

JCT 2024 - All You Need to Know but Have Not Dared to Ask

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Commercial and Construction

3RD JUL
2024

Commercial, Construction

At our most recent Webinar 'JCT 2024 – All You Need to Know but Have Not Dared to Ask' members Marion Smith KC, David Sawtell, Camilla ter Haar, Ruth Keating and Hannah Fry considered ten topics and a bonus topic. The webinar is now also available on demand '[JCT 2024 – All You Need to Know but Have Not Dared to Ask](#)'.

The webinar covered the key points:

New and Updated Clauses

- **Good Faith:** Article 3 includes an express obligation to collaborate in good faith. While such an obligation existed in the JCT Design & Build 2016 as a supplemental provision, the decision to promote it to a core mandatory article is a significant change. The inclusion of this mandatory clause reflects the growing importance of collaborative working in the industry and is a direct response to the Construction Playbook.
- **Building Safety:** A missed opportunity. JCT has been criticised for not giving sufficient consideration to the new procurement and contracting framework required by the Building Safety Act 2022. In particular, there is no set of clauses to accompany the new JCT Design & Build 2024 form for the construction of higher-risk buildings. What we have, instead, is a light-touch series of amendments to the JCT 2024 form.
- **Contractor's Design Liability:** Significant changes have been made to the wording of the contractor's design liability clause, which now reflects the standard amendment practitioners would make. The contractor's liability is limited to no greater than the use of reasonable skill and care. To the "extent permitted by Statutory Requirements" the contractor is not subject to a 'fitness for purpose' requirement. This is a response to the Supreme Court's decision in *MT Højgaard A/S v E. On Climate & Renewables UK Robin Rigg East Limited and another* [2017] UKSC 59.
- **Relevant Events and Relevant Matters:** New optional Relevant Events include epidemics and statutory powers being expanded. Clause 3.15 now also addresses discovery of asbestos, contaminated land, and unexploded ordnances.
- **Professional Indemnity Insurance:** The contract particulars can now specify exclusions or sub-limits within the overall level of professional indemnity insurance cover.
- **Sustainability and Environmental Provisions:** Previously optional clauses are now mandatory and in the main body of the contract, encouraging contractors to suggest amendments for improved environmental performance and requiring them to provide information on the environmental impact

of materials. Note, the contractor is encouraged to suggest amendments but not required.

- **Extensions of Time:** The timeframe for the Employer to respond to a delay claim is reduced from 12 to 8 weeks. Clause 2.24 remains vague: it is only required to give a notice 'forthwith' if and whenever it becomes reasonably apparent that work is being or is likely to be delayed, with no express sanction for a failure to provide a prompt notice.
- **Insolvency:** The definition of insolvency is expanded to reflect the Corporate Insolvency and Governance Act 2020.
- **Termination and Liquidated Damages:** New grounds for termination include epidemics and changes in law. A new clause, Clause 2.29.5, has been introduced dealing with liquidated damages for delay to the Works which reflects the Supreme Court's decision in *Triple Point Technology Inc v PTT Public Company Ltd* [2021] UKSC 29. If termination occurs before Practical Completion, liquidated damages will be charged from the Completion Date up to the time of termination. After termination, liquidated damages may not be claimed, however "other rights and remedies" remain, i.e. damages incurred by the Employer due to further delay should be claimed as general damages.
- **Gender Neutral Language:** The new contracts use gender-neutral language.

Key takeaways:

- The JCT 2024 reflects industry changes including building safety, a growing focus on sustainability, Covid, *Triple Point* and *MT Højgaard*.
- The changes are evolutionary rather than revolutionary. Some updates are minor, reflecting existing market practices.
- Given the references to statutory requirements and updated guidance, parties need to stay abreast of relevant updates.
- If you are contracting in respect of a higher-risk building, you need to make a number of important amendments to the contract.

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