

# JCT NEWS

THE JCT CONTRACTS UPDATE FOR THE CONSTRUCTION PROFESSIONAL

## THE ALICE HAWTHORN, NUN MONKTON, YORKSHIRE



The Alice Hawthorn

Named after a famous 19th century racehorse, The Alice Hawthorn pub has undergone a transformation with the renovation of its Grade II listed main pub building and the addition of 12 brand new guestrooms whose design befits its rural location and history. It charges out of the gate to the colours of a JCT Standard Building Contract.

The Alice Hawthorn is the last remaining pub in the Yorkshire village of Nun Monkton, the closure of four other pubs being indicative of the socio-economic and legal changes impacting the pub

industry across the country. Before new ownership in 2013, the pub itself was struggling and briefly closed in 2007 as its status as a meeting point and social hub for the community was under threat due to economic decline.

Nun Monkton is located at a meeting point of the rivers Ouse and Nidd. Historically, the village was an important northern trade hub for the medieval river transport network. The development of the road network as the major source of transport saw the location's importance diminish as a social and trade

focal point. The off-the-beaten-track location of The Alice Hawthorn meant that it was not naturally attracting a passing trade and, despite investment in the kitchen and ground floor pub space since 2013, it was not operating at a level sustainable to secure its future. The owners recognised the need to broaden its appeal and offering to attract a wider range of visitors.

The project brief was to provide a high quality but affordable 'base camp' for the local community and tourists to enjoy the surrounding landscape

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and visitor attractions, including the village maypole which has been in place since the 1790s and is reportedly the tallest in the UK, as well as exploit the village's proximity to York, Harrogate, and Leeds. The local community was at the heart of the project throughout the design phase and consultation between the project team, local council, and community at each stage ensured that the needs of the community were met and refined through a process of feedback and amendment.

The project itself includes 12 ensuite guest bedrooms – four on the first floor of the pub and eight around a new courtyard which extends the village green into the pub's rear garden. The layout takes inspiration from the Norse 'Garth', meaning 'a clearing in the woods' or place of gathering, with the connection to the village green and the sense of enclosure created by the courtyard space. The new bedrooms are also supported by ancillary service areas, including housekeeping and linen store, and staff accommodation. Level threshold access is provided to all buildings ensuring accessibility for all.

The design of the newbuild elements take their cues from the rural and informal farmsteads of the surroundings which continue to be grazed by livestock. The village green is one of the last remaining 'working' greens in Yorkshire. The structures mix home-grown Douglas fir frames with authentic agricultural building materials including galvanised corrugated steel and larch cladding. The simple and honest construction anatomy, echoing the theme of agriculture and stables, reflects the pub's equine connection and provides a harmonious link to the village's history.

The new timber frame buildings are called 'sheds', 'field barn', 'stables', and 'tack room' and are constructed as follows:

**Sheds** – A single storey in-fill building between two existing brick buildings. Contains two staff bedrooms plus a bathroom. Sheds is clad in larch, with a pan-tile roof to match the outbuildings.

**Field Barn** – A south-facing two-storey building with four guestrooms. The lower level is larch clad, whilst the upper is sinusoidal galvanised steel. There are no windows to the north and west to prevent overlooking and light pollution to the neighbours.

**Tack Room** – A single storey structure with wheelchair accessible guestroom. Adjacent to the west boundary and Field Barn, the Tack Room also provides shelter to the outdoor kitchen, pizza oven and pub garden bar.

**Stables** – Adjacent to the east boundary, Stables is a single-storey extension containing three guestrooms. Both Stables and Tack Room are clad in larch with a sinusoidal galvanised steel roof and back wall.

Internally, in contrast to the traditional pub interior, the guestrooms have no plaster but are lined with larch boarding and polar plywood. A tinted treatment subtly blurs the distinction between the different types of timber. The rooms are decorated with lino-cut prints created by the village primary school children, who also have a vegetable patch at the rear of the Garth.

Sustainability has been central to the design of the project and is reflected through materials choice, energy supply, final occupancy, and functionality. All the new build elements score an EPC 'A' rating. A ground source heat pump provides heating and hot water supplied by bore holes and supported with high levels of non-combustible mineral wool insulation and air tightness to a higher standard than the current Part L2A Building Regulations.

The timber frames are naturally ventilated through the use of high-level clerestory windows and roof lights on actuators. Solar gain is reduced by roof overhangs which offer shading. LED and low energy lighting, plus low-volume water appliances are fitted throughout. A sustainable drainage system includes permeable paving and surface water attenuation tanks concealed below the pub garden.

One of the challenges was developing a 1-hour fire resisting timber frame wall within 1 metre of the site boundaries. This was solved by employing fire resistant sheathing internally, which in turn avoided the use of carbon heavy brick work. Biodiversity has been improved with extensive planting and new habitat creation. The courtyard is bounded by borders planted with native species which also helps to screen adjacent bedrooms. An orchard at the back of the site, which would have been typical feature in the pub's medieval past, is being re-established with fruit trees to supply the kitchen.

The redevelopment of The Alice Hawthorn has created new revenue streams for the restaurant and bar business, cemented the pub's importance to locals, improved visitor footfall from a broader range of users, and improved the level of spend within the local community. The use of the JCT Standard Building Contract underpinning the project provides a stable foundation for parties, especially where the project needs to encompass a number of complex and specialist processes, mixing renovation and new-build with a number of sustainable measures.

## PROJECT DATA

START:	JANUARY 2019	PROJECT MANAGER:	R PICKERING
COMPLETION:	JULY 2020	QUANTITY SURVEYOR:	ASPECT 4
GROSS INTERNAL FLOOR AREA:	905M <sup>2</sup>	STRUCTURAL ENGINEER:	PRICE MYERS
GROSS (INTERNAL + EXTERNAL) FLOOR AREA:	3,620M <sup>2</sup>	M&E CONSULTANT:	P3R
CONTRACT:	JCT STANDARD BUILDING CONTRACT	ACOUSTIC CONSULTANT:	GILLIERON SCOTT ACOUSTIC DESIGN
COST:	£2.95 MILLION	SUSTAINABILITY CONSULTANT:	AWARD ENERGY
ARCHITECT:	DE MATOS RYAN	PRINCIPAL DESIGNER:	DE MATOS RYAN
CLIENT:	KATE AND RICHARD HARPIN	APPROVED BUILDING INSPECTOR:	HARROGATE BOROUGH COUNCIL
MAIN CONTRACTOR:	GEM CONSTRUCTION	CAD SOFTWARE:	MICROSTATION, SKETCHUP

## ROLLING OUT PBAS IN JCT CONTRACTS

**JOHN RICHES – VICE-CHAIR, JCT DRAFTING SUB-COMMITTEE**

Project bank account provisions are now available for all JCT contract suites – improving cash flow through the industry...

Lord Denning said in *Modern Engineering (Bristol) Ltd vs Gilbert Ash (Northern) Ltd 1973* that “cash flow is the lifeblood” of the construction industry – a sentiment that is particularly apposite where parties feel they are not being paid enough or on time. There have been a plethora of reports on the ills of the industry featuring cash flow related problems.

“What is needed [to improve cash flow] is an agreed procedure to ensure that payments are made regularly and promptly,” said the Banwell Committee in 1964. Fast forward to the two Latham reports, which retrod the familiar ground of cash flow. At last, we got an outcome in terms of adjudications and payment provisions in the 1996 Construction Act, subsequently amended in 2009. Throw in a non-construction piece of legislation, the Late Payment of Commercial Debts (Interest) Act 1998, setting a penal rate of interest, and we have all the ingredients to ensure prompt payment – cash flow at last.

Despite the courts having revealed weaknesses in the drafting of the 2009 legislation, and how applying the payment rules has accordingly become more difficult, payment has improved overall as a result of Latham.

Dissatisfaction remains, however. The government applied more pressure in 2015 and 2017 by introducing a duty to report payment practices and performance – a name and shame type revelation. Did this shame the industry into prompt payment practices? Central government performance on payment is gauged on two payment periods, one of 30 days and one of five days. Data from Build UK (for which I am grateful) shows that in July 2018 no main contractors were paying within 30 days, but in February 2022 half of main contractors were doing so. Things have improved. But there are many SMEs within the industry who think this is not good enough.

The public sector is putting more pressure on. In 2016 Scotland introduced project bank accounts (PBAs) for projects over £2m from March 2019. Since 2009, UK central government departments, their agencies and non-departmental public bodies have been told to move to a position where PBAs are adopted unless there are compelling reasons not to do so.

The Construction Playbook on public works projects (also impacting on the private sector) says: “The government understands the importance of prompt, fair and effective payment in all businesses.” Being paid promptly for work carried out in

accordance with the contract ensures businesses have a healthy cash flow throughout the supply chain, especially at the lower tiers.

The construction sector is ripe for introduction of PBAs as the next contributor to improving payment practices and cash flow. A PBA is a bank account dedicated to the project. The account is ring fenced and members who sign up to the PBA, the main contractor and subcontractors, are all paid directly and simultaneously from the PBA. There is no time lag for the supply chain: they get their money on the same date as the main contractor. No 60-day payment terms: whatever the standard contract payment period is, it applies to everyone who has signed up to the PBA.

The JCT has this year updated (not so much an update but supercharging) the old 2016 PBA documentation (available from the JCT website). Great effort has been made to provide a working document that will slot into the pressures being applied on the industry to adopt PBAs. In drafting this document, the prime objective was to use the existing (and future) standard form contracts. If you want a PBA there is the bolt-on to whatever contract suite you are using. It has been designed around the most-used suites.

All of the familiar valuation processes remain in the primary contract documents. These are dealt with arriving at the sum out of the PBA. All of the ordinary payment notices, pay less notices and the like operate as normal.

For everybody to be paid out of the PBA a payment schedule is sent to the employer identifying the sums to be paid to the main contractor and each subcontractor. They are all paid electronically at once. Good for cash flow.

But what about the great desire to be paid the right amount of money at the right time? The PBA very directly addresses this. Because the PBA is a system of dealing with the payment itself, establishing the right amount remains within the primary contract. There is less scope for argument on when the money is going to turn up, and the amount is known very quickly because of the way the PBA operates. Any shortfall that does not take the payee up to the right amount is readily identified. In terms of behavioural change, it is hoped an effectively operated PBA will leave the parties free to focus on resolving any differences affecting the right amount. Even domestic amounts between main contractor and subcontractor will be paid through the PBA once the amount is established.

What about final accounts and retention? The JCT PBA 2022 works right through to closure of the entire project. Will the JCT PBA 2022 rejuvenate the lifeblood?



## SMART CONTRACTS - WHAT ARE THEY AND HOW DO THEY FIT IN WITH TRADITIONAL CONTRACTS?

CHARLES MAURICE, PARTNER AND DANIEL FOURNIER, PARALEGAL – STEVENS & BOLTON LLP

*Smart contracts – fruit of the nascent distributed ledger technology – are an emergent disruptor to the legal landscape, but what are they and how do they fit in with traditional contracts?*

You might be forgiven for thinking that contract law in the UK is neither modern nor smart: after all at times we still rely on legal principles handed down in judgments from the Victorian era and earlier. However, the rise of distributed ledger technologies has been largely responsible for the introduction of a new phrase into the legal lexicon – the “smart contract” – “a legally binding contract in which some or all of the contractual obligations are defined in and/or performed automatically by a computer program.”<sup>[1]</sup> This definition has been provided by the Law Commission, in its paper on smart contracts published in November 2021, itself the culmination of research into whether the UK’s common law system is well-equipped to deal with smart contracts (more of which below).

Automated contract performance is not a new thing, at least conceptually. Plenty of contracts are conditional upon and/or are expressed automatically to come into force on certain outcomes or the performance of certain tasks. However, automated contract performance wholly or partially based on code takes this to a new level (a program **actually** doing something vs a piece of paper telling us it will happen), and raises interesting possibilities around efficiency, transparency and reliability.

So what do we mean by this? A smart contract written in machine executable code allows a given program to execute obligations within a contract automatically once the conditions to that contract have been fulfilled (i.e. to simplify: if “X” happens, then do “Y”). In practice, the parties to the agreement negotiate the terms, which are then transposed into code, and which can be (but are not always) accompanied by natural language clauses – it is perfectly possible to have a smart contract acting as an execution mechanism for a particular part of a wider natural language contract.

Due to their inherent transparency, smart contracts can reduce the importance of trust between parties. Generally the self-executing obligations in a smart contract are stored on distributed ledgers (such as a blockchain), which are designed to be difficult to alter without the consent of the other party. Therefore, once agreed and in force, the smart contract is designed to continue to do its thing without further intervention. Common applications for smart contracts include supply chain management, banking transactions, customer verification, peer-to-peer transacting and other repetitive tasks, although there is increasing potential for them to be used in more complex agreements. One practical example that we have implemented is to “hard bake” artist royalty payments into the onward sale of NFTs – particularly useful where the seller is not the artist itself. In that sort of application, the smart contract

for the NFT might include a pre-defined royalty payment, automatically paying a percentage of any onward sale of the NFT by a third party into the artist’s crypto wallet. The idea too is that this type of arrangement requires little policing, particularly if the arrangements are accurately described and appropriate control is maintained over the marketplace and crypto wallets used to make a sale: once a sale happens and value is exchanged, the royalty is automatically paid without the need for buyer or seller to do anything (or any ability to stop it).

All good so far, but this does raise some challenging questions for the contract lawyer, including whether we are expected to be able to write code (an area to upskill, but we also work with people who can); how we can identify when a smart contract is appropriate (the list of use cases is ever-growing); whether we need to understand how the smart contract fits together (we do); and whether the code itself is binding (yes, it can be).

Turning back to our friends at the Law Commission, their view is that the UK’s common law system *is* well-equipped to deal with smart contracts. However, this view is accompanied by recommendations on how best to ensure that a smart contract forms a binding contract from a traditional contract law perspective, including that parties: (i) distinguish which definitions prevail in the event of a conflict, if expressed in both natural language and code; (ii) provide a jurisdiction and choice of law clause; (iii) allocate the extent of liability in the event of bugs or coding errors; and (iv) provide an explanation in natural language to accompany coding, while making clear that the explanation forms part of the contract.

An interesting point arises too with regard to interpretation of coded terms. The courts have developed principles of interpretation in relation to natural language; it is unclear whether they will easily apply to terms in code. The Commission has propounded a test whereby an expert coder could assist the court in ascertaining the meanings of coded terms – a “reasonable coder” test. Additional uncertainties will doubtless arise as the use of smart contracts continues to increase, particularly in relation to conflict of law issues. The government has asked the Commission to set out further guidance on conflict of laws and emerging technology, and this work is expected to begin in the first half of 2022.

As the digitisation of contracts continues, smart contracts may feature as part of that, particularly for certain applications where automated contract execution is relevant. The construction industry may pick up on the benefits of this in due course, particularly for example as Building Information Modelling (BIM) takes hold in larger construction projects, where it is possible that smart contracts will have a role to play as concept progress.

This article was originally published by Stevens & Boltons LLP on their website. To access the original please click [here](#).

<sup>1</sup> Smart legal contracts, Advice to Government, CP 563, Law Com No 401, vii



JCT celebrates its YPG initiative with (l-r) Charlie Saunders (YPG member leader) Anjali Pindoria (YPG future event speaker) and Sneha Khetia.

## JCT'S PARLIAMENTARY RECEPTION HIGHLIGHTS THE IMPORTANCE OF SUPPORTING THE INDUSTRY'S FUTURE LEADERS

JCT used its Construction Industry Parliamentary Reception, hosted at the House of Commons, to highlight the importance to the future of the construction industry of supporting young professionals and providing education and training opportunities.

The event, held on 17th June, and JCT's first Parliamentary Reception since the Covid-19 pandemic, was an occasion to bring back together professionals across the industry who contribute to JCT's success and welcome members of JCT's Young Professionals Group (YPG).

The YPG is a networking group aimed at those primarily in the first ten years of their construction career, regardless of age, and brings together professionals across all sectors of the industry to provide peer-to-peer networking opportunities, talks from industry leaders and experts, and a members-only online portal including articles, resources, videos, white papers, and more.

The group uniquely combines a range of both digital and face-to-face networking resources to support a modern way of working.

The YPG is a vital link in combing the vast array of expertise and experience that exists within the JCT membership, with those that will one day be the industry's leaders and play a role in JCT's future.

JCT chief executive, Neil Gower, who gave a welcome address at the event, said:

"It is a pleasure to be able to welcome back JCT members and guests to our first Parliamentary Reception since the pandemic and to acknowledge the continued hard work of our members in what continues to be an extremely challenging period for the industry.

"Today is about looking to the future and highlighting the important work JCT is doing to develop and support young professionals through our YPG network, as well as providing a range of resources to ensure that professionals at all levels have the skills they need to meet future challenges and to lead our industry forward."

The initiative of supporting young professionals reflects JCT's reputation for providing a range of expert-led training and education resources to assist professionals at all levels in the use of JCT contracts.

JCT Training includes full-day in-person courses, 3-hour webinar courses, and a range of on demand video modules providing an introductory overview.

The flexibility of the courses and options supports the modern construction professional, who can choose between a fully detailed face-to-face session, and interactive online webinar, or cover a specific topic on the go via mobile or at the desk with a video module.

More information about the JCT YPG is available at [ypp.jctttd.co.uk](http://ypp.jctttd.co.uk).

Information about the range of JCT Training courses can be found at [www.jctttd.co.uk/jct-training](http://www.jctttd.co.uk/jct-training).

## JCT TRAINING UPDATE

### AUTUMN 2022 TRAINING COURSE DATES AND BRAND NEW JCT TRAINING VIDEO MODULE COURSES...

We have announced our range of available JCT Training courses for the Autumn 2022 season. We continue to provide a flexible range of face-to-face and digital webinar courses covering some of our best-selling contract families. Whether you opt for one of our full day, in-person courses, providing a thorough grounding in a contract, or one of our introductory 3-hour interactive webinars, we have the tools to help you improve your understanding of JCT contracts and the construction contract process.

#### JCT Training Autumn 2022: in-person, full day courses

##### An Introduction to JCT Intermediate Building Contract 2016

Thursday, 6th October: 10am – 4:30pm

##### An Introduction to JCT Design and Build Contract 2016

Wednesday, 9th November: 10am – 4:30pm

Trainer: Peter Barnes, past-member, JCT Council



#### JCT Training Autumn 2022: 3-hour webinar courses

##### An Introduction to JCT Design and Build Contract 2016

Wednesday, 5th October: 2pm – 5pm

##### An Introduction to JCT Minor Works Building Contract 2016

Wednesday, 16th November: 2pm – 5pm

Trainer: John Littler, member, JCT Council

Find out more and book your place today by visiting [www.jctltd.co.uk/jct-training](http://www.jctltd.co.uk/jct-training).



## NEW JCT TRAINING VIDEO MODULES LAUNCHED

Join those professionals who are developing their contract skills with our range of JCT Training Video Modules. Providing a short introduction to the key elements of JCT Contracts, the individual videos cover a particular aspect of the contract, full of useful information as a quick-reference guide and to refer to at a time convenient to you. You can also purchase a contract course as a complete series - the videos combined provide an introductory overview to the whole contract, useful for providing a grounding for those new to the contract or for those wishing to brush up on their knowledge without committing to a full JCT Training Course.

### We have just launched two new video module courses:

#### An Introduction to JCT Minor Works Building Contract 2016

##### Videos include:

1. When to use MW2016
2. Agreement, Articles & Recitals
3. Schedules & Particulars
4. Sections 1, 5, 6 & 7
5. Employer & Contractor's Key Obligations
6. Payment
7. Variations
8. Time, Delays & Extensions of Time
9. Differences between MW & MWD
10. Sub-Contracting under MW

#### An Introduction to JCT Sub-Contracts 2016

##### Videos include:

1. Sub-Contract Variants
2. Design
3. Time
4. Adjustment of the Period for Completion
5. Loss & Expense
6. Variations
7. Payment
8. Termination
9. Settlement of Disputes

For more information and to access our range of JCT Training Video Modules course, including those covering the JCT Standard Building Contract, JCT Design and Build Contract, and JCT Contracts 2016 – The Legal Perspective, visit [www.jctltd.co.uk/category/jct-training-videos](http://www.jctltd.co.uk/category/jct-training-videos).

### Coming soon...Choosing the right JCT 2016 Contract for your project

We are pleased to announce the launch of new JCT Training Video Modules courses – ‘Choosing the right JCT 2016 Contract for your project’, coming soon.

This course provides videos covering some of the key factors that govern the selection of a particular JCT 2016 contract for a project, including when is the right time to choose, procurement options, matching JCT contracts to the chosen procurement method, specific contracts in the JCT range, and choosing JCT sub-contracts.

To keep informed about the launch of this new course, join the JCT Network at

[www.jctltd.co.uk/network-signup](http://www.jctltd.co.uk/network-signup).

## A CONSIDERATION OF 3 RELEVANT CONSTRUCTION MATTERS

SU SHARMA – SKANSKA UK

Last year, the JCT Young Professionals Group (YPG) kindly invited me to speak on three of their chosen topics, Modular Construction – The Future of Construction, Draft Building Safety Bill (as it then was at the time), and PI Insurance: Current Position.

This article for JCT News includes those topic areas I covered with the YPG, as a summary for JCT News readers, and to provide an update where applicable on the current situation.

### **1. Modular Construction- the future of construction?**

#### **What is Modular Construction?**

Put simply, prefabricated components are manufactured off-site in a factory. These are then assembled on site. Most commonly, modular construction is used in the housing market.

Modular construction is a speedy way to build houses. Given the housing shortage in the UK and the government's keen initiative to build approximately 300,000 homes per annum, modular construction in the house building market is an attractive mode of construction. To support this initiative, local and central financial support (open to modular construction) is available.

#### **Skanska's Involvement in Modern Methods of Construction (MMC)**

The BoKlok housing project, an IKEA/Skanska joint venture, finally arrived in the UK after 20 years of building over 14,000 sustainable homes in Sweden, Finland, Denmark and Norway.

Under the BoKlok brand, IKEA/ Skanska announced its entrance into the UK housing market in mid-2019. Since then, it has garnered attention as one of the few homebuilders to introduce the concept of modular homes to the UK.

Homes are competitively priced enabling more home ownership. BoKlok is approved for the government's Help to Buy scheme. All homes carry the Building Offsite Property Assurance Scheme (BOPAS) and NHBC Accepts scheme.

#### **Sustainability**

Sustainability, a key IKEA/Skanska business strategy, is reflected in its net-zero carbon reduction targets. Boklok has the following key sustainability features: -

- a. Standardised solutions are applied which means the same home design can be produced with precision each time, limiting the number of errors made. The standardised solution further reduces waste by approximately 70%; fewer mistakes mean less wastage.
- b. Timber, a key sustainable material, contributes to BoKlok homes being 50% more carbon efficient

than traditionally built homes.

- c. The use of air source heat pumps for space and water saving ensures energy efficiency in BoKlok homes.

#### **The Challenges**

As with all construction projects, modular construction is not without its challenges. For instance:-

- a. Homes constructed in a factory setting require precision and repeatable designs. An approach like this prevents designs being tailored to customer taste. This contributes to a homogenous geographical landscape.
- b. Transporting modular blocks to site often requires an escort. Should damage occur during transportation, this could delay the completion date.
- c. Modular design requires architects and design engineers to understand Design for Manufacturing and Assembly processes (DfMA), which is specific to modular construction. This requires engineering and design decisions to be made upfront so they can be replicated in the factory.

#### **Modular Construction: Is it the Future?**

Modular construction certainly is part of the future in building homes. It is an efficient, low cost, high quality, sustainable mode of construction which is quicker to construct.

As modular homes are built in factories, local authorities, who own housing stock, are able to make modifications on existing stock quickly and efficiently. This adaptability is a key component of MMC.

BoKlok UK is currently developing sustainable homes in Bristol, Worthing and Littlehampton.

### **2. Building Safety Act 2022**

On 14 June 2017, the construction industry had a wakeup call; the unthinkable happened. The Grenfell Tower fire tragically claimed 72 lives. Serious failings were exposed, not just across the system of building and managing high rise homes, but across the whole of the construction industry. Dame Judith Hackitt led an independent review of the building regulations and fire safety to understand the cause of the fire. She concluded that the whole system needed major reform and stating the obvious, residents' safety needed greater priority through the entire life cycle of a building.

One consequence of the review was the enactment of the Building Safety Act 2022 ("BSA"), comprising 262 pages. This



received Royal Assent on 28 April 2022. It has brought about some of the biggest reforms in almost 40 years. The aim of the BSA is to dramatically improve building safety during design, construction and occupation. It has a particular emphasis on higher risk (residential) buildings i.e. those that are at least 18 metres in height or have at least 7 storeys and in each case, have at least two residential units. It also applies to care homes and hospitals meeting the same height threshold during design and construction. The Act makes changes to the Fire Safety Order, applicable to workplaces and the non-residential parts of blocks of flats.

The BSA makes far reaching changes to dramatically improve building safety during design, construction and occupation, relating to competence, selection of products and sound management. The BSA does not, however, amend the Building Regulations.

Although Royal Assent has been received, most of the provisions will not come into force for at least 12-18 months, through secondary legislation.

Providing a detailed analysis here of this complex legislation is not feasible. 3 significant features are, however, key:-

1. Extension to Limitation Periods: The current period of time of 6 years from practical completion for bringing a claim has been extended to 15 years for claims in two areas:
  - a. Dwellings unfit for habitation under Section 1, Defective Premises Act 1972; and
  - b. Breaches of the Building Regulations under Section 38, Building Act 1984.

This extension applies prospectively i.e. to claims which arise after the BSA takes effect.

In relation to claims brought under Section 1, DPA, however, claims can be brought up to 30 years after completion of the dwelling retrospectively i.e. to claims arising before the BSA takes effect, potentially giving rise to claims on historic projects.

2. New Building Safety Regulator and New Home Ombudsman: Two new roles have been created by the BSA; the Building Safety Regulator, responsible for overseeing and driving improvements in the safety and performance of all buildings. The Building Safety Regulator will form part of the HSE. A Home Ombudsman is also created by the BSA, whose role is to determine complaints by buyers of new homes against developers.
3. Construction Products: There is now a requirement on manufacturers to ensure all construction products are safe. A new cause of action against manufacturers and suppliers of products may be raised if the product:
  - a. Has been mis-sold; or
  - b. Is found to be defective; or

- c. Breaches existing construction product regulations.

If a product falling within one of the 3 categories above causes or contributes to a dwelling becoming unfit for habitation, a civil claim may be brought. For cladding products only, there is a retrospective 30-year limitation period. For all construction products, there is a 15-year prospective period.

### **3. Professional Indemnity (“PI”) Insurance market- Current Position**

Since mid-2018, the availability of insurance capacity for PI in the construction market has significantly reduced with many insurers withdrawing from the class and those remaining reducing the capacity they are willing to offer.

This has led to the transition into a ‘hard market’.

This transition has led to a dramatic increase in the cost of purchasing construction PI policies, increased self-insured excesses being applied and reductions in the scope of policy coverage.

The availability of unlimited reinstatements has been considerably reduced with a finite number of reinstatements being offered instead.

Coverage for claims arising from cladding and fire safety matters is now extremely limited.

In 2019, Lloyds of London issued a report called Decile 10 which highlighted the poor claims performance of construction PI insurance and led to Lloyd’s requiring all syndicates to identify their poorest performing portfolios of business and demonstrate plans to return their portfolios to profit.

One of the worst incidents was of course the Grenfell Tower tragedy, which resulted in an increase in the number of claims on buildings with dangerous cladding.

The PI market has seen some stabilising in the last 12 months. Construction companies with well performing loss histories and quality risk management are faring considerably better than companies with distressed loss histories who can expect to have challenging renewals.

The recent government comments regarding cladding and fire safety may raise further concerns to insurers regarding the current level of cover provided.

Construction companies can help themselves considerably when procuring PI by engaging with their brokers as early as possible in the renewal process.

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## JCT INTERVIEWS...

**DAVID KING**

**Member, JCT Council**

**RIBA representative**

**Current job title and company/position:**  
**Expert Witness / Technical Director, HKA Global**

**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.**

**David King is a chartered architect with 40 years' experience throughout the design and construction process. His legacy of projects includes several building design awards. He has led and managed large-scale and complex undertakings in a wide range of sectors and building types, with a particular interest in materials technology, research, and the environmental performance of buildings - focused primarily on the building envelope.**

**Formerly a member Hellmuth Obata & Kassabaum's world-wide Technical Board, and a director at HOK's London office, David had overall responsibility for office strategy in digital information management (BIM), the Integrated Management Systems (ISO 9001, ISO 14001 and OHSAS 18001), and BREEAM/LEED, EA/DDA, CDM**

**compliance. David was responsible for projects in Europe, the Middle East and Africa, using a wide range of contract forms, from JCT and NEC to FIDIC and bespoke. On leaving HOK, he joined Probyn Miers/HKA to invest his experience in dispute resolution and expert witness work.**

**JCT:** David, how did you first come to be involved with JCT? As a new member of Council, why do you think it is important to be involved?

**DK:** As a newly qualified architect, I represented the Junior Liaison Organisation for 2 years at meetings of the NJCC Good Practice Panel, with a view to understanding the perspective of other members of the design and construction team. In later years I became a member of the RIBA Large Practice Group and RIBA International Committee, and I remain a member of the CIC Liability Panel and CIC Digital Forum. I became involved with the JCT when Chris Miers (former JCT Council member) announced he was retiring from practice and resigned from JCT Council.

**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?

**DK:** I am particularly interested in how the construction industry is evolving to meet the challenges of working with digital information, and the future possibilities of Integrated Project Delivery as an alternative approach to project procurement.

**JCT:** Do you have any personal career highlights?

**DK:** Much of my early career was spent in conservation work and re-purposing existing buildings – the highlight being the refurbishment of Marlborough House (by Christopher Wren) for the Commonwealth Secretariat. In later years, I worked principally in healthcare and medical research, delivering first the PFI redevelopment of St Barts and The Royal London Hospital (completed 2010), and then the new Francis Crick Institute (completed 2016) as a joint venture between the MRC, CRUK, UCL, Wellcome Trust, Kings College and Imperial College.

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

**DK:** When the diverse stakeholders come together as a team, the construction industry can produce ground-

breaking innovation and buildings that inspire world-wide acclaim. Unfortunately, much time and energy is still wasted in an adversarial approach to procurement – we can do better than this, and should do so more often.

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

**DK:** Designers, consultants, and contractors have led the way in embracing 3D & 4D modelling as a way of reducing the time lost on site from incomplete and poorly coordinated information, but more substantive progress will continue to elude us until we succeed in bringing all parties to the table (including clients) and start to fully realise the benefits available from properly integrated interoperable digital data.

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

**DK:** JCT has developed contract forms that facilitate the use of BIM. But BIM is not just about 3D modelling, it's about collaboration – sharing interoperable data in the interests of the project more so than the interests of any one party. I think the opportunity exists for JCT to play a central role in the development of collaborative opportunities.

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