

# The Supreme Court grants permission to appeal in Providence Building Services Limited v Hexagon Housing Association Limited

## Supreme Court grants permission to appeal in Providence Building Services Limited v Hexagon Housing Association Limited on an important issue concerning termination provisions in JCT Design and Build Form 2016

1. Following on from the Court of Appeal's judgment in the above case on which I produced a note in August of last year (See: [Court of Appeal judgment handed down in Providence Building Services Limited v Hexagon Housing Association Limited – 4 Pump Court – Barristers' Chambers](#)), the Supreme Court has now granted permission to appeal the Court of Appeal's decision in relation to the Contractor's right of termination under the contract, which was based on the JCT Design and Build Form 2016.
2. In a judgment handed down on 15 August 2024, the Court of Appeal (comprising Coulson LJ, Popplewell LJ and Stuart-Smith LJ) concluded (reversing the first instance decision on this previously undecided issue) that on the true and proper construction of the contract at issue, it was not necessary that a right to terminate under clause 8.9.3 must have first accrued before the Claimant could have the right to terminate its employment under clause 8.9.4. This decision has now been appealed by Hexagon and permission granted (see [Permission to Appeal – November 2024 – UK Supreme Court](#)). It is anticipated that the Supreme Court will hear the case later this year.
3. It is expected that the Supreme Court's decision will provide important clarification as to the effect of the aforementioned termination provisions included in the widely-used JCT Design and Build Contract 2016 (and other contracts within the JCT suite of contracts which contain materially the same terms). In particular as to whether a contractor may immediately terminate for a repeated breach of contract in circumstances where no prior right to terminate had accrued. The decision is therefore likely to be of significant importance to all those operating in the construction field.
4. [Jonathan Lewis KC](#) and [Nick Kaplan](#) are instructed on behalf of Hexagon.

Written by [Helen Dennis](#)