Neutral Citation Number: [2009] EWHC 1487 (TCC)

Case No: HT-09-177

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

St Dunstan's House
133- 137 Fetter Lane
London EC4A 1HD

Date: Tuesday, 16th June 2009

Before:

MR JUSTICE COULSON

- -

Between:

PRIMUS BUILD LIMITED	**Claimant**
- and -	
(1) POMPEY CENTRE LIMITED	**Defendants**
(2) SLIDESILVER LIMITED	

- -
- -

Miss Lynne McCafferty (instructed by **Fenwick Elliott**) for the **Claimant**.
Mr Gideon Scott Holland (instructed by **Sellar Property Group**) for the **Defendants**.

- -

Judgment

Mr Justice Coulson :

1. INTRODUCTION

1. This is a claim for enforcement of an adjudicator's decision dated 14th April 2009. It raises two points of principle. The first concerns the proper service of a Notice of Adjudication and the possible consequences of invalid service. The second relates to the validity of an adjudicator's decision which is based upon a critical finding and calculation that neither side relied on in their submissions and did not have an opportunity to address. It also raises a more general point about the costs of the adjudication process.

2. BACKGROUND

2. By a contract made in writing on 12th October 2007, the Defendants ("Pompey") engaged the Claimants ("Primus") to provide construction management services in relation to the construction of a hotel and office building in Portsmouth ("the project").

3. Clause 22 dealt with dispute resolution. It provided that, in the first instance, disputes were to be addressed by senior representatives or members of the board of directors of each party. If that method failed to resolve the dispute, then the parties agreed that the dispute would be referred to adjudication and that the procedures and rules relating to that adjudication would be those set out in the Model Adjudication Procedure of the Construction Industry Council ("the CIC").

4. Clause 26 of the contract was concerned with notices. That clause provided:

> "26.1 Any notice to be given hereunder shall either be delivered personally or sent by fax. The addresses or numbers for service of the Employer and the Construction Manager shall be those stated in Schedule 1 or such other address or number for service as the party to be served may have previously notified in writing to the other party. A notice shall be deemed to have been served as follows:
>
> 26.1.1 if personally delivered at the time of delivery, or
>
> 26.1.2 if sent by fax at the time of transmission.
>
> 26.2 In proving such service, it shall be sufficient to prove that personal delivery was made or that the fax was properly addressed and despatched as the case may be."

5. In June 2008, the office building element of the project was omitted from the scope of Primus's work. Although there was an express agreement that Primus "would be entitled to be compensated for the profit it will have forgone" as a result of this omission, the particular profit claims put forward by Primus were rejected by Pompey and, in November, they suggested that Primus had in fact already been adequately compensated for the omission.

6. A Notice of Adjudication was issued on 5th March 2009, claiming loss of profit in the sum of £107,253.73, plus VAT and interest, or such other sum as the adjudicator might determine. It was served by post on that day. The evidence is that it was received by Pompey the following day, 6th March 2009, and that at some point that day it was received into the hands of their solicitor. By his decision of 14th April, the adjudicator, Mr Paul Lomas-Clarke, decided that the sum of £47,870.91, plus VAT and interest, should be paid by Pompey to Primus by way of loss of profit. Thus far, this sum has not been paid and, on 13th May 2009, Primus commenced these enforcement proceedings.

3. GENERAL PRINCIPLES

7. It is of course trite law that the Courts will generally seek to enforce decisions of adjudicators (***Macob Civil Engineering Ltd v Morrison Construction Ltd*** [1999] BLR 93) even if such decisions contain errors of fact or law: see ***Bouygues (UK) Ltd v Dahl-Jensen (UK) Ltd*** [2000] BLR 522. Broadly speaking, there are only two ways for a paying party to avoid payment: either by demonstrating a lack of jurisdiction on the part of the adjudicator, or a material breach of the rules of natural justice. Even then, the Courts have made it clear that such arguments face something of an uphill task.

8. In ***Carillion Construction Ltd v Devonport Royal Dockyard*** [2005] BLR 310, Chadwick LJ said:

> '85. The objective which underlies the Act and the statutory scheme requires the courts to respect and enforce the adjudicator's decision unless it is plain that the question which he has decided was not the question referred to him or the manner in which he has gone about his task is obviously unfair. It should be only in rare circumstances that the courts will interfere with the decision of an adjudicator …
>
> 86. It is only too easy in a complex case for a party who is dissatisfied with the decision of an adjudicator to comb through the adjudicator's reasons and identify points upon which to present a challenge under the labels "excess of jurisdiction" or "breach of natural justice" …
>
> 87. In short, in the overwhelming majority of cases, the proper course for the party who is unsuccessful in an adjudication under the scheme must be to pay the amount that he has been ordered to pay by the adjudicator. If he does not accept the adjudicator's decision as correct (whether on the facts or in law), he can take legal or arbitration proceedings in order to establish the true position.'

I note that here Pompey raise one point in each category, although the alleged breach of natural justice is also put as an excess of jurisdiction.

4. ISSUE 1 – THE SERVICE OF THE NOTICE OF ADJUDICATION

4.1 The Issue

9. Pompey originally took four jurisdiction points in front of the adjudicator. He rejected them all. Three of those have now been abandoned, leaving only the last, namely the allegedly defective service of the Notice of Adjudication. The adjudicator found that "the defect was not such as to prevent this adjudication continuing".

10. As I have indicated, the Notice of Adjudication was served by post on 5th March 2009. The evidence was that it was actually received by Pompey the following day, 6th March, even though the relevant envelope had in fact been misaddressed. The evidence is also that, at some point during 6th March, the Adjudication Notice was seen by Pompey's solicitor, who had been involved in some of the previous dealings between the parties on the loss of profit issue. Notwithstanding that receipt, Pompey say that, pursuant to clause 26 of the contract, the notice should have been provided either by way of personal delivery (which they equate with personal service) or by fax and, because it was not served in either way, it was invalid and that, consequently, the adjudicator did not have the necessary jurisdiction.

4.2 General Principles Relating To Service

11. Section 115 of the **Housing Grants, Construction and Regeneration Act 1996** provides as follows:

> "(1) The parties are free to agree on the manner of service of any notice or other document required or authorised to be served in pursuance of the construction contract or for any of the purposes of this Part.
>
> (2) If or to the extent that there is no such agreement the following provisions apply.
>
> (3) A notice or other document may be served on a person by any effective means.
>
> (4) If a notice or other document is addressed, pre-paid and delivered by post—
>
> > (a) to the addressee's last known principal residence or, if he is or has been carrying on a trade, profession or business, his last known principal business address, or
> >
> > (b) where the addressee is a body corporate, to the body's registered or principal office,
>
> it shall be treated as effectively served.
>
> (5) This section does not apply to the service of documents for the purposes of legal proceedings, for which provision is made by rules of court."

12. In the present case, the parties had agreed "on the manner of service of any notice": that is the procedure set out in clause 26. The parties also agreed, at clause 22.2, that the CIC Model Adjudication Procedure would apply. That provided detailed provisions relating to adjudication, but it did not contain any express provisions relating to service. Thus the parties are agreed that what matters for the purpose of this issue are the terms of clause 26.

13. More widely, I note that it has been held that, as a result of the wording of section 115, the provisions of the CPR dealing with service are not to be regarded as having been incorporated wholesale into the adjudication process: see ***Cubitt Building & Interiors Limited v Fleetglade Limited*** [2006] EWHC 3413 TCC. It is also to be noted that the same applies to arbitration proceedings: see ***Bernuth Lines Ltd v High Seas Shipping Ltd*** [2006] 1 Lloyd's Rep 537.

14. Technical points as to the service of documents in adjudications have not generally found favour with the Courts: see, for example, ***Nageh v Richard Giddings & Anr*** [2006] EWHC 3240 TCC. However, that general approach is not always appropriate. If, say, it can be shown that the responding party was kept in the dark about the adjudication process, because the Adjudication Notice (and/or other documents) were not served at the appropriate address, and there was an arguable case that this had been deliberate, the decision will not be enforced: see ***M Rohde Construction v Nicholas Markham-David*** [2006] EWHC 814 TCC.

15. In addition, because an adjudicator derives his jurisdiction from the Notice of Adjudication, if it is proved that the Notice has not been validly served, it will generally operate to deprive the adjudicator of any jurisdiction. In ***IDE Contracting Ltd. v RG Carter Cambridge Ltd*** [2004] EWHC 36 TCC, a Notice of Adjudication was invalidly served because, contrary to the express provisions of the Scheme for Construction Contracts, it was served after, and not before, the attempts to obtain the nomination of an adjudicator. HHJ Havery QC therefore ruled that this failing went to the root of the adjudicator's jurisdiction and he refused to enforce the subsequent decision.

16. Furthermore, as Mr Scott Holland has demonstrated, such an approach might be regarded as consistent with the recent decisions of the higher courts as to the proper construction of notice provisions in contracts. For example, in ***Von Essen Hotels 5 Ltd v Vaughan & Anor*** [2007] EWCA Civ 1349, the Court of Appeal upheld the trial judge's view that a particular notice had not been served in accordance with the agreement, because it had been sent to the other side's new solicitors rather than the solicitors actually referred to in the contract. Mummery LJ rejected the argument that the provision in question was permissive rather than mandatory. This had significant adverse consequences for the appellant.

4.3 Analysis

4.3.1 Was There A Failure To Serve In Accordance With Clause 26?

17. On behalf of Primus, Ms McCafferty accepted that service had neither been by fax nor by way of personal service, and originally she indicated that she therefore accepted that there had not been service in accordance with clause 26. However, when she developed her submissions, she said that, because on the evidence, the

notice was received by Pompey on 6th March, actual receipt had been established, such that there had been no breach of clause 26. On behalf of Pompey, Mr Scott Holland said that personal delivery meant personal service and, because that had not happened, there was a breach of clause 26 which went to the root of the adjudicator's decision.

18. I have come to the conclusion that, by using in clause 26.1 the unusual expression "personal delivery" (or, more accurately, "shall be delivered personally"), the parties must be taken to have meant something different from "personal service", which is a well known concept requiring the handing over of the document in question in a personal exchange between two individuals. "Delivery" seems to me to mean actual delivery, whether by post or by some other mechanism. "Personal", as defined in the *Oxford English Dictionary*, means "of, affecting or belonging to a particular person rather than anyone else, done or made by a particular person; involving the actual presence or action of a particular individual."

19. It seems to me, therefore, that "delivered personally" means the actual delivery by an appropriate individual within Primus to a similarly appropriate individual within Pompey. The document in question must actually be delivered. The method of delivery does not matter, provided that the document is actually delivered to the named address in Schedule 1. Because clause 26.1 refers expressly to 'the address for service', that seems to me to be another reason to distinguish this procedure from personal service, which can happen anywhere.

20. On the facts of the present case, actual delivery to the named address and to an appropriate person at that address is exactly what happened. Since, therefore, there was actual personal delivery to Pompey's solicitor (arguably the most appropriate person to receive it), I do not find that there was any breach of clause 26.

21. I consider that this approach is consistent with other authorities. For example, in ***Construction Partnership UK Ltd v Leek Developments Ltd*** [2006] CILL 2357, HHJ Gilliland QC dealt with the expression "actual delivery" and said that that meant "transmission by appropriate means so that it is actually delivered". Adopting the same words here, I consider that "delivered personally" means "transmission by an appropriate means so that it is actually delivered to an appropriate person within Pompey's organisation".

22. I should say at once that my finding that, on these facts, Primus complied with clause 26 is based on the combination of the unusual wording of clause 26 ("delivered personally"), and the uncontroversial evidence that the Notice of Adjudication was in fact received by an – perhaps *the* - appropriate individual the day after it was posted. If the contract had required, say, personal service, or the documents had sat on a reception desk for a week or been lost or even delayed in the post, then I would have had no hesitation in coming to the conclusion that the Notice had not been properly served in accordance with the contract. On one view, therefore, Primus have been rather fortunate that their enforcement claim has survived this first hurdle.

4.3.2 Consequences of Invalid Service

23. That view is compounded by any consideration of the consequences of invalid service. Whilst is it unnecessary for me to consider this in detail, because of my finding that there was no breach of clause 26, I am confident that, had I found a breach, I would also have found that it invalidated the Notice in accordance with the principles set out in ***IDE*** and, in a wider context, ***Von Essen***. The provisions of clause 26 were mandatory, not permissive, and the failure to comply would have rendered the Notice invalid. It was not necessary for the term to be expressed as any sort of condition precedent for that consequence to follow.

24. I would have also rejected the waiver argument. Although it is true that, when the jurisdiction point was first taken by Pompey, Primus offered a three day extension of time for the adjudication as a whole, it was clear from the correspondence that:

(a) this offer was made to the adjudicator, not Primus;

(b) Pompey did not accept it;

(c) the extension that was granted by the adjudicator was for the time for Pompey's response, not the adjudication as a whole.

Thereafter, Pompey did not waive the jurisdiction point and, although they suggested that they might do so, Primus did not re-serve the Notice of Adjudication.

25. Thus, so it seems to me, Primus were aware of the jurisdiction point from the outset and had at one point contemplated starting again in order to deal with it. They chose not to do so, notwithstanding the fact that they knew that this point was still being taken by Pompey. In such circumstances, there can be no waiver.

26. Thus, if there had been a breach of clause 26, the adjudicator would have had no jurisdiction and there would have been no waiver. However, for the reasons set out in the earlier part of this analysis, I have concluded that, on these facts and on the wording of this particular term, there was no breach of clause 26.

5. ISSUE 2 – THE BASIS OF THE ADJUDICATOR'S DECISION

5.1 The Issue

27. Primus's claim for loss of profit was based on the 3% construction and management fee percentage identified in the contract. Pompey took a variety of points in opposition to the claim, including the submission that the 3% fee did not represent Primus's actual loss of profit, if any, caused by the omission. The adjudicator awarded Primus loss of profit calculated at a rate of 1.3%, which was a figure that he, the adjudicator, had calculated from the profit to sales ratio identified in the set of Primus's accounts which had been provided as part of Primus's reply. It was not a percentage that was expressly stated in the accounts.

28. Pompey now complain that this was a decision that was made without jurisdiction and/or in breach of natural justice, because it was contrary to the way each side had put its case; it was based on an approach which neither side had raised; and was a basis of claim with which they had been given no opportunity to deal by the adjudicator in advance of his decision.

5.2 The Principles

29. Generally speaking, the rules of natural justice apply to adjudication, but they cannot always be fully applied, given the short timetable and 'the crude methodology' sometimes involved: see ***Balfour Beatty Construction Ltd v London Borough of Lambeth*** [2002] EWHC 597. Any alleged breach must be examined critically (***Amec Capital Projects Ltd v Whitefriars City Estates Ltd*** [2005] BLR 1) and must be material or of significance to the decision actually made by the adjudicator: see ***Kier Regional Ltd (t/a Wallis) v City & General (Holborn) Ltd*** [2006] EWHC 848 TCC and ***Cantillon Ltd v Urvasco Ltd*** [2008] EWHC 282 TCC. In other words, if there has been a breach of natural justice, but it cannot be demonstrated that it goes to the heart of the adjudicator's decision, it will not affect the enforcement of that decision.

30. There are a number of reported cases in which an adjudicator's decision has not been enforced, because it relied heavily on something which had not come from either of the parties but from the adjudicator himself, in circumstances where the parties had not even had the opportunity to comment on this new approach. Thus, in ***Balfour Beatty Construction Ltd v London Borough of Lambeth*** the adjudicator, with the help of his own programming expert, provided a critical path analysis which then formed the basis of his decision, even though that analysis was not shared with the parties and was not even seen by them until the decision was published. HHJ Lloyd QC held that, in consequence, there had been a breach of natural justice and the adjudicator's decision was invalid.

31. Similarly, in ***RSL (South West) Ltd v Stansell Ltd*** [2003] EWHC 1390 (TCC), the adjudicator relied on an independent report, again without notification to the parties. HHJ Seymour QC said that, whilst the adjudicator was entitled to obtain such a report, he should not have had any regard to it without giving both parties the chance to consider the contents of that report and to comment upon it. He also found that the breach was plainly material because the adjudicator had relied on the report in coming to his decision.

32. However, this issue will always be a matter of fact and degree. So, in ***Multiplex Constructions (UK) Ltd v West India Quay Development Company (Eastern) Ltd*** [2006] EWHC 1569 TCC, Ramsey J worked through the various aspects of an adjudicator's decision which, so it was said, the parties had not had an opportunity to comment upon. He concluded that, unlike the adjudicator in ***Balfour Beatty***, the adjudicator had not adopted his own methodology, but had instead carefully assessed the contractor's own programming analysis and made due allowance for his concerns about various aspects of it. There was, therefore, no breach of the rules of natural justice, because the adjudicator's decision was based upon the material properly before him, on which both parties were seeking to rely.

5.3 Analysis

5.3.1 Were The Parties Agreed That The Profit Figures In The Accounts Were Irrelevant?

33. The first issue is whether, on the facts here, the parties were agreed that the profit figures in Primus's accounts, which ultimately formed the basis of the adjudicator's decision, were irrelevant to the issue that the adjudicator had to decide. That point arises in this way because Mr Scott Holland argues that the position here is similar to the problem facing HHJ Kirkham in ***Shimizu Europe Ltd v LBJ Fabrications Ltd*** [2003] BLR 381. There, the learned judge concluded that the parties had agreed that their contractual relationship was governed by a letter of intent ("LOI"). She therefore found that the adjudicator had exceeded his jurisdiction by deciding that the DOM/1 Form had been incorporated instead. Mr Scott Holland argued, by analogy with that decision, that here, since the parties had agreed that the accounts were irrelevant, the adjudicator exceeded his jurisdiction by making any reference to them at all.

34. At first blush, I considered that this argument was a little contrived. However, on analysis of the documents, I have concluded that I must accept it. The parties were each saying that the accounts should be ignored. They may have had different reasons for that conclusion, but that was indeed their shared view. In particular:

(a) The accounts were introduced by Primus as part of their reply. Contrary to Primus' argument now, there is nothing to indicate on the face of that document that the accounts were provided because they had been requested by Pompey. Moreover, the only part of the reply that actually deals with the accounts themselves is paragraph 21, which is in these terms:

> "In the absence of any proposal from Pompey, Primus therefore produced its own assessment of lost profits on a fair basis. As explained in the referral, Primus considered it fair to apply the contractually agreed 3% construction management fee percentage to the estimated cost of the office works. In so doing,
>
> (a) Primus has ignored its usual profit recovery on similar works of around 6% to 8%. In his statement, Mr Samms confirms that Primus's statutory accounts for the period ending 31st December 2008 showed an earned gross profit of 6.9%.
>
> (b) Primus has also ignored the likelihood that ECH's costs estimate would have increased had the office works been carried out. See paragraph 9 of Mr Sammes' statement confirming this as a real possibility."

(b) In their rejoinder at paragraph 30, Pompey say this about that passage in the reply:

> "As to the first point [that is to say the argument that Primus had ignored its usual profit recovery on similar works of around 6% to 8%], it is simply not relevant what percentage profit Primus usually makes on other jobs. Each job is different and it cannot be reasonably assumed that the profit made on one job would also be made on another. For the same reason, it is not relevant what Primus expected to make on the office works. As explained above, besides the litigation point, the issues to be

> decided are what was the actual effect of the termination of the office works and, therefore, what is required to restore Primus to the position it would have occupied if that termination had not occurred? To answer those questions it is not relevant to consider Primus's expected or 'usual' level of profit, but fairness and legal principle require that the methodology adopted by Mr Cook and summarised at paragraph 22 of the response should be applied."

35. Accordingly, I find that both parties were agreeing that, to use Primus's own word, the accounts should be "ignored". Thus I conclude that the adjudicator did not have the jurisdiction to consider those accounts or make any findings based upon them. The parties had reached a similar sort of agreement to that reached by the parties in ***Shimizu*** and for the same reasons the adjudicator ought not to have gone beyond that agreement.

5.3.2 Was There A Breach Of Natural Justice?

36. Now assume that I am wrong on the jurisdiction question, and the adjudicator was entitled to look at the accounts. Did the rules of natural justice require him to obtain the parties' submissions on his approach, which calculated a figure of 1.3% from the figures in the accounts, or was he entitled to adopt that approach without any reference to the parties?

37. In my judgment, it is plain that the adjudicator was obliged to go back to the parties with his new calculation. There are a number of reasons for this.

38. First, it is worth considering why the adjudicator was going down this path in the first place. As the reasoning in paragraphs 21 to 28 of his decision makes clear, he started off by rejecting the entire approach advanced by Primus, namely the reasonableness of the 3% identified in the contract. It appears therefore that the adjudicator accepted Pompey's principal case, that proof of actual loss of profit was what mattered. The difficulty for the adjudicator was that, because of the way in which Primus had put their case, he had not been persuaded that there was any evidence of actual loss of profit. Hence, he was driven to calculate his own figures from a set of documents that both sides had told him to ignore.

39. In those circumstances, it might be said that the adjudicator was doing something which was very similar to what the adjudicator did in ***Balfour Beatty*** and for which he was rightly criticised, namely filling in the gaps in the referring party's case without any reference to the other side. It is a fine line for an adjudicator between wanting to help the parties on the one hand, and making one side's case for them, on the other. But if an adjudicator believes that, in the interests of justice, there is a legitimate alternative course which has not been considered or put forward by the referring party, but which may, on its face, meet the objections of the responding party, he should immediately ask himself the question: do I need to give notice of, and obtain submissions about, that alternative approach?

40. As I have said, these things are always a matter of fact and degree. An adjudicator cannot, and is not required to, consult the parties on every element of his thinking leading up to a decision, even if some elements of his reasoning may be derived from,

rather than expressly set out in, the parties' submissions. But where, as here, an adjudicator considers that the referring party's claims as made cannot be sustained, yet he himself identifies a possible alternative way in which a claim of some sort could be advanced, he will normally be obliged to raise that point with the parties in advance of his decision. It seems to me that that principle must apply *a fortiori* in circumstances where the document from which the alternative approach is to be derived, is a document which the adjudicator was told by the parties to ignore. In those circumstances, common sense demands that, before reaching any conclusion, the adjudicator must ask the parties for their submissions on that alternative approach.

41. For those reasons, I consider that this case is much closer in nature to ***Balfour Beatty*** and ***RSL*** than to ***Multiplex***. I also note that it is similar to the approach adopted by HHJ Kirkham in ***Shimizu*** because in that case she said that, had she been required to do so, she would have concluded that:

> "…the adjudicator should have made clear to the parties that, although they agreed that they had contracted on the basis of the LOI, he was intending to decide whether or not that was so, and should have given the parties the opportunity to make submissions on the question of contract formation (as opposed simply to the operation or otherwise of the cap). By not doing so, the adjudicator acted in breach of the rules of natural justice with the consequence that the court would be slow to give summary judgment to enforce the decision."

5.3.3 Was The Breach Significant Or Material?

42. The final issue is whether the breach of natural justice was significant or material. I am in no doubt that it was. The adjudicator's entire decision was founded on his calculation and subsequent use of the 1.3%. Without it, Primus would have recovered nothing.

43. Furthermore, at paragraph 57 of his skeleton argument, Mr Scott Holland set out some of the matters which would have formed part of the submissions that Pompey would have made (had they been given the opportunity) as to why the 1.3% was an unreliable figure. It is unnecessary for me to set each of those out here, in what is already an overlong judgment, but it does seem to me that those are all matters which could well have made a significant difference to the adjudicator's approach. Indeed, one of those points would have been the submission that, on a proper analysis of the accounts, far from a profit of 1.3%, there was actually a loss of 10.9% over the relevant period. In those circumstances, it is plain that these matters, had they been put to the adjudicator, may well have made a significant difference to the outcome.

5.3.4 Summary

44. Accordingly, for those reasons, I conclude that the jurisdiction/natural justice issue arising out of the adjudicator's unheralded use of Primus's accounts and his calculation of the 1.3% has been made out. That, therefore, means that on this occasion I am unable to enforce the adjudicator's decision.

6. GENERAL OBSERVATIONS ON COSTS

45. I need hardly say that this result gives me no satisfaction, because it means that the parties have wasted a good deal of money to achieve very little. But, as I indicated to the parties at the outset of the hearing, even if I had enforced the adjudicator's decision, I would still have been concerned about the costs that have been incurred in connection with this dispute. This case is an illustration of a trend in adjudication disputes which is becoming of increasing concern.

46. In the present case:

(a) The claim was for £100,000-odd, and just under £50,000 of that was the subject of the decision, albeit on a basis that was entirely different to that put forward by Primus.

(b) Although I do not have figures for the costs that the parties incurred in the adjudication itself, I note that they must have been quite high because there were four rounds of documents (referral, response, reply, and rejoinder). Each document was extensive and came with other documents attached. Solicitors were involved. The adjudicator's fees alone were over £10,000.

(c) The enforcement proceedings have themselves cost a total of £30,000.

47. In other words, considerably more has been spent on costs and fees than could have been recovered in relation to the claim itself, even if Primus had obtained summary judgment today. And, even if that had happened, it would have been in respect of a decision that was no more than temporarily binding, and which could have been reversed in the county court or in arbitration. It seems to me that this was just the situation, where the costs outweigh the value of the claim itself, which led to the general enthusiasm for adjudication in the first place. I fear that, in disputes of this kind, the adjudication process is in danger of revisiting some of the inefficiencies and injustices of the past.