

Termination

How have recent cases changed existing thinking on a client's ability to terminate for conduct or contractually, and how might the market respond?

Mark Chennells KC



JCT D&B 2016: Clause 8.9

8.9.1 If the Employer:

.1 does not pay by the final date for payment the amount due to the Contractor in accordance with clause 4.9 and/or any VAT properly chargeable on that amount; or

.2 ~~fails to comply with clause 7.1~~ [Number not used]; or

.3 fails to comply with clause 3.16,

the Contractor may give to the Employer a notice specifying the default or defaults (a ‘specified’ default or defaults).

.2 ...

.3 If a specified default or a specified suspension event continues for ~~14 days~~ 28 days from the receipt of notice under clause 8.9.1 or 8.9.2, the Contractor may on, or within 21 days from, the expiry of that ~~14 days~~ 28 day period by a further notice to the Employer terminate the Contractor’s employment under this Contract.

.4 If the Contractor for any reason does not give the further notice referred to in clause 8.9.3, but (whether previously repeated or not):

.1 the Employer repeats a specified default; ...

then, upon or within ~~reasonable time~~ 28 days after such repetition, the Contractor may by notice to the Employer terminate the Contractor’s employment under this Contract.”

JCT D&B 2016, Clause 8.4:

8.4.1 If, before practical completion of the Works, the Contractor:

- .1 ~~without reasonable cause~~ wholly or substantially suspends the carrying out of the Works **or any material part thereof save pursuant to clause 4.11**; or
- .2 fails to proceed regularly and diligently with the performance of his obligations under this Contract; or
- .3 refuses or neglects to comply with a notice or instruction from the Employer requiring him to remove **or rectify** any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected; or
- .4 fails to comply with clause 3.3 or 7.1; or
- .5 fails to comply with clause 3.16,

the Employer may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).

- .2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 8.4.1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.
- .3 If the Employer does not give the further notice referred to in clause 8.4.2 (whether as a result of the ending of any specified default or otherwise) but the Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Employer may by notice to the Contractor terminate that employment."

Providence Building Services v Hexagon Housing Association [2024] EWCA Civ 962

- *Reinwood Ltd v L Brown and Sons Ltd* [2007] BLR 10
 - See [34] and [40]
- *Ferrara Quay Ltd v Carillion Construction Ltd* [2009] BLR 367
 - See [88] to [89]

Hedging your Bets

- *Thomas Barnes v Blackburn with Darwen BC* [2022] EWHC 2598 (TCC)
 - See [228]ff.
- *Ocean Shipping and Trading v Great Asia Maritime* [2025] EWCA Civ 1210
 - See [114] to [122]



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Mark Chennells KC has broad experience of acting in substantial commercially, legally and technically complex disputes. As well as litigation in the TCC and Commercial Court, recent cases include ICC, LCIA, SIAC, LMAA, UNCITRAL, HKIAC and DIAC Arbitrations.

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