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Payment and Pay Less Notices: TCC brings Vision to Drylining dispute

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In the world of construction contracts, cash-flow is paramount and so too is strict adherence to the procedural framework governing Payment Notices and Pay Less Notices. The Housing Grants, Construction & Regeneration Act 1996 (as amended) ('the Construction Act') and the accompanying scheme regulations, lie at the core of determining a contractor's or subcontractor's entitlement to receive or withhold payment.

In practical terms, issuing the correct Payment Notice at the right time (under section 110A) and/or a Pay Less Notice (under section 110B) can mean the difference between getting paid on time, and having the full claimed sum automatically become the "notified sum" by default. Miss the deadline, label the notice incorrectly or rely on informal course of previous dealings, and you may find yourself on the wrong end of a judgment regardless of the substance of what you say you're owed.

The recent Technology & Construction Court decision in Vision Construct Ltd v Gypcraft Drylining Contractors Ltd [2025] EWHC 2707 (TCC) (21 October 2025) is a good reminder of how strictly the clock and the form operate in this space.

In my experience, issues with Notices are still common, and *Vision* provides evidence of this: Contractors and subcontractors misunderstand the strict requirements and deadlines under the Construction Act, often only discovering problems when it is too late. Ensuring a clear understanding of the notice regime from the outset is therefore critical. Taking the time to confirm what constitutes a valid Payment or Pay Less Notice, and adhering precisely to the prescribed timelines, can prevent disputes and protect cash flow before deadlines expire.

The facts

The main contractor, Vision Construct Ltd ("VCL"), engaged the subcontractor, Gypcraft Drylining Contractors Ltd ("Gypcraft") under a subcontract dated 12 November 2020 ("the Sub-Contract"). The Sub-Contract incorporated the JCT DBSub/C 2016 form and included a bespoke "Payments Schedule" (for years 2021-22, 2022-23, 2023-24) listing for each payment cycle: a "Sub-Contractor Submission Valuation Date", a "due date", last date for Payment Notice, last date for Pay Less Notice, and final date for payment.

Gypcraft submitted Interim Payment Application No. 23 in January 2023 (for the cycle with Valuation Date 16 January 2023) for £342,385.52. VCL issued a document on 7 February 2023 headed "Payment Notice" for only £125,437.77, paying only part of the claimed sum. However, the Payment Notice was issued 5 days late (after the contractual deadline/Payment Notice window) and no

separate Pay Less Notice was served. Gypcraft adjudicated in Nov 2024. The adjudicator found Gypcraft was entitled to the full notified sum because VCL had failed to serve a valid Payment Notice or Pay Less Notice in time, under section 110B(4) of the Construction Act.

VCL then brought Part 8 proceedings seeking declarations on:

1. Whether the payment mechanism under the Sub-Contract was "adequate" (so that the statutory scheme did *not* apply).

2. Whether VCL could rely on estoppel by convention (because past late Payment Notices had been accepted) to avoid strict compliance.

3. Whether the late "Payment Notice" issued could instead be treated as a valid "Pay Less Notice".

2. Key legal issues and court's findings

The key issues for the court were therefore:

(i) Adequacy of the payment mechanism

VCL argued that the Sub-Contract did *not* contain an adequate mechanism for contractual interim payments (because the Schedule used the term "Sub-Contractor Submission Valuation Date" rather than the JCT term "Interim Valuation Date"), and therefore the statutory scheme applied. Deputy Judge Williamson KC held the payment mechanism (despite using "Sub-Contractor Submission Valuation Date" rather than exactly "Interim Valuation Date") was adequate under s 110 of the Construction Act. The judge found that the Schedule was commercially workable and the divergence in wording from the standard form didn't invalidate the mechanism.

(ii) Estoppel by convention

VCL argued that there was a "course of dealing" or shared convention between the parties that late Payment Notices had been accepted in previous cycles, and so Gypcraft should be estopped (i.e. prevented) from rejecting the late notice. The legal test for estoppel by convention requires a shared assumption, reasonable reliance upon it, and resulting detriment or unconscionability, as the Supreme Court confirmed in Tinkler v Commissioners for Her Majesty's Revenue and Customs.

So, in essence, VCL contended that, in past payment cycles, Gypcraft accepted and acted upon late notices without objection. Therefore, there was a shared assumption that VCL could send late notices and Gypcraft would treat them as valid. When Gypcraft tried to depart from that assumption by now insisting on strict compliance with the deadline, it was unconscionable for Gypcraft suddenly to reject a late notice in Cycle 23 and rely on its invalidity.

The court rejected this argument on several grounds, including: (i) there was no clear representation or shared assumption beyond statements of fact; (ii) no established convention that late notices were acceptable; (iii) no evidence of reliance by VCL on such convention; and (iv) also, the factual enquiry required would render Part 8 inappropriate.

I find this one of the most interesting aspects of the judgment, as it's relatively uncommon for a party to invoke equity in an attempt to sidestep the strict statutory time limits governing Pay Less Notices. Allowing an estoppel to override the clear statutory payment regime (designed with strict deadlines) would undermine Parliament's central intention in the Construction Act: ensuring cash flow certainty.

The court emphasised that equitable principles cannot be used to bypass the statutory framework and, accordingly, the estoppel by convention failed entirely. Both parties were commercial entities, and VCL bore the risk of its own failure to follow the timetable. As William KC succinctly noted: "*The*

court is slow to find estoppel by convention in the face of a clear contractual payment timetable."

(iii) Payment Notice vs Pay Less Notice

VCL contended that the late document issued on 7 February 2023 (labelled "Payment Notice") could be treated as a valid "Pay Less Notice". The attempted re-characterisation of the late Payment Notice as a valid Pay Less Notice was rejected. The Court held that the document issued by VCL was plainly a Payment Notice (albeit late) and could not retrospectively be converted into a Pay Less Notice. To do so would "entirely undermine the Act and the Sub-Contract".

Decision

VCL was denied the declarations it sought, and the adjudicator's award in favour of Gypcraft stood. The decision reinforces the fundamental principle that parties must strictly adhere to the Payment Notice/Pay Less Notice regime under the Construction Act and the contract. Whilst bespoke mechanisms can be upheld if drafted and applied in a commercially sensible manner, late notices carry significant risk and cannot easily be salvaged by estoppel or reclassification after the fact.

Practical implications

So, if you are dealing with contract payment mechanisms:

1. Ensure the payment mechanism is clearly drafted and operates *commercially* (what matters is that it is workable, not that it uses standard form language).

2. Strictly observe deadlines for Payment Notices and Pay Less Notices as late service can lead to loss of ability to pay less within the relevant payment cycle.

3. Past practice is not the same as waiver or estoppel, so don't rely solely on informal past practice/course of previous dealings (such as accepting late notices) to avoid strict compliance. Estoppel is hard to establish, especially in a Part 8 context.

4. A Payment Notice and a Pay Less Notice are different. A document labelled as a Payment Notice cannot simply be treated as a Pay Less Notice (or vice versa) retrospectively just because you would like it to be. So, if you're issuing a notice, **it must state clearly what type of Notice it is, and given within the correct timeframe. In short, it's essential to get it right the first time; you cannot re-label a notice later to sidestep the statutory or contractual rules.**

5. Document conduct carefully. If you and the other party are looking to relax deadlines, do so expressly (e.g. by amending the payment schedule). A valid estoppel by convention requires proof of a communicated, shared, and relied-upon assumption. So, in the absence of documents, correspondence, or explicit statements proving the shared assumption, the estoppel argument will likely fail.

In conclusion, timing of notices is critical under the Construction Act, and late Payment Notices carry significant risk. Failure to meet the statutory or contractual deadline may result in the loss of the right to rely on the notice and potential liability for the full amount claimed.

Estoppel arguments (i.e., "*we always accepted late notices, so we're allowed to do so*") carry a high evidentiary burden and so pattern alone is unlikely to be sufficient for the Courts to override parliament's intention of the Construction Act; to provide cash flow certainty within the construction industry.

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