

Adjudication Case Notes Beale and Company, August 2006

Introductory note

The vast majority of court cases on adjudication under the Housing Grants Construction and Regeneration Act 1996 concern an attempt by the defendant to resist enforcement of the adjudicator's decision. At an early stage, the courts held that an error in the adjudicator's decision, even an obvious error, was not a sufficient ground for not enforcing the decision. Consequently, the grounds for resisting enforcement of the adjudicator's decision in most of the cases have been jurisdictional. The case summaries, therefore, set out for each case the ground or grounds on which enforcement was resisted in that case, and the court's decision thereon. The subject categories used for classifying the cases are, for the most part, the various grounds on which enforcement has been resisted. These grounds are set out below (further description of each category is given at the end of the table of cases).

Date	Case Summary	Subject categories*
31.03.06	<p><i>Kier Regional Ltd v City and General (Holborn) Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted on the ground that the adjudicator had not considered reports submitted by the Defendant in opposing the Claimant's loss and expense claim</p> <p><i>TCC's decision: There was considerable force in the argument that the adjudicator was wrong in his view that he should not consider the reports (on the ground that they had not been available to the contract administrator), but if so this was an error of law which would not render the adjudicator's decision invalid, in the light of the Court of Appeal's judgment in <u>Carillion Construction Limited v Devonport Royal Dockyard Limited</u></i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Natural justice
02.02.06	<p><i>Quietfield Ltd v Vascroft Contractors Ltd</i></p> <p>Enforcement of the adjudicator's decision in favour of the Claimant's entitlement to liquidated and ascertained damages resisted on the ground that the adjudicator did not consider the Defendant's submissions and evidence in support of its right to an extension of time.</p> <p><i>TCC's decision: The adjudicator did not consider the Defendant's submissions because he considered that the question of an extension of time had been decided in an earlier adjudication. However, the claim for an extension of time in the earlier adjudication had been made on different grounds to those put forward in this adjudication. Accordingly, the adjudicator was wrong not to consider the Defendant's submissions. The Claimant had conceded that, if this was the case, it would have been a breach of the rules of natural justice, and so the decision could not be enforced.</i></p>	<ul style="list-style-type: none"> • Natural justice

	<p>Court: Technology and Construction Court, London</p>	
27.01.06	<p><i>Rankilor and Perco Engineering Service Ltd v M. Igoe Ltd</i></p> <p>Enforcement of the adjudicator's decision (and payment of the Defendant's share of the adjudicator's fees) resisted on the ground that the adjudicator had reached a view on the technical evidence for which neither party had contended and had not given the parties an opportunity to comment on that view.</p> <p><i>TCC's decision:</i></p> <p><i>i. The view that the adjudicator had reached on his own initiative and not communicated to the parties before giving his decision was at most only supportive of the main view that he had reached in favour of the Claimant (in the action).</i></p> <p><i>ii. Applying proposition 3 of the judge in <u>Carillion Construction Limited v Devonport Royal Dockyard Limited</u>, there had been no serious breach of the rules of natural justice, and the adjudicator's approach could not be characterised as obviously unfair.</i></p> <p><i>iii. It was not therefore necessary to decide whether, if there had been a breach of the rules of natural justice sufficient to prevent enforcement of the adjudicator's decision, the adjudicator would have been entitled to payment of his fees, but it may seem surprising if this were the case.</i></p> <p>Court: Technology and Construction Court, Salford</p>	<ul style="list-style-type: none"> • Natural justice • Adjudicator's fees
19.12.05	<p><i>All In One Building and Refurbishments Ltd v Makers UK Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted on the grounds that:</p> <p><i>i. No dispute had arisen between the parties at the time of the referral to adjudication</i></p> <p><i>TCC's decision: There was sufficient to infer that, at the time of the referral, the Claimant's claim, having been submitted to the Defendant, was not admitted by the Defendant, and that there was, therefore, a dispute. The judge referred to the Court of Appeal's judgment in <u>Collins Ltd v Baltic Quay Management</u> approving propositions in <u>Amec Civil Engineering Ltd v Secretary of State for Transport</u> concerning the circumstances from which it may emerge that a claim is not admitted.</i></p> <p><i>ii. The decision of the adjudicator on one issue offended against the rules of natural justice, in that the adjudicator carried out an independent exercise for which neither party had contended</i></p> <p><i>TCC's decision: The exercise carried out by the adjudicator was one that he was well qualified to carry out, and the Defendant had been able to make submissions on the issue in question. There was no procedural unfairness.</i></p> <p><i>iii. The adjudicator had not dealt properly with a critical factual issue, following an allegation that evidence in a sworn affidavit had been withdrawn</i></p> <p><i>TCC's decision: The way in which this issue had been dealt with was not satisfactory compared with the strict litigation approach but no breach of the rules of natural justice had been shown.</i></p>	<ul style="list-style-type: none"> • Existence of Dispute • Natural Justice • Stay of Execution

	<p>iv. Execution of summary judgment should be stayed because of the impecuniosity of the Claimant</p> <p><i>TCC's decision: In all probability, the Claimant is insolvent and its present ability to repay is doubtful, but its financial status is not dissimilar to that that presented itself at the outset and the inference is warranted that its impecuniosity derives from non-payment by the Defendant. Were it to have been demonstrated that the Claimant was in insolvent liquidation, then it would have been appropriate to refuse summary judgment. Stay refused.</i></p> <p>Court: Technology and Construction Court, London</p>	
10.11.05	<p><i>David McLean Contractors Ltd v The Albany Building Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted on the grounds that:</p> <p>i. There was a dispute between the parties over whether a supplemental agreement, which sought to vary the main agreement, was part of the contract between the parties</p> <p><i>TCC's decision: The supplemental agreement did not affect the terms of the main contract that were relevant to the issues that had been referred to adjudication. The main contract had not been extinguished and replaced by the supplemental agreement. The dispute over the validity of the supplemental agreement did not, therefore, affect the jurisdiction of the adjudicator.</i></p> <p>ii. There had been a previous adjudication, and this second adjudication was prohibited by the CIC rules, which applied.</p> <p><i>TCC's decision: The CIC rules prohibited the same issue being referred to adjudication again. Both adjudications concerned the Defendant's right to liquidated and ascertained damages, but the previous adjudication had been concerned with the validity of the Defendant's notice of withholding payment (resolved in the Defendant's favour), whereas the second adjudication had been concerned with a different issue – the validity of the Defendant's notices of non-completion (resolved in the Claimant's favour).</i></p> <p>iii. The adjudicator had not dealt with one of the Defendant's arguments</p> <p><i>TCC's decision: The adjudicator had concluded that he did not deal with the argument in question</i></p> <p>iv. The Defendant still had a claim to liquidated and ascertained damages, having served fresh notices of non-completion, which it could set off against the adjudication award</p> <p><i>TCC's decision: To allow summary judgment to be defeated by a claim for set-off, which might or might not succeed, was inconsistent with the policy of the adjudication scheme and with the Court of Appeal's decision in <u>Levolux v Ferson</u>.</i></p> <p>Court: Technology and Construction Court, Salford</p>	<ul style="list-style-type: none"> • Existence of contract • Natural justice • Set-off
20.05.05	<p><i>Wimbledon Construction Co 2000 Ltd v Derek Vago</i></p> <p>Enforcement of the adjudicator's decision resisted on the ground that execution of the summary judgment should be stayed due to the</p>	<ul style="list-style-type: none"> • Stay of execution

	<p>Claimant's financial position, which showed that it would probably be unable to repay the amount awarded by the adjudicator if ordered to do so in the substantive proceedings.</p> <p><i>TCC's verdict: A stay of execution would be refused because the evidence did not show that it was probable that the Claimant would be unable to repay the amount if ordered to do so at the time that any such order was likely to be made.</i></p> <p><i>Even if the evidence had suggested otherwise, a stay would still have been refused because:</i></p> <ol style="list-style-type: none"> i. <i>The Claimant's financial standing was much the same as it was at the time the contract was made;</i> ii. <i>The Defendant's failure to pay the sums later awarded by the adjudicator had been a significant cause of the financial problems of the Claimant on which the Defendant relied in support of its application for a stay.</i> <p>Court: Technology and Construction Court, London</p>	
26.04.05	<p><i>Carillion Construction Ltd v Devonport Royal Dockyard</i></p> <p>Enforcement of the adjudicator's decision resisted on the following grounds:</p> <ol style="list-style-type: none"> i. The adjudicator's decision on one element of the claim (his assessment of the target cost) was outside his jurisdiction. <p><i>TCC's decision: The target cost was an essential element of the overall claim and had been the subject of submissions made by the parties. It was therefore within the adjudicator's jurisdiction to make that assessment of the target cost, whether it was right or wrong.</i></p> <ol style="list-style-type: none"> ii. The adjudicator disregarded arguments put forward by the Defendants. <p><i>TCC's decision: The adjudicator was entitled to take the view that certain arguments put forward by the Defendants should be disregarded, and the fact that he did not refer to other arguments of the Defendants in his reasons does not mean that he did not consider them.</i></p> <ol style="list-style-type: none"> iii. The adjudicator's assessment of another element of the claim (defects alleged by the Defendant) was inadequate and made without giving the parties a proper opportunity to comment and the reasons given by the adjudicator were inadequate. <p><i>TCC's decision: The adjudicator's treatment of this element of the claim and the reasons that he gave for his assessment were adequate, taking into account the amount of material before him and the constraints of the process.</i></p> <ol style="list-style-type: none"> iv. The adjudicator did not have jurisdiction to award interest. <p><i>Paragraph 20 (c) of the Statutory Scheme, which applied to the contract in this case, gives a freestanding power to the adjudicator to award interest, which is not dependent on there being a contractual right to interest, though any such right must be taken into account.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Validity of decision • Natural justice

25.03.05	<p><i>Ritchie Brothers (PWC) Ltd v David Phillip (Commercials) Ltd</i></p> <p>Adjudicator's decision resisted on the ground that the decision was made outside the time limit under the Statutory Scheme, which applied to the contract in question.</p> <p><i>Court's verdict (by a majority of 2 to 1): The 28-day time limit was mandatory, and could only be extended under paragraph 19 of the Scheme before it had expired. Therefore, a decision given after the expiry of the time limit was automatically invalid. The Court disagreed with the view of the English TCC in Simons Construction Ltd v Aardvaark Developments Ltd that the adjudicator's jurisdiction would continue until a request for a fresh appointment is made under paragraph 19.2 of the Scheme.</i></p> <p>Court: Inner House, Court of Session, Scotland</p>	<ul style="list-style-type: none"> • Timing of decision
22.03.05	<p><i>Palmac Contracting Limited v Park Lane Estates Limited</i></p> <p>Enforcement of the adjudicator's decision resisted on the following grounds:</p> <p>i. There was no dispute at the time of the reference to adjudication, because the application for payment, which was the subject of the adjudication, had not been served by the claimant on the defendant in accordance with the contract between them and/or in accordance with an agreement later reached between them.</p> <p><i>TCC's verdict: This objection did not concern the adjudicator's jurisdiction, because the question of whether the application for payment had been properly served was one within the jurisdiction of the adjudicator and he had answered it in favour of the claimant.</i></p> <p>ii. The adjudicator had not been appointed in accordance with the contract, because the application for the appointment of an adjudicator had been made before the notice of adjudication was served.</p> <p><i>TCC's verdict: The contract (and section 108 of the Act) did not prevent the nomination process being initiated prior to the adjudication notice being served (unlike the terms of the Statutory Scheme, which did not apply to this contract).</i></p> <p>iii. The adjudicator had departed from an agreed position between the parties as to the method of service of applications for payment and/or had not given the parties a proper opportunity to make representations about doing so.</p> <p><i>TCC's verdict: There was no agreed position between the parties and, in any event, the adjudicator had formed his view on the basis of representations and information received from the parties, so there was no breach of the rules of natural justice.</i></p> <p>Court: Technology and Construction Court, Birmingham.</p>	<ul style="list-style-type: none"> • Existence of dispute • Appointment of adjudicator • Natural justice.
25.06.04 01.03.05	<p><i>Connex South Eastern Limited v MJ Building Services Group</i></p> <p>The right to refer a dispute to adjudication resisted on the following</p>	<ul style="list-style-type: none"> • Contract in writing • Time for starting

	<p>grounds:</p> <p>i. There was no agreement in writing for the purpose of section 107 of the Act.</p> <p><i>TCC's verdict: The acceptance of the defendant's tender was evidenced by the minutes of a meeting, which meant that there was an agreement in writing under section 107.</i></p> <p>ii. The defendant (the referring party) was not entitled to seek adjudication so long after the contract had been terminated by the defendant's acceptance of the claimant's repudiation of the contract; alternatively, it was an abuse of process to seek adjudication in these circumstances</p> <p><i>Court of Appeal's verdict: The Act provides for a party to refer a dispute to adjudication at any time, which means exactly what it says - there is no time limit for commencing an adjudication. If it is commenced after the expiry of a period of limitation, the other party may raise a limitation defence. An adjudicator has no power to strike out or stay an adjudication for abuse of process.</i></p> <p>iii. The claimant (the respondent to the adjudication) had been released from liability by the defendant's settlement with another party to the contract, with whom the claimant was a joint contractor</p> <p><i>Court of Appeal's verdict: The claimant and the other party were not joint contractors and, in any event, the defendant's settlement with the other party did not affect the works carried out by the claimant.</i></p> <p>Court: Technology and Construction Court, Court of Appeal</p>	<p>adjudication</p> <ul style="list-style-type: none"> • Existence of dispute
<p>09.02.05</p>	<p><i>David John Cartwright v Lydia Fay</i></p> <p>Enforcement by the adjudicator of payment of the adjudicator's fees resisted by the defendant on the following grounds:</p> <p>i. The adjudicator was not a party to the contract that provided for payment of his fees.</p> <p><i>Court's verdict: The adjudication rules incorporated into the contract provided that the adjudicator could take proceedings for payment of his fees, and so he was entitled to sue for payment under the Contracts (Rights of Third Parties) Act 1999.</i></p> <p>ii. The adjudication rules were not incorporated into the contract, because the defendant did not have notice of them when she signed the contract.</p> <p><i>Court's verdict: Because the contract was signed by the defendant, the question of notice does not arise.</i></p> <p>iii. The defendant was a consumer and the provisions for adjudication were unfair within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999 and therefore not binding on the defendant</p> <p><i>Court's verdict: The provisions for adjudication were fair for the reasons given in Lovell Projects v Legg & Carver. They did not cause any imbalance in the rights and obligations of the parties to the detriment of the defendant and did not affect the defendant's right to</i></p>	<ul style="list-style-type: none"> • Adjudicator's fees • Residential contract • The 1999 Regulations

	<p><i>take legal action. There was no breach of the requirement of good faith.</i></p> <p>Court: Bath County Court</p>	
13.01.05	<p><i>William Verry (Glazing Systems) Ltd v Furlong Homes Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted by the defendant on the following grounds:</p> <p>i. The adjudicator had considered and decided upon a new claim put forward in the adjudication</p> <p><i>TCC's verdict: The claim in question was not in fact new and, even if it had been, it was encompassed within the matters in dispute referred to adjudication. The wider definition of 'dispute' put forward in recent cases such as AWG Construction Ltd v Rockingham Motor Speedway Ltd was preferred to that in Nuttall v Carter.</i></p> <p>ii. The adjudicator did not act fairly because he did not have time to carry out a proper analysis</p> <p><i>TCC's verdict: Taking into account the summary nature of adjudication and the complexity of the issues in this particular adjudication, the adjudicator dealt with the matter adequately and fairly. The defendant's complaint was misconceived as it had itself commenced the adjudication and referred a dispute containing wide-ranging and complex issues.</i></p> <p>iii. The adjudicator acted unfairly in discouraging the defendant from pursuing a request for further material from the claimant</p> <p><i>TCC's verdict: There was no procedural irregularity, in that the adjudicator did not indicate that failure to produce the material would be taken into account, and no evidence that the material in question would have affected the decision.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Existence of dispute • Natural justice.
06.12.04	<p><i>Trustees of the Strathfield Saye Estate v AHL Construction Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted on the ground that there was no agreement in writing for the purpose of section 107 of the Act.</p> <p><i>TCC's verdict: All the express terms of the contract were recorded in writing, and so the contract was evidenced in writing within the meaning of section 107 (2)(c), as interpreted by the Court of Appeal in RJT Consulting Engineers v DM Engineering (Northern Ireland) Ltd. Alternatively, the exchanges of submissions in adjudication proceedings constituted a sufficient record of the agreement for the purpose of section 107(5) of the Act.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Agreement in writing
04.11.04	<p><i>Bryen & Langley Ltd v Martin Rodney Boston</i></p> <p>Enforcement of adjudicator's decision resisted on the following</p>	<ul style="list-style-type: none"> • Jurisdictional issues generally

	<p>grounds:</p> <p>i. The adjudicator was in error in thinking that he had been requested by the respondent to decide the issue of jurisdiction.</p> <p><i>Court's decision: The Respondent did request the adjudicator to decide the issue of jurisdiction, and the Claimant concurred. However, the point is of little practical significance, because such a decision is only interim and can be finally decided by the court, on the application for enforcement of the main decision.</i></p> <p><i>Note: This analysis, according to the judgment, was not seriously in issue.</i></p> <p>ii. The adjudicator had no jurisdiction, because the terms of the JCT agreement containing provisions for adjudication had not been incorporated into the contract between the parties (the contract was with a residential occupier and so did not incorporate adjudication provisions by virtue of the Act).</p> <p><i>Court's verdict: The JCT agreement containing adjudication provisions had not been incorporated into the contract, and so the adjudicator did not have jurisdiction.</i></p> <p>iii. The terms for adjudication and for giving notices of withholding payment (if the JCT contract did apply) were not binding on the Respondent by virtue of the Unfair Terms in Consumer Contracts Regulations 1999.</p> <p><i>Court's verdict: The terms in question were not unfair within the meaning of the Regulations, and so the Regulations would not have prevented these terms being applied, if the adjudicator had had jurisdiction.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Residential contract • The 1999 Regulations.
29.10.04	<p><i>Emcor Drake & Skull Ltd v (1) Costain Construction Ltd (2) Skanska Central Europe AB</i></p> <p>Enforcement of adjudicator's decision resisted on the ground that the adjudicator's decision was inconsistent with the decision of an earlier adjudicator's decision.</p> <p><i>Court's verdict: There was no inconsistency with the earlier decision as properly understood, and the fact that the same documentation appeared in both adjudications was not an abuse of process.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Validity of decision
28.10.04	<p><i>Amec Capital Projects Ltd v Whitefriars City Estates Ltd</i></p> <p>Enforcement of the adjudicator's award resisted on the following grounds:</p> <p>i. The appointment of the adjudicator (the same one as for the earlier adjudication) was again not valid</p> <p><i>Court of Appeal's decision: The adjudicator nominated in the contract had recently died and the effect of this was that the contractual provisions failed and the appointment by a nominating body, pursuant to the default machinery of the statutory scheme, was valid. The provisions in the contract for the death of an</i></p>	<ul style="list-style-type: none"> • Appointment of adjudicator • Natural justice

	<p><i>adjudicator applied only where the adjudicator died after being appointed.</i></p> <p>ii. There was a possibility of bias on the part of the adjudicator</p> <p><i>Court of Appeal's decision: There was no apparent bias on the part of the adjudicator. Apparent bias was not established by any of the following matters:</i></p> <ul style="list-style-type: none"> ▪ <i>The fact that the adjudicator had been re-appointed and was likely, therefore, to reach the same decision as he did in the first adjudication</i> ▪ <i>The fact that the earlier decision had been made without jurisdiction</i> ▪ <i>The fact that the adjudicator was likely to have relied on legal advice which he obtained in the first adjudication (and had not disclosed to the parties)</i> ▪ <i>A telephone conversation between the claimant's solicitors and the adjudicator at the time of the second appointment in which the solicitors had said that he was being appointed again because he was familiar with the case</i> ▪ <i>The fact that the adjudicator reached a decision on his own jurisdiction before giving the parties an opportunity to comment on the advice that he had received on this issue. The Court of Appeal also said that the rules of natural justice do not apply to adjudicator's decisions on the question of jurisdiction where such decisions are not binding on the parties, though it would normally still be sensible for adjudicators to give the parties the opportunity to make representations on the issue</i> ▪ <i>The fact that the respondent had told the adjudicator that it may have a claim against him (arising out of the first adjudication)</i> <p>Court: Court of Appeal, London</p>	
19.10.04	<p><i>CIB v Birse</i></p> <p>Enforcement of the adjudicator's decision resisted on the following grounds:</p> <p>i. At the time of the referral, the parties were in discussions and the dispute referred to adjudication had not crystallised.</p> <p><i>TCC's verdict: The test of whether a dispute has crystallized should be based on a common sense approach and will depend on the facts in each case. On the facts of this case, the dispute had crystallized.</i></p> <p>ii. The dispute was too complex for it to be possible to be adjudicated fairly in accordance with the Act, and the adjudicator's conduct of the adjudication was in fact unfair.</p> <p><i>TCC's verdict: The Act provides the means for any dispute, however complex, to be adjudicated, by giving the parties the ability to agree extensions of time for the adjudicator to make his decision. A defendant is not obliged to agree to extend time, but in this case the defendants did agree to extensions of time which were sufficient for the adjudicator to reach a fair and impartial decision. The adjudicator did act fairly.</i></p> <p>iii. There was an error in the adjudicator's award that could be characterized as a mistake or slip which the court could and should rectify.</p> <p><i>TCC's verdict: Any such error could be corrected by the adjudicator if it was indeed the result of a mistake or slip, as opposed to further consideration, and if the adjudicator acknowledged that this was the</i></p>	<ul style="list-style-type: none"> • Existence of dispute • Natural justice • Error in the adjudicator's decision

	<p>case and was willing to make the correction. However, it was not open to the Court to make any such correction, if the adjudicator declined to do so, and, in any event, it was not clear that any such mistake had been made.</p> <p>Court: Technology and Construction Court, London</p>	
27.07.04	<p><i>A & S Enterprises Ltd v Kema Holdings Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted on the following grounds:</p> <p>i. The adjudicator failed to take account of the defendant's submissions</p> <p><i>TCC's verdict: The adjudicator had made relevant findings, which could not be challenged merely on the ground that they may have been erroneous.</i></p> <p>ii. Apparent bias on the part of the adjudicator and breach of the rules of natural justice</p> <p><i>TCC's verdict: The adjudicator's adverse comments in his decision on the failure of an employee of the defendant to take part in a meeting with the adjudicator did demonstrate apparent bias, where the adjudicator had not indicated prior to the meeting that the employee in question should attend, and the adjudicator's failure to give the employee an opportunity to comment thereafter did infringe the requirements of natural justice.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Natural justice
15.07.04	<p><i>Roscco Civil Engineering Ltd v DWR Cymru Cyfyngedig</i></p> <p>Enforcement of the adjudicator's decision resisted on the grounds that:</p> <p>i. The contract was not with the Claimant but with the partnership that existed prior to incorporation of the Claimant.</p> <p><i>Court's verdict: There was a common understanding that there was a contract between the parties and the parties had proceeded on the basis that this was the case. The defendant was estopped from contending otherwise, both by convention and by its own representations (the Defendant had commenced the adjudication).</i></p> <p><i>The common understanding constituted an agreement within section 107(3) of the Act and, also, the contract was sufficiently evidenced in writing for the purpose of section 107(2)(c) of the Act.</i></p> <p>ii. The adjudicator was not entitled to order a payment to be made to the Claimant, the adjudication having involved a claim by the Defendant for a payment to be made to the Defendant.</p> <p><i>Court's verdict: The basis upon which the adjudicator rejected the Defendant's claim necessarily involved a finding that the Defendant should make a payment to the Claimant and the Scheme authorizes the adjudicator to make an order to that effect.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Existence of contract • Contract in writing • Validity of decision.

<p>11.06.04</p>	<p><i>William Verry Ltd v North West London Communal Mikvah</i></p> <p>Enforcement of the adjudicator's award resisted on the following grounds:</p> <p>i. The referral notice was not served within 7 days of the Notice of Adjudication.</p> <p><i>Court's verdict: Section 108 of the Act did not prohibit a contract from allowing the adjudicator to extend time for service of the Referral Notice beyond 7 days.</i></p> <p>ii. The Notice of Adjudication did not identify a dispute that existed at the time of the Notice and so no existing dispute was referred to adjudication.</p> <p><i>Court's verdict: The background to the Notice of Adjudication, set out in the correspondence between the parties, made clear the full nature of the dispute referred to in the Notice and that such a dispute existed at the time of the Notice.</i></p> <p>iii. The adjudicator made fundamental errors in reaching his decision</p> <p><i>Court's verdict: The adjudicator believed that he could not take into account the effect of defects alleged by the Respondents on an earlier valuation. This belief was due to a fundamental error of law, which was compounded by a procedural error in believing that this issue was not within his jurisdiction. The latter error potentially vitiated his decision, but he would have reached the same decision anyway due to the error of law. The decision would be enforced but not for a further 42 days to allow time for another adjudication or an agreement on the value of the alleged defects, so that any sum awarded in that adjudication or agreed could be balanced against the award in this adjudication.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Procedure • Existence of dispute • Error in the adjudicator's decision
<p>12.05.04</p>	<p><i>McAlpine PPS Pipeline Systems Ltd v Transco Plc</i></p> <p>Enforcement of the adjudicator's award resisted by the defendant on the ground that the adjudicator's decision did not respond to the issues in the adjudication notice and/or that the defendant did not have a proper opportunity to consider further material submitted by the claimant at a late stage in the adjudication</p> <p><i>Court's verdict: The basis of the claimant's claim changed during the adjudication from that in the adjudication notice. The defendant therefore had a plausible argument that the adjudicator had made his decision on issues that were not part of the dispute referred to him, and that they had not had a proper opportunity to consider the material produced by the claimant at a late stage in relation to these issues.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Validity of decision • Natural justice
<p>14.04.04</p>	<p><i>Ritchie Brothers (PWC) Ltd v David Phillip (Commercials) Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted by the defenders on the ground that the decision was reached out of time.</p> <p><i>Court's verdict: The date of the referral notice (the start date for the</i></p>	<ul style="list-style-type: none"> • Timing of decision.

	<p><i>running of time for the adjudicator to give his decision) was the date when the notice was posted to the adjudicator, not the date on which it was received by him. The date on which the adjudicator reached his decision was not the date on which the decision was communicated to the parties but the date on which he informed the parties that he had made his decision and requested payment of his fees. However, the fact that the decision was reached out of time did not, under the statutory scheme, mean that the decision was a nullity, nor did the adjudicator automatically cease to have jurisdiction following the effluxion of time.</i></p> <p><i>The appeal against this judgment was allowed by the Inner House on 25 March 2005 (see post) on the issue of whether the adjudicator's decision was a nullity for being reached out of time. The other issues were not the subject of appeal.</i></p> <p>Court: Outer House, Court of Session, Scotland</p>	
05.04.04	<p><i>AWG Construction Ltd v Rockingham Motor Speedway Ltd</i></p> <p>Enforcement of the adjudicator's award resisted by the defendant (to the adjudication) on the following grounds:</p> <p>i. The adjudicator had no jurisdiction to make the decision that he made</p> <p><i>Court's verdict: The adjudicator upheld the claim on a basis that was not in the adjudication or referral notice but was only put forward at a later stage. The adjudicator's decision was, therefore, on an issue that was not part of the dispute referred to him.</i></p> <p>ii. There was a breach of natural justice</p> <p><i>Court's verdict: The defendant did not have a sufficient opportunity to deal with the new basis for the claim, and so there was a breach of natural justice in allowing it into the adjudication.</i></p> <p>iii. The adjudicator's decisions on other discrete disputes, which by agreement were dealt with together, should not be enforced separately</p> <p><i>Court's verdict: The other decisions should be immediately enforceable.</i></p> <p><i>The Court also made comments on the circumstances in which there could be a stay of execution, although this was no longer an issue.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Validity of decision • Natural justice • Partial enforcement • Stay of execution.
05.04.04	<p><i>Conor Engineering v Les Construction Industriels de la Mediterranee</i></p> <p>Enforcement of the adjudicator's award resisted by the defendant on the ground that the defendant was entitled to set off its claim for liquidated damages.</p> <p><i>Court's decision: The defendant was not entitled to set off its claim for liquidated damages, because it had not served a notice of withholding payment in due time. The adjudicator, in ordering payment within 14 days of his decision, was thereby fixing the 14th day after his decision as the final date for payment, and the notice was not given within 7</i></p>	<ul style="list-style-type: none"> • Set-off • Construction contract.

	<p><i>days before that date. Note: The Claimant does not seem to have argued that a claim could not be set off against the adjudicator's decision in any event.</i></p> <p>The defendant also argued that the Act did not apply, as this was a project involving power generation. (This was only relevant to the provisions for payment, because the contract contained adjudication provisions).</p> <p><i>Court's verdict: Power generation was not the primary purpose of the project, so the Act did apply.</i></p> <p>Court: Technology and Construction Court, London</p>	
19.03.04	<p><i>M.J.Gleeson Group Holding Ltd v Devonshire Green Holding Ltd</i></p> <p>Enforcement of the adjudicator's award resisted by the defendant on the ground that the defendant was entitled to be repaid the sum in question under a subsequent application under the building contract and was also entitled to liquidated damages.</p> <p><i>Court's verdict: The contractual obligation to implement the adjudicator's decision overrode entitlements that may arise under other provisions and a notice of withholding payment under the contract or under section 111 of the Act could not be served in respect of an adjudicator's decision.</i></p> <p>Court: Technology and Construction Court, Salford District Registry</p>	<ul style="list-style-type: none"> • Set-off
12.03.04	<p><i>Buxton Building Contractors v Governors of Durand Primary School</i></p> <p>Enforcement of the adjudicator's decision resisted by the defendants on the ground that the adjudicator had failed to consider the submissions, documents and issues referred to him by the defendants.</p> <p><i>Court's verdict: The adjudicator had failed to consider the submissions, documents and issues referred to him by the defendants. The adjudicator had therefore failed to decide the entirety of the dispute and his decision was unfair.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Validity of decision • Natural justice
27.02.04	<p><i>Specialist Ceiling Services Northern Ltd v ZVI Construction (UK) Ltd</i></p> <p>Enforcement of the adjudicator's award resisted by the defendant on the ground that the adjudicator should have recused himself after he was made aware of a without prejudice offer having been made in negotiations by the defendant (though not of the contents of the offer)</p> <p><i>Court's verdict: There was no indication of apparent bias in the way the adjudicator handled the issues in the adjudication and he applied the right test in considering the defendant's objection to his jurisdiction.</i></p> <p>Court: Technology and Construction Court, Leeds District Registry</p>	<ul style="list-style-type: none"> • Natural justice

26.02.04	<p><i>Branlow Ltd v Dem-Master Demolition Ltd</i></p> <p>Enforcement of the adjudicator's award resisted by the defenders on the ground that there was no contract in writing for the purpose of section 107, so the adjudicator did not have jurisdiction.</p> <p><i>Court's verdict: Exchange of letters between the parties constituted an agreement in writing under section 107, and thus gave the adjudicator jurisdiction to deal with uncertainties over contractual terms which the contract did not make clear.</i></p> <p>Date: Court: Sheriff's Court, Scotland</p>	<ul style="list-style-type: none"> • Contract in writing
20.02.04	<p><i>Westminster Building Co Ltd v Andrew Beckingham</i></p> <p>Enforcement of the adjudicator's decision resisted on the following grounds:</p> <p>i. The Act did not apply, because the defendant was a consumer, and no contract incorporating adjudication provisions had been entered into between the parties</p> <p><i>TCC's verdict: The defendant had accepted contractual terms incorporating adjudication provisions by his conduct in allowing the works to proceed without objecting to the terms. These terms therefore formed a valid contract even though the contract had not been signed by both parties as envisaged in the earlier letter of intent.</i></p> <p>ii. The defendant had reached a later agreement with the claimant which capped his liability and the adjudicator did not have jurisdiction to rule on the efficacy or effect of this agreement since it was a separate agreement from the contract containing the adjudication provisions.</p> <p><i>TCC's verdict: The later agreement was an agreement to vary the contract containing the adjudication terms. The adjudicator did, therefore, have jurisdiction in ruling (as he did) that the later agreement was invalid as it was unsupported by consideration.</i></p> <p>iii. The adjudication terms were unfair and unenforceable by virtue of the Unfair Terms in Consumer Contracts Regulations 1999.</p> <p><i>TCC's verdict: The adjudication terms were not unfair within the meaning of the Regulations. The contractual terms had been prepared by the defendant's surveyor and there was no breach of the requirement of good faith. The adjudication terms did not constitute a significant imbalance between the parties adverse to the rights of the defendant or exclude or hinder the defendant's right to take legal action or pursue other legal remedies.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Residential contract • The 1999 Regulations.
23.01.04	<p><i>The Highland Council</i></p> <p>Enforcement of the adjudicator's award in favour of the respondents resisted by the petitioners on the ground that they had an adjudicator's award against the respondents for a greater amount, and the respondents were insolvent.</p> <p><i>Court's verdict: The equitable right to balance debts in a bankruptcy is, arguably, open, so there should be an interim suspension of the right</i></p>	<ul style="list-style-type: none"> • Set-off

	<p><i>to enforce the award in favour of the respondents.</i></p> <p>Court: Inner House, Court of Session, Scotland</p>	
28.01.04	<p><i>Citex Professional Services Ltd v Kenmore Developments Ltd</i></p> <p>Party seeking in litigation to recover moneys paid pursuant to an adjudication award raised the issue of onus of proof.</p> <p><i>Court's verdict: The normal rules as to burden of proof are unaffected by an adjudicator's decision</i></p> <p>Court: Outer House, Court of Session, Scotland</p>	<ul style="list-style-type: none"> • Proceedings to reverse adjudicator's decision
16.01.04	<p><i>IDE Contracting Ltd v R G Carter Cambridge Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted by the defendant on the ground that the adjudicator had not been properly appointed.</p> <p><i>Court's verdict: Under the statutory scheme, which applied to an adjudication under this contract, the referring party should have approached the adjudicator named in the contract following service of the Notice of Adjudication, with a written request for him to act. The claimant considered that it had already ascertained that the adjudicator named in the contract was unable to act and did not therefore follow this procedure but instead applied to the relevant nominating body for an appointment. The appointment was not therefore valid. There was no need for the defendant to show that it had suffered any prejudice.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Appointment of adjudicator.
17.12.03	<p><i>Costain Ltd v Strathclyde Builders Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted by the defender on the ground that the adjudicator had not disclosed to the parties legal advice that he had taken</p> <p><i>Court's verdict: Although neither of the parties requested at the time an opportunity to comment on the legal advice received by the adjudicator, they should still have been given this opportunity, if the legal advice covered matters that were not already covered by the parties' submissions. It is not known whether this was the case or not; because there is, therefore, a possibility that this was the case, summary judgment could not be given.</i></p> <p>Court: Outer House, Court of Session, Scotland</p>	<ul style="list-style-type: none"> • Natural justice
15.12.03	<p><i>Prentice Island Ltd v Castle Contracting Ltd</i></p> <p>Payment of the adjudicator's fees resisted by the defenders on the ground that, as the defenders contend, the adjudicator had no jurisdiction and his decision was therefore a nullity.</p> <p><i>Court's decision: Even if the adjudicator did lack jurisdiction and his decision was a nullity (yet to be decided), the adjudicator is still entitled to his fees, if he has acted in good faith in conducting the adjudication in the genuine belief that he had jurisdiction.</i></p> <p>Court: Sheriffdom of Tayside Central and Fife, Scotland</p>	<ul style="list-style-type: none"> • Adjudicator's fees

<p>18.12.03</p>	<p><i>London & Amsterdam Properties Ltd v Waterman Partnership Ltd</i></p> <p>Enforcement of the adjudicator's award resisted by the defendant on the grounds that:</p> <p>i. The adjudicator's terms of remuneration did not accord with the contract between the parties and therefore the appointment of the adjudicator was not authorized by the contract</p> <p><i>Court's verdict: The adjudicator was entitled to reasonable remuneration under the agreed scheme for adjudication and the adjudicator's terms for payment on a time basis were reasonable</i></p> <p>ii. The adjudicator had knowledge of the project through having adjudicated on an earlier dispute</p> <p><i>Court's verdict: If the adjudicator had had relevant knowledge, he should have disclosed it to the parties to give them an opportunity to comment on it. If he was bound by confidentiality not to disclose it, he would have had to decline the appointment. As it was, there were no grounds for challenging the adjudicator's assertion that he did not have relevant knowledge. A party could not raise the spectre of bias without some credible evidence.</i></p> <p>iii. The referral notice did not accord with the contract, which stipulated that it should not exceed 20 pages.</p> <p><i>Court's verdict: The first 17 pages of the referral notice contained a sufficient summary of the Claimant's case so as to constitute a referral that accorded with the contract. Therefore, the adjudicator was entitled to accept the first 20 pages as constituting the referral notice and treat the balance as evidence.</i></p> <p>iv. There was no dispute between the parties at the time of the adjudication notice, because there was substantial evidence forming part of the Claimant's case on which the defendant had not had a reasonable opportunity to comment.</p> <p><i>Court's verdict: The narrower definition of dispute in Halki Shipping Corporation v Sopex Oils Ltd is to be preferred to the wider definition relied on by the defendant, but on either approach there was a dispute.</i></p> <p>v. The defendant was ambushed by the inclusion with the referral notice of a large amount of material relevant to the claimant's case that had been withheld from them until then and by further evidence presented at a late stage of the adjudication.</p> <p><i>Court's verdict: The defendant did not have a proper opportunity to deal with the further evidence, which should have been excluded by the adjudicator. This constituted an infringement of the rules of natural justice and there was thus a triable issue as to whether the adjudicator failed to act impartially.</i></p> <p>vi. The adjudicator had made an error of law. Earlier cases to the effect that an error of law should not prevent the enforcement of an adjudicator's decision were inconsistent with higher authority.</p> <p><i>Court's decision: The court was bound by the earlier cases, which had been approved in the Court of Appeal.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Appointment of adjudicator • Natural justice • Procedure • Existence of dispute • Error in adjudicator's decision
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01.12.03	<p><i>Galliford Try Construction Ltd v Michael Heal Associates Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted by the defendant on the ground that that there had been no contract between the parties.</p> <p><i>Court's decision: There had indeed been no contract between the parties. The parties nonetheless had agreed to submit disputes to adjudication and to be bound by the adjudicator's decision pending final determination of the dispute by legal proceedings or agreement. However, the adjudicator's decision had been based on the existence of a contract which the Court had now held did not exist and therefore could not be enforced.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Existence of contract.
21.11.03	<p><i>Pegram Shopfitters Ltd v Tally Wiejl (UK) Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted by the defendant on the ground that the adjudicator had followed the wrong procedure or, alternatively, that there had never been a construction contract in writing.</p> <p><i>Court of Appeal's decision: Neither of the defendant's contentions was fanciful, and the judge at first instance was wrong to conclude that there must have been a construction contract in existence. The judge was also wrong to conclude that, where the terms of the contract were uncertain, the statutory scheme would apply. Any genuine dispute over the terms of the contract has to be resolved in order for the adjudication to be able to proceed.</i></p> <p>Court: Court of Appeal, London</p>	<ul style="list-style-type: none"> • Existence of contract.
29.10.03	<p><i>Simons Construction Ltd v Aardvark Developments Ltd</i></p> <p>The defendant resisted enforcement of the adjudicator's decision and the adjudicator's claim for payment of his fees on the ground that the decision had not been given in time.</p> <p><i>Court's decision: Under the agreement between the parties, the decision had to be given within 28 days of the referral. The adjudicator produced a draft decision on the 28th day and a final decision, substantially unaltered, 7 days later. The draft decision was not a valid decision.</i></p> <p><i>An adjudicator's decision produced out of time is still binding on the parties, unless the adjudicator's appointment is terminated before the decision is produced. Whether and how the appointment can be so terminated depends on the terms of the appointment. Subject to the terms of the appointment, failure to produce the decision on time would probably be considered a sufficiently serious breach to entitle either party to treat the agreement with the adjudicator as terminated (the party in question would have to communicate this to the adjudicator and the other party). Under the statutory scheme, a fresh referral would have the effect of terminating the appointment.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Timing of decision.
28.10.03	<p><i>Dean & Dyball Construction Ltd v Kenneth Grubb</i></p>	<ul style="list-style-type: none"> • Contract in writing

	<p>Associates Ltd</p> <p>Enforcement of the adjudicator's decision resisted by the defendant on the following grounds:</p> <p>i. The contract between the parties had not been in writing as required by s. 107 of the HGCRA.</p> <p><i>Court's decision: the contract incorporated terms that included provisions for adjudication.</i></p> <p>ii. The dispute referred to adjudication was not the dispute that had arisen between the parties.</p> <p><i>Court's decision: the dispute referred to adjudication was in essence the same as the dispute that had arisen between the parties. The changes to the Claimant's case did not alter this situation.</i></p> <p>iii. Refinement of the issues during the adjudication meant that the adjudicator did not address the issues in the adjudication notice.</p> <p><i>Court's decision: The adjudicator had addressed the essential issue before him.</i></p> <p>iv. The adjudicator's conduct in holding separate meetings with each party was contrary to the rules of natural justice, as the other party did not have sufficient opportunity to comment on the evidence obtained at the meeting.</p> <p><i>Court's decision: The adjudicator provided to the other party a note of the information obtained at each separate meeting. This procedure was expressly permitted by the procedure for adjudication that had been agreed between the parties. It was therefore considered acceptable by the court, although the court would otherwise have had doubts about it.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Existence of dispute • Validity of decision • Natural justice
<p>21.10.03</p>	<p>Thomas-Fredric's (Construction) Ltd v Keith Wilson</p> <p>Enforcement of the adjudicator's decision resisted by the defendant on the ground that the defendant was not a party to the construction contract.</p> <p><i>Court's decision: the adjudicator was plainly wrong to conclude that the defendant was a party to the construction contract and, in any event, the defendant did not agree to be bound by the adjudicator's decision on this jurisdictional point.</i></p> <p><i>If a defendant does agree to be bound by the adjudicator's ruling on an issue of jurisdiction, the adjudicator's decision will be enforced even if the ruling on the jurisdictional issue was plainly wrong. If a defendant does not agree to be bound by the adjudicator's ruling on an issue of jurisdiction, the adjudicator's decision will still be enforced if the ruling on the jurisdictional issue was plainly right.</i></p> <p><i>Only if a defendant advances a properly arguable jurisdictional objection with a realistic prospect of succeeding upon it can he hope to resist summary enforcement of an adjudicator's award against him</i></p> <p>Court: Court of Appeal, London</p>	<ul style="list-style-type: none"> • Existence of contract • Jurisdictional issues generally

<p>19.09.03</p>	<p><i>AMEC Capital Projects Ltd v Whitefriars City Estates Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted by the defendant on the ground that the adjudicator was not the adjudicator nominated by the contract and that this issue - whether or not the appointment was unauthorized - should be referred to arbitration under the arbitration agreement in the contract.</p> <p><i>Court's decision: The adjudicator appointed was not the adjudicator designated by the contract. The decision could not, therefore, be enforced.</i></p> <p><i>The arbitration agreement did not cover disputes relating to the enforceability of an adjudicator's decision and this exception included disputes concerning the appointment of the adjudicator, not merely the decision itself. The issue of whether the adjudicator was properly appointed should therefore be decided by the Court and not referred to arbitration.</i></p> <p>Court: Technology and Construction Court, London</p>	<ul style="list-style-type: none"> • Appointment of adjudicator • Stay of proceedings
<p>04.09.03</p>	<p><i>RSL (Southwest) Ltd v Stansell Ltd</i></p> <p>RSL made an application to the Court for summary judgment or for an interim payment of an adjudicator's award in their favour. Stansell resisted this application on the grounds that the adjudicator had breached the rules of natural justice in reaching his decision. This was on the basis that the adjudicator had reached his final decision in part by relying on a final programming report submitted by his colleague, which neither party had seen (although they had had a chance to comment on an initial report). HHJ Seymour QC held that the principles of natural justice required the parties to know the case against them and to have an opportunity to meet it. Accordingly, he dismissed RSL's application both for summary judgment or an interim payment.</p> <p>In September 2004, the Claimant was granted leave to appeal on the issue of whether part of an adjudicator's award could be enforced, in a situation where the grounds for refusing to enforce the award applied only to part of the amount comprised in the award, which could be severed from the rest of the award.</p> <p>Court: Court of Appeal</p>	<ul style="list-style-type: none"> • Partial enforcement
<p>03.10.03</p>	<p><i>J W Hughes Building Contractors Ltd v GB Metalwork Ltd</i></p> <p>Enforcement of the adjudicator's decision resisted by the defendant on the grounds that:</p> <ol style="list-style-type: none"> i. The adjudicator did not have jurisdiction because the dispute had been settled <p><i>Court's decision: The dispute had not been settled. Also, the parties agreed that the adjudicator could decide this point in accepting (by not challenging) his terms of appointment, which contained a term enabling him to determine jurisdictional points. The point was raised before him and he decided it in the claimant's favour.</i></p> <ol style="list-style-type: none"> ii. The respondents did not have a proper opportunity to consider the referral documents prior to the adjudication meeting and therefore 	<ul style="list-style-type: none"> • Existence of dispute • Jurisdictional issues generally • Natural justice • Stay of execution

	<p>there was a breach of the rules of natural justice and/or procedural unfairness.</p> <p><i>Court's decision: The respondents did have a proper opportunity to consider the documents and in all the circumstances there was no procedural unfairness.</i></p> <p>iii. The respondents applied for a stay of execution of the judgment, on the ground that the claimant's financial position, as shown from their accounts, showed that there was a high risk of the claimants being unable to repay the amount in the event of the underlying dispute being resolved in the respondents' favour.</p> <p><i>Court's decision: The claimant's accounts showed that their financial position was improving, so there was no basis for a stay</i></p> <p>Court: Technology and Construction Court, London</p>	
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*** Subject categories explained:**

(i) Jurisdictional grounds for resisting enforcement:

Existence of contract: There was no contract between the parties to the adjudication.

Construction contract: The contract was not a construction contract.

Contract date: The contract was entered into before 1 May 1998.

Residential contract: The contract was with a residential occupier and contained no provision for adjudication.

Contract in writing: The contract was not in writing.

Existence of dispute: There was no dispute at the time of the reference to adjudication over the issue or issues referred to adjudication.

Time for starting adjudication: It was too late to give notice of adjudication.

Appointment of adjudicator: The adjudicator was not appointed in accordance with the contract.

Validity of decision: The adjudicator's decision did not respond to the issues in the dispute or respond to issues not in dispute or already decided or otherwise exceeded the jurisdiction of the adjudicator.

Timing of decision: The adjudicator did not reach a decision within the required period.

Natural justice: The adjudicator did not act impartially and/or there was a breach of the rules of natural justice and/or procedural unfairness and/or apparent bias.

Procedure: The adjudicator did not comply (or the adjudication was not carried out in accordance) with the procedure that applied to the adjudication.

(ii) **Other grounds for resisting enforcement:**

Error in the adjudicator's decision: The adjudicator has made an error of fact or law.

Set-off: The defendant has a claim against the claimant.

Stay of proceedings: The Court should order a stay of proceedings.

Stay of execution: The Court should order a stay of execution.

The 1999 Regulations: Where the contract was with a residential occupier and contained terms for adjudication, these terms are not binding on the residential occupier by virtue of the Unfair Terms in Consumer Contract Regulations 1999.

(iii) **Subject-matters not relating to a specific ground for resisting enforcement:**

Jurisdictional issues generally

Enforcement - general issues

Partial enforcement

Adjudicator's fees

Proceedings to reverse adjudicator's decision

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