

## Security, Solvency and Scrutiny: What Adjudicators can learn from “Midas”

OCTOBER 14, 2025



Back in July, I had the pleasure of organising an event on behalf of the Adjudication Society New Practitioner's Group on the topic of “Recovery of Adjudicator's Fees”. Kindly hosted by 4 Pump Court, barrister Nick Kaplan delivered an excellent and informative session, which looked at, among other things, various barriers to adjudicators being paid.

*“The decision was wrong,” “the other side should pay,” “we didn't accept the terms,” and “the adjudicator had no jurisdiction”* are just some of the common reasons parties give for non-payment. It's perhaps a sign of the times, as more contractors fall into administration, but nothing captures the reality more plainly than the candid admission: *“we don't have any money.”*

As an adjudicator, I have seen first-hand both issues arising from insolvent parties within an adjudication and issues with non-payment of my fees. Unfortunately, insolvency is a topical issue in the current industry climate and one that it seems is unlikely to fall in relevance anytime soon.

A couple of months before the Adjudication Society event, the topic of insolvency in adjudication arose in the case of [\*\*Midas Construction Ltd \(in liquidation\) v Harmsworth Pension Funds Trustees Ltd \[2025\] EWHC 1122 \(TCC\) \(09 May 2025\)\*\*](#). Although the case did not concern the payment of an adjudicator's fees, it did examine the issue of security for costs in circumstances where an insolvent party has the benefit of an adjudication decision in its favour.

### The Background

*Midas Construction Limited (in liquidation)* (“Midas”) entered into a JCT Design and Build Sub-Contract 2011 (as amended) with *Harmsworth Pension Funds Trustees Ltd* (“Harmsworth”) for works at Unity Street, Bristol, valued at approximately £24 million (“Sanctus” Project). Midas became insolvent before completing the project, and the contract was consequently terminated. Under the contract, Harmsworth was required to issue a post-termination statement setting out its costs, payments made, and the total contract sum to determine whether any balance was owed between the parties. Harmsworth's statement asserted that its costs and payments equalled the total contract sum, resulting in no balance due. Midas disputed this, claiming that Harmsworth had over-stated the payments made and that a further £1.55 million was due. The adjudicator agreed with Midas and ordered payment within seven days (the “Sanctus Claim”). Harmsworth did not make payment and contended that sums owed to it under another project, *Print Hall*, offset any liability. Midas referred

that dispute to a second adjudication (the “Print Hall Claim”) and again succeeded.

Midas sought to enforce both decisions. It accepted that, as an insolvent company, it must provide security for Harmsworth’s costs in defending enforcement and pursuing any final proceedings. The court therefore had to decide whether an insolvent party could enforce an adjudicator’s decision and, if so, upon what terms. The key question was how much security for costs Midas should provide to enable enforcement to proceed.

## **Decision**

The Court found that both parties’ proposed figures were unsatisfactory: Midas’s were unrealistically low and Harmsworth’s unreasonably high. Adopting a balanced approach, the judge ordered Midas to provide: £150,000 in security for the Sanctus Claim, and £400,000 for the Print Hall Claim. With those safeguards in place, Midas was permitted to enforce the adjudicator’s decision (subject to a stay) while Harmsworth retained the right to bring final proceedings to challenge the decision. The court stressed that courts have the power to revisit security later if the initial estimate proves inadequate (once costs budgets become available and case management further develops). The court also rejected Midas’s proposal to provide staged security, ruling that Harmsworth should not be forced to litigate piecemeal because the enforcing party was insolvent.

## **The Court’s reasoning**

Deputy Judge Bowdery applied the principles set out in *Meadowside Building Developments Ltd v 12-18 Hill Street Management Company Ltd* [2019] EWHC 2651 (TCC) ([10 October 2019](#)) and *Styles & Wood Limited (in administration) v GE CIF Trustees Limited* [2020] EWHC 2694 (TCC). Those cases established that insolvency does not automatically bar enforcement of an adjudicator’s decision; however, the enforcing party must provide adequate safeguards to protect the responding party’s ability to recover its costs if it succeeds in later proceedings.

The Court emphasised that when assessing the amount of security, it is necessary to examine the *actual issues* likely to be determined in final proceedings rather than adopting a generic or inflated estimate of costs. The Court must also give credit for work already undertaken during the adjudication process e.g. witness evidence and documentation which would reduce the costs of subsequent litigation. Importantly, security should reflect “*likely recoverable costs*”, not total incurred costs. This approach mirrors how courts generally determine security applications outside the adjudication enforcement context.

The judge rejected Midas’s proposal to provide security in stages, holding that this would unfairly restrict Harmsworth’s ability to advance its claims as it saw fit. The objective of security is to place the respondent as near as possible to the position it would have been in had the claimant been solvent. Staging security would undermine that purpose.

## **Lessons for Adjudicators**

The *Midas* decision provides timely guidance on how the courts are addressing adjudication decisions in the context of insolvency. I think it gives some good reminders for adjudicators, referring parties, and respondents, and so, from an adjudicator’s perspective, here are my top 10 takeaways from the case:

### **1. Be alert to insolvency issues**

If one party is insolvent or in liquidation, then enforcement and security for costs may later become central issues, more on what Adjudicators can do with this in mind below. However, and specifically in relation to payment of fees, consider if an undertaking is necessary, or confirmation from the solvent party that it still wishes to proceed is appropriate.

For example, in a previous adjudication the Responding Party entered into a CVA part-way through and, after obtaining confirmation that the Referring Party still wished to continue, I proceeded to a Decision that found in favour of the Referring Party. To ensure payment of my fees I ordered that, in the first instance, these were to be paid by the Referring Party and recovered from the Responding Party with payment of the other awarded sums.

## **2. Stay within jurisdiction**

Insolvency can raise jurisdictional challenges, and whilst it's always essential to ensure that so that the dispute referred falls clearly within your jurisdiction, also ensure that the referring party has standing to bring the claim. Record your jurisdictional reasoning in your decision.

## **3. Clarity and precision in reasoning**

The *Midas* case reiterates that when insolvency is involved, clarity of reasoning is crucial. As enforcement is often sought by insolvent claimants, courts rely heavily on the clarity of the adjudicator's decision. A well-structured, reasoned decision gives the enforcing party the best chance of success, so: (i) structure reasoning logically; (ii) explain factual and legal conclusions clearly; and (iii) reference how sums have been assessed or calculated.

## **4. Transparency about costs and scope**

Be explicit about what has and has not been considered within the adjudication. This helps courts assess what work or costs might overlap with any subsequent litigation.

## **5. Maintain independence and procedural fairness**

An adjudicator's task remains to decide the dispute before them based on the evidence and submissions, not on the parties' financial viability or litigation strategy. However, maintaining impartiality and ensuring procedural fairness becomes even more important when one side is insolvent or externally funded.

As adjudicators we should always keep a clear audit trail of correspondence, responses, and procedural directions but perhaps also consider the rules of natural justice and ensure that the insolvent party has fair opportunity to respond – and it may be that insolvency effects the party's ability to do so. Consider how this can be balanced within the tight process of adjudication.

## **6. Recognise that security for costs may follow**

*Midas* shows that the courts will often require substantial security before allowing an insolvent party to enforce a decision. Adjudicators should therefore avoid assuming that enforcement will automatically follow and consider noting, where appropriate, that financial standing was not part of the adjudicator's remit.

## **7. Considering Evidence**

Insolvency may result in unavailability of records or resources. Consider alternative contemporaneous records and apply the usual balances of weight and completeness, record clearly how missing or incomplete evidence has been treated for the purposes of the decision.

## **8. Manage party expectations**

It's often beneficial to remind parties that adjudication is temporarily binding and enforcement may depend on the financial standing of the parties and subsequent security for costs applications. As mentioned, it could be beneficial to ensure that, if the solvent party is the Referring Party, it still wishes to proceed with the adjudication.

## 9. Understand how courts assess security

The judgment in *Midas* clarified that: (i) work already done in adjudication should be credited when calculating security; and (ii) “Staged” security (providing sums in phases) is not generally acceptable. While adjudicators do not determine security issues, awareness of these principles helps contextualise how decisions may be reviewed and enforced.

## 10. Handle funding and third-party involvement carefully

Insolvent parties may rely on litigation funders to pursue enforcement. Courts may examine these arrangements for champerty or abuse of process. So, keep records of any disclosed funding arrangements and avoid commenting on their propriety but note the existence of third-party interests for transparency.

The wider message for adjudicators

*Midas* confirms that adjudication remains a valid and valuable mechanism, even where one of the parties is insolvent. However, enforcement will ultimately depend on the adequacy of security for costs. For adjudicators, the decision serves as a reminder of the importance of clarity, procedural integrity, and impartiality particularly when financial hardship is involved.

The case highlights how adjudication and insolvency are becoming increasingly interconnected in the current economic climate. I think the key takeaway for adjudicators is not to avoid such matters, but to approach them with heightened diligence: managing the process carefully, ensuring transparency and delivering clear, well-reasoned decisions that can withstand scrutiny. In doing so, as adjudicators we can help to preserve confidence in the adjudication process, even when the solvency of the enforcing party presents additional challenges.



**AMY BONCZYK**