

Universities will be aware that, as employers in a JCT contract, they have the right to automatically terminate the contract if the contractor becomes insolvent. In these circumstances, any future payments due under the contract fall away together with those that have already been the subject of a Pay Less notice. However, what is less clear is the extent to which universities remain liable for payments that became due before the contractor become insolvent, where no Pay Less notice has been served.

Previously, it was understood that in these circumstances the payment-avoidance clauses would only be triggered if the contractor became insolvent during a narrow window of opportunity, known as the 'prescribed period'. This was the time between the deadline for serving of a Pay Less notice and the final date for payment.

This issue was closely examined in the recent Court of Appeal decision of *Wilson and Sharp Investments Ltd v Harbour View Developments Ltd* ([2015] EWCA Civ 1030).

The court decided that the timeframe for the payment-avoidance clauses to take effect was not limited to the 'prescribed period'. It confirmed that the scope of the payment-avoidance provisions extend not only beyond the final date for payment, but also the termination of the contract itself.

Although it is always advisable for universities to ensure that Pay Less notices are served in accordance with the contract, this decision provides additional assurance that all hope is not lost where universities have been unable to do so and their contractor goes insolvent.

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