

FRESH JCT



What is a Collateral Warranty?

Collateral Warranties are commonly used in Construction Contracts.

A collateral warranty is a contract under which a party involved in the works typically a sub-contractor warrants to a third party beneficiary (Employer or Funder) that it has fulfilled its obligations under its underlying building contract, subcontract or professional appointment (referred to as underlying).

In a simple construction project, an Employer may contract with a contractor (Main Contractor) to carry out building works. Those two parties usually have a clear contractual relationship.

However, construction projects invariably involve a wide range of parties with an interest in the development (funders, purchasers, tenants for example) and also those involved in the works (contractors and consultants). Some of those parties will not have a direct contractual link or a commercial relationship of any sort.

Ordinarily, only a party to a contract is entitled to enforce a contract.

Therefore, if a subcontractor were to commit a breach of its subcontract (with the Main Contractor), and that breach adversely impacted on the Employer (this could also be a funder/purchaser or tenant), an Employer would be unable to enforce the same. That creates a problem for the employer particularly in a situation where the Main Contractor has ceased trading.

In addition, if the Employer identify defects in the subcontract works, in the absence of a collateral warranty the Employer would have no realistic contractual recourse against any party in the example above.

In the absence of that contractual link, the Employer would have to rely on a claim in negligence. This would require the Employer to establish that the subcontractor owed it a duty of care before its claim was even considered. Even if successful, the Employer would also be limited as to what it could recover in negligence.

Collateral warranties are used to bridge the contractual gap and create a direct contractual link for the benefit of those parties that may otherwise have no recourse.

FRESH JCT

07563 246 975

info@freshjct.co.uk

Www.freshjct.co.uk

**FRESH JCT WILL PROTECT YOUR BUSINESS WITH
YOUR OWN BESPOKE TERMS & CONDITIONS**

