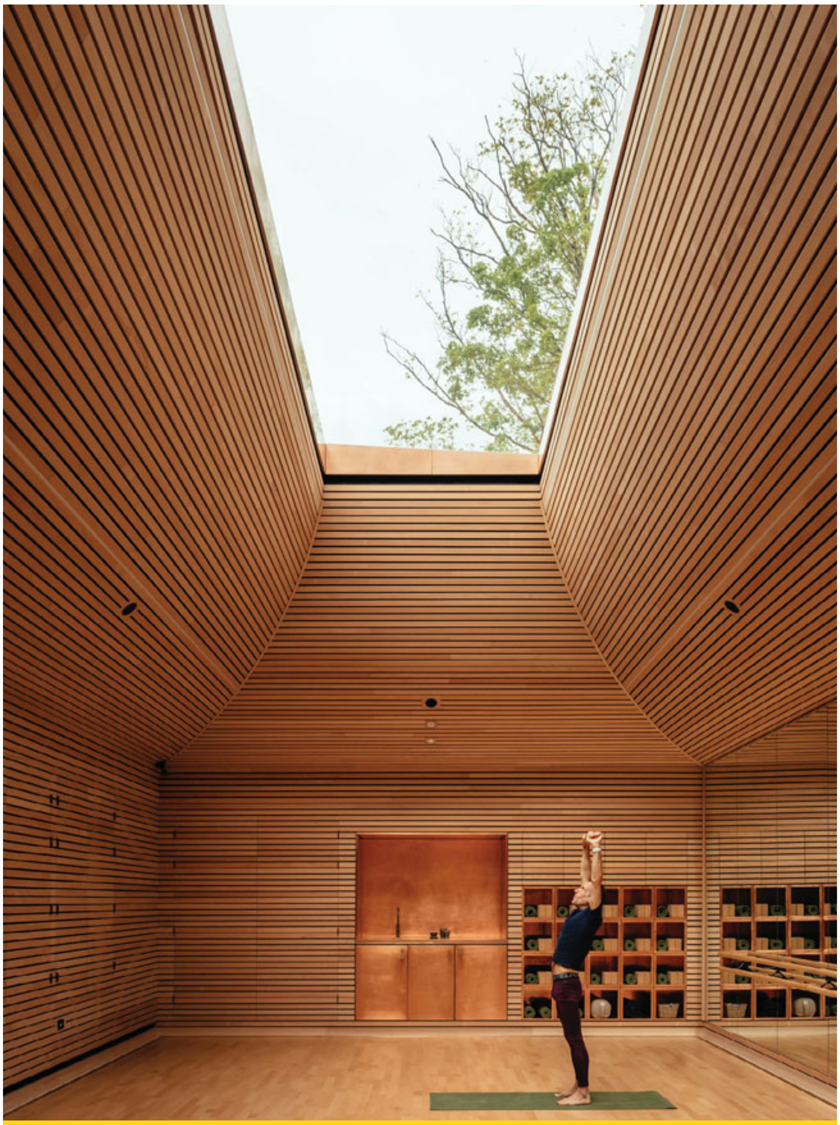
YOGA STUDIO, THE NEWT IN SOMERSET

The Yoga Studio is the latest of three buildings at The Newt in Somerset hotel, designed by architects, Invisible Studio. Displaying the architect's reputation for innovative and unusual design, the building was constructed on a JCT Intermediate Building Contract.

The Newt in Somerset hotel's new Yoga Studio joins a recently installed gym and lakeside apiary (known as the Beezantium) created for the hotel by Invisible Studio, the architects founded by Dr Piers Taylor, co-presenter of BBC series *The House That £100k Built* and *The World's Most Extraordinary Ordinary Homes*. Across the three buildings is a shared approach to material choice and design, which not only reflects Invisible Studio's philosophy regarding simplicity, function, and sustainability, but also nods towards the Newt's original Georgian limestone construction and colour palette.

The Yoga Studio (as with the gym) uses a rammed stone construction. The stone used is a local Hadspen limestone with a distinctive red hue that ties in with the main hotel building. Crushed from 45mm to dust, the stone is combined with a specially constructed binder. The project team worked with the Material Science Lab at the University of Bath to experiment and establish the correct combination, which is a lime/GGBC/cement mix. The stone was mixed on site and poured by bucket into the formwork. Stainless steel tubes in the wall ventilate a Surecav formed cavity. The external wall is tied back through the Surecav to a ply sheathing fixed to an internal stud wall.

The striking feature of the rammed stone exterior is the way that the roof meets it with no overhang. The roof membrane is installed over the parapet at the top to protect it but is held back from the edge just enough to conceal it. The exposed portion is further protected by a shelter coat. The copper detailing of the roof echoes the materials used for the apiary and, as it ages, compliments the slate seen elsewhere on the hotel's other buildings.

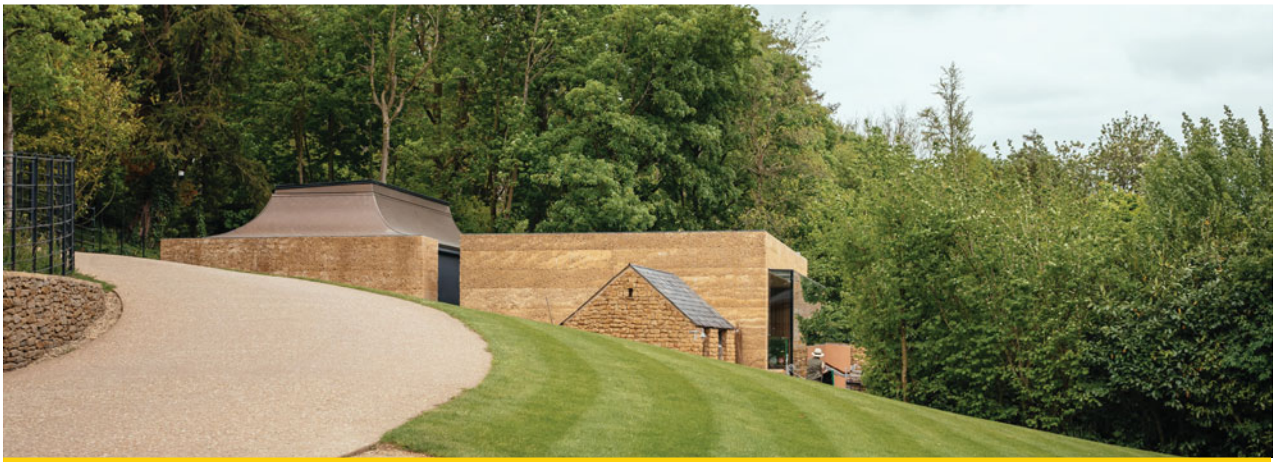


Yoga Studio, The Newt in Somerset, interior © Jim Stephenson

Continues on page 2 >>

SWEET & MAXWELL

THOMSON REUTERS®



© Jim Stephenson

Yoga Studio, The Newt in Somerset

Natural light and the choice and positioning of windows is an important design feature of all three of the new buildings. The gym, for instance, is oriented to its view of the garden via the use of a huge window. The Yoga Studio however, focuses light in through the ceiling via a massive 11m long rooflight made of a single double-glazed unit. From the interior the funnel-like way that light is drawn into the space contributes to its spa-like atmosphere. The feeling of warmth and tranquillity is intensified by the uniform colour scheme of beech slats which line the walls from floor to ceiling.

Invisible Studio is well known for the way it combines form and function, often with low cost or reused materials. Operating out of its self-built studio in a working woodland near Bath, it has created a low-cost micro-home made from wood and recycled materials, and a model-making workshop with a timber frame and fibreglass panel cladding, amongst many other structures.

The Yoga Studio encapsulates the aim of incorporating local materials, connecting with the landscape and existing architecture and utilising a limited palette to maximum effect. This is further supported by the use of the JCT Intermediate Building Contract, which is ideal for a project of this scale where there is a certain level of complexity and flexibility required. It provides a familiar and reliable set of terms which allow a modern and striking project to be delivered.

PROJECT SUMMARY:

START:
JULY 2021

COMPLETION:
APRIL 2022

GROSS INTERNAL FLOOR AREA:
100M²

GROSS (INTERNAL + EXTERNAL) FLOOR AREA:
110M²

CONTRACT:
JCT INTERMEDIATE BUILDING CONTRACT

ARCHITECT:
INVISIBLE STUDIO

CLIENT:
EMILY ESTATES

MAIN CONTRACTOR:
KEN BIGGS

STRUCTURAL ENGINEER:
HYDROCK & GLASS

M&E CONSULTANT:
E3 CONSULTING

QUANTITY SURVEYOR:
CURRIE & BROWN

PRINCIPAL DESIGNER & CDM CO-ORDINATOR:
HOOKWAY PARTNERSHIP

CDM CO-ORDINATOR:
HOOKWAY PARTNERSHIP

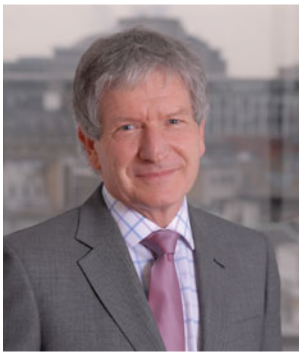
APPROVED BUILDING INSPECTOR:
LOCAL AUTHORITY

CAD SOFTWARE:
MICROSTATION

3

THE RISK OF VOLATILE PRICES ON A BUILDING PROJECT

PETER HIBBERD



In September 2021, the Bank of England stated that inflation may reach 4% by the end of that year. The talk, by some, that this was alarmist and that we should not overreact to rising prices is now seen to be way off beam. General inflation has increased significantly since then and in September 2022 it had risen to circa 10% according to ONS. How wrong can one be! The construction materials indices are even more variable and reflect price increases in specific materials affected by supply problems. Overreacting now to inflation and volatile prices is one thing but making sensible provision is another.

Fluctuations in labour and material prices in relation to construction projects can, and do, quickly erode a contractor's margin. Conversely, overproviding for them in a tender means the employer pays more than necessary. Over recent years, prior to the start of 2021, price inflation had been benign. That situation led to those entering building contracts giving little consideration to its impact and for the need to incorporate fluctuations provisions in their contracts. Consequently, much knowledge of fluctuations, together with the expertise to advise and calculate them, has been diminished.

Prior to 2021, yearly inflation had, since 1992, only exceeded 5% on one occasion, so perhaps that is not surprising. However, during the previous twenty years (1971-1991) it was seldom below 5% and reached a peak of over 24%. That is history, and many people never contemplated that history would repeat itself. Well, it seldom does exactly, but sufficiently enough to put one on notice. History, and indeed economics, will also tell us that a significant upward movement of prices, such as we have been experiencing recently, can also quickly turn downwards, particularly so for certain goods. The question then becomes, are we going to react to inflation just as the curve turns downwards. Maybe, maybe not. The problem is we do not know, we can only make an informed assessment. What we do know is that over the past year or so there has been increasing concern about inflation because of monetary and fiscal policy, both here and abroad. Furthermore, inflation is being exacerbated because of shortages, both of materials and labour, and additionally could also lead to project delay, which could further affect the prices paid for construction inputs. Also, there is a greater risk because of an increase in geopolitical tensions.

Predicting inflation rates in such circumstances is fraught with difficulty and it is now clear that inflation is a bigger problem than many have previously encountered. Although it may be near, or over its peak, it will remain a significant issue for some time. Therefore, it is prudent to make provision for dealing with price volatility in a building contract. That is generally true, regardless as to whether inflation is benign or otherwise because volatility in levies and prices can emerge without much warning. Provision for inflation in a building contract should not be by just simply increasing the tender price by an arbitrary figure, or indeed pricing the risk in a sophisticated way. It may prove more than adequate, and the building employer may well pay more than they might otherwise. Conversely, it may be inadequate, and the contractor suffers loss that in some instances could be terminal. Some see the main advantage of fluctuations is that the employer only pays the actual cost incurred rather than the contractor's estimate of increased costs, however, others understandably have a different view.

The increased possibility of changes to the types and rates of contractor's contributions, levies, and taxes payable as an employer, was evident with the recent introduction of the national insurance surcharge, albeit quickly reversed. It is a sign of the times and of how quickly things can change. There is a need to keep an eye on government finances following the cost of support provided during the coronavirus pandemic and any consequent decisions to redress the situation. Such events could readily trigger other changes in contributions, levies and taxes and there is an increased chance that such changes will arise. Although VAT is outside the remit of the fluctuations provisions, and not adjusted under them, it is still another factor that may have an impact.

The other issue that urges consideration of the incorporation of fluctuations provisions is that there can be significant volatility in the cost of materials regardless of general inflation. Construction material's inflation frequently diverges from general inflation. Two years ago, when general inflation was around 2%, we could see, for example, the World Construction Industry Steel Purchasing Price Indices showing a 40% increase between April 2020 and February 2021, and that the oil price had risen by close to 400%. Consequently, where there is a high content of certain items in a building project, contractor's profit margins can be put at risk, unless there is protection under the contract. Or, depending on the timing of events, employers would pay more than they need. During 2022 these figures have changed significantly. General inflation is now around 10%, whereas the price of steel and diesel has fallen back. Shortages in supply exacerbate price increases and it is not difficult to identify commentators predicting that certain materials will be likely in short supply during 2023. The point here is that we are seeing wide variation in input prices and the ability to second guess what they will be at the point of purchase during a building project is extremely limited. Therefore, as a matter of risk management, one must consider the effect of inflation upon the building contract at the time of entering the contract. A point that is made in the Construction Playbook version 1.1 September 2022 under the section on risk allocation, but curiously, not made in the earlier version of December 2020. A sign of changed times.

In determining the approach to fluctuations, the usual principles of risk management should be followed. That is assessing what chance the risk will arise, who is best able to assess that risk and who is best placed to mitigate and/or incur the consequences of that risk should it arise. When carrying out this process in relation to fluctuations we should keep reminding ourselves that although prices generally trend higher, they can go down as well as up and often do following steep rises. Fluctuations provisions in a building contract are for the benefit of both parties, but they are seldom viewed that way.

The RICS published a guidance note entitled 'Fluctuations' in 2016 and which sets out what it considers best practice. In that guidance it makes the point that QSs need to be familiar with the respective contract methodologies, and the associated means of assessment. Fluctuations are also referred to at 2.6.1 in the RICS New Rules of Measurement 2nd edition UK October 2021 (NRM2). RICS members are on notice and must act with care. A failure to do so puts them at risk of professional negligence.

JCT has always recognised the risk of inflation and makes provision for it in its fluctuations clauses. JCT provides for three approaches to fluctuations, namely Option A (which deals only with contribution, levy, and tax payable as an employer), Option B (which additionally covers labour and materials costs) and Option C (formula adjustment using the Formula Rules).

The principal 2016 editions of JCT contracts that refer to all three Options are: Design & Build Contract (including its sub-contracts), Standard Building Contract (including its sub-contracts), Intermediate Named Sub-Contract, Construction Management Trade Contract, and the Management Works Contract.

The Minor Works, and the Intermediate Building Contract, only contain what is Option A, with no reference to the Options B or C. The logic is that those forms of contract are for small scale, short duration work and, consequently, the risk is deemed to be small, perhaps to be accurate one should say smaller. Smaller contractors and clients can be impacted disproportionately because of their inability to withstand relatively small changes. Consequently, in certain circumstances, such as those which currently prevail, it is appropriate to consider whether Option A alone is sufficient, and indeed, the Contract Particulars of those contracts allow for the incorporation of Options B or C by clear reference, or the insertion of the parties' own fluctuations provisions.

In September 2020, I advised that 'in such circumstances those entering contracts for projects of more than a few months should consider the desirability of using a suitable fluctuations provision.' That advice remains because everyone must now be aware of the problem with rising prices and increasing volatility.

http://corporate.jctltd.co.uk/wp-content/uploads/2020/09/Future-Projects-the-impact-of-Covid-19-and-Brexit-v1.pdf

By contrast to other JCT principal contracts for large scale works, neither the Major Project Construction Contract nor the JCT - Constructing Excellence Contract expressly contain fluctuation provisions. However, that does not mean they cannot provide for them. That can be done through the Pricing Document under the Major Project Construction Contract, and by identifying fluctuations as a risk under the JCT - Constructing Excellence Contract when the contract sum option is used. In either case, one must include or specifically identify details of how fluctuations will be determined. Such requirements may be modelled on one of the JCT Options. At present, fluctuations are a significant risk, and the allocation of that risk needs particular consideration.

To reiterate, it is essential prior to entering a contract to carry out a risk assessment, which must include fluctuations, and the availability of materials and labour. Such an assessment will guide the user to the most appropriate means of dealing with the identified risks. Current circumstances suggest that wide cover is secured in respect of fluctuations unless one is entering into cost plus type arrangements. That means the use of either Option B (Labour and materials cost and tax fluctuations) or Option C (Formula adjustment).

The time involved in preparing calculations, especially for materials, under Option B, has put off some practitioners from using it, but it should not because all approaches to calculating fluctuations involve time and effort with the exception of a broad-brush approach. The latter approach of a single index, or similar, may work but its accuracy for any given project is questionable. Whatever route one chooses it is essential that there is the experience in the team to ensure that fluctuations assessments can be properly carried out. If not, it could lead to claims, and with a myriad of associated problems.

Where Formula adjustment is adopted, it is prudent to consider the Work Category method in preference to the Work Group method because of hugely variable price changes related to some materials and trades. In such circumstances it should more accurately reflect the differences that arise. The BCIS currently publishes Price Adjustment Formula Indices (PAFI) for various sectors but those for building and specialist engineering are the most relevant for JCT contracts. The BCIS indices are a subscription service, which may lead some to make an alternative, and possibly inappropriate decision as to the fluctuations provisions to be used.

Never overlook the impact of volatility of wages and materials and changes to levies etc. To do so will often end in pain for one or other party. Be sure to incorporate the relevant fluctuations provisions following a risk assessment. General inflation is one thing, construction specific inflation is another. Where they simultaneously arise it spells an even bigger danger to the parties to the contract.

Join JCT's YPG

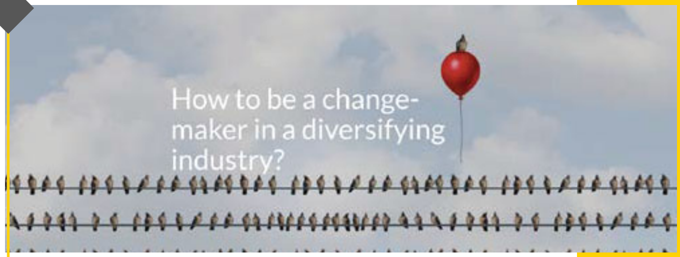
Networking and resources for new construction professionals.

Once you are a member you can start connecting with your peers across the industry, share information, and can access a whole host of benefits for just £5.

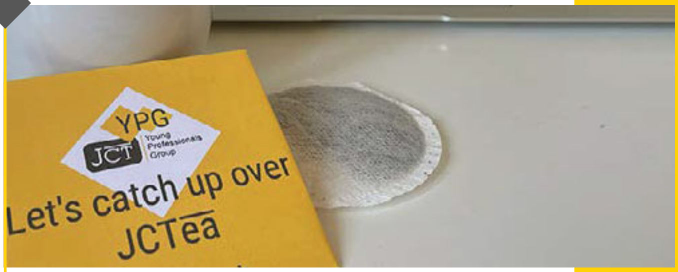
- Link up with your peers from across the industry to gain information and perspectives from a range of construction disciplines.
- Join events and webinars that give you a vital update on a range of key issues within the industry: learn what construction companies can do to “future proof” their projects, hear all about the role of digitalisation in building a safer future, find out how to be a change-maker in a diversifying industry, and learn more about the benefits of modular construction and offsite manufacturing.
- Quickly and easily join online as an individual member, or get corporate membership on account by teaming up with a minimum of 5 colleagues.
- Get a 10% discount on JCT Training online courses.
- Access your own account on the YPG online portal – home to a growing hub of articles, videos, and other resources, and where you can sign up for networking events, and join in on comments and discussion.

Events tailored to and developed by you

How to be a change-maker in a diversifying industry?
by Anjali Pindoria
Project Surveyor, Avi Contracts Ltd
Public Speaker



JCT YPG - ‘Let’s catch up over JCTea’,
The scheme is to introduce new members, get conversations flowing, learn about some of the different disciplines that make up YPG (and JCT) membership, and learn about some of the work that individual members are involved with.



JCT YPG ‘spot mentoring’
Spot mentoring provides an informal opportunity for casual, short, or one-off guidance sessions (of about 30mins), primarily delivered through online meetings, where YPG members can benefit from the knowledge and experience of the construction professionals that contribute to JCT.

Discover more:

Join here: ypg.jctltd.co.uk

MANAGING CONSTRUCTION PRICE INFLATION

SARAH ELLIOTT AND SUZANNE REEVES – WEDLAKE BELL

The construction industry has had to mitigate the effects of Brexit and COVID-19 and is now beset with additional inflationary pressures in the wake of the war in Ukraine.

Unfortunately, inflation is unlikely to be brought under control in the short term and will be with the industry for some time to come. This means that businesses across the supply chain need to find ways to manage the risks of cost escalation over the life of a project that are fair and proportionate to all parties. This may lead to a re-allocation of risk in existing and future contracts.

What is a fluctuations clause?

A fluctuations clause is a contractual term allowing the price of a construction contract to be adjusted to reflect changes in the law, the cost of materials and/or the cost of labour during the contract period.

Fluctuations clauses in standard form contracts were usually deleted when prices for construction projects were stable, because contractors were prepared to accept the risk of any increase in the cost of materials, plant and labour. However, recent events have caused price volatility not seen since the 1970s, particularly of key construction inputs such as energy, steel and timber, as well as wage inflation. Fluctuations clauses increase the Contract Sum in accordance with objectively measured price rises.

There are a range of fluctuations clauses in standard form contracts and which ones are adopted needs to be considered carefully in relation to the overall project and duration. For example, certain fluctuations provisions may be more appropriate for projects of a longer duration or for particular materials that are subject to high price volatility.

Regardless of the provisions of the contract, if cost inflation is seriously impacting the project or one or more of the parties, then all parties should work together to find a way to manage it.

Where can I find fluctuations clauses in JCT contracts?

In JCT 2016 contracts, there are three fluctuations options to choose from to cover different types of price increases:

- **Option A** covers contribution, levy and tax fluctuations (essentially statutory changes)
- **Option B** covers labour and materials cost and tax fluctuations
- **Option C** is a formula, which adjusts prices, using cost indices produced by the RICS.

Fluctuations clauses can be incorporated by reference in the Contract Particulars. The Contract Conditions also include the operative clauses in the payment provisions of each contract which are essentially additions to the interim payments. The current default provision is Option A but parties should consider whether for example Option C, which is broader in scope may be more suitable. The JCT Minor Works and Intermediate Building Contract forms only contain the Option A provisions and do not refer to the other JCT Options, but these other options can still be incorporated by clear reference. The logic for this is that these contracts are designed for simpler projects with shorter work programmes. The Contract Particulars also enable users to specify their own fluctuations provisions. Options B and C are available on the JCT website.

If negotiating a contract how can inflation be addressed?

The starting point is whether the proposed terms and conditions allow for any price increases and if not, the parties should consider how it can be best addressed in relation to all the circumstances of the project.

If the works are being procured by way of a standard form contract and it is agreed that the contract's fluctuations provisions apply, then this must be made clear by making an entry in the Contract Particulars and in any schedule of amendments to the contract that the fluctuations clauses are being used.

Attention must also be paid to the date inserted into the contract for the "Base Date" from which any fluctuations provisions will apply.

In JCT contracts, the Contract Sum is deemed to have been calculated at the agreed Base Date. The Base Date is usually stated to be the date of the tender or priced offer, which means that the risk of inflation between the tender and contact execution lies with the supplying party. However, if the date of execution of the contract or commencement of the works is used as the Base Date, then the risk of inflation over this period rests with the employer.

Considerations if procuring materials in advance.

- Check the **terms of your contract** and contract documents carefully to ensure that they are consistent and reflect precisely what has been agreed about early delivery and payment. Most payers will want ownership of goods for which they pre-pay to be formally "vested" in them by way of a "vesting deed" to guard against supplier insolvency and ensure that the goods cannot be used for any other project.
- If materials are going to be **stored off-site**, consider who will pay the storage charges and when the legal ownership in those goods passes to the payer. Check suppliers' terms of sale to make sure that if transfer of ownership of those goods is required early you are not prevented from doing so by "retention of title" provisions.
- Place greater emphasis on **security and protection for materials and fuel** both on and off site. An increase in thefts is already being reported as prices rise.
- If an **off-site materials bond** is a precondition of early payment, consider if what is required can be obtained and which party will bear the cost. The bond market has

hardened considerably since COVID-19, therefore carefully consider the terms being offered.

What can be done about inflation in existing contracts?

If the contract expressly includes any basis for price adjustment, for example a term or provision that states prices will only be fixed for a specific time period that has now elapsed, the price may be adjustable.

If the contract does **not** include any fluctuations clauses or another way of being able to adjust prices, there may only be scope for additions to the agreed Contract Sum where there is either:

1. a variation or change, or
2. an entitlement to an extension of time and related loss and expense.

This will be by reason of specified delay events (Relevant Matters in JCT contracts). All will need to be within the meaning of the contract provisions so careful consideration of the background circumstances will be required. If there are grounds for such an application, it is important that contractors comply with all the contractual requirements to make a claim.

Even where no contractual right of recovery exists, the parties are best advised to be pragmatic and find a consensual way to deal with the issue.

What can I do if a shortage of materials is causing a delay?

JCT contracts provide for specific grounds on which a contractor can seek to claim an extension of time (EOT), known as “Relevant Events”.

Generally, proving **force majeure** is a high threshold which can be difficult to reach. This is particularly so under unamended JCT contracts because force majeure is undefined. It is therefore necessary to look to common law when considering whether or not force majeure may apply to the facts in any case. However, historically successful force majeure claims have been made in relation to disruption caused by regional or large-scale conflicts. The war in Ukraine is not a war that the UK is directly involved in, so it remains to be seen if the effects on trade with the UK are held by the courts to come within the common law meaning of force majeure.

Depending on the terms of the contract, a **change in law** that directly affects the execution of the works may be a Relevant Event for which an extension of time can be granted, for example if performance of the contract has been impacted by sanctions imposed on Russia and certain Russians by the UK.

Although under unamended JCT contracts force majeure and changes in law are not “Relevant Matters” entitling a contractor to claim for additional loss and expense for any EOT allowed, an EOT if granted will at least provide relief against liquidated damages. Further, if having regard to the contract terms there is a variation to the specification or change to the Employer’s Requirements instructed by the Employer to mitigate the effects of materials and labour shortages and delays, such instructions may be treated as a variation or change and be valued as such.

Can I lawfully terminate a contract if inflation makes it commercially unviable?

Termination is unlikely to be an option if the supplying party has made what has become a bad bargain and the contract itself does not provide for such a remedy in the relevant circumstances.

It is also a risky strategy because if the terminating party gets it wrong and unlawfully terminates, then it runs the risk of a claim being made against it for breach of contract. The damages claimed will include the additional costs of getting the work completed by others, as well as the costs and expenses incurred as a result of wrongful termination. Any party contemplating termination of a contract should carefully consider and/or seek advice on its terms, the circumstances that give rise to termination and the consequences if that step is taken.

Depending on the precise circumstances, the following may be relevant for existing contracts:

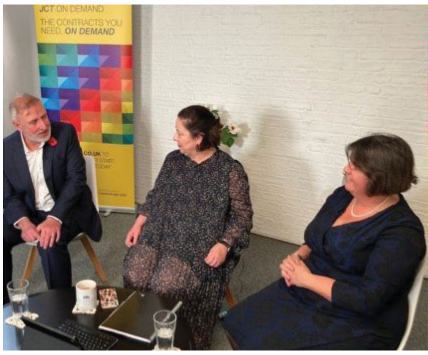
- Does the contract have an **express force majeure clause** that precisely covers the post contract event giving rise to delay(s)/price increase(s) concerned? Events known about before the contract was entered into will **not** count. The courts will be reluctant to come to a conclusion that force majeure applies and will consider if the event in question materially undermines the commercial objective of the contract.
- Are sanctions against Russian companies or individuals relevant? If so, does the contract deal with illegality in the circumstances? Illegality might also be a defence to any claim for non-performance by the other party.
- Is there an express sanctions clause that relieves the supplying party of their contractual obligations? If so, does it apply?
- After the contract was entered into, has performance become frustrated, that is impossible or radically different to what was intended, due to unforeseen circumstances which defeat the commercial purpose of the contract? This is a high legal threshold to prove and inconvenience, hardship or financial loss will not be sufficient.
- Does the contract provide alternative remedies for shortages/delays/price increases, for example clauses allowing for substitutions/variations/extensions of time and can those clauses be utilised? If so, the courts are unlikely to be sympathetic to arguments that termination was appropriate.

For contracts currently being negotiated, termination clauses can be agreed for inclusion, either for specified circumstances, which will have to be carefully drafted, or for termination at will/without cause. However, a termination at will clause is currently unusual in English construction contracts.

Will works insurance cover an increase in costs if a claim is made?

Contractors’ All Risks (CAR) policies often include so-called escalation and inflation clauses to account for increases in the value of works undertaken during a construction contract.

Cont. after interview on page 11.



COMPETENCY, CULTURE, AND COMPLIANCE WILL ENSURE WE DON'T 'FEEL THE BREATH OF THE BUILDING SAFETY ACT UPON US'

Gary Neal, head of fire at Skanska UK, delivered a clear set of guidelines to those working in construction to ensure that building projects not only achieve the necessary requirements of the Building Safety Act but also the desired cost and quality outcomes first time, in his JCT Povey Lecture, given on Thursday, 10 November 2022.

In his presentation, 'Building Safety Act: practical steps to compliance in construction', Gary explained the four main areas of focus of the Act, namely, the changes to general building safety rules, introduction of a new regime for higher risk buildings, changes to the fire safety regime, and the extension of limitation periods.

He also described the key role of the Building Safety Regulator and its important function across three key gateways concerned with the planning, design and construction, and occupancy phases.

Throughout, Gary highlighted the importance of competency at all levels; in making sure competent people with relevant experience are employed, that design is carried out correctly, that the correct and compliant products are selected and installed by competent teams, and that inspections are carried out based on data competently compiled and stored from the project's inception.

He also stressed that compliance with the building regulations was not only compulsory but should be seen as a minimum requirement and that cutting corners on compliance not only risks a building's safety but increases costs as a result of having to rectify poorly designed or installed works.

Above all, Gary reinforced the point that culture and behavioural change was at the centre of achieving long-term benefits:

> *"What this really comes down to is culture; fire safety and delivering excellence is the heart of […] everything we do.*
>
> *"For those of us with this in mind, it is likely that we will never feel the breath of the Building Safety Act upon us, leaving those in our wake to suffer the long-term implications."*

Following his presentation, Gary joined a panel discussion and audience Q&A hosted by JCT chair, Karen Kirkham, and featuring Amanda Long, chief executive of Building a Safer Future.

Amanda reiterated Gary's point about culture to stress that leadership and reinforcing building safety as a 'business as usual' culture through behavioural change, was something that the industry needed to embrace, as it is lagging behind other industries such as rail, oil and gas, and nuclear, in terms of managing its role as a 'major hazard' industry.

Watch On Demand

The full presentation, panel discussion and Q&A, which recorded JCT's highest registration and viewership for a Povey Lecture to date, is available to view at https://corporate.jctltd.co.uk/povey-lecture-2022.

You can also find out more information, including the following:

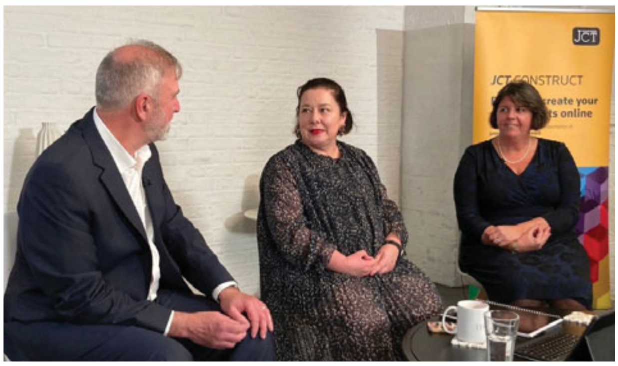
- Download the presentation slides
- Access relevant links, including more about Skanska UK, the Building a Safer Future Champions programme, and the Get It Right Initiative (GIRI)
- Gary Neal and Karen Kirkham's follow-up Q&A, which covered questions that weren't able to be aired during the live broadcast.

About the JCT Povey Lecture

The JCT Povey Lecture is an annual event at which 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.

The JCT Povey Lecture is delivered as part of JCT's 'digital first' approach, which encompasses a range of digital-only and hybrid activities. It provides a flexible and interactive way for construction professionals across the industry, and regardless of location, to access high quality content from industry experts.



JCT TRAINING – SPRING 2023

New courses added for February, March and April – book your place on one of our full-day, in-person courses today. Visit www.jctltd.co.uk/jct-training

The latest batch of JCT Training courses for the Spring 2023 season are now available to book. See below for details of the following courses:

JCT Contracts 2016— The Legal Perspective

Date: Tuesday, 28 February 2023

Venue: JCT Offices, 4th Floor, 28 Ely Place, London, EC1N 6TD

Time: 10.00 a.m. - 4.30p.m. (lunch and refreshments provided)

Host: Victoria Peckett, chair, JCT Drafting Sub-Committee

£455 + VAT

JCT Design and Build Contract 2016

Date: Thursday, 09 March 2023

Venue: JCT Offices, 4th Floor, 28 Ely Place, London, EC1N 6TD

Time: 10.00 a.m. - 4.30 p.m. (lunch and refreshments provided)

Host: Peter Barnes, past-member, JCT Council

£455 + VAT

JCT Intermediate Building Contract 2016

Date: Wednesday, 26 April 2023

Venue: JCT Offices, 4th Floor, 28 Ely Place, London, EC1N 6TD

Time: 10.00 a.m. - 4.30 p.m. (lunch and refreshments provided)

Host: Peter Barnes, past-member, JCT Council

£455 + VAT

Have you seen our latest range of JCT Training Video Modules?

If you are not looking for a full-day or webinar course, consider our brand new range of JCT Training Video Modules - shorter segments on key elements of JCT contracts.

We have two new modular courses:

Which JCT Contract is best for your project?

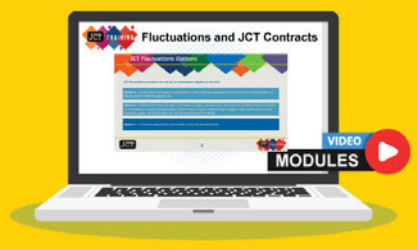
Arm yourself with the information you need to make the best decisions around the choice of contract for your project. The modules in this course cover:

- When is the time to decide the contract form
- Procurement routes and the factors that determine choice
- Matching the available contracts with procurement process
- Choosing the specific contract from the range
- Choosing the sub-contract
- Other questions concerning choice of contract

Fluctuations and JCT Contracts

This one-off, extended module provides an overview of the options available within JCT contracts for the use of Fluctuations provisions.

- Learn about JCT Fluctuations Options A, B & C, the differences between them, where to find them, and how to select them in the Contract Particulars.
- Learn about the operation of the Formula Rules under Fluctuations Option C, including identifying and establishing the Base Month, the differences between Part I (Work Categories) and Part II (Work Groups), and how to make and maintain the necessary calculations using the formula.
- Find out how to make the necessary requirements for operating Fluctuations Options A & B and where one or other might be more relevant.
- Get general guidance on the principles behind fluctuations provisions and their use.



For more information about these and our full range of JCT Training Video Modules, visit:

www.jctltd.co.uk/category/jct-training-videos

JCT INTERVIEWS…

KARYN WATT

member, JCT Council and JCT Drafting Sub-Committee

vice chair, SBCC and chair, SBCC Drafting Sub-Committee

Current job title and company/position: head of construction, Anderson Strathern LLP

In the *JCT Interviews…* series we shine the spotlight on some of the key people who are involved with or give their time to support JCT, showing the diverse range of disciplines across the construction industry that our members represent and the collaborative work that contributes to the development of our contracts. We look at how our interviewees contribute to JCT specifically and gain their views on the wider industry and JCT's role within it.

Karyn Watt has over 30 years' construction industry experience and is accredited by the Law Society of Scotland as a specialist in Construction Law. She is a member of Construction Scotland Industry Leadership Group which plays a crucial role in shaping and delivering Scotland's economic ambitions. She is a Director of BE:ST (formerly Construction Scotland Innovation Centre). Karyn is New York bar qualified and is a qualified mediator.

Karyn is vice chair of the Board, a member of the Consultative Committee and chair of the Drafting Sub-Committee of the Scottish Building Contracts Committee (SBCC) – the body that adapts appropriate contracts drafted by JCT to bring them in line with Scottish Law. She leads major projects on behalf of both local authorities and the private sector, involving complex strategic procurement and project issues.

In recognition of her contribution to the industry, Karyn was awarded an Honorary Fellowship of the RIAS in 2013. She is chair of the board of Woman in Property (Scotland).

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

KW: I first got involved in about 1988 when I was the in-house head of legal for Solaglas. I was asked to attend a meeting of FAS (which then became NSCC and now Build UK) and the rest, as they say, is history. When I moved back to Scotland at the end of the 80s I was honoured to be asked to be the Scottish legal adviser, which meant I got to join the Scottish Building Contracts Committee (SBCC). I soon got involved on the drafting side, as well as being a Board member. I think it is important to be involved as JCT reflects the views of the construction industry and current practice.

JCT: Are there any specific projects, areas of interest or activities that you are looking forward to working on or being involved with as a JCT Council member?

KW: I am very much looking forward to being involved in the review and drafting of the next generation set of contracts, and "kilting" them to reflect Scots Law.

JCT: Do you have any personal career highlights?

KW: I have been fortunate enough in my career to have advised on everything from small domestic projects through to iconic projects of national importance. Probably my earliest tricky bit of drafting was around the Channel Tunnel project as a fresh faced enthusiastic in-house lawyer (now I am showing my age!). These days I regularly advise on major developments and infrastructure projects. As a lawyer, for me one of the great joys is to actually visit something you have been involved in, and think that all those hours of negotiating have been worth it when you see a magnificent building or piece of engineering.

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

KW: I think its resilience. The last couple of years have been extremely challenging, with the impact of Covid, Brexit, Ukraine and Grenfell setting challenges that other industries would have struggled to meet. The construction industry has found innovative ways to deal with what has been thrown at it, and it embraces new technologies and ideas. It adapts.

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

KW: We are all aware of the skills shortages and the need to ‘future proof’ our buildings. We are looking at a downturn in the economy and higher interest rates, and all of this will impact on margins.

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

KW: I think the key additional role is in education. The fact that JCT (and SBCC) keeps the market up to date by offering drafting, guidance around current issues, fascinating articles and regular lectures is of great benefit to those involved in the sector.

Cont. from article on page 7.

However, CAR policies are not all the same. That which applies to a particular contract should be carefully checked to see if such a provision is included and if so, that it adequately covers not only current inflation but higher rates of inflation during the life of the project.

If the insurance cover is not adequate for a particular loss suffered and covered by the policy, the policy may contain an “average clause” proportionately to reduce the amount paid out to match the level of the policy. This means that if the insurance cover is inadequate the policy will not meet the total amount of the claim.

Is there anything else to consider?

In the current market, there is likely to be tension between employers and their funders requiring fixed prices for budgetary and funding reasons and the supply chain’s ability to deliver at fixed prices, and to a pre-determined programme, over the life of a contract. This is particularly the case for a long programme and ones that rely on materials that are in short supply.

As with COVID-19, all parties involved in construction projects are best advised to collaborate in finding solutions. More time spent planning ahead and thinking strategically about procurement is likely to be the first step towards successful cost management.

Originally produced by Wedlake Bell on behalf of and in conjunction with Build UK in September 2022.
The guidance can be found at: https://builduk.org/wp-content/uploads/2022/09/Managing-Price-Inflation-Guidance.pdf