

Construction Law Update

JCT Termination Clauses Clarified!

In *Providence Building Services Ltd v Hexagon Housing Association Ltd* [2026], the Supreme Court unanimously granted an employer's appeal, finding that the contractor was not entitled to terminate its employment for repeated default.

This case concerns a short point of contractual interpretation in respect of the JCT Design and Build Contract (2016 edition) termination clause. The standard JCT termination clause is used widely across the construction industry and is present in both the 2016 and 2024 D&B editions.

Key takeaways:

- A contractor may not terminate its employment under clause 8.9.4 of the JCT Design and Build contract, unless a right to terminate under clause 8.9.3 had previously accrued but not been exercised.**
- There is no reason why the right to terminate should be symmetrical as between an employer and contractor given that the relevant contractual obligations are so different.**

Factual Background

The detailed facts of this case were discussed in our earlier bulletin on the Court of Appeal decision ([HAWKSWELL KILVINGTON LIMITED](#)). In this case, the Court of Appeal held that the contractor (Providence) was entitled to terminate its employment for repeated late payment, despite the employer (Hexagon) having cured a previous breach by making payment within the period allowed for remedying the

specified default. Hexagon subsequently applied to the Supreme Court to appeal the decision.

The sole question before the Supreme Court was whether Providence could terminate its employment under clause 8.9.4 of the JCT Design and Build Contract 2016 edition, where its right to give a further notice referred to in clause 8.9.3 had never previously accrued.

Held

The Supreme Court unanimously allowed Hexagon's appeal and reversed the Court of Appeal's earlier decision, finding that Providence was not entitled to terminate the contract. In making its ruling, the Supreme Court found as follows:

1. The natural meaning of the words

Clause 8.9.3 essentially acts as a "gateway" to clause 8.9.4. The words make clear that the contractor must have had an accrued right to terminate under clause 8.9.3 before 8.9.4 applies. This interpretation is described as "*objectively and contextually a natural one*".

2. An extreme outcome

If an employer made two late payments, each being one day late, and a contractor was allowed to serve a termination notice on that basis (providing a specified default notice had been served in respect of the first late payment), this would create an "*extreme outcome*" described by the Supreme Court as a "*sledgehammer to crack a nut*".

3. Heavy reliance on 8.4.3 is misplaced

There is no reason why the right to terminate should be symmetrical as between an employer and contractor given that the relevant contractual obligations are so different. Additionally, different words were used by the author of the JCT standard form in clause 8.4.3 to those used in 8.9.4. Why use

HAWKSWELL KILVINGTON LIMITED

Leeds | Manchester | London
Tel: +44 113 543 6700 | enquiries@hklegal.co.uk | www.hklegal.co.uk



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different wording if the clauses have the same meaning?

4. Cash-flow difficulties

The interpretation of the disputed termination clause should not be distorted, so as to favour contractors from cash flow issues resulting from late payments.

Comment

This decision is significant and will affect parties using both the JCT Design and Build Contract 2016 and 2024 editions which retain this specific wording. Both parties will therefore need to carefully consider their position under these standard form contracts when considering termination.

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