SBC

CASE SUMMARY

PARTIES

TRANSPORT FOR GREATER MANCHESTER
& KIER CONSTRUCTION LTD

DATE

31st March
2021

ISSUE

NEC Notice of Dissatisfaction

QUESTION

What constitutes a valid Notice?

THE KEY PART OF THE JUDGMENT IS

The letter of 29 November 2019 was a valid notice of dissatisfaction for the purposes of clauses W2.3(11) and W2.4. The words: *"it is clear that he has erred in law and in his interpretation and application of the express terms of contract between the parties in a number of fundamental respects*" were sufficient to make clear that TfGM did not accept, and was dissatisfied with, the Adjudicator's decision. The words: "*TfGM's… intention to seek formal resolution to reverse the outcome of the Decision*" were sufficient to inform Kier that it intended to refer the disputed adjudication decision to the Court.

THE ANALYSIS

Transport for Great Manchester ("TfGM"), sought reversal of an adjudicator's decision against Kier Construction Limited ("Kier"). TfGM brought this action on the basis of its Notice of Dissatisfaction issued under the contract, which disputed the adjudicator's award in favour of Kier. It alleged that the adjudicator had erred in law and contract interpretation. Kier argued that TfGM had failed to serve a valid Notice of Dissatisfaction in accordance with the contract and that therefore the adjudicator's decision was final and binding.

The Contract was in the form of an amended NEC3 Engineering and Construction contract. Significant delays occurred during the project. TfGM blamed Kier, and consequently deducted liquidated damages. Kier commenced an adjudication for an extension of time.

The adjudicator decided that Kier was entitled to an award of circa £600,000 plus an extension of time. Clause W2.4 of Contract provided that unless a party serves a valid Notice of Dissatisfaction within four weeks of an adjudicator's decision, it would be deemed final and binding.

TfGM purported to serve such a Notice on Kier by email and post, following which it commenced Part 8 proceedings to challenge the outcome of the adjudication. Kier argued that the court had no jurisdiction because no valid Notice of Dissatisfaction had been served. This would mean that the adjudicator's decision was final and binding.

Kier argued that the Notice had been posted to the wrong address; covered other irrelevant topics; and was not adequately precise nor clear. Kier criticised TfGM for failing to comply with the notice and service provisions of the Contract. Finding in favour of TfGM, the court declared that the Notice of Dissatisfaction was valid, and thus the court did have jurisdiction to determine the

claim. The Notice was deemed valid on the basis that the correct last notified address had been used; it did not cover irrelevant topics; and it was adequately precise — the Contract did not require a description of the grounds of dispute.

This judgment provides useful guidance on how service of a Notice of Dissatisfaction under an NEC contract or similar will be assessed by the court. Such a Notice should be clear and unambiguous. The Court determined that it was not necessary for a notice to set out detailed submissions and grounds of dissatisfaction. Provided the recipient is left on notice that the adjudicator's decision is disputed, the Notice of Dissatisfaction will probably be effective.

Case No: HT-2020-000293

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)
[2021] EWHC 804 (TCC)

Royal Courts of Justice
Rolls Building
London, EC4Y 1NL

Date: 31/03/2021

Before:

MRS JUSTICE O'FARRELL DBE

- -

Between:

TRANSPORT FOR GREATER MANCHESTER	**Claimant**
- and -	
KIER CONSTRUCTION LIMITED (t/a Kier Construction - Northern)	**Defendant**

- -
- -

Alexander Hickey QC (instructed by **Pannone Corporate LLP**) for the **Claimant**
Adrian Williamson QC (instructed by **Walker Morris LLP**) for the **Defendant**

Hearing date: 5th November 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

"**Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Wednesday 31st March 2021 at 10:30am"**

.....

MRS JUSTICE O'FARRELL DBE

Mrs Justice O'Farrell:

1. On 12 August 2020, the Claimant ("TfGM") issued a Part 8 Claim, seeking final determination of a dispute which had been referred to adjudication by the Defendant ("Kier") so as to reverse the adjudicator's decision.

2. The matter before the Court is Kier's application under CPR Part 11, seeking a declaration that the Court lacks jurisdiction to hear the Part 8 claim and an order setting aside the Part 8 claim.

3. The issue is whether TfGM gave a valid notice of dissatisfaction in respect of the adjudication decision, so as to preserve its right to challenge the decision through legal proceedings, or whether the adjudication decision became final and binding.

The Contract

4. In or around April 2015, Kier and TfGM entered into a contract based on the NEC Engineering and Construction Contract, with bespoke amendments, whereby Kier were to design and build a bus interchange in Bolton ("the Contract").

5. The Contract Data identified TfGM's address as 2 Piccadilly Place, Manchester M1 3BG and Kier's address as Tempsford Hall, Sandy, Bedfordshire SG12 2BD.

6. Clause 13 of the Contract provided as follows:

> "13. Communications
>
> 13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the language of this contract.
>
> 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
>
> …
>
> 13.7 A notification which this contract requires is communicated separately from other communications …"

7. The Works Information at Clause WI 920 Communications stated:

> "All communications shall be undertaken using the project extranet 'NEC3 Change Management Tool', [provided by Conject (formerly BIW Technologies)]. Each communication should be completed as fully as possible by the Project Manager, Contractor or Supervisor and issued as required. The system will automatically send a corresponding email notification to those

concerned. One copy of all communications and attachments will be provided on disk as an archive by the extranet change management provider at the end of the contract.

All communications issued will be regarded as the contractual record. Hard copies of communications will only be issued under the following circumstances:

- when required to do so by the Works Information
- when issuing documents that cannot be easily electronically transferred and as agreed between the Project Manager and Contractor."

8. The Contract provided for Adjudication as set out in Option W2. Clause W2.3 stated:

"(1) Before a Party refers a dispute to the Adjudicator, he gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which he wishes the Adjudicator to make…."

(2) Within seven days of a Party giving a notice of adjudication he

- refers the dispute to the Adjudicator,
- provides the Adjudicator with the information on which he relies, including any supporting documents and
- provides a copy of the information and supporting documents he has provided to the Adjudicator to the other Party.

…

(6) A communication between a Party and the Adjudicator is communicated to the other Party at the same time."

…

(11) The Adjudicator's decision is binding on the Parties unless and until revised by the tribunal and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The Adjudicator's decision is final and binding if neither Party has notified the other within the times required by this contract that he is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the tribunal …"

9. Contract Data Part 1 identified "the tribunal" as the Court.

10. Clause W2.4 stated:

> "(1) A Party does not refer any dispute under or in connection with this contract to the tribunal unless it has first been decided by the Adjudicator in accordance with this contract.
>
> (2) If, after the Adjudicator notifies his decision a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the tribunal. The dispute may not be referred to the tribunal unless this notification is given within four weeks of the notification of the Adjudicator's decision.
>
> (3) The tribunal settles the dispute referred to it. The tribunal has the powers to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the Project Manager or the Supervisor related to the dispute. A Party is not limited in tribunal proceedings to the information or evidence put to the Adjudicator."

The dispute

11. On 23 September 2019 Kier issued a Notice of Adjudication, seeking a decision that the Completion Date in the Contract be extended to 11 August 2017 and repayment of delay damages withheld in the sum of £598,775.42.

12. The Notice of Adjudication was drafted and signed by Walker Morris, solicitors acting for Kier.

13. At paragraph 1.1 the referring party was identified as Kier and its registered office was as stated in the Contract Data.

14. Paragraph 1.2 stated:

> "Kier are represented by Walker Morris LLP whose contact details are 33 Wellington Street, Leeds, LSI 4DL, telephone: 0113 283 2500; fax: 0113 245 9412;
>
> email: tom.peel@walkermorris.co.uk and alex.jones@ walkermorris.co.uk."

15. At paragraph 1.3 the responding party was identified as TfGM and its address was as stated in the Contract Data.

16. Paragraph 3.4 stated:

> "This Notice of Adjudication constitutes Kier's written notice of its intention to refer the dispute as herein described and which has arisen under the Contract to Adjudication."

17. The address given at the end of the document was:

> "Walker Morris LLP, 33 Wellington Street, Leeds, LSI 4DL Tel: 0113 283 2500, Fax:0113 245 9412
>
> Ref: AJJ/TTP/KCL0007.110
>
> Solicitors for the Referring Party."

18. The Notice of Adjudication was sent by recorded delivery and email to TfGM at the address set out in the Contract Data.

19. By letter dated 26 September 2019 (also sent by email), Pannone Corporate raised a jurisdictional dispute, confirming to the Adjudicator that it represented TfGM in the adjudication, and asked for all communications to be directed to it, on behalf of TfGM.

20. On 30 September 2019, Walker Morris served the Referral by courier on Pannone, and sent an email containing an internet link to a sharefile where the documents were uploaded and could be accessed.

21. Thereafter, all communications during the adjudication were sent between the parties via their solicitors.

22. On 25 November 2019, the Adjudicator published his decision, determining that Kier was entitled to the full extension of time sought together with the sum of £598,775.542 plus interest and that TfGM should pay the Adjudicator's fees and expenses.

23. On 29 November 2019, Pannone on behalf of TFGM sent a letter to Walker Morris, by email and post, in the following terms:

> "**In the First Adjudication between Kier Construction Limited ("Kier") and Transport for Greater Manchester ("TfGM")**
>
> We write with reference to the Decision of Mr. Curtis dated 25 November 2019 in the above Adjudication ("Decision"). Having considered the reasoning given by Mr. Curtis in reaching his Decision on the dispute referred, it is clear that he has erred in law and in his interpretation and application of the express terms of contract between the parties in a number of fundamental respects.
>
> However, and without prejudice to TfGM's right and intention to seek formal resolution to reverse the outcome of the Decision, TfGM is prepared to comply with the Decision on a provisional basis. To that end, we confirm that TfGM has made

> arrangements for payment in satisfaction of the Decision to be made to Kier. Please can you ask Kier to raise an invoice for the sums awarded, plus the VAT status, as soon as possible, as TfGM cannot process payment without an appropriate invoice.
>
> Please confirm in the course of the next 7 days if Walker Morris LLP is instructed to accept service of formal Proceedings for and on behalf of Kier."

24. On 2 December 2019 Jon Mayor of TfGM sent an email to Phil Vickers of Kier, stating:

> "Further to the adjudication decision dated 25th November 2019 on Bolton, please can you raise two invoices in the following sums:
>
> Invoice in relation to payment assessment Nr 48 (issued on conject today) in the sum of £713,572.90. This value is inclusive of the repayment of delay damages and associated interest charges up to 25th November 2019.
>
> A separate invoice in the sum of £31,259.25 in relation to the payment of the TfGM element of the adjudicator's fees in accordance with the decision notice.
>
> Also, please can you confirm the bank account details to which the funds will be directed.
>
> We intend to honour the timeline as instructed by the adjudicator and would appreciate the invoices to be raised by return. "

25. Mr Vickers responded with the relevant details, thanking TfGM for its speedy payment.

26. On 3 December 2019 Mr Mayor of TfGM sent a further email to Mr Vickers of Kier, stating:

> "Further to the issue of Payment Assessment nr 48 and the subsequent payments to Kier in accordance with the Adjudicator's decision dated 25th November 2019, we record that it has been issued on a provisional basis only and without prejudice to TfGM's right and intent to seek formal resolution to reverse the Decision.
>
> If you have any queries, do not hesitate to contact myself."

The claim

27. On 12 August 2020, TfGM commenced Part 8 proceedings, seeking declarations that the Adjudicator erred in law in determining that Kier was entitled to the extensions of time claimed, and claiming repayment of the sums awarded in the adjudication.

The application

28. On 9 September 2020 Kier issued an application, seeking an order declaring that the Court has no jurisdiction to hear the Claim and setting aside the Claim Form.

Parties' submissions

29. Kier's case is that TfGM failed to give a valid notice of dissatisfaction within four weeks of the adjudication decision, with the result that the decision became final and binding. Mr Williamson QC, leading counsel for Kier, submits that:

    i) The Contract provides for adjudication, that the result is to be honoured and that the same will become final and binding unless a notification of dissatisfaction is given within four weeks. This obviously serves an important commercial purpose of achieving certainty and finality in relation to disputes. Such a notification must, therefore, be clear and unambiguous, and comply with the contractual provisions for service.

    ii) The letter of 29 November 2019 was not such a notification because:

        a) contrary to clause 13.2, it was not sent to the address of Kier stated in the Contract Data, no other address having been notified by Kier for receiving communications;

        b) it was not sent separately from other communications, contrary to clause 13.7; and

        c) it did not state that TfGM intended to refer a specified matter to court, contrary to clause W2.3(11).

    iii) Further, the letter relied on was defective as a matter of substance in that TfGM failed to identify the matters with which it was dissatisfied and wished to take to court.

    iv) The email dated 3 December 2019 suffered from similar defects.

    v) TfGM's attempt to rely on clause WI 920 does not assist because:

        a) the two purported Notices of Dissatisfaction do not identify the matter decided by the Adjudicator with which TfGM are dissatisfied;

        b) the letter dated 29 November 2019 was not sent in compliance with Clause WI 920 and was sent not by TfGM but by Pannone Corporate;

        c) the email of 3 December 2019 was not sent via the Clause WI 920 method;

        d) Clause WI 920 is clearly concerned with routine contractual communications and was not intended to cut down the effect of clauses 13.2, 13.7 and W2.3(11).

    vi) Walker Morris sent and received communications in the adjudication on behalf of Kier but this does not assist TfGM because this was not provided for in the

Contract Data and Kier did not identify the address of Walker Morris as that for receiving communications pursuant to Clause 13.2.

30. TfGM's case is that its letter dated 29 November was a valid notice of dissatisfaction. Mr Hickey QC, leading counsel for TfGM, submits that:

i) Kier authorised communications in relation to the adjudication through its representatives, Walker Morris; therefore, this was a valid method of giving notice to Kier.

ii) The contents of the 29 November letter clearly asserted that (a) TfGM considered that the Adjudicator's decision was wrong in law as a matter of interpretation of the Contract and (b) TfGM intended to reverse the decision by court proceedings.

iii) In any event, email was an accepted contractual method of communication between the parties and notice of dissatisfaction in similar terms was also communicated by TfGM directly to Kier via email on 3 December 2020.

iv) Further, the validity of the adjudication decision depends on the adjudication having been validly commenced by a notice in accordance with clauses 13 and W2.3. Kier's Notice of Adjudication was a document created and served on TfGM by Walker Morris and not by Kier. If the originating document commencing the adjudication constituted a valid notice under the Contract, that document gave the address and contact details of Walker Morris and thereby constituted the 'last notified address' for the purposes of further notices under the Contract. The logical corollary of Kier's contractual notice point (if right) would mean that the adjudication itself was null and void, and the adjudication decision would therefore not be binding.

v) It would also make the adjudication provisions unworkable if every communication in relation to the adjudication for the purposes of clause W2 was required to be sent to the registered office of the party by the party itself and not via client representatives. Clearly none of the communications in the adjudication under clause W2.3 was sent and received in the manner in which Kier's case would require, nor would it be required under W2.4.

Discussion

31. Both parties placed reliance on the decision of Edwards-Stuart J in *Anglian Water Services Ltd v Laing O'Rourke Utilities Ltd* [2010] EWHC 1529 (TCC), a case in which the court had to deal with a very similar point.

32. The claimant in that case sought a declaration that it validly notified the defendant of its intention to refer a dispute to arbitration. The contract incorporated the terms of the second edition (1995) of the NEC Engineering and Construction Contract. The contract provided for disputes to be referred to arbitration following adjudication, provided that the party dissatisfied with the adjudication decision notified the other party of its intention to refer the matter to arbitration within four weeks of the notification of the adjudicator's decision. The material parts of clause 13 were in the same terms as the Contract in this case. During the adjudication, the defendant's solicitors confirmed that

they would accept service of any documentation relevant to the adjudication. Following receipt of the adjudicator's decision, the claimant's solicitors faxed a notice of dissatisfaction and a notice to refer a dispute to arbitration to the defendant's solicitors within the specified time limit. The defendant's position was that the notice was not a valid notice of dissatisfaction under the contract.

33. In finding that the contractual notice provisions in that case were mandatory, Edwards-Stuart J stated:

> "[45] It seems to me that the probable commercial purpose of the clause is to enable each party to the contract to work on the basis that all communications in relation to the contract will be channelled through one particular office, with the obvious advantage of enabling every incoming document to be properly filed and its arrival properly recorded…
>
> [46] Turning to the wording of the clause itself, it seems to me that clause 13.2 is there to fix the moment in time when a communication takes effect. For the reasons given by Mr Streatfeild-James, in the case of certain types of communication the date of its receipt will trigger the start of the period in which a response or action is required. The answer to the rhetorical question asked by Mr Wales — what is wrong with a document being handed over in a meeting? — is nothing, but I consider that the contract requires that a copy of the document should be sent also to that party's prescribed address.
>
> [47] It would be unsatisfactory, in my view, if in any case where there was a dispute about the time when a communication took effect, the parties had to investigate the circumstances in which the communication was made and received in order to determine whether the mode of delivery was actually as good as, or better than, the mode of delivery prescribed by clause 13.2. Apart from anything else, there might well be legitimate room for disagreement as to whether the actual mode of service was an improvement on the prescribed mode of service…
>
> [49] For these reasons I conclude that compliance with the mode of delivery specified in clause 13.2 is the only means of achieving or securing effective delivery of a communication under the contract because the communication only takes effect when it is received at the prescribed address.
>
> [50] The consequence of this conclusion is that I reject the submission that the fact that notification was received within time by the relevant personnel at LOR effectively trumps the failure to give notice in accordance with the contract. On this aspect I would echo the words of Gross J, albeit made in a different context and to a different end, in *Lantic Sugar Ltd v Baffin Investments* [2009] EWHC 3325 (Comm), namely:

> 'If a claimant is required to serve X and, mistakenly purports to serve Y, the mere fact that Y informs X of the purported service so that X knows of it, cannot convert Y's receipt of the documents into good service upon X'…"

34. On the facts of that case, the court accepted that agreement by the defendant's solicitors to accept service of any documentation relevant to the adjudication was sufficient notification under clause 13.2 that the solicitors' office would from then on be the address for service of communications relevant to the adjudication. The notice of intention to refer the dispute to arbitration was a document relevant to the adjudication and therefore amounted to a valid notice of dissatisfaction:

> "[68] … In the absence of a notice of intention to refer served within the four week period, the adjudicator's decision becomes finally binding on the parties. A valid notice of intention to refer served in time is therefore relevant to the adjudication because it prevents the adjudicator's decision being final. Whilst it is not part of the adjudication process itself, in my judgment it is relevant to the adjudication for this reason …"

35. Although the Court must always be careful to construe the express terms of the contract in question against the factual matrix and the documents relied on as the relevant notice(s), I gratefully adopt the above analysis of Edwards-Stuart J in *Anglian* as the starting point when considering the competing arguments in this case.

36. Clause 13.2 of the Contract stipulated that:

> "A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data."

37. The provision did not require communications exclusively to be sent to the address of the recipient as stated in the Contract Data. That was merely the default position if the parties failed to identify any other address for receiving communications.

38. In this case the parties agreed an alternative means of communicating as set out in WI 920, namely, the project extranet NEC3 Change Management Tool. WI 920 expressly stated that such communications would be regarded as the contractual record. Contrary to Mr Williamson's submission, WI 920 was not confined to routine contractual communications. There were stated exceptions to use of the management tool, where hard copies would be issued, namely, where the Works Information required hard copies or when issuing documents that could not easily be electronically transferred. Those exceptions did not include the notices with which the Court is concerned. Therefore, the email mode of notification set out in WI 920 was the last address notified at the start of the project pursuant to clause 13.2 and the parties were obliged to use the management tool for their communications.

39. The Notice of Adjudication was sent by Walker Morris to TfGM by email and to the address set out in the Contract Data. This mode of service was not in compliance with the requirement of WI 920. Contrary to Mr Hickey's submission, this did not have the

effect of rendering the adjudication award invalid. No objection was raised by TfGM on receipt of the notice, during the adjudication or following receipt of the award and therefore it lost any right to challenge the jurisdiction of the Adjudicator on that ground.

40. However, both the Notice of Adjudication and the Referral identified Walker Morris as the legal representative of Kier and gave Walker Morris' contact details for the purposes of the adjudication. The address of Walker Morris thereby became the last address notified by Kier for receiving communications in connection with the adjudication pursuant to clause 13.2. Likewise, by its letter dated 26 September 2019, sent by email and post, Pannone gave notice to the adjudicator and Walker Morris that it was the legal representative of TfGM, giving its contact details for the purposes of the adjudication pursuant to clause 13.2. No objection was taken by either party to this arrangement and communications continued through the parties' respective legal representatives for the duration of the adjudication.

41. Pannone's letter dated 25 November 2019 was sent to Walker Morris at the address notified in the Notice of Adjudication and the Referral. The letter was in connection with the adjudication as evident from the heading: *"In the First Adjudication between Kier Construction Limited ("Kier") and Transport for Greater Manchester ("TfGM")*. Therefore, such notice was sent to the last address notified by Kier for receiving communications in connection with the adjudication in accordance with the mandatory requirement of Clause 13.2 of the Contract.

42. Clauses W2.3(11) and W2.4 of the Contract provided that the Adjudicator's decision would be final and binding unless one of the parties notified the other within four weeks of notification of the decision that (i) it was dissatisfied with a matter decided by the Adjudicator and (ii) it intended to refer the matter to the Court.

43. The Contract did not stipulate the form of words that had to be used, or the level of detail that was required in any notice of dissatisfaction. The purpose of the notice was to inform the other party within a specified, limited period of time that the adjudication decision was not accepted as final and binding. A valid notice would have to be clear and unambiguous so as to put the other party on notice that the decision was disputed but did not have to condescend to detail to explain or set out the grounds on which it was disputed.

44. The letter of 29 November 2019 was a valid notice of dissatisfaction for the purposes of clauses W2.3(11) and W2.4. The words: *"it is clear that he has erred in law and in his interpretation and application of the express terms of contract between the parties in a number of fundamental respects"* were sufficient to make clear that TfGM did not accept, and was dissatisfied with, the Adjudicator's decision. The words: *"TfGM's ... intention to seek formal resolution to reverse the outcome of the Decision"* were sufficient to inform Kier that it intended to refer the disputed adjudication decision to the Court.

45. I reject Kier's argument that the notice did not comply with clause 13.7 of the Contract because it was not sent separately from other communications. The letter was short. The first paragraph stated that TfGM disputed the adjudication decision. The second paragraph stated that TfGM intended to refer the disputed adjudication decision to the Court. The third paragraph asked for confirmation that Walker Morris would accept service of formal proceedings on behalf of Kier. The reference to TfGM's intention to

pay the sums awarded to Kier in compliance with the adjudication decision pending such litigation did not amount to a separate notification requiring a separate communication; it arose out of the adjudication decision and was simply confirmation that, despite the notice of dissatisfaction, the adjudication decision would be honoured.

46. If, contrary to my finding above, the letter of 25 November 2019 did not amount to a notice of dissatisfaction, I would have rejected TfGM's alternative argument based on the email of 3 December 2019. The substance of the email was sufficient to notify Kier that the adjudication decision was disputed. It confirmed that the payment made to Kier in accordance with the decision was without prejudice to TfGM's right and intent to seek formal resolution to reverse the decision. This was consistent with the letter sent a few days earlier. Although the main purpose of the email was to clarify the status of the payment made, in particular to ensure that the payment was not construed as acceptance of the adjudication decision, it also contained notification that the decision was disputed and would be referred to Court. That would have been sufficient for the purpose of clauses W2.3(11) and W2.4. However, the email was not sent in compliance with clause 13.2 and WI 920; nor was it sent to Kier's solicitors in accordance with the notification by Walker Morris. Therefore, it would not have constituted valid notice of dissatisfaction.

Conclusion

47. For the reasons set out above:

    i) TfGM gave a valid notice of dissatisfaction in respect of the adjudication decision, so as to preserve its right to challenge the decision through legal proceedings and prevent the decision becoming final and binding.

    ii) Kier's application under CPR Part 11, seeking a declaration that the Court lacks jurisdiction to hear the Part 8 claim and an order setting aside the Part 8 claim, is dismissed.

48. All consequential or other matters, if not agreed, will be dealt with by the Court at a further hearing to be fixed by the parties.