Termination Rights Under JCT Contracts

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One of the most significant construction cases of 2026 so far has been the Supreme Court's judgment in *Providence Building Services Ltd v Hexagon Housing Association Ltd.*[3] This case holds significant relevance for parties contracting under JCT terms, as it clarifies the grounds for termination in instances of late payment or other specified defaults. It will therefore be of particular interest to employers, contractors, and subcontractors throughout the industry.

The Court of Appeal judgment was reversed and *Hexagon Housing Association Limited's* ('Hexagon') appeal was allowed. In doing so, the Supreme Court unanimously decided that on the correct construction of the JCT Design & Build Contract (2016),[4] a Contractor may not terminate its employment under clause 8.9.4 of the contract unless a right to terminate under clause 8.9.3 had previously accrued but not been exercised. In practice, this means that a contractor may not terminate its employment for successive instances of late payment unless it had first attained a right to terminate the contract because of a previous instance of late payment that had been notified but not been cured within the contractual cure period. In contrast to the Court of Appeal decision, the Supreme Court has significantly curtailed contractors' ability to terminate under the JCT forms on the grounds of a 'specified default'.

The case concerned work performed on buildings in Purley, South London and was done so under a 2019 contract, which relied on the then standard terms of the JCT Design & Build Contract (2016). It should be noted that this very widely used contract has

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[3] [2026] UKSC 1

[4] JCT 2024 Edition – The Joint Contracts Tribunal (accessed February 23, 2026). A link is provided to the 2024 edition, even though *Providence relates to the 2016 edition as users, of the JCT website, will as the site notes ' be unable to purchase 2016 edition contracts either in hardcopy or digital format from the JCT Online Store after Tuesday, 31 March 2026. However, users can continue to draft and finalise contracts and documents from both editions purchased* ***before Tuesday 31 March 2026****. As the main article notes the wording of clauses 8.9.3 and 8.9.4 the subject of the decision remains the same as between the 2016 and 2024 editions.*

subsequently been updated in 2024, but the relevant wording in clause 8.9.3 and 8.9.4, which are the subject of this Supreme Court decision remain the same.

Factual Background

On the facts of this case, the Hexagon paid £264,242.55 under a Payment Notice (that had been due on 15 December 2022) on 29 December 29 2022 after Providence had issued, under 8.91 of JCT 2016, a Notice of specified default. A later Payment Notice, for £365,812.22, was paid on 22 May 2023 having been due on 17 May 2023. However, Providence had issued a Termination Notice, under Clause 8.9.1, relying on the fact that the 15 December 15 2022 Payment Notice was paid late. *Hexagon* challenged the Contractor's Termination Notice. *Inter alia* they contended that any default by an Employer must under 8.9.3 have remained extant for 28 days, the temporal period which the parties had agreed on in the contact. Whereas *Providence* argued that no such accrual of right/s was needed to have a right to serve a Termination Notice. In the Court of Appeal *Providence*'s view prevailed and this was as set out appealed by *Hexagon*.

Supreme Court decision

The central issue before the Supreme Court concerned contractual interpretation, namely:

"Can the contractor terminate its employment under clause 8.9.4 of the JCT 2016 Design and Build Form, in a case where a right to give the further notice referred to in clause 8.9.3 has never previously accrued?"

The court therefore had to determine whether the right to terminate under clause 8.9.4 was contingent upon a prior entitlement to terminate under clause 8.9.3. At first instance, the High Court concluded that clause 8.9.4 could only be relied upon if the contractor had first acquired a right to terminate under clause 8.9.3. The judge reached this conclusion by reference to what he considered to be the ordinary and natural meaning of clauses 8.9.3 and 8.9.4 when read together within the wider contractual framework. He also rejected arguments that this interpretation would operate unfairly against contractors, who might otherwise face payment delays of up to 27 days during

each payment cycle. In the judge's view, the contractor had a range of mechanisms available to safeguard its cash flow, including the ability to claim statutory interest.
The Court of Appeal, however, reached a different conclusion. Stuart-Smith LJ began by analysing clause 8.9.4 on its own terms. He considered that the wording of the clause did not indicate that a contractor must previously have had a right to terminate under clause 8.9.3 before invoking clause 8.9.4. In particular, the Court held that the phrase "for any reason" in clause 8.9.4 was sufficiently broad to encompass situations where the contractor had not previously issued a further notice to terminate, for example where an earlier default had been remedied within the 28-day period and therefore had not given rise to a termination right at that stage. Stuart-Smith LJ also rejected the argument that the availability of other remedies adequately protected the contractor from late payment. In his view, those alternatives did not offer the same immediacy or effectiveness as receiving payment on time.

The Supreme Court found that entitlement to terminate under clause 8.9.4 could not arise without a termination right under clause 8.9.3 having first arisen. A central factor in the Supreme Court's reasoning was that the opening words of clause 8.9.4 would have little purpose unless read together with clause 8.9.3. The Court considered this to indicate that termination under clause 8.9.4 depends on an earlier default that was not remedied within the 28-day period before any repeated breach occurs. On this analysis, the right to terminate under clause 8.9.3 operates as the "gateway" to termination under clause 8.9.4.

The certainty provided by the Supreme Court's judgment will be welcomed by employers. As a result of this judgment employers who are operating under standard form JCT contracts will be confident that any late payments, which are promptly corrected will not give an automatic right for the contractor to terminate under the contract. Whilst a contractor is entitled to be paid in a timely way as per their contractual rights on large, and long running, construction projects technical and administrative issues with payments can and do arise. Such issues are often just as set out inadvertent technical and administrative issues which are not indicative of any intent not to meet the contractual obligations owed to the contractor. In many instances once the error/ technical issue is identified it is addressed because of the speed of electronic fund transfers within 24 hours. In making its judgement the Supreme Court set out that in considering the parties respective position, re the application of clause 8.9.3 and clause 8.9.4, wider commercial considerations, such as the Contractor's potential cash-flow difficulties (consequent to late payment) should not impact on the proper interpretation of the disputed clause.

Conclusion

The Court of Appeal's judgment had allowed for a scenario where a Contractor could notionally terminate the contract once two payments were made in each case one day late. It was the opinion and judgment of the Supreme Court that this would allow the use of "*a sledgehammer to crack a nut*" Rather as set out the Supreme Court held that clause 8.9.4 cannot operate independently of clause 8.9.3. It is important for an Employer to 'cure' any late payment within the agreed period that is set out in the contract. Had, for instance, due to the Christmas holidays the 15 December 2022, late payment, referred to above, not been paid within 28 days *Hexagon*'s position would on the proper application/ interpretation of clauses 8.9.3 and 8.9.4 have been fatally undermined. Contractors need to know when they consider clause 8.9.4 that a repetition of late payment, only counts for the purposes of clause 8.9.1 if the initial breach saw a termination right accrue.

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