



Rob Tate

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Rob Tate is an architect, a Past President of SCALA and a former Head of Property Services at the LB of Enfield. He is a construction consultant, expert witness and a member of the President's Panel of Adjudicators of both the RICS and Chartered Institute of Arbitrators.

Rob, author of the SCALA and LGTF 'Guide to Standard Forms of Construction Contracts', has offered to share his experience and expertise with you and looks forward to hearing from readers.

The work of the Joint Contracts Tribunal

I represent SCALA on the Local Government Association (LGA) team, sitting as part of the Employers' College of the Council of the Joint Contracts Tribunal (JCT). I thought an update on how JCT works and what it's been up to may be of interest to SCALA members.

The Joint Contracts Tribunal was established in 1931 and has for 78 years produced standard forms of contracts, guidance notes and other standard documentation for use in the construction industry. In 1998 The Joint Contracts Tribunal became incorporated as a company limited by guarantee. The company is responsible for producing suites of contract documents and in operating the JCT Council. Its publisher is Thomson Reuters (Legal) Ltd trading as Sweet & Maxwell.

SCALA's representation is as a member of the LGA team which, in turn, forms part of the Employers' College. The LGA team currently consists of four of the eighteen members of the Employers' College; but had been five prior to the recent retirement of Neil Jones who had done sterling work both for the College and as Chairman of the Drafting Sub-Committee. There are five colleges:

- Employers/clients (including local authorities) - member bodies are British Property Federation (BPF) and LGA.
- Consultants - member bodies are the RIBA and RICS.
- Contractors - member body is the Construction Confederation (CC).
- Specialists and sub-contractors - member body is the National Specialist Contractors Council (NSCCC).

- Scottish building industry interests - one representative from the Scottish Building Contract Committee Ltd (SBCC).

Each member body - BPF, LGA, RIBA, RICS, CC, NSCC, SBCC - has a Chairman who sits on the JCT Company Board. JCT Council meets four times a year and receives reports from its working parties and Drafting Sub-Committee. Council must "sign-off" documents for publication. That requires the unanimous agreement of Council, which is often difficult but ensures the production of "solid" documents. It is often said of JCT contracts that they are biased to contractors but the balance between numbers of client and contractor representatives on Council belies that view - I think JCT contracts are industry contracts.

Working parties are set up to examine specific issues and make recommendations to Council, often in respect of policy and the need for new publications. An LGA member provided the initiative for and chaired the Sustainability Working Party, which gave rise to the JCT Guidance Note "Building a Sustainable Future Together". That is a commendable document addressing sustainability issues in the context of building contracts. The guide makes the important point that sustainability in design and construction is an issue of major importance and should be provided for in the contract documents. Its incorporation can be in the printed contract conditions, a specifically drafted schedule to the conditions or in the



specification or other contract documentation. Whatever means are used it is important that the sustainability requirements are contractually enforceable or at the very least provide objective measures for exercising sanctions where there is non-compliance.

The main work of JCT is carried out by its Drafting Sub-Committee, which briefs and manages consultants appointed to draw up JCT contracts and revisions in accordance with Council requirements. The LGA have had an important influence in bringing the public sector dimension and requirements to the fore in JCT. With the predominance of the private sector among JCT Council members it would be easy for public sector needs to be overlooked but the nature of the JCT organisation, the pressure from the LGA and the importance of public sector works in the current market have ensured that hasn't happened. LGA influence was again important in achieving the JCT Framework Agreement, and associated documents, and in bringing JCT to recognise the importance of partnering in the public sector, resulting in the JCT Constructing Excellence Contract.

JCT states that the Framework Agreement is appropriate for:

- the procurement of construction/engineering related works over a period of time;
- use by clients with contractors and/or suppliers;
- use by contractors, sub-contractors and/or suppliers sub-letting to others in the supply chain;
- use with most standard forms of construction and engineering contracts and sub-contracts;

and can be used where compliance with the public procurement rules is required and on a single project. With the widespread use of frameworks in the public sector, this is an important document.

The key role of partnering and the collaborative approach in public sector projects is reflected in the JCT *Constructing Excellence Contract* and its *Partnering Charter (Non-binding)*. Both of these provide a unique JCT approach and provide further standard forms as options to the PPC2000 and NEC forms. My experience is that "home grown" partnering agreements are fraught with problems and should be avoided - these JCT documents would seem to obviate the need to grow your own.

JCT states that the JCT Constructing Excellence Contract is appropriate for:

- the procurement of construction works and construction related services;
- use throughout the supply chain including the provision of professional services;
- use where participants wish to engender collaborative and integrative working;
- use in partnering;

and can be used whether or not the supplier is to design, where the works are to be carried out in sections and for Target Cost or Lump Sum.

The LGA and SCALA, through the LGA, are active and effective members of the JCT. The public sector should benefit from the recognition of its needs by the JCT and your representatives on JCT will seek to ensure that continues to be so. I urge SCALA members to visit the JCT website and to make use of the wide range of JCT contracts and documents - there are eighteen contracts and agreements on my last count. I also urge you to contact me if there is anything you think should be raised at JCT or which JCT should be addressing. I will continue to keep you informed through **Scalanews**. The dates of future JCT Councils are: 17th September and 10th December 2009, 18th March, 17th June, 16th September and 16th December 2010. ■

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