Hilary Term
[2026] UKSC 1
On appeal from: [2024] EWCA Civ 962

JUDGMENT

Providence Building Services Limited (Respondent) *v* Hexagon Housing Association Limited (Appellant)

before

Lord Reed, President
Lord Briggs
Lord Burrows
Lord Stephens
Lord Richards

JUDGMENT GIVEN ON
15 January 2026

Heard on 10 November 2025

Appellant
Jonathan Lewis KC
Nicholas Kaplan
(Instructed by Devonshires Solicitors LLP (London))

Respondent
Mark Chennells KC
(Instructed by Clyde & Co LLP (London))

LORD BURROWS (with whom Lord Reed, Lord Briggs, Lord Stephens and Lord Richards agree):

1. Introduction

1. This appeal concerns a short point of contractual interpretation in respect of a termination clause in a construction contract. The point is one of general public importance because the contract in question incorporated the JCT (Joint Contracts Tribunal) Design and Build Contract (2016 edition), as modified in relatively minor ways by the parties. That standard form JCT contract, and hence the termination clause in dispute, is very widely used in the construction industry. Moreover, that termination clause continues to be used: a new edition of the JCT Design and Build Contract was published in 2024, subsequent to the events in this case, but the wording of the termination clause remains the same as in the 2016 edition.

2. The correct interpretation of a contract is a question of law: see, eg, *Pioneer Shipping Ltd v BTP Tioxide Ltd, The Nema* [1982] AC 724, 736. On the point of interpretation in issue, Adrian Williamson KC, sitting as a Deputy High Court Judge, held in favour of Hexagon Housing Association Ltd ("the Employer"): [2023] EWHC 2965 (TCC). However, Providence Building Services Ltd ("the Contractor") succeeded in its appeal to the Court of Appeal. The judgment was given by Stuart-Smith LJ, with whom Popplewell and Coulson LJJ agreed: [2024] EWCA Civ 962. The Employer now appeals to this court.

3. The sole issue of contractual interpretation, as agreed by the parties, is as follows:

> "Can the contractor terminate its employment under clause 8.9.4 of the JCT 2016 Design and Build Form, in a case where a right to give the further notice referred to in clause 8.9.3 has never previously accrued?"

2. The most relevant clauses in the contract

4. It is long-established and trite law that in interpreting a contract, one must consider the whole of the contract: see generally *Chamber Colliery Co Ltd v Twyerould* [1915] 1 Ch 265n, 272; *Charter Reinsurance Co Ltd v Fagan* [1997] AC 313, 384; and in the context of JCT contracts, *Beaufort Developments (NI) Ltd v Gilbert-Ash (NI) Ltd* [1999] 1 AC 266, 274. But the primary focus here must be on the disputed clause which is clause 8.9.

5. Clause 8.9 reads as follows, with bespoke amendments marked by strike-through and words in square brackets:

"**Termination by Contractor**

Default by Employer

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 If after the Date of Possession (or after any deferred Date of Possession pursuant to clause 2.4) but before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of ~~the length stated in the Contract Particulars~~ [2 months] by reason of any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, then, unless it is caused by the negligence or default of the Contractor or any Contractor's Person, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).

.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 day~~ [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; or

.2 a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,

then, upon or within ~~a reasonable time~~ [28 days] after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract."

6. Clause 8.10 then deals with termination by the Contractor for the insolvency of the Employer. The contractual consequences of termination by the Contractor under, inter alia, clause 8.9 are set out in clause 8.12. By the second sentence of an earlier clause, clause 8.3.1, "The provisions of clauses 8.9 and 8.10, and (in the case of termination under either of those clauses) the provisions of clause 8.12, are without prejudice to any other rights and remedies of the Contractor." Also under an earlier clause, clause 8.2.1, "Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously."

7. In considering the submissions of the parties, it is also important to set out clause 8.4, which deals with the opposite situation of termination by the Employer for default by the Contractor. This reads as follows, with bespoke amendments marked by strike-through and words in square brackets:

"**Termination by Employer**

Default by Contractor

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 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."

8. Clause 8.5 then deals with termination by the Employer for the insolvency of the Contractor. The contractual consequences of termination by the Employer under, inter alia, clause 8.4 are set out in clause 8.7. By the first sentence of clause 8.3.1, "The provisions of clauses 8.4 to 8.7 are without prejudice to any other rights and remedies of the Employer." Clause 8.2.1, set out in para 6 above, applies whether the notice of termination of the Contractor's employment is given by the Contractor or the Employer.

3. The facts

9. In February 2019, the Employer and the Contactor entered into a contract for the construction of a number of buildings in Purley, London. The contract incorporated the JCT Design and Build standard form (2016 edition) as amended by the parties. The original contract sum was approximately £7.2 million.

10. On 25 November 2022, the Employer's agent issued Payment Notice 27, pursuant to which the Employer was required to pay the Contractor £264,242.55 on or before 15 December 2022. The Employer failed to pay the sum due by that date. The following day, 16 December 2022, the Contractor served a notice of specified default under clause 8.9.1 ("the December Notice of Specified Default"). The terms of the December Notice of Specified Default included:

> "You have not paid us the amount due to us under Payment Notice No. 27, i.e. £264,242.55, by the final date for its payment, i.e. 15 December 2022. We therefore give you this Notice of Specified Default under clause 8.9.1 of the Contract."

11. On 29 December 2022 the Employer paid the sum of £264,242.55 in full. It is common ground that, because payment was made on that date, the specified default did not continue for 28 days from the receipt by the Employer of the December Notice of Specified Default. It followed, and is also common ground, that, applying clause 8.9.3, it was not, and never became, open to the Contractor to serve a further notice on the Employer pursuant to clause 8.9.3 terminating the Contractor's employment in respect of that December late payment.

12. On 28 April 2023, the Employer's agent issued Payment Notice 32, pursuant to which the Employer was required to pay £365,812.22 on or before 17 May 2023. The Employer failed to pay the sum due by that date. The following day, 18 May 2023, the Contractor issued a notice of termination under clause 8.9.4 ["the May Notice of

Termination"]. The May Notice of Termination referred back to the December Notice of Specified Default and relied upon the Employer's non-payment of the sum due on 17 May 2023 as a repetition of the specified default that had been the subject matter of the December Notice of Specified Default.

13. Without prejudice to its asserted contractual termination of the contract, the Contractor went on in the same letter of 18 May 2023 to say that 19 of the 32 payments that the Employer had been required to pay had been made late and stated that it accepted what it characterised as the Employer's repudiatory breaches of contract so as to terminate the contract in accordance with its common law rights.

14. On 23 May 2023, the Employer paid the sum of £365,812.22 in full. The next day, 24 May 2023, the Employer disputed the lawfulness of the May Notice of Termination and asserted that the Contractor had repudiated the contract. A week later, on 31 May 2023, the Employer wrote again to the Contractor, accepting what it characterised as the Contractor's repudiatory breach.

15. The Employer referred the dispute to an Adjudicator who found largely in its favour. The Contractor then issued the present proceedings seeking a declaration as to the correct interpretation of clauses 8.9.3 and 8.9.4.

4. The submissions of the parties as to how clauses 8.9.3 and 8.9.4 apply

16. Jonathan Lewis KC for the Employer argues that, before a termination notice can be validly served by the Contractor for a repetition of a specified default under clause 8.9.4, the Contractor must previously have had an accrued right to serve a termination notice under clause 8.9.3. It follows that, where an earlier specified default was cured within 28 days, no termination notice can be immediately served where there has been a repetition of the specified default by a subsequent late payment. So on these facts, it is submitted that the Contractor was not entitled to terminate under clause 8.9.4 in respect of the late payment in May because, although that May payment was a repetition of a specified default (ie the late payment in December for which the December Specified Notice of Default had been served), there was no previously accrued right to terminate under clause 8.9.3 because that late December payment had been cured within 28 days. The Contractor therefore should have waited 28 days, to allow for the May payment to be made, before it could terminate for the May late payment. The position would have been different, and the Contractor could have immediately terminated for the May late payment, had the December payment not been cured within 28 days (so that a right to terminate had previously accrued).

17. In contrast, Mark Chennells KC for the Contractor argues that, where there has been a repetition of a specified default (in respect of which a specified default notice has

been served), there is no requirement that the right to terminate has previously accrued under clause 8.9.3. On these facts, therefore, the Contractor was entitled to terminate under clause 8.9.4 because in May there had been a repetition by the Employer of late payment in a situation where there had been earlier late payment in December for which a specified default notice had been served. The Contractor was therefore immediately entitled to terminate for the May late payment, as it did a day after the May payment should have been paid, and was not required to wait for 28 days to see if the Employer would make the May payment.

18. It may be helpful to make clear at the outset that it is common ground that the repetition of a specified default in the context of a late payment refers to the late payment in a subsequent month and is not referring to the repetition of the same month's late payment. That is, it is not in dispute that there was a repetition of a specified default where the Employer failed to pay the December payment on time and then failed to pay the May payment on time. Stuart-Smith LJ succinctly explained this at para 28 of his judgment in the Court of Appeal:

> "As a preliminary point, it is common ground that what constitutes the 'specified default' in question is the failure to pay by the final date for payment the amount due to the Contractor in accordance with Clause 4.9. The fact that it occurred in the context of Payment 27 is not a constituent element of the specified default: if it were otherwise, it would not be possible for the Employer to repeat the specified default on a later occasion in the context of a different payment."

5. The reasoning of the courts below

(1) High Court

19. In deciding in favour of the Employer, the reasoning of Adrian Williamson KC, sitting as a Deputy High Court Judge, was as follows:

> (i) The essential task was to ascertain the natural and ordinary meaning of clauses 8.9.3 and 8.9.4 in the context of the contract as a whole. Applying that approach, he regarded the correct interpretation as being that it was necessary, before a notice of termination could be given by the Contractor under clause 8.9.4, that a clause 8.9.3 notice of termination could previously have been given; and a clause 8.9.3 notice of termination could not previously have been given where the specified default had been cured by the Employer within the 28-day period. He said at para 19, "In my view, clause 8.9.4 requires that a clause 8.9.3 notice could have been given but the Contractor has decided not to do so for whatever reason."

(ii) The judge was not persuaded by the Contractor's submissions that that interpretation would produce the harsh and uncommercial result that the Employer could make every payment 27 days late and thereby avoid the Contractor being able to terminate. He said, "the Contractor has a battery of weapons available to him to protect his cash flow position" (para 23). Those weapons included a right to suspend the works, statutory interest, and the right to refer disputes to adjudication. He also thought that it would be surprising if a Contractor could terminate "where there was a specified default that had been cured and was then repeated, perhaps only to a very minor extent, subject only to recourse to the contention that the termination was unreasonable or vexatious [applying clause 8.2.1]" (para 26). Overall, these arguments of "business commonsense" did not take the matter much further one way or the other (para 28).

(iii) He also rejected the argument that clauses 8.9 and 8.4 should be read so as to avoid asymmetry in the termination rights of Contractor and Employer. He said at para 27:

> "asymmetry is not necessarily surprising in itself but in any event … clause 8.9 is drafted by the parties in a way which is more favourable to the Employer than the corresponding provisions of clause 8.4. Clause 7.1 is not, in clause 8.9, a ground to terminate as it is in clause 8.4, and the time limits in clause 8.9.3 are 28 days, whereas the equivalent period in clause 8.4 is 14 days. Thus, the parties have opted for asymmetrical termination provisions, as is their right."

(2) Court of Appeal

20. The Court of Appeal allowed the Contractor's appeal. Stuart-Smith LJ's reasoning was as follows:

(i) As a first step, the natural meaning of the words in clause 8.9.4 "viewed in isolation" did not give rise to any inference that the Contractor must have had an accrued right to give further notice but did not do so. In particular, the words "for any reason" were "broad enough to catch a case where the reason why the further notice may not be given is that there is no accrued right to give it" (para 31).

(ii) It was necessary to view clause 8.9 in its wider context and, in particular, by reference to clause 8.4. The "congruence of structure and conditional words" in the two clauses meant that "the conditional words must carry the same meaning in each clause" (para 33). Unlike clause 8.9, clause 8.4 spelt out, by using the words "whether as a result of the ending of any specified default or otherwise", that it

covered a case where the further notice had not been given because there had been no accrued right to give it. Since the words "for any reason" encompassed the words "whether as a result of the ending of any specified default or otherwise", it followed that clause 8.9 also did not require that there was an accrued right to give the further notice.

(iii) The arguments from commercial commonsense did not take the matter any further. Nor did the "archaeological digging" by the parties into past editions of the JCT standard form and their respective commentaries (para 37). The only point of interest to emerge from that analysis was that it was common ground that the interpretation put forward by the Contractor had been the correct interpretation of the 1998 version of the JCT contract (before it was changed in the 2005 version); and in neither of the two cases to which the court had been referred (*Ferrara Quay Ltd v Carillion Construction Ltd* [2009] BLR 367 and *Reinwood Ltd v L Brown & Sons Ltd* [2007] BLR 10) in which judges steeped in construction law had considered the 1998 version, was it suggested that the termination provisions in that version were uncommercial or otherwise inappropriate.

(iv) Finally, Stuart-Smith LJ was not persuaded that the judge was correct to rely on there being a "battery" of other remedies for a Contractor to counter cash flow difficulties created by an Employer making late payments. That was because "none provides a satisfactory and immediate solution to the typical case of late payment" (para 43).

6. The law on the interpretation of contracts (including industry-wide standard form contracts)

21. The modern approach in English law to contractual interpretation is to ascertain the meaning of the words used by applying an objective and contextual approach. As was said by Lord Hoffmann in his seminal speech in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 ("*ICS*"), at p 912, the aim of contractual interpretation is to ascertain "the meaning which [the contract] would convey to a reasonable person having all the [relevant] background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract." His Lordship also explained that business (or commercial) common sense may be relevant. In contrast, declarations of the subjective intentions of the parties and, for reasons of practical policy, previous negotiations cannot be used in determining what the contractual language means.

22. In *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619, the Supreme Court clarified that the words used by the parties are of primary importance so that one must be careful to avoid placing too much weight on business common sense (or purpose) at the expense

of the words used; and one must be astute not to rewrite the contract so as to protect one of the parties from having entered into a bad bargain.

23. In *Wood v Capita Insurance Services Ltd* [2017] UKSC 24; [2017] AC 1173, Lord Hodge, with whom the other Supreme Court Justices agreed, pointed out, at para 12, that contractual interpretation "involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated…".

24. It is also clear law that explanatory notes to a contract may be admissible evidence as an aid to interpretation: see Lewison, *The Interpretation of Contracts*, 8th ed (2024), paras 3.38 – 3.42, citing, inter alia, the reliance on the explanatory notes that accompanied the contract in *ICS*. In this case it is not in dispute that the JCT's *Design and Build Contract Guide 2016* to the JCT standard form contract (2016 edition) is admissible evidence in interpreting the contract.

25. In *A Schroeder Music Publishing Co Ltd v Macaulay (formerly Instone)* [1974] 1 WLR 1308, Lord Diplock helpfully distinguished between two types of standard form contract. One type is a "take it or leave it" standard form used by a party with superior bargaining power. The other type is an industry-wide standard form that has been negotiated by representatives of contracting parties on both (or all) sides of a particular trade or industry. Lord Diplock gave as examples, bills of lading, charterparties and contracts of sale in the commodity markets. One can add the JCT standard form contract as a further example. In relation to this latter type of standard form contract, inequality of bargaining power is not a problem. In the words of Lord Diplock at p 1316:

> "The standard clauses in these contracts have been settled over the years by negotiation by representatives of the commercial interests involved and have been widely adopted because experience has shown that they facilitate the conduct of trade. … [T]hey are widely used by parties whose bargaining power is fairly matched…"

26. In interpreting such an industry-wide standard form contract, the admissible background context may include past decisions of the courts on, and practice in relation to, clauses in an earlier version of the standard form. For example, it may be clear that the standard form has been amended so as to depart from a decision of a court. In *Beaufort Developments (NI) Ltd v Gilbert-Ash (NI) Ltd*, a case dealing with a JCT standard form, Lord Hoffmann said the following, at p 274:

> "It is also important to have regard to the course of earlier judicial authority and practice on the construction of similar

> contracts. The evolution of standard forms is often the result of interaction between the draftsmen and the courts and the efforts of the draftsman cannot be properly understood without reference to the meaning which the judges have given to the language used by his predecessors."

27. See also *Orion Shipping and Trading LLC v Great Asia Maritime Ltd* [2025] EWCA Civ 1210, paras 144-146, per Nugee LJ, which was drawn to the court's attention by Mr Chennells subsequent to the hearing. We are grateful for the short, written, submissions on that judgment which we requested and received from both parties.

28. However, the general position taken by the courts is that, subject to exceptions, an examination of what has been termed the "archaeology of the forms" is to be discouraged: see *Polestar Maritime Ltd v YHM Shipping Co Ltd, The Rewa* [2012] EWCA Civ 153; [2012] 2 All ER (Comm), para 30 per Aikens LJ. A very clear statement of the position, in which an analogy was drawn with the non-admissibility of previous drafts of a contract, was set out by Moore-Bick LJ in *Seadrill Management Services Ltd v OAO Gazprom* [2010] EWCA Civ 691; [2011] 1 All ER (Comm) 1077. He said, at para 17:

> "The parties and the judge were content to treat the history and development of the [standard] form as part of the commercial background to the contract. In cases where it is possible to identify with a degree of confidence the reason for a particular amendment to a standard form, for example, where a change has been made to respond to the effect of a particular decision of the courts, a change in legislation or a widely publicised event, that may be appropriate. Such cases are usually well-known within the industry and are often documented in the trade press. Both parties are therefore likely to be aware of them. I am doubtful, however, whether it is legitimate simply to compare the earlier and later versions of the contract form on the assumption that the parties consciously intended to achieve a particular result by adopting the later version. Such an exercise is not wholly removed from that of referring to drafts produced during the course of negotiations, which are not a proper aid to construction. The earlier version does, of course, serve as an example of how the contract could have been worded differently, but in that respect it has no greater persuasive force than a text created for the purposes of the trial. The fact is that in the present case we have no evidence of why specific changes were made, nor any evidence that the parties turned their minds to the differences between the two forms and there must be a real likelihood that they simply reached for the current form without any consideration of the earlier version.

> In any event, times have moved on and one cannot assume that the commercial background has not moved with them. In my view the right course when seeking to ascertain the intention of the parties is to consider this contract on its own terms against the commercial background as it existed at the time it was made."

29. Mr Lewis for the Employer suggested in his oral submissions that a different approach applies to the interpretation of a standard form contract, such as the JCT contract in this case, as opposed to a normal bespoke contract. That is because, according to his submission, the aim is to effect the intention of the person who drafted the standard form contract rather than the objective intentions of the contracting parties.

30. In my view, that submission goes too far. It is certainly true that courts and commentators have sometimes considered whether industry-wide standard-form contracts may be subject to different principles of interpretation than normal. See generally, eg, Aaron Taylor, "Interpretation of Industry-Standard Contracts" [2017] LMCLQ 261; Louise Gullifer, "Interpretation of Market Standard Form Contracts" [2021] JBL 227; and Martin Davies, "The Construction of Standard Form Shipping Contracts" [2023] LMCLQ 225. *Chitty on Contracts*, 36th ed (2025), para 16-061 summarises a number of the relevant cases as follows:

> "In the case of a contract which is intended for standard use throughout a particular industry or market, the court is more likely to focus its attention on the background generally known to participants in the industry or the market and not on the background known to, or the understandings of, the individual parties to the particular transaction."

That summary reflects the approach, which I readily accept to be correct, that an industry-wide standard-form contract should usually be interpreted consistently for all contracting parties using that form and, subject to bespoke amendments, that interpretation is unlikely to be contradicted by the objective intentions of the particular contracting parties.

31. Nevertheless, the established approach, based on the objective intentions of the contracting parties in the relevant context, should still be applied to the interpretation of an industry-wide standard form contract. It is not a departure from that approach to say that, where parties choose to use an industry-wide standard form, it can generally be taken that their objective intentions in the relevant context are that their respective rights and obligations should be consistent with those of other parties using the same form and should reflect the objective intentions of those who were concerned with the drawing up of that standard form agreement. Although dealing with a collective agreement and not a

standard form contract, see somewhat analogously the discussion and acceptance in *Tesco Stores Ltd v Union of Shop, Distributive and Allied Workers* [2024] UKSC 28; [2025] ICR 107, at paras 4 and 150-153, of the admissibility of the objective intentions of the parties to a collective agreement in interpreting a clause in a contract of employment incorporating a clause from the collective agreement.

7. What is the correct interpretation of clauses 8.9.3 and 8.9.4?

32. Focussing first on the objective natural meaning of the words in clause 8.9.4, in the context of clause 8.9, clause 8.9.4 appears to be parasitic on clause 8.9.3 rather than being independent of it. That is essentially because of the opening words of clause 8.9.4 ie "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): …". If clause 8.9.4 were independent of clause 8.9.3 there would be no need for those opening words. If all that is needed for the Contractor to terminate is that the Employer has repeated a specified default, the clause would simply start with the words in clause 8.9.4.1, "If the Employer repeats a specified default…". In contrast, the opening words of clause 8.9.4 are essential if clause 8.9.4. is parasitic on clause 8.9.3. In my view, they make clear that the Contractor must have had an accrued right to terminate under clause 8.9.3 before clause 8.9.4 applies; or as Mr Lewis put it, clause 8.9.3 is the "gateway" to clause 8.9.4. Put another way still, it is only if the Employer has failed to cure any earlier specified default within 28 days that the Contractor can terminate for a repetition of the specified default. The Contractor may not have exercised its earlier right to terminate for various reasons. It may have been, for example, that the late payment was made by the Employer, albeit after the 28 days allowed for cure, and the Contractor exercised the choice to accept that payment and to continue with the contract; or the Contractor may have inadvertently failed to exercise its right to give the further notice of termination. The precise reason why the Contractor failed to give the further notice to terminate is not significant because the words "for any reason does not give the further notice [to terminate]" clearly cover all possible reasons.

33. That interpretation is objectively and contextually a natural one. In contrast, the interpretation put forward by Mr Chennells for the Contractor contradicts the objective natural meaning of the words in their context because, essentially, his suggested interpretation renders the opening words of clause 8.9.4 superfluous. Even if not superfluous, they are on his alternative interpretation unclear and ambiguous. As Mr Lewis put it, they are, on Mr Chennells' interpretation, not only redundant but also "inept" or "maladroit" to achieve the meaning that the Contractor contends that clause 8.9.4 has. Or as one might otherwise express it, they are both otiose and obscure.

34. The objective natural meaning of the words in the context of clause 8.9, contended for by Mr Lewis, is supported by that interpretation producing a rational and less extreme outcome than the interpretation contended for by Mr Chennells. The rational consequence is that it is only where the earlier breach (for which a specified notice of default was given

by the Contractor) went uncured for 28 days, and was in that sense particularly serious, that the Contractor can terminate immediately for a further late payment.

35. While also rational, the contrasting interpretation put forward by the Contractor would produce an extreme outcome. It would mean that any breach by late payment (provided a specified notice of default were given by the Contractor), if repeated by any subsequent late payment, would entitle the Contractor to terminate the contract. For example, if the Employer made two late payments, each being made one day late, the Contractor, on this interpretation, would be entitled to serve a notice terminating the contract (provided a specified default notice had been served in respect of the first late payment). That might be thought to provide a sledgehammer to crack a nut. Mr Chennells submitted that clause 8.2.1 could be invoked by the Employer to deal with any such potential problem. That clause requires that termination of the Contractor's employment should not be given unreasonably or vexatiously (see para 6 above). But I agree with Adrian Williamson KC's view at first instance, at para 25, that "that gives scant comfort to the Employer who would have to embark upon the tricky and nebulous task of showing that the notice was given unreasonably or vexatiously."

36. Stuart-Smith LJ placed great weight on clause 8.4. Oddly his reasoning started by incorrectly focussing on the natural meaning of the words of clause 8.9.4 "viewed in isolation" (para 29) although he almost immediately corrected this by making clear that it is "necessary, and vital to view the words in context" (para 30). But what appeared to drive his analysis in favour of the Contractor was his conviction that, because the structure of clauses 8.9 and 8.4 was the same and the words of clauses 8.9.4 and 8.4.3 were so similar, the words in clauses 8.9.4 and 8.4.3 should be given the same meaning. Clause 8.4.3 makes clear (by the inclusion of the words "as a result of the ending of any specified default"), and this was common ground between the parties, that the Employer is entitled to terminate for a repeated specified default even if the right to terminate has not previously accrued because the Contractor has cured a specified default within the relevant period of 14 days. It followed, on Stuart-Smith LJ's analysis, that for clause 8.9.4, as well as for clause 8.4.3, it is not necessary for a right to terminate to have previously accrued in order for the party not in breach to terminate for a repeated specified default.

37. With respect, that heavy reliance on clause 8.4.3 is misplaced for three main reasons. First, there is no necessary reason why the right to terminate should be symmetrical as between Employer and Contractor given that the relevant contractual obligations are so different. Secondly, as Adrian Williamson KC made clear at first instance (see para 19 (iii) above), clauses 8.9 and 8.4, as incorporated in this contract, were plainly asymmetrical because the time periods specified (28 days; and 14 days and "within a reasonable time after such repetition" respectively) were different and in respect of clause 8.4, but not clause 8.9, a failure to comply with clause 7.1 was a possible specified default (the reference to clause 7.1 in clause 8.9.2 was deleted by the parties). Thirdly, different words were used by the drafter of the JCT standard form in clause 8.4.3 to those used in clause 8.9.4. Clause 8.4.3 reads, "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) …". In contrast, clause 8.9.4 reads, "If the Contractor for any reason does not give the further notice referred to in clause 8.9.3 …". Why use that different wording (ie the inclusion in clause 8.4.3, but not in clause 8.9.4, of the words "as a result of the ending of any specified default") if the two clauses had the same meaning? That would be especially puzzling given that the JCT standard form is the carefully considered product of the work of experienced construction professionals advised by expert lawyers. Mr Lewis submitted, and I agree, that the different wording is explicable precisely because it was being clarified in clause 8.4.3, in contrast to clause 8.9.4, that there need be no previously accrued right to terminate.

38. Like the courts below, I do not derive any help on the disputed question of interpretation in this case from considering the JCT's *Design and Build Contract Guide 2016* or previous versions of the JCT form or past judicial decisions on those previous versions. I also consider it unhelpful to examine whether the Contractor does, or does not, have other satisfactory methods of combating cash-flow problems caused by late payment. Even if Stuart-Smith LJ were correct, contrary to Adrian Williamson KC's view, to regard other remedies for the Contractor as inadequate to counter cash-flow difficulties, the interpretation of the disputed termination clause should not be distorted so as to favour the Contractor. If there is a problem for Contractors, which could be justifiably ameliorated by a differently worded termination clause, that is a matter for the JCT to consider, in the light of this judgment, in a future draft of the standard form contract.

8. Conclusion

39. For all these reasons, I would allow the appeal.