

## What to Watch on JCT 05 Contracts

In 2005, JCT, as part of its new publishing agreement with Sweet & Maxwell, re-launched its standard forms of contracts. In order to achieve publication deadlines, compromises were made in relation to a number of clauses when JCT was revising and updating the suite. NSCC is currently discussing the implications with JCT and it is likely that the issues will be resolved shortly; however, in the meantime, NSCC members should be aware of the following:

### Collateral Warranties

There is a danger that, as currently worded, a sub-contractor could inadvertently sign up to providing a warranty in an unacceptable form, as the standard JCT sub-contract does not make it clear that a sub-contractor's commitment is to give a warranty in the unamended JCT wording. JCT has agreed to clarify that an unamended JCT sub-contract can only oblige a sub-contractor to provide an unamended JCT warranty; however, in the meantime, you should take care to make this clear to the contractor, or agree in writing before commencing work if you are willing to provide some other document.

Don't forget that amended JCT sub-contracts can commit you to whatever they say, so always be careful when signing them!

**NSCC recommends that you check all warranty wordings prior to giving a contractual commitment to provide one.**

### Professional Indemnity (PI) Insurance

The JCT Design and Build Sub-Contract is for use with the JCT Design and Build [Main] Contract regardless of whether or not a sub-contractor is performing design work. The way in which the recitals and articles in the agreement are completed determines whether there is a design element to the sub-contract works and PI is required. If the schedules are completed correctly, there is not a problem; if there is design, the sub-contractor has to have PI, and if there is not, none is required.

However, NSCC is concerned that, as main contractors "mass produce" their contracts, they often require PI regardless of whether it is actually needed, and this can be used as an excuse for withholding money.

**You are advised to check the relevant sections regarding design work. If you do not have design responsibility and are not intending to provide PI, make sure the Design and Build Sub-Contract Agreement is properly completed to reflect this and all the sections relating to design and PI (and in particular the third recital of the particulars) are either deleted or left blank. Check the footnotes in the agreement for further information.**

### FPS' response

In the interim, the longstanding FPS policy to support the use of unamended standard forms of contract has been suspended and Members have been advised to negotiate the problematic clauses.