

RIP Statutory “Smash and Grab” Claims (in Ireland, at least)

JANUARY 20, 2026



For many years, Irish construction lawyers and adjudicators have debated a deceptively simple question: *what happens when a payer does not respond to a payment claim?* Unlike some comparable regimes, the Construction Contracts Act 2013 (CCA 2013 or the Act) is conspicuously silent on the consequences of non-response. Under the Act, a payee may issue a payment claim notice and the payer may respond by issuing a payment response notice setting out the amount proposed to be paid and the reasons for any difference. What the Act does not say, at least not expressly, is what follows if the payer ignores the process altogether. *Does silence amount to acceptance? Is there an implied default entitlement to payment? Or must the payee still prove its entitlement on the merits, even where the payer has failed to engage at all?*

That silence has fuelled not only lively and unresolved debate, but also uncertainty, inconsistent adjudication outcomes, and competing interpretations of the Act’s purpose. Until recently, there was no definitive High Court authority on the point. That changed with the decision in [Tenderbids Ltd t/a Bastion v Electrical Waste Management Ltd \[2026\] IEHC 5](#) which was handed down on 12th January 2026.

The facts

The proceedings arose out of a construction contract for the development of a metal waste recycling facility in Co. Dublin. In May 2024, the contractor issued a payment claim pursuant to section 4 of the Act, but the employer failed to respond within the statutory 21-day period. Following an earlier adjudication that was later found to be void due to a procedural issue, the contractor issued a new notice of intention to refer a payment dispute to adjudication in March 2025. The contractor’s case was framed entirely on the basis that the employer’s failure to respond entitled it, by default, to payment of the full amount claimed. The employer did not challenge that interpretation during the adjudication.

In April 2025, the adjudicator (somewhat unsurprisingly given the employer’s position) directed the employer to pay the full amount claimed, and the contractor subsequently applied to the High Court for leave to enforce the adjudicator’s decision under section 6(11) of the Act.

The decision

In a detailed and carefully reasoned judgment, Mr Justice Garrett Simons primarily approached the issue as one of statutory interpretation and considered whether the Act permits an adjudicator to

award the full amount claimed solely because the paying party failed to issue a response within the statutory timeframe. Applying the natural and ordinary meaning of the words used in the Act, he held that the adjudicator had *"erred in law in determining that the employer's failure to deliver a response to the payment claim notice triggered an entitlement, on the part of the contractor, to payment in full for the amount specified in the payment claim notice. This is not the proper interpretation of the Construction Contracts Act 2013. The Act does not provide for such a default direction to pay"* (paragraph 85).

The Court emphasised that the CCA 2013 contains no express or implied provision providing for a default direction to pay and, had the Oireachtas (the national parliament of Ireland for those readers unfamiliar with Irish parliamentary democracy) intended to deprive a respondent of the right to defend a claim on its merits, it would have done so in clear and specific terms, but no such language appears in the Act. Mr Justice Simons was particularly concerned that adopting a default payment mechanism would, in practice, preclude a paying party from advancing a substantive defence in adjudication, notwithstanding that such a restriction is not authorised by statute. That outcome would cut against fundamental principles of natural justice, especially given that adjudicators' decisions are enforceable by statute (albeit on a provisional basis).

The Court also rejected the invitation to imply such a consequence as a matter of interpretation. In the absence of statutory guidance as to the intended consequences of non-response, selecting one potential consequence over another would amount to impermissible judicial law-making. Mr Justice Simons held: *"There is nothing within the Act which makes it possible to ascertain which of the potential forms of consequence the Oireachtas has chosen. In the absence of any such guidance, it would represent judicial law-making for the court to choose one over the others."* (paragraph 75)

The Judge therefore rejected the contractor's argument and concluded that the Act does not provide for an automatic obligation to pay the full amount claimed in a payment claim notice merely because the paying party failed to respond within the stipulated timeframe. He regarded the issue as going to the heart of the adjudication process and held that, despite the point being raised for the first time at the enforcement stage rather than during the adjudication itself, it warranted exceptional consideration because: *"If, on the proper interpretation of the Act, it does not provide for a default direction to pay, then it is imperative that this be declared now rather than have the contended-for error replicated in other adjudications"* (paragraph 54). In some respects, this approach is similar to a Part 8 claim before the TCC in England.

I think it's apparent from the judgement that Mr Justice Simons was influenced, at least in part, by the potential consequences of accepting the contractor's interpretation. Rightly or wrongly, he was concerned that such an approach could permanently deprive the respondent of the opportunity to contest the merits of the claim, not merely for the purposes of the adjudication, but potentially in subsequent arbitral or court proceedings as well.

The arguments the other way

That conclusion will not surprise many, but I think it is worth acknowledging why the issue remains contentious as, prior to this decision, it was not uncommon for adjudicators to imply default payment consequences under the Act, particularly where a payer had failed to engage at all with the statutory payment process. After all, the CCA 2013 is expressly designed to protect cashflow, and the payment claim and response mechanism lies at the heart of that objective. While the Act does not expressly state that non-response gives rise to a default entitlement, I don't think it automatically follows that no such consequence was intended. Section 4(3)(a) is clearly designed to require meaningful engagement with the payment process by obliging a payer, where it disagrees with the claim, to state the amount it proposes to pay. If a payer can simply ignore that obligation without consequence, the provision risks serving little or no practical purpose and can be rendered largely optional. I think it is difficult to accept that this is what the drafters of the Act intended. From that perspective, it is

understandable to argue that the legislature must have intended non-compliance to carry some teeth, in the form of an entitlement to payment of the sum claimed. Seen in that light, default payment operates as a practical incentive to comply with the Act and to protect cashflow, which sits at the heart of the legislation.

Interestingly, the market had already begun to adapt to this statutory silence. Standard-form contracts such as those produced by the Construction Industry Federation (CIF) already include express provisions addressing the consequences of a failure to respond to a payment claim, namely that where no payment response notice is issued, the amount claimed becomes payable. It is difficult to avoid the conclusion that such clauses exist precisely because the CCA 2013 does not spell this out. Where parties want certainty, they must contract for it.

Where do we go from here ...

As noted at the outset, this very issue has been debated since the CCA 2013 came into force in July 2016. Some involved in adjudication in Ireland have argued that the only logical consequence of a failure to respond within the statutory period is that the full amount claimed becomes payable. Others have taken the opposite view, contending that, had the legislature intended such a result, it would have said so expressly, as it has in the UK.

The *Tenderbids* decision undoubtedly provides clarity. Statutory adjudication in Ireland does not permit “smash and grab” claims based solely on a failure to respond to a payment claim notice, and the High Court has interpreted the Act as drafted and resisted filling the gap by implication. So, practitioners must, for the time being, take the law as they find it and parties now know where they stand.

That clarity, however, arguably comes at a price. The absence of any default consequence for non-response leaves a significant gap in the statutory protection of payee cashflow. A payer who ignores a payment claim may still face adjudication, but one in which the payee must prove its entitlement in full. Although some see this as a downside by potentially blunting the speed and effectiveness the Act was designed to achieve, it could be argued that it will reduce the amount of adjudications, because rather than having a “smash and grab” adjudication followed by a true-value adjudication, there will only be the latter. Furthermore, why shouldn't the payee be required to prove what they are entitled to, rather than relying on a procedural fault to recover everything claimed?

Whichever side you take, what is clear is that the solution lies not with adjudicators or judges, but with the Oireachtas. An express amendment addressing the consequences of silence would arguably align the CCA 2013 more closely with its stated purpose but, until then, statutory “smash and grab” adjudications in Ireland must now be laid to rest.



