

JCTNEWS

THE JCT CONTRACTS UPDATE FOR THE CONSTRUCTION PROFESSIONAL

THE YOUNG V&A, LONDON



Young V&A Feature Staircase

© Luke Hayes courtesy of Victoria and Albert Museum, London

The V&A's East London museum, originally the 'Museum of Childhood', has undergone a rejuvenation that not only continues to preserve and document the history of childhood play across different cultures, but also inspires the next generation 'with the power of creativity and agency'. The project was completed using a JCT Standard Building Contract.

The development of the Young V&A is the most significant chapter for its 150-year-old grade II* listed

building since its original opening, when its frame and fabric were moved to its current location in Bethnal Green from South Kensington, where it was used during the 1851 Great Exhibition. Its latest upgrade celebrates and cleverly adapts its existing fabric whilst creating a space with an emphasis on accessibility and inclusivity. The base build and spatial rework was designed by De Matos Ryan (designers behind previous JCT case study, the Alice Hawthorn Pub), whilst the exhibit, display and fit-out work was designed by AOC.

The project team formed a 'design cohort' of children, teens, parents, and teachers, who all informed the design process and helped establish the priorities for the museum's upgrade. Particular amongst these were that the experience of the visit could be built around the agency and interaction of the visitor – so an emphasis on accessibility, inclusivity, and flexibility of the spaces, and that, where possible, sustainable, low carbon and recycled materials should be used. The result is a brand-new set of highly colourful and interactive

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Young V&A, Design for Change, Design Gallery

© Luke Hayes courtesy of Victoria and Albert Museum, London

displays, rooms, and installations, incorporating both old and new exhibits.

The AOC designed installations are organised into three permanent new galleries: 'Play', 'Imagine', and 'Design', each aimed at a different age group – babies, toddlers, and teens, respectively. AOC has employed imaginative use of colour and form, such as the signage developed with Graphic Thought Facility. These include large yellow and pink padded lettering announcing the 'design' gallery which also double as acoustic panels. Clever details in the display work incorporate features such as optical illusions, sensory playscapes, a giant marble run, a story-telling stage, a self-portrait making station, and a den building area. The teen group also has its own space to check phones, look at a display charting the history of video games, or interact with a virtual Young V&A built-in Minecraft game. Improvements have been made to circulation routes through the building and acoustics, with the galleries being designed around the needs of SEND, neurodivergent and disabled visitors. Interactive displays have adjustable volume levels and quiet spaces are implemented throughout.

Many exhibits from the original museum have been retained, including an 18th Century marionette theatre, ancient teddy bears, and a dolls house gallery which has been organised into an impressive multi-level 'village' display. The new curatorial approach expands on this however, with many of 1700 items drawn from the V&A's 2.8m collection and beyond. New exhibits include a 2300BC Syrian rattle, a suit of Japanese samurai armour, a Microline car, as well as characters from the history of cartoons, games, and nostalgic toys, such as Barbie, Kermit the Frog, Teenage Mutant Ninja Turtles, Pokemon, Peppa Pig, and SpongeBob SquarePants. Other works, from artists, designers,

and activists are also incorporated into the displays, from the likes of Virgil Abloh, Olafur Eliasson, Greta Thunberg, Bridget Riley, Miuccia Prada, Keith Haring, Issey Miyake, and David Hockney.

Sustainable and reusable materials are incorporated in a way that combines practicality with a quirky sense of fun, including recycled plastic plinths, benches made from yoghurt pots, old cupboard doors used as display surfaces, upcycled frames and display cases, terrazzo surfaces made from the building's site rubble, and sustainable hemp fibre panelling.

In addition to the three permanent galleries, the renovation includes a suite of workshops and office spaces, as well as a purpose-built 515m² gallery for temporary exhibitions, a new visitor shop and café.

The De Matos Ryan designed works takes a subtler but no less bold approach to enable the gallery and display work to stand out. The works are designed to preserve and enhance the museum's heritage as a grade II* listed building, and to treat new elements as distinctly modern but considered additions that respect that history. Similarly to AOC's work on the galleries, De Matos Ryan's design approach was organised along three themes: 'in and out' – improving the circulation with a second accessible entrance, and developing the outside space to be more welcoming and provide a more interactive experience, 'up and down' – installation of a new spiral staircase with optical effects to draw in visitors to each level, and 'around and about' – a plan to move the museum's learning spaces throughout the displays, and move the library and archive to a more prominent location at the front of the building.

The approach to preserving and respecting the building's heritage has been achieved by decluttering a lot of the main space,

restoring a sense of the original volume, and revealing and reusing elements of the original fabric. Functioning roof lights in the barrel-vaulted roofs have been reinstated to flood the space with natural light. The shop and café have been moved back to create the sense of a 'town square', which has been paved with a fully revealed and restored 19th century marble mosaic floor. The building has been brought fully up to modern standards in terms of environmental control, and the project team undertook a 'radical rethink' of the fire safety strategy. Major structural work was undertaken in the basement, replacing the columns on the south side with transfer beams to create a large community room. A 'Busby Berkeley' style performance space with tiered stage and 'road to nowhere' set of steps has been creatively implemented by utilising an existing stair, blocked off at first floor level by the creation of the new temporary gallery space.

Outside, a new archway on the street provides a more welcoming entrance. Behind the 2006 front extension, the entrance has been opened up with a huge, but more environmentally efficient, pair of sliding doors. The view through these large doors at street level now presents the most eye-catching new addition, a kaleidoscopic spiral stair. It is a striking, sculptural feature that takes visitors up to all levels and contains in-built mirrors that distort your reflection as you move up and down.

It takes a careful balance to marry the mix of modern, colourful and bold design with the need to not only respect but fully celebrate a historic building's fabric. This is especially challenging where the purpose of the building is to capture the imagination of children and be functional and accessible for a wide variety of visitors. The Young V&A has embraced this challenge transparently, fully engaging the end user and treating limitations as creative opportunities. Using the JCT Standard Building Contract provides a platform where this level of complexity can be encompassed, enabling a collaborative approach where parties can be confident of their approach.

YOUNG V&A PROJECT DATA:

START:	AUGUST 2021 (BASE-BUILD STARTED)
COMPLETION:	MAY 2023 (FIT-OUT FINISHED)
GROSS INTERNAL FLOOR AREA:	3,929M ²
GROSS (INTERNAL + EXTERNAL) FLOOR AREA:	6,000M ²
CONTRACT:	JCT STANDARD BUILDING CONTRACT
CONSTRUCTION COST:	£9.8M
CLIENT:	V&A
ARCHITECT:	DE MATOS RYAN (BASE BUILD) AND AOC ARCHITECTS (FIT OUT)
MAIN CONTRACTOR:	QUINN LONDON AND FACTORY SETTINGS
STRUCTURAL ENGINEER:	PRICE & MYERS
M&E CONSULTANT:	P3R
QUANTITY SURVEYOR:	GREENWAY
LIGHTING:	SPIERS & MAJOR AND ZNA
GRAPHICS AND WAYFINDING:	GRAPHIC THOUGHT FACILITY
AV:	HARMONIC KINETIC
INTERACTIVES:	CLAY
MATERIALS:	FRANKLIN TILL
ACCESS:	WITHERNAY ASSOCIATES
ACOUSTIC CONSULTANT:	GILLIERON SCOTT
PROJECT MANAGER:	LOCKERDELL (PM)
PRINCIPAL DESIGNER:	ARCHITECTS FOR THEIR OWN PACKAGES
CDM COORDINATOR:	JACKSON COLES
APPROVED BUILDING INSPECTOR:	AIS
FUNDERS:	THE MCLAIN FOUNDATION, PRUE MCLEOD, DUNARD FUND, BUFFINI CHAO FOUNDATION, THE BAND TRUST, GARFIELD WESTON FOUNDATION, ANDREW HOCHHAUSER KC, OAK FOUNDATION, THE PORTAL TRUST, THE THOMPSON FAMILY CHARITABLE TRUST, WOLFSON FOUNDATION AND MANY OTHER SUPPORTERS.



Young V&A, Play Gallery, view across the Mini Museum

© Luke Hayes courtesy of Victoria and Albert Museum, London



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SIMON TOLSON TO GIVE THE JCT POVEY LECTURE 2023

'The Terminator' will be the title of this year's JCT Povey Lecture, taking place on Wednesday, 22 November 2023.

The webinar will be presented by Simon Tolson, senior partner at Fenwick Elliott LLP, and solicitor, chartered arbitrator and adjudicator.

In 'The Terminator', Simon Tolson will discuss the latest case law, developments, and legal issues surrounding the termination of construction contracts. There has been a number of important decisions in the courts since 2022, and Simon's presentation will cover:

- The termination remedy
- Why and when
- Background to the right to terminate
- Remedy of last resort – is the threat enough?
- Weighing up decision to terminate – behind the scenes; when to stick or twist?
- Why reaching for trigger can backfire
- Boston Deep Sea Fishing and Leafelis, etc
- The Heisler exception
- The JCT process
- Two steps to glory or disaster – getting the termination right: termination notices
- The attitude of HM Judges/TCC
- The role of the common law – even exceeding the delay damages cap can amount to a repudiatory breach
- Tips for drafters
- How to dodge the bullet

Povey Lecture 2023 Summary

Termination for breach of contract releases the parties from their contractual obligations to perform. It is a powerful and definitive device that discharges all unperformed primary obligations under the contract yet to accrue and ends the contractual relationship, often instantaneously.

Profound commercial and financial consequences for the parties can ensue. This can be acute for the defaulting party. Not only are they deprived of the benefit of the contract; in many cases they must also compensate the injured party in damages for losses caused by breach, possibly including the loss of the bargain. But equally getting it wrong for the 'innocent' party is also very dangerous.

JCT Povey Lecture 2023 – Event Details

The JCT Povey Lecture is an online event hosted and presented by JCT chair, Karen Kirkham. Karen will give a welcome address and also host a post-event discussion/Q&A, for which audience members will be able to submit questions via the online interface.

For more information and to register, visit: <https://jct.multichanneltv.com/povey-lecture-2023/>

The JCT Povey Lecture was inaugurated in 2003 to acknowledge and pay tribute to Philip Povey, who served JCT for fifty years. The lecture is an annual event at which an eminent person is invited to give their thoughts on significant matters relevant to the construction and property industry. The purpose of the series is to stimulate thought and encourage ways of continuing to improve the quality and value of construction output. For more information and to view past presentations, visit: <https://corporate.jctltd.co.uk/category/jct-povey-lecture/>

Simon Tolson

senior partner, Fenwick Elliott LLP

BA (Hons), FCI Arb, FFB, solicitor, chartered arbitrator and adjudicator

Simon Tolson was admitted as a solicitor of the Supreme Court of England and Wales in 1987. He has specialised in construction and energy dispute law for over 35 years on a huge range of project types and infrastructure developments in the UK and overseas. Most of his work has been involved with disputes and dispute resolution with extensive court, international arbitration, as well as construction adjudications and mediations. During his career he has led over 20 reported cases in the Courts.

Simon was made a fellow of the Chartered Institute of Arbitrators in 1995 and a Chartered Arbitrator in 2002. He is ranked amongst the top construction solicitors in Who's Who Legal, Chambers UK, The Legal 500 UK (Hall of Fame) and the Legal Experts guides.

Simon takes a keen interest in building defects cases, the Building Safety Act, and related areas, and has lectured widely and appeared in many webinars.

Simon is a past chairman of the Technology and Construction Solicitors' Association and now the Honorary President. In that time, he championed the TeCSA eDisclosure Protocol, the 2017 Pre-Action Protocol, CE-File, Technical Courses and is actively involved in the training, modernisation and diversification of adjudicators and arbitrators.

He has a huge interest in legal and construction technology, AI and the changing world of procurement and delivery.

Simon currently holds the TeCSA Clare Edwards Award for 2022, awarded to an individual demonstrating professional excellence and for making an outstanding contribution to the legal profession.

Simon is a Building Magazine commissioner on the Building the Future Commission sitting alongside leading figures from across the built environment.

He is also a long-standing visiting lecturer at King's College London on their MSc in Construction Law and Dispute Resolution.



RETROFITTING AND CONTRACTUAL ARRANGEMENTS

PETER HIBBERD

This article is primarily concerned with the manner that retrofitting of buildings might impact on the procurement for its delivery, and whether adequate standard form contracts exist.

Simply put, retrofitting of buildings is the introduction of new or modified parts or equipment not available at time of build. Contrast this with repair, which is only to restore something broken or damaged to a good condition or working order. Also, contrast it with renovation and renewal, which restores to a new or fresh condition and often includes a measure of improvement.

Retrofitting has different angles, for example, the driver for the Technology Strategy Board's publication 'Retrofit for the Future' is the need to reduce energy use and carbon emissions. Others use sustainability, which is much wider, as the driver. Sustainability embraces the concept of retaining buildings and their repurposing through adaptive reuse. Where appropriate it adapts existing buildings, rather than demolish and rebuild. Other important drivers of retrofitting are the improvement of living and working conditions and improving operational aspects within organisations. Although retrofitting plays a large part in residential buildings it is also relevant to other buildings.

Altruism alone is seldom enough to make progress; an economic driver is necessary, particularly with non-residential buildings. Economic benefit must arise. This often depends upon the ownership of the buildings for retrofit. Homeowners, home occupiers, private or public companies or the public sector have the same primary objective, but the scale of the work and its implementation varies enormously.

Delivery of any retrofitting programme is not only dependent on suitable and cost-effective technical solutions in respect of the building itself but also on finding suitable means of delivering such work. Ownership of buildings together with the nature and scale of the retrofit project are significant factors in the procurement of the works and in determining appropriate contractual arrangements.

A principal issue concerns whether the retrofit primarily involves specialist engineering work or just straightforward building works. However, even in situations where someone sees the work as purely specialist, e.g., installation of a heat pump, there is associated building work.

Whether the premises are vacant or occupied is relevant because of the greater health and safety concerns of occupation. Those concerns and other practical difficulties that the occupants might encounter, where they remain in situ, may lead to decanting, extensive protective works, and restricted hours of working. Factors the procurement process must take account of.

The things that influence the precise nature of retrofitting work, include energy performance requirements, availability of funding, grants such as the Green Homes Grant Scheme, and technical expertise. Building ownership and the number of properties involved are relevant. PAS 2035:2019 is a code of practice that sets out a framework of best practice for the implementation of

energy retrofit measures to existing buildings in the UK. It is an important document in guiding the process of procurement but interestingly it does not mention contract. The intention of the following is to fill the gap.

Procurement of work for a homeowner on their own property is significantly different to that of an organisation or public body that has hundreds of dwellings to retrofit. As is work on a large commercial building in sole ownership, compared to school buildings. Each requires a different procurement approach that involves the selection of a particular contractual arrangement.

The considerations for any contractual arrangement, and more specifically the contractual documentation, are not dissimilar to other building works; it is a matter of dealing with process and risk. Take for example; insurance of the works, how one provides protective works, or guarantees for specialist inputs. It is a matter of matching a contract with the objectives and specific requirements of the project. A good place to start is JCT's publication 'Deciding on the appropriate JCT contract'.

For homeowners who are residential occupiers there are specific contracts, namely the Building Contract for a Home Owner/ Occupier, which is available in two versions, one where no consultant is appointed to oversee the work, the other with a consultant. These contracts oblige the homeowner to notify their insurers, which highlights working in an occupied building. Such contracts are only suitable for small scale retrofitting. Once the works become larger and more complex one should look to the principal JCT forms of contract, regardless of whether the work is for a homeowner or other contracting party. The next tier is the Minor Works Building Contract or its contractor's design version, followed by Intermediate Building Contracts. Whether a contractor takes responsibility for design is determined by the character of the retrofit.

For the larger scale retrofitting, involving large numbers of houses by a housing association or complex services on commercial works, consideration should, in addition to the building contract, look at the desirability of using a framework agreement, for example, together with the Measured Term Contract. Certain types of large-scale work of complexity could also usefully employ a pre-construction agreement, such as either the Pre-Construction Services Agreement (General Contractor) or the Specialist version, in conjunction with a main form of contract. Those include the JCT Standard Building Contract, Design and Build Contract, and Major Project Construction Contract. There is a variety of options that suit most situations, and all the principal forms referred to, cover insurance in existing buildings, health and safety requirements and sustainability. All especially important for retrofit.

Hindrances to the successful uptake of retrofitting are varied but one thing that does not hinder, is the availability of standard form building contracts. When there is an appropriate contract together with properly prepared contractual documentation supporting it, there is no need for specially drafted bespoke contracts.



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YPG UPDATE

JCT's Young Professionals Group continues a productive 2023 with a series of events, activities, and initiatives for construction professionals in the first few years of their career.

On 1st September, the group hosted a breakfast seminar covering Letters of Intent, presented by Charles Edwards, JCT Council member, barrister, and head of chambers, Gray's Inn Construction Chambers. This interactive, small group, workshop explored the potential issues around the use of Letters of Intent and the dos and don'ts to follow when parties choose this early method of engagement.

On 12th September, a YPG Volunteer Leader-led event took place at the offices of CMS, on the topic of 'How is inflation governed under JCT?'. This roundtable networking event covered the topic of inflation with JCT contracts and looked at some examples of scenarios to see how the clauses work in practice. Both legal and surveying perspectives were covered, with the event hosted by YPG Volunteer Leaders Kate Moffett, senior associate, CMS, Charlie Saunders, associate project monitoring surveyor, Emerson Bond, and Mark Pantry, solicitor, Fenwick Elliot.

On 26th October, the JCT YPG will be teaming up with young professional groups from the RICS and CIOB for a networking event at RICS headquarters in London. The event will be an exciting opportunity to bring young professionals from across the industry to meet, make contacts, and discuss key issues affecting their careers and the wider built environment.

Aside from events, the YPG has also launched a new quarterly initiative, the Member Spotlight, which gives YPG members the opportunity to share their background, career highlights to date, and key achievements, with a featured article on the YPG website, on social media, and in member emails. This new feature enables us to get to know members and shine a spotlight on their achievements.

The YPG 'Let's Catch up Over JCTea' scheme is also continuing to pair members for short, informal online conversations on a range of topics. Added to this is the new Spot Mentoring programme,



which provides an informal opportunity for casual, short, or one-off guidance sessions (of about 30 mins), where YPG members can benefit from the knowledge and experience of the construction professionals that contribute to JCT.

If you are interested in finding out more or would like to indicate your willingness to take part in mentoring or talking at a YPG event, please send an email to hello@adminypg.co.uk.



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

Letters of Intent - Members' Workshop
by Charles Edwards
JCT Council Member

MEMBERS' WORKSHOP

Letters of Intent

Presented by Charles Edwards, MSt(Cantab) MSc(Lond)
FCInstCES Barrister (Head of Chambers)
JCT Council Member



How is inflation governed under JCT? - Members' Networking Event
Speakers; Kate Moffet, Charlie Saunders and Mark Pantry
JCT YPG Leader Members

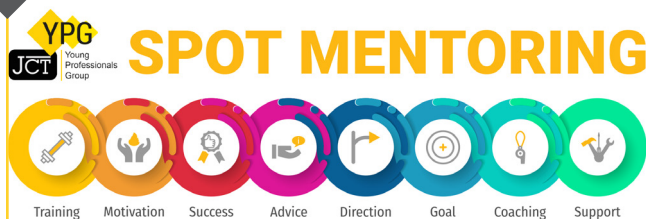
MEMBERS' NETWORKING EVENT

How is inflation governed under JCT?

Round table discussion with Kate Moffett, Charlie Saunders, and Mark Pantry
JCT YPG Leader Members

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.



JCT YPG, CIOB Tomorrow's Leaders and RICS Matrics networking evening
Partnered event



CIOB, JCT and RICS networking evening
held at the Royal Institution of Chartered Surveyors, 12 Great George Street, SW1P 3AD

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JCT EXPLAINS ...

In this new feature for JCT News, we break down some of the key sections and clauses within the JCT contract to explain and provide more information about how these elements function in practice. The issue looks in more detail at the process of interim payments.

Interim payments

Generally, the provisions relating to valuation, certificates, notices and payment (interim and final) are the same or similar for many of the JCT main and sub-contracts. In this article, we refer to the **JCT Standard Building Contract**, and the provisions of the With Quantities version (SBC/Q).

SBC includes detailed provisions for payment as the works progress. The payment cycle is based on the issue of interim certificates on a monthly basis.

Due dates for interim payments

SBC starts by defining the due dates for interim payments, which under the Construction Act must be fixed. For the period up to the final payment, the monthly due dates for interim payments are in each case the date 7 days after the relevant 'Interim Valuation Date' specified in the contract particulars.

The Interim Valuation Date system

The concept of interim valuation dates (IVD) was introduced in the 2016 edition of JCT contracts, in support of the government's Construction Supply Chain Payment Charter. The IVD system is

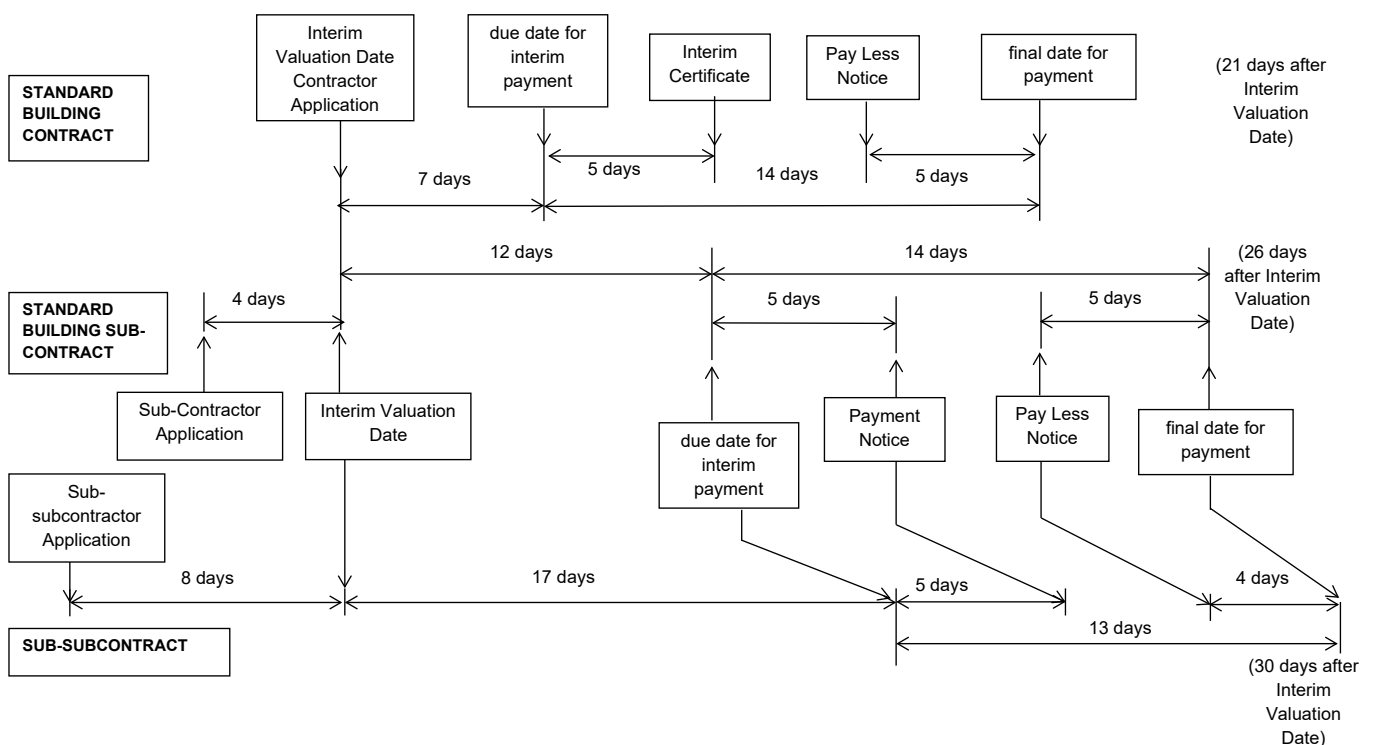
designed to streamline the payment process across the contractual chain, to allow for interim payments at main contract level and downstream to be assessed on the same date each month and paid shortly thereafter.

In SBC, the system works by requiring the parties to specify the first IVD in the contract particulars. JCT recommends the first IVD is not more than one month after the date of possession.

Should the parties fail to agree on a date, a default date is provided, which is one month after the date of possession. Subsequent IVDs are then the same date in each month, or the nearest 'Business Day' in that month. Employers and (in relation to sub-contracts) contractors should take careful note of the fact the IVD is capable of being adjusted because any alteration in the IVD will directly affect the due date and, inter alia, the 5 day period for issue of the interim certificate, the last date for giving a pay less notice and the final payment date.

The payments can be streamlined between tiers by using JCT sub-contracts and sub-subcontracts which provide for the IVD under the main contract to apply to the payment process under the sub-contract/sub-subcontract.

It is to be noted that at each tier the payment provisions are designed to have payment periods not exceeding 30 days, so as to conform with fair payment principles. This is demonstrated in the following diagram.



Interim certificates and valuations

Under SBC, the payment related notice provisions are 'payer led'. The architect/contract administrator is required to issue an interim certificate within 5 days of the due date, this being the maximum period allowed under the Construction Act (section 110A of the Act and clause 4.9 of SBC).

The quantity surveyor is responsible for preparing interim valuations whenever the architect/contract administrator considers them necessary for ascertaining the sum due in an interim certificate (clause 4.9).

Interim payments – contractor's payment applications, payment notices and pay less notices etc.

Under SBC, in relation to any interim payment, the contractor may (not later than the interim valuation date) make an application to the quantity surveyor stating the sum that the contractor considers will be due at the due date and the basis on which that sum has been calculated (clause 4.10.1).

Clause 4.10.2 then sets out the default mechanism provided by section 110B of the Construction Act and deals with the role of contractor's payment applications where there is no interim certificate. Under section 110B of the Construction Act, where a payer is required to give a compliant payment notice but fails to do so, the payee may serve a 'payee payment notice'. This must state the sum the payee considers to be due at the payment due date and the basis on which that sum is calculated. **Importantly, the effect of sections 110B(2) and 110B(4) of the Act is that if the payer fails to give a valid payment notice (as required) and the payee has already made an application for payment as the contract permits or requires, then that payment application will be deemed to be the 'payee payment notice' and the payee will not be required to give another notice. The amount specified in the payment application will therefore become due.**

Reflecting the provisions of section 110B of the Act, clause 4.10.2 provides that if an interim certificate is not issued in accordance with clause 4.10.1:

- where the contractor has made a payment application in accordance with clause 4.10.1, that application becomes a payment notice
- where the contractor has not made a payment application, it may at any time after the last date for issue of the interim certificate give a payment notice to the quantity surveyor stating the sum considered to be due and the basis on which that sum has been calculated; and under

clause 4.11.4 (section 110B(3) of the Act) the final date for payment will be postponed by the number of days after the last date for issue of the interim certificate that the payment notice is given.

The contract states that the final date for payment of each interim payment is 14 days from its due date.

If the employer intends to pay less than the sum stated as due in an interim certificate or payment notice, the employer must not later than 5 days before the final date for payment, notify the contractor, in a 'pay less notice', of the sum the employer considers is due and the basis on which it has been calculated. The time scale for issuing the pay less notice is short and the employer will need to act promptly if it believes it should pay less than the amount stated in the certificate or payment notice.

If there is no pay less notice within the stated time period, the employer must pay the sum stated as due in the interim certificate or payment notice by the final date for payment. Failure to do so would constitute a breach of contract, and there will be a number of remedies available to the contractor.

The contractor will be entitled to interest in the event of the employer's failure to pay the whole or part of the sum due as an interim payment (clause 4.11.6). Interest is payable at 5% above the official bank rate of the Bank of England current at the date that a payment due under the contract becomes overdue.

If the employer fails to pay a sum payable to the contractor by the final date for payment and the failure continues for 7 days after the contractor has given notice to the employer, with a copy to the architect/contract administrator, of its intention to suspend the performance of its obligations (due to non-payment) and the grounds for the proposed suspension, the contractor may suspend performance of all or any of its obligations until payment is made in full. This right does not affect any other rights the contractor may have, such as the right to terminate its employment. The contractor has the right to claim costs and expenses reasonably incurred as a result of the suspension (clause 4.13.2). In practice (and as an alternative), consideration may be given to starting adjudication proceedings, as suspension causes considerable disruption to the works.

The information in this article is extracted from JCT Contracts Discovery education and learning module. The process of payment is also one element covered in the range of JCT Training courses and resources. Learn more here: <https://corporate.jcttd.co.uk/initiatives/education-students/>



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JCT YPG Interviews

YPG founder member leader: Kathryn Moffett.

JCT: Tell us a bit about your background; what is your current role, and why did you decide on a career in the construction industry?

I am a senior associate at CMS, specialising in construction, energy and infrastructure disputes. I advise clients in all sectors from project advisory through to formal dispute resolution forums like court, arbitration and adjudication.

I qualified in 2015, have a LLB and LLM from Edinburgh University, am accredited in Construction Law by the Law Society of Scotland and a Member of the Chartered Institute of Arbitrators.

I have always found construction sites fascinating, the way they operate and how they manage to build such amazing structures, especially when the site is remote or involves off-shore developments. When the opportunity to participate in the construction elective on the Diploma (the post-grad year after the LLB) arose, I couldn't think of a better area of law to get into. The elective also confirmed I was a disputes lawyer as it gave me my first taste of adjudication.

JCT: Kate, how did you first come to be involved with JCT's Young Professionals Group? Why do you think it is important to be involved with the new focus group?

I was introduced to the JCT's Young Professionals Group by a colleague who heard about it at an event.

It is important for young professionals to have a place where they can interact, network and learn more about other parts of the industry.

JCT: Can you tell us about any specific work you're currently doing that has any association to JCT and its contracts?

JCT is one of the most commonly used standard form contracts so I have seen it in one form or another in a number of domestic disputes.

JCT: Do you have any personal career highlights so far?

I participated in the TeCSA Marshalling Scheme, shadowing TCC judges and seeing them from the other side of the bench. On my final day in the scheme I attended a drinks reception with all the judges which for me would be like being at the Oscars.

JCT: What are you most proud of about the construction industry as a whole?

The industry's resilience. It has been proven that the construction industry can weather a lot of difficult situations, most recently shown through the COVID-19 pandemic.

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

The UK is in a very turbulent period right now but the main things I think which will continue to affect the industry for the next five years are inflation and workforce shortages.

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

Yes, it is a great place for people building up their network of contacts at a similar level.



BUILDING SAFETY ACT – ARE YOU READY FOR 1 OCTOBER?

SARAH ELLIOTT – PARTNER, WEDLAKE BELL

In August 2023, the government finally published the secondary legislation that will bring the design and construction requirements of the higher-risk building ("HRB") regime under the Building Safety Act 2022 into force, on 1 October 2023. This is the date originally planned by the government for implementation but clearly there is now limited time for those involved in HRB developments, to get to grips with the legal requirements. The Health & Safety Executive has also published a useful guide to the new building control regime: [Building Control: An overview of the new regime \(hse.gov.uk\)](https://www.hse.gov.uk/building-control/)

There is now a huge raft of secondary legislation implementing elements of the Building Safety Act and more is expected but the most relevant in relation to the changes coming on 1 October are the:

Building (Higher-Risk Buildings Procedures) (England) Regulations 2023, [SI 2023/909](#);

Building Regulations etc. (Amendment) (England) Regulations 2023, [SI 2023/911](#); and

Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023, [SI 2023/906](#).

Together these regulations implement a new legal regime applicable for the design and construction of HRBs. HRBs are buildings that are at least 18 metres in height or have at least seven storeys (other regulations set out what is and is not to be considered in calculating the height or number of storeys) and contain at least two residential units. There are some exceptions (including hotels) but mixed use developments which meet this criteria will also come within the new regime and not just residential parts.

The HRB regime consists of new building control procedures together with related changes to how approved inspectors (now building control approvers registered in accordance with the legislation) operate. There are also 'duty holder' roles imposed on clients, principal contractors and principal designers to ensure compliance with building regulations and that those involved in all elements of the works are competent (these roles also apply to work in non HRBs). Generally, parties involved in building work on

an HRB will be required to follow a prescriptive building control approval 'gateway' process before works can start and before completed buildings can be occupied. Approval must also be sought before implementing significant changes to the works. It will be mandatory to compile and maintain a 'golden thread' of information on the works for each HRB, which will continue to be maintained when the building is occupied. In addition there are new 'duty holder' roles imposed on those responsible for the building once it is occupied.

The new building control regime will be overseen by the Building Safety Regulator ("BSR") as part of the HSE, which will act as the building control authority in respect of all HRB works. The BSR has strengthened existing building control powers and new enforcement tools, which will be available to all building control authorities not limited to HRBs. Compliance notices can be served requiring corrective action by a set date, with failure to comply a criminal offence. Stop notices can also be served requiring all specified work to stop until the contravention is rectified, again failure to comply will be a criminal offence.

Although the new regime comes into effect on 1 October there are transitional arrangements which apply to developments already 'in flight'. Essentially for these arrangements to apply and for the works to remain within the existing building control framework:

the initial notice must have been given to a local authority (and not be rejected), or full plans must have been deposited with a local authority (and not be rejected) before 1 October; and the HRB work must be 'sufficiently progressed' by 6th April 2024.

'Sufficiently progressed' for the construction of a new HRB is when the pouring of concrete for the permanent placement of the trench, pad or raft foundations or the permanent placement of piling for the building has started. If work to an existing building, when that work starts or if a material change of use when work to effect that change of use has started.

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