



Press Summary

15 January 2026

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

[2026] UKSC 1

On appeal from: [2024] EWCA Civ 962

Justices: Lord Reed (President), Lord Briggs, Lord Burrows, Lord Stephens and Lord Richards

Background to the Appeal

This appeal concerns the interpretation of a termination clause in a construction contract. The contract in question incorporated the JCT (Joint Contracts Tribunal) Design and Build Contract (2016 edition), a standard form contract very widely used in the construction industry. The wording of the disputed termination clause remains unchanged in the latest 2024 edition of the JCT contract.

The contract was between Hexagon Housing Association Ltd (“**the Employer**”) and Providence Building Services Ltd (“**the Contractor**”). The Contractor agreed to construct a number of buildings in Purley, London, to the Employer’s specification. The contract included a payment timetable.

The focus of the dispute is on two late payments by the Employer. In December 2022, the Employer paid the Contractor 14 days late. In May 2023 the Employer failed to pay on time for a second time and the Contractor, on the next day, issued a notice to terminate the contract.

The Contractor argued that the contract entitled it to terminate if the Employer paid late twice (provided a specified default notice had been served by the Contractor in respect of the first late payment, which was the case here). The Employer rejected that interpretation. It argued that the contract only entitled the Contractor to terminate for a second late payment if the first late payment had not ultimately been made within 28 days of its due date and here the first late payment had been paid within 28 days. Put another way, the Employer argued that the Contractor must have had a previously accrued right to terminate and here that was not so.

The judge at first instance, Adrian Williamson KC, held in favour of the Employer but that was overturned by the Court of Appeal. The Court of Appeal accepted the Contractor’s interpretation and held that the Contractor was entitled to terminate the contract if the

Employer failed to pay it on time twice, even if the first payment was paid within 28 days. The Employer now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the Employer's appeal and holds that the Contractor was not entitled to terminate the contract. Lord Burrows gives the judgment, with which Lord Reed, Lord Briggs, Lord Stephens and Lord Richards agree.

Reasons for the Judgment

The sole question before the Supreme Court is the correct interpretation of clause 8.9 of the JCT contract. This clause reads as follows:

“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 [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).

...

.3 If a specified default or a specified suspension event continues for 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 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 28 days after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.”

The Court of Appeal considered that the phrase ‘for any reason’ in clause 8.9.4 was broad enough to encompass a situation where the Contractor had not previously given the further notice to terminate the contract for the reason that, in respect of the previous default, the sum due was paid within 28 days so that the Contractor had not been previously entitled to terminate.

The Court of Appeal also considered that this interpretation was supported by the merits of achieving symmetry between the Employer's right to terminate under an earlier clause 8.4.3 and the Contractor's right to terminate under clause 8.9.4. The earlier clause 8.4.3 has

wording that makes clear that the Employer can terminate if the Contractor repeats a specified breach, even if the previous breach was swiftly cured.

The Supreme Court rejects this analysis for several reasons.

First, the Supreme Court considers that, on the objective natural meaning of the words in their context, the opening words of clause 8.9.4 mean that the Contractor must have had an accrued right to terminate under clause 8.9.3 before clause 8.9.4 applies. If clause 8.9.4 merely means that the Contractor is entitled to terminate the contract if the Employer twice fails to pay it on time, its reference back to the preceding clause is superfluous. Put another way, 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 later words, “if the Employer repeats a specified default” [32-33].

Second, the Supreme Court considers that it would be an extreme outcome, one might say a sledgehammer to crack a nut, if the Contractor were entitled to terminate the contract because it received each of two payments a single day late [35]. It would be less extreme if a second delay entitles the Contractor to terminate the contract only where the first late payment has been delayed beyond the specified 28 days and has therefore been particularly serious.

Third, reliance on the scope of the Employer’s termination rights to determine the scope of the Contractor’s termination rights is misplaced [37]. The Employer’s and Contractor’s contractual obligations are very different and there is no reason to presume that their termination rights would necessarily be identical. Indeed, the Employer’s and Contractor’s termination rights were clearly asymmetrical in other respects. The two relevant termination clauses had different wording, and it is hard to see why that should be so if they were intended to have identical meanings.

The Supreme Court also makes clear that it would be wrong to distort the correct interpretation of the disputed termination clause as a way of protecting Contractors from cash-flow difficulties caused by late payments [38].

More generally, the Supreme Court discusses the correct approach to the interpretation of industry-wide standard form contracts, such as the JCT contract in this case [29]-[31]. It makes clear that the established modern approach to contractual interpretation, based on the objective intentions of the contracting parties in the relevant context, should 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. This is somewhat comparable to the approach to the interpretation of contracts incorporating collective bargaining agreements that was discussed and applied by the Supreme Court in *Tesco Stores Ltd v Union of Shop, Distributive and Allied Workers* [2024] UKSC 28.

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)