Neutral Citation Number: [2026] EWHC 1404 (TCC)

Claim No: HT-2026-000085

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10/06/2026

Before :

ADRIAN WILLIAMSON KC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

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Between :

PREMIER MODULAR LIMITED	**Claimant**
-and-	
MAIDSTONE AND TUNBRIDGE WELLS NHS TRUST	**Defendant**

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Mathias Cheung (instructed by **Fenwick Elliott LLP**) for the **Claimant**
Edmund Neuberger (instructed by **Bevan Brittan LLP**) for the **Defendant**

Hearing date: 19TH May 2026

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JUDGMENT

Adrian Williamson KC :

1. The Claimant (**"PML"**) by this application seeks to enforce a (re-corrected) adjudication decision issued on 26 February 2026 (**"the Decision"**) made by Mr John Riches (**"the Adjudicator"**) by which PML was awarded £1,655,385.49 (and other relief).

2. The Defendant Trust submits that the central findings in the Decision were reached in breach of natural justice. Three grounds are relied upon:

   i) The Adjudicator's central finding that there had been a Compensation Event was made on a contractual basis that had not been raised by the parties and on which neither party had made submissions. The Trust says that this was "an unforeseen and unforeseeable aspect of the Decision that goes to its heart".

   ii) The Adjudicator failed to address one of the Trust's defences to the Compensation Event claim, namely that PML had failed to comply with a condition precedent and as such was not entitled to a Compensation Event.

   iii) The Adjudicator made a finding that the Accepted Programme had been updated. This was not part of the Adjudication and, moreover, was entirely contrary to the clear position of both parties in the Adjudication that the Accepted Programme had not been updated.

3. It was, also, somewhat faintly, argued that the Adjudicator exceeded his jurisdiction. However, as will appear, my findings on the above three natural justice grounds make it unnecessary to delve very far into this issue.

4. I deal with the application below under the following headings:

   a) The law relating to natural justice challenges;

   b) The relevant facts;

   c) Grounds 1 and 3 (which are conveniently taken together);

   d) Ground 2;

   e) Conclusions.

A. The law relating to natural justice challenges

5. These challenges arise in the adjudication context where a responding party has an unfavourable decision which they do not wish to honour. However, it is important to bear in mind that these challenges can take two main forms:

   i) An allegation that the Adjudicator has failed to consider a defence;

   ii) A complaint that the Adjudicator has decided the dispute upon a basis which the responding party did not have an adequate opportunity to deal with.

6. The present case seems to me to fall into category (ii). The law in this respect was summarised in *Cantillon Ltd v Urvasco Ltd* [2008] B.L.R. 250, where Akenhead, J said this, with emphasis added:

"*57. From this and other cases, I conclude as follows in relation to breaches of natural justice in adjudication cases:*

(a) It must first be established that the Adjudicator failed to apply the rules of natural justice;

(b) Any breach of the rules must be more than peripheral; they must be material breaches;

(c) Breaches of the rules will be material in cases where the adjudicator has failed to bring to the attention of the parties a point or issue which they ought to be given the opportunity to comment upon if it is one which is either decisive or of considerable potential importance to the outcome of the resolution of the dispute and is not peripheral or irrelevant.

(d) Whether the issue is decisive or of considerable potential importance or is peripheral or irrelevant obviously involves a question of degree which must be assessed by any judge in a case such as this.

(e) It is only <u>if the adjudicator goes off on a frolic of his own, that is wishing to decide a case upon a factual or legal basis which has not been argued or put forward by either side, without giving the parties an opportunity to comment</u> or, where relevant put in further evidence, that the type of breach of the rules of natural justice with which the case of Balfour Beatty Construction Company Ltd -v- The Camden Borough of Lambeth was concerned comes into play. It follows that, if either party has argued a particular point and the other party does not come back on the point, there is no breach of the rules of natural justice in relation thereto."

7. The position was further illuminated by the decision of Edwards-Stuart, J in *Roe Brickwork Limited v Wates Construction Limited* [2013] EWHC 3417 (TCC) as follows, again with emphasis supplied:

"*22. It is also well understood that an adjudicator must observe the rules of natural justice. In this context, that means that <u>he should not decide a point on a factual or legal basis that has not been argued or put forward in the submissions made to him</u>: see Balfour Beatty Construction v London Borough of Lambeth [2002] BLR 288 . However, this rule is often easier to state than to apply.*

23. If an adjudicator has it in mind to determine a point wholly or partly on the basis of material that has not been put before him by the parties, he must give them an opportunity to make submissions on it. For example, he should not arrive at a rate for particular work using a pricing guide to which no reference had been made during the course of the referral without giving the parties an opportunity to comment on it.

24. By contrast, there is no rule that a judge, arbitrator or adjudicator must decide a case only by accepting the submissions of one party or the other. An adjudicator can reach a decision on a point of importance on the material before him on a basis for *which neither party has contended, provided that the parties were aware of the relevant material and that the issues to which it gave rise had been fairly canvassed before the adjudicator. It is not unknown for a party to avoid raising an argument on one aspect of its case if that would involve making an assertion or a concession that could be very damaging to another aspect of its case."*

8. These observations have to be set in the broader context that the courts have made clear in numerous cases that they have every sympathy for the difficult task which adjudicators have to perform, seeking to deal with complex disputes under great pressures of time. By contrast, the courts regard with scepticism losing parties who, rather than paying now and arguing later, seek to resist enforcement on unmeritorious grounds.

9. For example, the Court of Appeal expressed these matters robustly in *Carillion Construction Limited v Devonport Royal Dockyard Limited* [2006] BLR 15:

"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. The courts should give no encouragement to the approach adopted by DML in the present case; which…may, indeed, aptly be described as "simply scrabbling around to find some argument, however tenuous, to resist payment.

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"…The task of the adjudicator is not to act as arbitrator or judge. The time constraints within which he is expected to operate are proof of that. The task of the adjudicator is to find an interim solution which meets the needs of the case.

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. To seek to challenge the adjudicator's decision on the ground that he has exceeded his jurisdiction or breached the rules of natural justice (save in the plainest cases) is likely to lead to a substantial waste of time and expense as, we suspect, the costs incurred in the present case will demonstrate only too clearly."

B. The relevant facts

10. Against that background, I turn to the facts of the present case.

11. The parties entered into a contract for the design and construction of a new barn theatre dated 3 August 2023 and based on the NEC4 Option A (Priced contract with activity schedule). The barn theatre is a stand-alone building in the Maidstone Hospital site comprising two floors, a ground floor for medical care and surgery and a first floor for plant. The tendered total of the Prices was £19,793,700.41 (**"the Contract"**).

12. The original completion date for the work was 31 January 2024, with delay damages at £15,712 per week. The starting date was 23 February 2023, and the access date was 14 July 2023.

13. A problem arose in late 2023 that was central to the adjudication. PML asserted that it required a permanent mains water supply to be made available not later than 30 October 2023 for the testing and commissioning of elements of its work and that the Trust failed to make it available until 20 February 2024, which caused them delay. The Trust's position was that it was responsible for the mains water supply, but there was no requirement for it to be made available by any particular date.

14. The Contract by clause 11.2(1) defined the "Accepted Programme" as "the programme identified in the Contract Data or…the latest programme accepted by the Project Manager." The Accepted Programme was at Appendix 3 of the Contract. It was common ground before me that:

    i) the Accepted Programme was never updated, in the sense that the Project Manager never accepted a later programme;

    ii) the Accepted Programme contained no obligation on the Trust to make permanent water available by any particular date, albeit that various subsequent programmes proffered by PML did contain such an obligation.

15. The Contract made provision for compensation events as follows, with emphasis added:

    "60.1 The following events are compensation events:

    (1) The Project Manager gives an instruction changing the Scope except…

    (3) <u>The Client does not provide something which it is to provide by the date shown on the Accepted Programme</u>…

    (14) An event which is a Client's liability stated in these conditions of contract…

    (18) A breach of contract by the Client which is not one of the other compensation events in the contract."

16. Clause 61.3 stated that:

"The Contractor notifies the Project Manager of an event which has happened or which is expected to happen as a compensation event if

- *the Contractor believes that the event is a compensation event and*
- *the Project Manager has not notified the event to the Contractor*

If the Contractor does not notify a compensation event within eight weeks of becoming aware that the event has happened, the Prices, the Completion Date or a Key Date are not changed unless the event arises from the Project Manager or the Supervisor giving an instruction or notification, issuing a certificate or changing an earlier decision."

17. Clause 63 explained how compensation events were to be assessed. In particular it provided that "delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion is shown on the Accepted Programme".

18. On 8 October 2025 PML's representatives wrote to the Trust as follows:

"During the course of PML proceeding to Provide the Works, a compensation event arose under 60.1 of the Contract when in late 2023 M&TW did not make available to PML the permanent water supply that PML required in order for mechanical testing and commissioning to be carried out and/or M&TW thereafter instructed change to the Scope in connection with the permanent water supply. In consequence of that compensation event, PML was delayed in carrying out the works and PML incurred additional Defined Cost in carrying out the works."

19. The Trust's solicitors responded in forceful terms on 11th November:

"Having reviewed the contents of your client's submissions, we note that no Compensation Event ("CE") notifications were issued by PML in accordance with Clause 61.3 of the Contract in respect of the incoming water main, nor were Early Warning Notices raised sufficient to constitute formal notification of a CE. As you will be aware, the NEC requires that a Contractor notify a CE within eight weeks of becoming aware of the event, failing which entitlement to both time and cost adjustments is lost.

Accordingly, any claims relating to the alleged delays arising from the incoming water main are time-barred under the Contract…

While we note your client's submissions and analysis within the report, our client does not accept that the matters described constitute CEs or justify any extension to the Completion Date under the Contract."

20. PML then proceeded to issue their Notice of Adjudication on 1 December:

"Brief description of the Dispute

5. A dispute has arisen under and/or in connection with the Contract (the "Dispute") and PML hereby gives notice of its intention to refer the Dispute to adjudication.

6. The Dispute is briefly described as follows: a dispute as to PML's entitlements under and/or in connection with the Contract as described in a letter from CSD Legal Limited ("CSD") to M&TW dated 08 October 2025 a copy of which letter is given with and forms part of this Notice of Adjudication…

Decision which PML wishes the Adjudicator to make

8. PML wishes the Adjudicator to decide the following:

8.1. That as briefly described in the letter from CSD to M&TW dated 08 October 2025

8.1.1. During the course of PML proceeding to Provide the Works, a compensation event arose under 60.1 of the Contract when in late 2023 M&TW did not make available to PML the permanent water supply that PML required in order for mechanical testing and commissioning to be carried out and/or M&TW thereafter instructed change to the Scope in connection with the permanent water supply…"

21. PML's Referral followed on 8 December. This document made clear that the Accepted Programme was that at Appendix 3 to the Contract: see paragraph 6. It developed the detail of PML's case about the water supply and asserted at paragraph 35 that these matters gave rise to a compensation event under clauses 60.1(1), (14) and (18).

22. The Referral then said this (bold as original):

*"**Notice paragraph 8.1.4: in consequence of the delay caused to Completion by the compensation event, PML is entitled to a revision of the Completion Date equivalent to a 14-week postponement (or such other period as the Adjudicator may decide)***

57. The period of critical delay caused to PML's works by the compensation event was 99 days (14 weeks) as explained and demonstrated by Mr Dunn's report copied at Referral Appendix 10.

58. Clause 63.5 provides for the impact of delay to be assessed in relation to an 'Accepted Programme':

"the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme current at the dividing date"

59. PML is not disentitled from being granted an extension of time by the absence of any specific revised 'Accepted Programme', as suggested by the correspondence copied at Referral Appendix 16, because the clause 11.2(1) definition of Accepted Programme (Referral Appendix 04, PDF page 15) provides that the Accepted Programme is the Contract programme if not superseded by any later revision of it. The Contract programme is copied at Referral Appendix 05.

60. However, as a revised programme was in October 2023 created by PML as copied at Referral Appendix 11, Mr Dunn's report Appendix E, PML submits that it makes considerably more sense (in particular having regard to the NIHE v Healthy Buildings judgment copied at Referral Appendix 06, in which the Court held that actual, accurate data should be used for retrospective compensation event assessment, not reconstructions of what may / may not reasonably have been forecast at an earlier juncture) to base the assessment on the programme as it actually was, rather than what it may have been when forecast some 8 months earlier than the occurrence of the compensation event."

23. It was clear from the Referral that PML conceded that the only Accepted Programme was the Appendix 3 version but that they contended that, in some way, delay should be assessed by reference to a later, unaccepted programme.

24. The Trust put in a Response on 30 December. This stated:

"2.1 PML's case is (as set out, inter alia, in paragraphs 32, 38 and 39 of the Referral) that M&WT did not provide a permanent water supply until 20 February 2024 and, because of this, it was not able to carry out the testing and commissioning of the mechanical elements of its Works (and, as a result, PML claims a 14 week extension of time and associated changes to the Defined Cost and/or Prices).

2.2 In order to succeed, PML must first show (i) a compensation event (within the list at clause 60.1 of the Contract) arose; and (ii) the compensation event was notified. If PML fail to establish either of these points, its claim fails (and it is not necessary to go on to assess the length of alleged delay or quantum claimed). It is only if the compensation event was notified, that it is necessary to consider whether any delay or additional cost flowed from that compensation event and make an assessment of that delay and/or additional cost.

2.3 For the reasons set out in further detail below:

2.3.1 No compensation event arose within the meaning of 60.1(1). The instruction relied upon did not change the Scope and therefore does not fall within clause 60.1(1) of the Contract. There was also no breach by M&TW (or any of its subcontractors) and therefore no compensation event arose under clause 60.1(14) and/or 60.1(18).

2.3.2 Without prejudice to that position, the compensation events under clauses 60.1(14) and (18) were not notified and, as a result, PML's claim is time barred."

25. The parties were, therefore, both proceeding on the footing that the Accepted Programme was the Appendix 3 programme and that PML's entitlement, if any, to a compensation event arose under clauses 60.1(1), 60.1(14) and/or 60.1(18) of the Contract.

26. On 22 January, the Adjudicator asked the parties to deal with some clarifications by noon the next day. The relevant questions were as follows:

"1. I am currently reading in and starting to draft parts of my decision. I need some clarification on the following points.

2. The purpose of these clarifications is to enable me to fully understand the respective cases in order to make my decision.

Compensation event

60.1 The following events are compensation events.

(3) The Client does not provide something which it is to provide by the date shown in the Accepted Programme.

11.2 (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the Project Manager. The latest programme accepted by the Project Manager supersedes previous Accepted Programme.

3. Is the revised programme Contract Programme Rev2 dated 14 July 2023 an Accepted Programme?

Early Warnings

4. Where is it required anywhere in the contract that this particular event requires an Early Warning Notice in order for it to become a Compensation Event?"

27. The parties responded:

i) PML:

"*3. Is the revised programme Contract Programme Rev2 dated 14 July 2023 an Accepted Programme?*

PML response: the only Accepted Programme is that which is in the contract (Referral Appendix 05). PML submitted numerous later programme to the Project Manager but the clause 31.3 mechanism (for acceptance or not) was not operated, the parties just discussed programme during meetings - see for example the numerous meeting minutes to which M&TW refers at Rejoinder footnote 67.

4. Where is it required anywhere in the contract that this particular event requires an Early Warning Notice in order for it to become a Compensation Event?

PML response: there is no such requirement. If there is a compensation event (within the list at clause 60.1) it is a compensation event regardless of whether or not any early warning is given or required to be given."

(underlining in original)

ii) The Trust:

"*In Response to Query no.3:*

This is not an Accepted Programme in accordance with Clause 31 of the Contract or the definition at paragraph 11.2(1) of the Contract. This is *because it was not accepted by the Project Manager in accordance with the clause 31 acceptance process.*

In Response to Query no.4:

M&TW does not contend that an Early Warning Notice is required under the Contract in order for an event to become a Compensation Event. The Contract contains no such requirement...To be clear, the operation of clause 15.1 is not in dispute between the parties. The point in dispute is whether an Early Warning Notice can also be a notice of compensation event. For the reasons set out in section 5 of the Response and section 4 of the Rejoinder, clause 13.7 prevents this".

(again, underlining in text)

28. Following these and other exchanges, the Adjudicator issued the Decision on 26 February 2026. It is necessary to set out significant portions of the Decision in order to understand what was being decided.

29. First of all, the Adjudicator defined the issues in the following terms, so far as relevant (bold in original, underlining my emphasis):

*"**Issue 1 – Is there an accepted programme?***

73.00 The original programme incorporated in the contract at Appendix 03 was an Accepted Programme…Subsequent revised programmes were issued…

74.00 Clause 31 of the contract states…

75.00 I am told that the parties did not adhere to any of these procedures…

Issue 2 – Is there a Compensation Event?

76.00 The case from PML is simple. There is a provision in clause 60.1 3) which is simply a provision that provides where there is a failure to provide something that the employer was to provide.

77.00 It is that simple. It requires no more.

78.00 The response to that from M&TW is slightly more complex it is as follows:…

Issue 3 – Is there a time bar?

79.00 M&TW's position is that any claim for all under the Compensation Event provisions in the contract is time-barred. This is because the Compensation Event was not notified.

80.00 It is PML's position that in any event for the Compensation Event to exist it does not require notification.

81.00 I would examine the effects of Early Warnings under this item."

30. The Adjudicator answered issue 1 as follows, with emphasis added:

" 101.00 There was an original Accepted Programme. This is found at Appendix 3 to the Contract, (Appendix 5 in the Referral).

102.00 There were a number of subsequent programmes issued by PML .

103.00 The programme that is important to PML 's case is the revision issued on 30 October 2023 Contract Programme Rev3 30.10.23.

104.00 It is that programme that PML says sets the date by which the water supply was required on site…

115.00 It follows from this that I am satisfied Contract Programme Rev3 30.10.23 became an Accepted Programme. Notwithstanding that the procedures were not followed the default position where the Project Manager has not taken steps to reject or amend the presented programme must be that the programme becomes the Accepted Programme.

116.00 I am further satisfied that the date that the watermain was required was 30 October 2023. This is shown on the revised programme.

I Find That <u>Contract Programme Rev3 30.10.23 became an Accepted Programme. Further that set the date on which the water main was required as 30 October 2023</u>."

31. In relation to issue 2, the Decision was that (bold in text, underlining my emphasis):

"117.00 This issue separates the mere existence of a Compensation Event from its impact.

118.00 For a Compensation Event to exist is there a regime of notices of any sort required in order for an occurrence to become a Compensation Event?

119.00 The contract provision to consider here is;

Compensation Event 60

60.1 The following events are compensation events.

3) The Client does not provide something which it is to provide by the date

Reasons

120.00 M&TW agreed to provide the water main. Who was doing what in connection with the provision of the water main is contained in the Responsibility Matrix in Appendix 1.4 of the Scope.

121.00 The water main was to be provided by South West water and WMM. Both were employed by M&TW.

122.00 They were not in the control of PML.

123.00 These are items to be provided by the Client. They were within Client control.

124.00 <u>They were not provided in accordance with the requirements of dates on Accepted Programmes</u>…

126.00 <u>The Compensation Event exists simply on the basis of the provision in clause 60.1 (3). When M&TW failed to provide the water main by the required date a Compensation Event came into existence</u>.

***I Find That** a Compensation Event did arise when M&TW failed to provide the water main on the date on the Accepted Programme."*

32. In respect of issue 3, the Adjudicator held that there was no time bar.

33. The upshot of this was that the Adjudicator decided that a compensation event had arisen under clause 60.1(3) because the Trust had not provided the water main by the date shown in Contract Programme Rev3 30.10.23. This had become an Accepted Programme, even though it had not been accepted in accordance with the procedures set out in clause 31. There was no time bar.

C. Grounds 1 and 3

34. I take these grounds together, as did Counsel.

35. The recitation of the facts set out above shows that the Adjudicator decided the central issue – whether the water main was supplied on time, giving rise to a compensation event – on a basis that:

    i) was not argued by either party;

    ii) was directly contrary to the common position that the only Accepted Programme was that at Appendix 3 to the Contract;

    iii) was not put by the Adjudicator to the parties.

36. On the face of it, that looks very much like an adjudicator going off on a frolic of his own, that is wishing to decide a case upon a factual or legal basis which has not been put forward by either side, without giving the parties an opportunity to comment. Indeed, the Adjudicator here seems to have thought that the case which he devised under clause 60.1(3) provided a solution which was "that simple", even though it had not occurred to either party. He appears, therefore, to have decided a key point on a factual or legal basis that had not been argued or put forward in the submissions made to him.

37. Mr Cheung, who appears for PML, resists this conclusion.

38. In respect of ground 1, he argues that:

    i) the dispute which the Adjudicator was asked to decide under paragraph 6 of the Notice of Adjudication was framed in very wide terms, namely whether a compensation event arose due to the late provision of the permanent water supply by M&TW and was not tied to any particular compensation event under clause 60.1 of the Contract.

ii) the Adjudicator's attention was drawn to the full list of compensation events under clause 60.1 of the Contract at paragraph 16 of the Referral Notice, and the Adjudicator was entitled to consider, rely on and interpret all the provisions of the Contract which were put before him, including clause 60.1(3).

iii) the potential relevance of clause 60.1(3) was sufficiently canvassed during the adjudication in query no. 3 of the Adjudicator's list of clarifications dated 22 January 2026, and the Adjudicator invited the parties to clarify whether Contract Programme Rev 2 dated 14 July 2023 was an Accepted Programme for the purposes of clause 60.1(3). Both parties therefore had a reasonable opportunity to consider and address the relevance of clause 60.1(3).

iv) even if the Court finds that the relevance of clause 60.1(3) was not sufficiently canvassed during the adjudication, the Adjudicator was in any event not obliged to invite submissions on every potential argument or interpretation based on the materials put forward by the parties before he reached his conclusion.

39. As to these points, I would observe:

i) This would be an answer to a jurisdictional challenge, but it does not deal with the natural justice complaint.

ii) I do not agree with this characterisation of how the dispute unfolded before the Adjudicator. The parties both addressed themselves to clauses 60.1(1), 60.1(14) and/or 60.1(18). If the Adjudicator thought other grounds were potentially relevant, he should have invited the parties to address him on those grounds. As Mr Neuberger, for the Trust, pointed out, the logical conclusion of this argument for PML would be to suggest that the Trust should have been ready to deal with a case that, for example, there was a COVID related compensation event, when nothing of this kind was put by either party.

iii) The request for clarification, set out above, did not ask the parties to consider whether clause 60.1(3) was in play. It referred, confusingly, to that sub-clause, but actually asked for assistance on the status of Contract Programme Rev 2 dated 14 July 2023. Both parties agreed that this was <u>not</u> an Accepted Programme.

iv) It is, of course, correct that an adjudicator is not obliged to decide a case only by accepting the submissions of one party or the other. But if he is to depart from the submissions of both parties, he must ensure that the issues have been fairly canvassed. This did not happen here. The first that the trust knew of the clause 60.1(3) case, based on the proposition that it had not provided the water main by the date shown in Contract Programme Rev 3 30.10.23, was when they received the Decision.

40. As regards ground 3, the Accepted Programme, Mr Cheung submits as follows:

i) the dispute referred required the Adjudicator to decide, inter alia, what programme(s) to use for assessing delay and on what basis, so that the

Adjudicator was entitled to conclude that Contract Programme Rev 3 was the appropriate baseline for assessment (whether by treating it as an Accepted Programme or otherwise), and this was a decision he could make within his jurisdiction.

ii) the parties were plainly in dispute as to whether the Adjudicator should assess the delays based on Contract Programme Rev 3 as contended by PML, or the original Contract Programme as contended by the Trust.

iii) there was a range of possible answers to the interpretation of clause 31 and the wider question of what contract programme the Adjudicator should rely on to assess delay and on what basis, and the Adjudicator was in any event entitled to consider, rely on and interpret all the provisions of the Contract and all the materials which were put before him.

41. As to this, I would observe:

i) This again goes to jurisdiction, not natural justice;

ii) This principally goes to jurisdiction. As regards natural justice, it is true that PML's expert (and PML) argued that the assessment of delay should be based on a later unaccepted programme rather than the Accepted Programme. However, that does not really address the point that as regards the existence (not quantification) of the compensation event, the Adjudicator was founding his Decision upon a programme which neither party alleged to be an Accepted Programme.

iii) As to this, I would repeat what I have said above at paragraph 39 (iv).

42. In summary, the Adjudicator determined that there was a compensation event within the meaning of clause 60.1(3) because the Trust had not provided the water main by the dates set out in a revised programme which neither party said was an Accepted Programme. By contrast, the Accepted Programme contained no such dates. This startling conclusion was clearly material to the Decision, and it should have been put to the parties for comment. It was a breach of the rules of natural justice not to do so: the Adjudicator went off on a "frolic" by, in effect, inventing a case for PML which he considered to be superior to that which they actually advanced.

43. Insofar as the Trust argued that the Adjudicator exceeded his jurisdiction, I agree with the submissions of Mr Cheung, summarised above, that everything decided was within the scope of the matters referred.

D. Ground 2

44. Given the views I have expressed above, I will deal with this point briefly.

45. As set out above, the Trust sought to argue that PML's entitlement to a compensation event must fail in any event because it had not been notified in accordance with clause 61.3. This point was ventilated at length in the adjudication.

46. The Adjudicator plainly addressed himself to this issue at his issue 3, which I have referred to above. It may be that, in so doing, he misunderstood the Trust's case or

confused the contractual regime for Early Warnings with the provisions of clause 61.3. But that is not a breach of the rules of natural justice. It is not for the court, in enforcement proceedings, to pick over a Decision and consider which parts are correct and which are more doubtful.

E. Conclusions

47. At this stage, I remind myself that this is an application for summary judgment. CPR Part 24.3 provides that:

"The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—

(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial".

48. I have concluded that the Trust does have a real prospect of succeeding on its contention that the Decision was arrived at in breach of the rules of natural justice. In so concluding, I have had very much in mind the guidance from the Court of Appeal in *Carillion Construction Limited v Devonport Royal Dockyard Limited* [2006] BLR 15 that it is for "the courts to respect and enforce the adjudicator's decision unless it is plain that…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".

49. However, in my view, this is one of those rare cases where there has been obvious unfairness, for the reasons set out above.

50. I have also had very much in mind the difficult task which adjudicators face in dealing with substantial disputes in very short order, a point also emphasised in *Carillion*. However, I think that this factor weighs more heavily in favour of the enforcement of a decision where it is said that a point has been overlooked or misunderstood. In the present case, the Adjudicator did not neglect a matter under pressure of time. Rather, he sought to create a case for PML which PML had not made and with which the Trust had no proper opportunity to deal, even by the hectic standards of adjudication.

51. I would, therefore, dismiss this application.