

## **Overview**

When JCT is referenced in the context of construction insurance, both retail and commercial, it refers a set form of readily available construction contract that is agreed between those wishing the construction to happen (known in JCT terms as The Employer), and those that will make it happen (known in JCT terms as The Contractor).

There are many different types of JCT contracts, with each type seeking to apply more precisely to individual types of construction Works – e.g. repair and maintenance work, measured term work (being regular ongoing construction Works), major projects, and prime cost work (being construction Works that requires early start, such as following fire damage).

Each one seeks to lay down the 'rules' of the construction Works which are clear, fair and acceptable to both The Employer and The Contractor, and which have undergone appropriate judicial scrutiny and interpretation.

By far the most common types of JCT contract used are the Standard Building Contract, the Intermediate Building Contract and the Minor Works Building Contract. All follow a very similar format, with each one varying in degrees of complexity that follow the complexity and size of the construction Works to be undertaken. The current iterations of such, are denoted 2016.

For the purpose of this article, we shall be referencing arrangements under JCT SBC/Q 2016 Standard Building Contract With Quantities 2016.

## **Insurance**

From the perspective of the insurance industry, the most important aspect of the contract is the section that deals with insurance arrangement (Section 6).

Such arrangements will take on the task of laying down what insurance is required, to whom cover should be afforded, and crucially, which party is required to effect it.

To break it down, there are three main aspects of cover to consider, being;

- 1] Injury/death to any person
- 2] Damage to third party property
- 3] Damage to owned property

Each one can be further split down into such that arise due to the actions of The Employer, or the actions of The Contractor. Each will be responsible for their own actions, but JCT provides the opportunity to enter into joint insurance cover arrangements for some aspects, which afford added protection to the construction Works being undertaken by removing (to some extent) the need to establish blame between the parties (and thus which policy it was applicable to if separate policies were arranged), and additionally by standardising the cover afforded to both parties alike.

### **Injury/death to any person**

JCT states that The Contractor will be liable for any injury/death that arises due to the construction works, except where this occurs due to actions of the Employer (Sub-section 6.1). It goes on to state that the Contractor must effect and maintain insurance to this extent (Sub-section 6.4) - in short, JCT will require Employers Liability and Third Party Public Liability from The Contractor. This, in addition to relevant legislation, is a key driver for contractors to purchase liability insurance in their own name.

JCT does not state any requirement for The Employer to arrange insurance cover liability insurance to cover their exposure to injury/death to persons, but clearly as the land / property owner and as a party that will commonly be present (even if temporarily) on site during the construction works, an exposure is present and this should be considered by the insurance intermediary acting on behalf of The Employer, especially as any previously arranged cover may be restricted once construction works begin unless discussions with insurers have discussed such construction activity on The Employers land/property.

### **Damage to third party property**

JCT states that The Contractor will be liable for loss or damage to property that arises due to the construction works, to the extent that this is due to the negligence of The Contractor (Sub-section 6.2). The generalised reference to property becomes 'third party' by way of a clarification that such property does not include the construction Works being undertaken (Sub-section 6.3.4). This then leaves The Employers property (which is third party from The Contractors point of view) and other true third-party property, which is owned by those who are not parties of the construction contract. It will go on to state that the Contractor must effect and maintain insurance to this extent (Sub-section 6.4).

If it is agreed that The Employer shall effect and maintain a Joint Names Policy (a policy arranged for the benefit of both The Employer and The Contractor, with no rights of recourse between the two parties) for the insurance of the Existing Structures (including contents therein) and construction Works (Insurance Option C), then The Contractors third party liability insurance may be arranged simply to apply to the other true third party property owned by those who are not parties of the construction contract.

JCT does not state any requirement for The Employer to arrange insurance cover liability insurance to cover their exposure to third party property, however one aspect is considered if agreed / instructed, and this is the infamous 6.5.1 cover (the title of which refers to its JCT Sub-section denotation), which concerns itself with the liability of The Employer that arises from damage to third party property due to collapse, subsidence, heave, vibration, weakening or removal of support, or the lowering of ground water arising from the construction Works and where The Contractor is not liable (i.e. The Contractor has not been negligent). It states that The Contractor must take out and maintain the insurance for the benefit of both The Employer and The Contractor, as the need is still pinned to the construction works being undertaken, and thus more aptly arranged by The Contractor, however where project insurance has been effected with such effecting duty placed on The Employer, it is common that The Employer arranges the 6.5.1 despite the fact that JCT states The Contractor must do so.

Thus the insurance intermediary of The Employer must independently consider The Employers exposure to damage to third party property, including when this arises from non-negligent contractor actions, and should investigate if The Contractor has, or has not, effected 6.5.1 cover.

## **Damage to owned property**

There are three set options available concerning owned property insurance arrangement, being;

Insurance Option A] New buildings to be constructed, where insurance of the construction Works is to be effected by The Contractor

Insurance Option B] New buildings to be constructed, where insurance of the construction Works is to be effected by The Employer

Insurance Option C] Construction Works in (or extensions to) Existing Structures, where insurance is to be effected by The Employer

The Employer and The Contractor are free to choose the most appropriate option.

All risks coverage is specified for the construction Works, with Specified Perils (i.e. FLEA, storm, flood, escape of water, earthquake) for Existing Structures and contents under Insurance Option C.

All of the Insurance Options require a Joint Names Policy in respect of damage to the owned property. This means that both The Employer and The Contractor are insured, with no rights of recourse present between the parties.

The 'all-risks' level of coverage is not expected to provide cover for any work executed which is loss or damaged as a result of its own defect (in design, plan, specification, material, or workmanship), but will generally provide cover for resulting loss or damage.

Terrorism coverage is generally required, unless stated otherwise within the agreed variations of the contract (Contract Particulars).

It's worth noting that breakdown, traditionally excluded from the construction / engineering insurance 'all-risks' approach, is not mentioned by under the JCT definition of All Risks Insurance (Sub-section 6.8) and care should be taken to ensure its presence within any arranged insurance cover where required – e.g. where plant and machinery or other moving parts form part of the construction Works. It is often provided in the form of cover during testing and commissioning.

All of the Insurance Options require adequate provision of coverage for sub-contractors, which includes a waiver of subrogation against them. Required cover is for Specified Perils (i.e. FLEA, storm, flood, escape of water, earthquake), however often the all risks coverage provided to The Employer and The Contractor will carry through to the subcontractors due to policy arrangement.

### **Other insurance aspects**

Other aspects handled by the insurance arrangements (Section 6) are;

- a) the need to provide evidence that the insurance cover is in place to other parties to the construction contract
- b) a mechanism to reporting loss or damage, insurance claims, and in reinstatement work
- c) the need for The Contractor to take out post completion, Professional Indemnity insurance where there has been a Contractors Designed Portion of the construction Works.
- d) compliance with and breach of the Joint Fire Code.

### **Conclusion**

Complexities and familiarity are both equally present in the JCT insurance arrangements section, and whether you are an insurance intermediary acting on behalf of either The Employer or the Contractor, they introduce aspects that will force you to represent the interest of parties that you are not directly appointed to represent day to day.

Showing a keen understanding of the general JCT approach to coverage will ensure that appropriate coverage is arranged for all.

*(Reference: JCT SBC/Q 2016 Standard Building Contract With Quantities 2016)*

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