



Summer 2024

Construction newsletter

Welcome to the summer 2024 edition of Cornerstone, our construction sector newsletter which is packed with what we hope will be interesting and informative articles for you. I would like to start by extending my thanks to those of you who joined us for our summer webinar. [Stefan](#), [Patrick](#), [Emma](#) and [Nicole](#) discussed a variety of topics, including an update by Emma on the latest position in the ongoing implementation of the Building Safety Act 2022, Patrick took us through the key amendments introduced in the 2024 editions of the JCT suite of contracts, specifically in the new design and build form, and Nicole provided a useful update on significant recent cases in the sector. Don't worry if you missed it, you can catch up [here](#).

As you may have seen, we are already busy planning for our autumn webinar which is scheduled to take place on 25 September. You can sign up for that [here](#).

In the meantime, it has been a busy year so far for the courts, with further key decisions being handed down. We discuss several of these cases in this edition. Firstly, John Fawcett and Daniel Fletcher take us through the decision in the case of *Battersea Project Phase 2 Development Co Ltd v QFS Scaffolding Ltd* [2024] EWHC 591 (TCC) which provides useful guidance on the effect of conclusivity provisions in construction contracts. Daniel Fletcher then considers the long-awaited decision in *Abbey Healthcare Ltd v Augusta 2008 LLP* (formerly Simply Construct (UK) LLP) which has finally settled the question on whether collateral warranties are construction contracts. Kira Sharp highlights the salutary reminder as to cost consequences for failing to engage in proceedings, as provided in the case of *Alandale Plant and Scaffolding Ltd v Ilford (Jersey) Ltd*. And finally, John Fawcett shares his thoughts on the case of *Wordsworth Construction Management*

*Ltd v Inivos Ltd T/A Health Spaces* [2024] EWHC 617 (TCC), which concerned the enforcement of serial adjudications.

In other news, with the long-awaited Procurement Act coming into force in October, Jasmin Sandhu and Daniel Fletcher highlight the importance of getting procurement right. Steven Williams then discusses how issues with odour can arise on construction projects, and who may be liable for dealing with the consequences.

Whilst growth in the construction sector has reached a two-year high, Nicole Clifford and I share tips on how to mitigate the risk of contractor and supply chain insolvencies which are occurring thanks to the rising number of insolvencies in the sector.

Daniel Fletcher and I also provide a useful summary of the key changes made to the JCT Design and Build 2024 contract, and, finally, Florence Paul explains the importance of risk assessments following recent high profile cases of injuries and fatalities on construction sites.

If you have any queries regarding any of the topics discussed in this edition, or you have a burning issue you would like us to cover please contact a member of the team. We are always available to provide further advice and assistance.



**Katrina Bretten**

Senior Associate

T: 01223 326660

E: [katrina-bretten@birketts.co.uk](mailto:katrina-bretten@birketts.co.uk)

---

## Featured articles



### **Public procurement: a costly reminder of the importance of getting it right**

[Jasmin Sandhu](#) and [Daniel Fletcher](#) provide a salutary reminder of the importance of complying with the requirements of the Public Contract Regulations 2015, ensuring the correct documents are provided, and the process is followed.

[Read more →](#)

## Conclusivity clauses and mistakes in the adjudication process: what makes an effective conclusion?

[John Fawcett](#) and [Daniel Fletcher](#) look into a case where the TCC provided insight into when the Court will consider an adjudication to be “concluded” and under which circumstances a Final Payment Notice will be considered “conclusive evidence”.



[Read more](#) →



## Collateral warranties are not “construction contracts”

[Daniel Fletcher](#) reviews the case of *Abbey Healthcare Ltd v Augusta 2008 LLP (formerly Simply Construct (UK) LLP)*.

[Read more](#) →

## Harsh cost implications for failing to engage in adjudication enforcement proceedings

[Kira Sharp](#) shares a salutary reminder of the Technology and Construction Court’s (TCC) low tolerance for wasting time and costs, especially in what should be relatively straightforward proceedings.



[Read more](#) →



## The legal landscape of odour issues in construction projects

[Steven Williams](#) discusses how an odour issue forced a contractor to halt work on a £75million residential scheme in East London back in April 2024.

[Read more →](#)

## How to mitigate the risk of contractor insolvency on construction projects

[Nicole Clifford](#) and [Katrina Bretten](#) discuss some of the practical steps parties may wish to consider when planning a construction project, with a view to mitigating the effects of the risk of insolvency.



[Read more →](#)



## JCT 2024 – key updates

[Katrina Bretten](#) and [Daniel Fletcher](#) look at some of the key changes which the JCT has made to the 2024 suite with the aim of streamlining and modernising the suite; specifically in the context of the DB 2024.

[Read more →](#)

## Enforcement of serial adjudication decisions

[John Fawcett](#) explains that following a case the TCC has given some useful further guidance on how the Court will approach the enforcement of serial, and seemingly incompatible, adjudication decisions.

[Read more →](#)



## Protecting progress: the importance of risk assessments in construction

[Florence Paul](#) explains why prioritising health and safety in the construction industry is important to reduce the amount of fatalities.

[Read more →](#)

---

## Events



### Mock employment tribunal - London

Join Birketts and barristers from 3 Paper Buildings chambers for our fantastic interactive mock employment tribunal.

[Sign up here →](#)



## Construction and engineering autumn update webinar

Our autumn update will cover a variety of topical issues including the Building Safety Act, the HSE's approach to intervention, prohibition and improvement notices, and recent cases of interest.



[Sign up here](#) →

---

© Copyright Birketts LLP 2024 All rights reserved

### Follow us



You received this update because you've subscribed to our newsletter.

[birketts.co.uk](https://birketts.co.uk) | [View in browser](#) | [Contact us](#) | [Update your preferences](#) | [Unsubscribe](#)