



## Clear by Design

**Court confirms that express contract terms prevail when interpreting parties' design responsibilities—and Part 8 may be the correct route for deciding such claims**

Design and build projects proceed on the basis that the contractor bears responsibility for carrying out and completing the design. Where the employer provides a design that has been progressed to a certain level, the contract should explicitly state the extent to which the contractor can rely on that existing design.

Difficulties arise when the contract is not as clear as it might be, and the parties disagree about the scope of the contractor's design responsibility. In interpreting the disputed contract provisions, do individual sentences carry more weight than the general tenor of the agreement? Can pre-contractual submissions qualify the language of the contract? And is Part 8, the simpler procedure for civil claims, the correct route for deciding such disputes?

The recent case of *Workman Properties Ltd v Adi Building And Refurbishment Ltd* [2024] EWHC 2627 (TCC) provides fresh guidance on all of these issues.

### Key takeaways:

- It is for the party resisting the Part 8 procedure to show that disputes of fact exist, and general references to pre-contract representations do not suffice for this purpose. Part 8 remains the appropriate procedure for determining discrete points of law in cases that do not involve a substantial dispute of fact.
- When interpreting contracts, the express terms in their totality prevail over isolated statements, pre-

contract discussions, or assumptions made by the parties before a contract was agreed.

- When seeking to allocate design responsibility, make sure your contract terms are clear, consistent, and precisely reflect the agreement between the parties.

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## Background

On 6 January 2022, Workman Properties Limited ("**Workman**") and Adi Building Refurbishment Limited ("**Adi**") entered into a JCT Design and Build Contract 2016 Edition (with bespoke amendments) ("**the JCT Contract**") for the expansion of existing facilities at Cotteswold Dairy in Gloucestershire.

Before the legal proceedings, the parties had contested two adjudications. The first and relevant adjudication involved a dispute over Adi's design responsibilities.

Workman contended that Adi had inherited design work carried out pre-contract and contained in the Employer's Requirements ("**ERs**") and had assumed full responsibility for completing the design to RIBA Stage 4 (technical design) standard.

Adi disagreed. Pointing to the second part of paragraph 1.4 of the ERs, which read, "*significant design has been developed to date which has been taken to end of RIBA Stage 4(i)...*", Adi argued that such language constituted a contractual warranty given by Workman that Workman had completed the design to Stage 4 prior to the commencement of the JCT Contract.

The first Adjudicator agreed with Adi's interpretation. Since not all work met Stage 4 standards, the Adjudicator determined that Workman had breached its warranty and/or necessitated a change under the

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JCT Contract, entitling Adi to additional time and money for completing the design work.

## The Part 8 Proceedings

Workman was dissatisfied and commenced Part 8 proceedings, seeking declarations that its interpretation of the contract was correct and that Adi was wholly responsible for completing the design to Stage 4. Essentially, these were the same issues as those considered by the Adjudicator.

Adi opposed the use of the short-form Part 8 procedure. It maintained the case involved substantial disputes of fact, including questions around statements made in pre-contract negotiations and the parties' intentions during the tendering process. Adi contended that the conventional Part 7 route was the appropriate procedure for addressing these factual complexities.

Workman countered that such issues were immaterial to the contract's interpretation. There were no disputes of fact, only law, and the matter could be dealt with swiftly under Part 8.

The TCC was therefore tasked with two issues:

- Determining the suitability of Part 8 for resolving the contractual interpretation issue; and
- Clarifying the design responsibilities of the parties under the contract.

## Held

Judge HHJ Stephen Davies ruled in favour of Workman for the following reasons:

### On the suitability of Part 8

- It is up to the party opposing the Part 8 procedure to clearly identify the disputes of fact material to the interpretation of the contract: *"it is not for the claimant, still less for the court, to scrabble around*

*in the undergrowth of the defendant's evidence"* to identify substantial disputes of fact.

- Adi's *"general reference to what might have happened or been said at meetings,"* was *"obviously insufficient"* to identify a genuine factual issue relevant to the question of contractual interpretation.
- Since Adi had failed to establish a substantial dispute of fact, the claim could proceed on the Part 8 basis.

### On who bore design responsibility

- When interpreting contracts, the focus should be on the express terms and the language used, rather than pre-contractual negotiations or the subjective intentions of the parties.
- All relevant contract provisions, except the second part of paragraph 1.4 of the ERs, placed the Stage 4 design responsibility on Adi. In particular, the Judge highlighted:
  - Recital 3 of the JCT Contract, which stated that Adi had *"examined the Employer's Requirements"* and had agreed to *"accept full responsibility for any design contained in them"*.
  - Clause 2.17.1 of the JCT Contract, which provided that Adi was *"fully responsible in all respects of the design of the works including all design work proposed by or on behalf of the Employer... forming part of the Employer's Requirements"*.
  - The first half of paragraph 1.4 of the ERs which held Adi responsible for *"the complete design, construction, completion, commissioning and defects rectification of the works"*.
- Adi's reliance on the second part of paragraph 1.4, was misplaced. That provision was not sufficient to qualify all the other (clear) contractual terms and did not amount to a contractual warranty. The contract imposed full design responsibility on Adi, including to Stage 4.



## On the parties' conduct

In delivering his judgment, the judge chose to comment on aspects of the parties' conduct. He criticised:

- Workman for issuing the Part 8 claim in London, when Bristol or Birmingham would have been a more appropriate forum, allowing for earlier listing of the application.
- Workman for failing to engage fully at the pre-action stage. After receiving Adi's response objecting to the use of Part 8, Workman simply issued the Part 8 proceedings without seeking to explore those issues further in correspondence.
- Adi for failing to clearly identify the alleged disputed facts it claimed went directly to the issue of contractual interpretation.
- Both parties for failing to apply for court directions on the appropriate procedural route, before the claim reached the trial stage.

## Analysis

In contractual interpretation, the express terms of the contract invariably carry the most weight.

Neither isolated statements, nor pre-contractual negotiations, nor the parties' subjective assumptions will qualify the express provisions of a contract. If representations made during the tender process are critical, they should be clearly incorporated in the contract.

This case also confirms that Part 8 remains the correct procedure for clarifying legal questions that do not involve a substantial dispute of fact. If in doubt, consider seeking directions from the Court on the appropriate procedural route.

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