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Termination for Late Payment under JCT: Supreme Court Restores the High Threshold

[*Providence Building Services Ltd v Hexagon Housing Association Ltd* \[2026\] UKSC 1](#)

Court

Supreme Court of the United Kingdom

Lord Reed PSC, Lord Briggs, Lord Burrows, Lord Stephens, Lord Richards

Subject Matter

Construction contract – JCT Design and Build 2016 (and 2024) – termination for late payment – repeated default – construction of clause 8.9 – standard form contracts – contractual interpretation.

Key Issue

Whether, under **clause 8.9 JCT D&B**, a Contractor is entitled to terminate **simply because the Employer has paid late twice**, even if the **first late payment was cured within 28 days** and therefore never gave rise to a right to terminate.

Material Facts

1. The contract incorporated **JCT Design and Build 2016**.
2. In December 2022, the Employer paid an interim payment **14 days late**.
3. The Contractor served a **specified default notice** under clause 8.9.1.
4. The Employer **paid within 28 days** of the notice.
5. In May 2023, the Employer paid another sum late.
6. The Contractor **terminated the following day**, relying on clause 8.9.4 (“repeat default”).

Procedural History

- **TCC (Adrian Williamson KC):** Employer succeeds – termination invalid
- **Court of Appeal:** Contractor succeeds – termination valid
- **Supreme Court:** Employer succeeds (unanimous)

Contractual Framework

Clause 8.9 JCT D&B (material parts):

- **8.9.1:** Right to serve notice for late payment
- **8.9.3:** Right to terminate if default **continues for 28 days**
- **8.9.4:** Right to terminate if Contractor did not terminate under 8.9.3 but the Employer **repeats a specified default**

Decision

The Contractor was **not entitled to terminate**.

Clause 8.9.4 **only applies where the Contractor previously had an accrued right to terminate under clause 8.9.3** but did not exercise it.

If the first late payment is cured within 28 days:

- No termination right arises under clause 8.9.3
- Clause 8.9.4 is **never engaged**
- A later late payment does **not** justify termination

Reasoning

(1) Natural Meaning and Structure of the Clause

The opening words of clause 8.9.4:

“If the Contractor for any reason does not give the further notice referred to in clause 8.9.3...”

presuppose that:

The Contractor **could have terminated under clause 8.9.3**.

If repetition alone were sufficient, the reference back to clause 8.9.3 would be **redundant**: [32]–[33].

(2) Commercial Common Sense

It would be:

“A sledgehammer to crack a nut”

if termination could follow from two trivial delays (e.g. two payments each one day late): [35].

The clause makes commercial sense only if the first default was **serious enough to crystallise into a termination right**.

(3) No Presumption of Symmetry

The Court of Appeal relied on symmetry with the Employer's termination rights elsewhere in the contract.

The Supreme Court rejected this:

- Employer and Contractor obligations are **fundamentally different**
- The clauses are **differently worded**
- There is **no principle** that their termination rights must be symmetrical: [37]

(4) No Policy-Driven Distortion

The Court accepted the importance of cashflow in construction, but held:

It would be wrong to distort the language of the contract to achieve that policy aim: [38]

Interpretation of Standard Form Contracts

The Court reaffirmed that:

- The **ordinary modern principles of contractual interpretation** apply to standard forms: [29]–[31]
- But where parties adopt an industry standard form, it is legitimate to assume they intended:

Consistency of meaning across the industry and consistency with the intentions of the form's drafters

Cf **Tesco Stores Ltd v USDAW [2024] UKSC 28**.

Practical Effect

Under **JCT D&B 2016 and 2024**:

- Two late payments are **not enough** to justify termination
- The first late payment must remain unpaid for **over 28 days** so that a termination right **actually arises**
- Only then can a **repeated default** trigger clause 8.9.4
- If the first default is cured in time, the repetition mechanism is not engaged

Significance

- Overturns a contractor-friendly Court of Appeal decision
- Clarifies the operation of a **widely used JCT termination clause**
- Raises the practical threshold for termination for late payment
- Reinforces a **disciplined, orthodox approach** to standard form interpretation

Key Takeaway

Termination for late payment under JCT remains a **high-threshold, high-risk remedy** and requires strict, clause-by-clause analysis before being invoked.

Conclusion

*This decision restores the JCT termination machinery to what it was always meant to be: **a safety catch, not a hair trigger**.*

The Court of Appeal's interpretation would have turned clause 8.9 into a contractual tripwire: two slightly late payments and down comes the guillotine, regardless of whether any real damage had been done. The Supreme Court has now put that particular piece of over-enthusiasm back in its box.

Termination, the Court reminds us, is not a performance art. It is not there to express irritation, teach lessons, or indulge in moral instruction. It is there for serious contractual failure, properly defined, properly triggered, and properly proved.

*Under JCT, that still means what it always meant: **you only get the big red button if the first problem was big enough to justify it**. A minor, promptly corrected default does not become a capital offence merely because someone later commits another.*

For practitioners, the message is reassuringly dull and therefore extremely important: read the clause, follow the steps, count the days, and resist the temptation to treat termination as a character assessment.

The Supreme Court has, in short, saved the industry from a world in which two late bank transfers could be treated as a hanging offence. Which is probably for the best.

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ICE DRC CPD Committee Chairman

Adjudicator Exam Question Setter for the ICE

CIArb Adjudication Panel Member since 2006

CIArb Arbitration Panel Member since 2006

CIC Adjudication Panel Member since 2010

FIDIC Adjudication Panel Member since 2021

ICE Adjudication Panel Member since 2021

Law Society Panel Arbitrator

RIBA Adjudication Panel Member since 2018

RICS Adjudication Panel Member since 2006

RICS Dispute Board Registered since 2013

TECSA Adjudication Panel Member since 2012

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