MC MS Blog

Clegg Food v Prestige Car Direct – a lucky escape for the adjudicator or a defence bound to fail?

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Fans of *Last of the Summer Wine* will remember the quietly dependable character of Norman Clegg. Admittedly, the reference might only resonate with a limited demographic as many readers may be too young to remember Clegg's gentle misadventures with 'Foggy' and 'Compo', but he immediately came to mind when I read the recent judgment in the Technology and Construction Court: *Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd [2025] EWHC 2173 (TCC).* **The similarity, of course, ends there.** Indeed, handed down on 19th August 2025, the TCC decision provides a crisp and thoughtful analysis of natural justice in adjudication, and in particular the extent to which an adjudicator may reach their own "fair and reasonable" conclusions without straying into impermissible territory.

Background

This case centres on a dispute under an amended JCT Design and Build contract for the construction of a leisure and retail centre between a contractor, Clegg Food Projects Ltd ("Clegg"), and employer, Prestige Car Direct Properties Ltd ("Prestige"). Specifically, the dispute concerned Payment Application 37 relating to eight variations ("the Relevant Changes"), and Clegg's entitlements to extensions of time ("EOTs") and prolongation costs. Prestige claimed liquidated damages in respect of delays ("LADs").

Clegg referred the dispute to adjudication, requesting a number of declarations, including that the gross valuation of Payment Application 37 totalled £23,502,636.65 plus VAT or "*such other sum as the adjudicator may decide*". Prestige countered with its own significantly lower valuations or again "*such other sum as the adjudicator may decide*". The appointed adjudicator took the approach of rejecting both parties' figures where he considered them unsupported. Instead, he applied what he called "*fair and reasonable*" valuations derived from his own "*first principles view*" of the work involved. That exercise sometimes meant he adopted neither side's precise rate or figure, but landed somewhere between the two. Crucially, as I'll come onto, he did not stray outside the ranges put forward by the parties.

In his 88-page Decision, the adjudicator held that Prestige had undervalued the sums due in respect of the Relevant Changes and that Clegg was entitled to EOTs (reducing Prestige's LADs), as well as suspension and thickening costs. Prestige was ordered to pay £541,880.12 plus VAT and interest, and the adjudicator's fees.

Prestige didn't pay and so Clegg sought summary judgment to enforce the Decision. Prestige resisted

enforcement, alleging procedural unfairness.

Parties' positions

(i) Prestige

Prestige argued that the adjudicator had introduced his own rates in valuing five of the eight Relevant Changes and had remeasured work without informing the parties or seeking their submissions. Prestige maintained that this breach was material because, by deciding matters on a novel basis, the new rates and remeasurement affected the majority of the sums in dispute. It further argued that the adjudicator's reasoning was inadequate: the provision of bare figures and a reference to "new rates" did not allow the parties to understand or challenge the approach taken. On that basis, Prestige submitted it had been deprived of the opportunity to contest the adjudicator's analysis, and that its liability could have been significantly reduced had consultation taken place. This, it said, was a breach of natural justice and rendered the Decision unenforceable.

(ii) Clegg

Clegg denied any breach of natural justice. It argued that the adjudicator was entitled to use his own knowledge and experience to reach a gross valuation of Payment Application 37, and that Prestige's objections to new rates and remeasurement were excessively granular. Every disputed item was valued within the range of the parties' competing figures, and the adjudicator's task was to reach an overall valuation, not to set specific rates line by line. Even if aspects of the decision were open to criticism, Clegg maintained that no substantial injustice arose. In fact, the vast majority of the new rates adopted favoured Prestige, and, on that basis, there could be no material prejudice.

Clegg also rejected any suggestion of inadequate reasoning, noting that the adjudicator's valuations consistently lay between the parties' rival positions, a legitimate approach in line with Arcadis UK Ltd v May and Baker Ltd (t/a Sanofi) [2013] EWHC 87 (TCC) (29 January 2013). It emphasised that adjudication is designed to be a "rough and ready" process, in which non-material errors or procedural imperfections are not grounds for non-enforcement. In short, Prestige was said to be "*scrabbling about for reasons to avoid payment".*

The critical issue was therefore whether the adjudicator's approach to valuation had breached the rules of natural justice.

The judgment

The court rejected Prestige's case that the adjudicator had breached natural justice by failing to seek further submissions before adopting "fair and reasonable" rates and a single remeasurement, and granted summary judgment enforcing the adjudicator's decision. In her well-reasoned judgment, HHJ Kelly held that the adjudicator had been tasked with a broad overall valuation of Application 37, not the fixing of individual rates, and was entitled to reach intermediate positions within the range of the parties' submissions using his own expertise. I think paragraphs 38 and 39, in particular, really set the tone:

At paragraph 38, the judge made it clear that "*it is acceptable for an adjudicator to come to a different view from the parties in respect of the value of a particular item which he considers "fair and reasonable" using the documentation provided and submissions made by the parties…".*

Further, paragraph 39 reinforced the point by citing the decision of Coulson J (as he was then) in Primus Build Limited v Pompey Centre Limited [2009] EWHC 1487 where it was held that an adjudicator "*cannot, and is not required to, consult the parties on every element of his thinking leading to a decision, even if some of the elements of his reasoning may be derived from, rather than expressly set out in, the parties' submissions…*"

HHJ Kelly also found that the issues had been "fairly canvassed", many of the rates adopted were more favourable to Prestige, and the few that were less favourable, were trivial in value and outweighed by benefits of over £200,000. On that basis, no material prejudice could be shown. The court also dismissed the argument that inadequate reasons were given, noting that the 88-page decision contained sufficient explanation, with references to submissions and documents, to enable the parties to understand the outcome. Fuller reasons might have been desirable, but the decision was not incoherent or unintelligible, and in any event, Prestige could not demonstrate substantial injustice.

My take-aways

What I think is significant in this case is that it does not appear that the adjudicator strayed outside the parties' valuations of the individual Relevant Changes in dispute. An example of such "straying" would be where a referring party to an adjudication asserted a value of £100,000.00 for an item, and responding party had asserted a value of £60,000.00, but the adjudicator had plumped for a value of £40,000.00. This was clearly an important factor in the judge's finding that there had been no breach of natural justice, as noted at paragraph 40 of her judgment that it was *"…significant that in respect of each "fair and reasonable" value, and in respect of the single remeasurement, used to calculate the gross value of each Relevant Change by the adjudicator, that value was an intermediate position between those contended for by the parties…"*. Interestingly, Prestige effectively conceded that if the adjudicator had simply "*split the difference*" there would have been no legitimate complaint. Their objection was that he had instead used his own "fair and reasonable" rates to get there. That prompted the judge to pose a pointed rhetorical question at paragraph 50: *"At what point does a variation by an adjudicator from the Claimant's rate, the Defendant's rate or a broad "split the difference" rate require consultation? Does any deviation at all from the unobjectionable rates require consultation? I would expect any party to answer "of course not" to that question…."*. This must be right, and an adjudicator must be able to make an assessment on the basis of the material before them which is somewhere between the parties' valuations.

On the issue of reasoning, I confess that I have some sympathy with Clegg in terms of the lack of workings-out in the decision. Clearer reasons would have perhaps avoided some of this satellite litigation. HHJ Kelly acknowledged that the reasons were *"…broad brush…"* and that fuller reasons could have been set out. However, this did not prove to be fatal, and brevity does not necessarily equal inadequacy. Citing *Clerk LJ in Gillies Ramsay Diamond & Others v PJW Enterprises Ltd* [2004] BLR 131 at paragraph 31, she noted that reasons are only inadequate if they are "*so incoherent that it makes it impossible for the reasonable reader to make sense of them*"; a threshold plainly not crossed here. Any minor or technical shortcomings clearly did not justify withholding enforcement.

Just a summer whine?

Returning to the question posed in the title, was this a lucky escape for the adjudicator? No, I don't think it was, and for me the critical point was that the adjudicator never ventured outside the boundaries set by the parties' own valuations. Had he done so, the outcome might have been different. But working within those bounds, the law recognises that adjudicators must have scope to exercise judgment otherwise the process would collapse into a crude numbers game. On these facts, the adjudicator had done exactly what he was asked to do: reach a fair and reasonable valuation on the material before him.

Was the defence to the enforcement proceedings always doomed to fail? It is difficult to say so with certainty. Prestige may have had valid grounds to be frustrated by the lack of workings, but that did not render the decision unenforceable, and I think its central argument was always a challenging one to run. Stepping back, a contrary outcome would also have carried significant consequences for future enforcement. Had Prestige succeeded, it could have unsettled the enforcement of many adjudicators' decisions by creating an expectation of consultation on every methodological point, which would cut

across the speed and effectiveness that adjudication is intended to achieve.

So, reassuringly, the threshold for overturning an adjudicator's decision remains high and only serious, materially prejudicial breaches justify non-enforcement. The court will clearly not pick apart every methodological choice unless the adjudicator has plainly gone "*off on a frolic of their own*". Enforcement will only be refused where there has been a material and unfair breach of natural justice, and the courts' pro-enforcement stance recognises that a degree of procedural imprecision is inherent in adjudication.

I rarely bet, but if you had given me the facts before the enforcement hearing, then I know who my money would have been on - I acknowledge that hindsight is a wonderful thing though!

Finally, whether you're looking for a trip down memory lane, an introduction to one of the UK's longest-running sitcoms, or quite literally sipping the last of the summer wine as the kids head back to school this week, take a moment to enjoy this iconic theme tune: **Last of the Summer Wine - TV Theme & Intro**

JONATHAN COPE