



December 2024

Construction newsletter

Welcome to the December edition of Cornerstone, our newsletter for the construction and engineering sector.

I don't know about you, but 2024 has flown by. There has certainly been plenty of interesting developments in the construction and engineering sector including the long-awaited introduction of the new JCT suite of contracts which prompted lots of updating of precedent schedules of amendments, as well as a whole host of interesting cases to keep us busy.

In this edition we cover a few of the most recent of those, including:

- [\*Topalsson GmbH v Rolls-Royce Motor Cars Ltd \[2024\] EWCA Civ 1330, 5 November 2024\*](#) which provided a useful reminder of the importance of clear and unambiguous drafting, particularly in the context of limitation of liability clauses.
- [\*ATG Services \(Scotland\) Ltd v Ogilvie Construction Ltd \[2024\]\*](#) in which the Scottish courts gave a stark warning against mounting frivolous defences regarding claims for non-payment.
- [\*Providence Building Services Limited v Hexagon Housing Association Limited\*](#) which established the principle of a 'two-strikes' termination, although we will be watching

this case with interest as the Court of Appeal decision is referred to the Supreme Court next year.

Elsewhere, [Steven Williams](#) explores the impact of when the parties fail to confirm their respective roles and obligations in formal contractual documentation, [Daniel Fletcher](#) considers what happens when projects are delayed or disrupted and [Patrick Cooney](#) takes an in-depth look at Option X29.

Finally, [Stefan Harris-Wright](#) recently chaired our [winter webinar](#). Stefan was joined by team members, [Patrick Cooney](#), [Sarah Prior](#) and [George Elliman](#) who, together, provided an update on 'net zero building standards', the new fair payment initiatives in the construction industry, focusing on the Government's new fair payment code as well as an update on recent cases of interest. For those who missed it you can [catch up here](#). Please look out for details of our programme for 2025 which will be released shortly.

In the meantime, have a very Merry Christmas from all in the Birketts Construction & Engineering Team.



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## Featured articles

### **Environmental considerations in construction contracts: focus on NEC Option X29 [Climate Change]**

[Patrick Cooney](#) takes an in-depth look at Option X29 and how the construction industry is contributing to the global commitment to drive down carbon emissions.



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### Liability caps and contractual interest: a case study of *Topalsson v Rolls-Royce*

[Rachel Lee](#) explores the recent case of *Topalsson GmbH v Rolls-Royce Motor Cars Ltd [2024] EWCA Civ 1330*, 5 November 2024 where the Court of Appeal considered the interpretation of a liability cap in a commercial contract and its interplay with other contractual provisions.

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### Payment in construction contracts: beware of “frivolous defences”

[Sarah Prior](#) shares the latest decision regarding payment in construction contracts from the Scottish case of *ATG Services (Scotland) Ltd v Ogilvie Construction Ltd [2024]*.



[Read more →](#)

### Grenfell: a cavalier approach to contractual documentation

[Steven Williams](#) explores the disastrous effects that can be caused on projects when the parties fail to confirm their respective roles and obligations in formal contractual documentation.



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## Court ruling shakes up JCT contract termination for repeated breaches: what you need to know

[Catherine Andrews](#) and [Katrina Bretten](#) share an update as the Court of Appeal has considered the first instance decision in the case of *Providence Building Services Limited v Hexagon Housing Association Limited*.



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## Construction contracts: dealing with civil unrest

[Daniel Fletcher](#) considers, from a construction perspective, how parties ensure that their interests are protected, and what happens when projects are delayed or disrupted.

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