

Will a pay less notice be ineffective if it starts with a valuation contained in an invalid payment notice?

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Sections 110 and 111 of the Housing Grants, Construction and Regeneration Act 1996 (the *Construction Act*) have long been fertile ground for disputes. In fact, I think the volume of case law on payment notices and pay less notices prompts a fair question: are these among the most heavily litigated provisions in construction law history? MCMS' Amy Bonczyk and James Frampton of Keating Chambers certainly weren't short of examples from 2025 when they discussed the topic at a couple of recent [SCL events](#).

Last month's TCC decision in *Laing O'Rourke v Shepperton Studios* is the latest addition to this growing collection of case law. While Shepperton Studios is better known as the home of major film and television productions from *Gandhi* and *Gladiator* to *Batman Begins* and *Bridgerton*, not forgetting *Luther* and *Last of the Summer Wine*, it was, in this instance, the setting for something rather less glamorous: the relationship between an invalid payment notice and the effectiveness of a subsequent pay less notice.

The background

The dispute arose under a £331 million design and build contract for the redevelopment of Shepperton Studios ("the Contract"), where Laing O'Rourke ("LOR") was engaged as the contractor. It concerned an interim payment application submitted by LOR to Shepperton Studios Limited ("Shepperton"), seeking payment of approximately £5.6 million. In response to the application, Shepperton issued two notices: (i) a payment notice setting out a gross valuation of circa £367m with the amount stated as due being around £2.4 million; and (ii) a pay less notice asserting that, once further deductions were applied to net valuation of circa £2.4m, no sum was payable. It is apparent that Shepperton's gross valuation was not broken down and nor was there reference to any other document in which it could be seen how that sum was calculated.

LOR referred the matter to adjudication. The adjudicator concluded that the payment notice was invalid because it failed to explain how the sum stated had been calculated as required by the Contract and Construction Act. He also found that the pay less notice was ineffective, on the basis that it adopted the valuation contained in the invalid payment notice as its starting point. As a result, the adjudicator determined that LOR's application constituted the "notified sum" for the purposes of the Construction Act and was payable in full. LOR sought to enforce that decision in the TCC.

What the court made of it

Mr Simon Lofthouse KC, sitting as a Deputy High Court Judge, agreed that the payment notice was

invalid (I won't go into that chapter and verse, but have a read of paragraphs 19-31 of the judgment for further information). However, the Court parted company with the adjudicator on the status of the pay less notice. The key issue the Judge needed to determine was whether a pay less notice is automatically rendered invalid if it is based on, or starts from, a valuation contained in an invalid payment notice.

The Judge found that, although the payment notice was defective, the pay less notice was valid because it contained a sufficiently clear and detailed breakdown of the deductions being applied, including items such as liquidated damages, utilities and catering costs. That was enough to satisfy the requirement under the Construction Act to explain the basis on which the reduced sum had been calculated. Importantly, the Court rejected the contention that a pay less notice is undermined simply because it adopts a valuation from an earlier invalid notice. As the Judge put it: *"I do not consider that the ability to deduct falls away simply because the mathematical calculation of which those deductions are part commences with the incorrect figure."* The effect was that the deductions set out in the pay less notice were upheld, reducing the amount payable to approximately £3.2 million, rather than the full £5.6 million awarded in the adjudication.

What this means in practice

The decision confirms that a pay less notice must be assessed on its own merits, and its validity is not "contaminated" by any earlier payment notice, even where the same underlying valuation is used. The focus remains on compliance with section 111 and so, provided that the pay less notice clearly sets out the deductions a payer intends to make, it can still be effective. This is a helpful clarification in practice as payment notices and pay less notices are often prepared using similar valuation material. If the invalidity of one notice automatically affected another, it would introduce unnecessary technical risk into an already complex regime. The Court's approach avoids that outcome, recognising that the notices serve different functions and should be judged independently.

That said, I think it is important not to overstate the effect of the decision. I don't consider that *Laing O'Rourke v Shepperton* is authority for the proposition that, in circumstances where no effective payment notice is served by a payer, the gross value will automatically be the sum set out in the payee's application for payment, subject only to deductions set out in the relevant payless notice. The statutory language does not support such a narrow approach. Indeed, sections 111(3) and (4) require simply the payer to state: *"the sum that the payer considers to be due on the date the notice is served, and "the basis on which that sum is calculated"*. So, in my view, there is no reason why the sum stated as due in a pay less notice cannot be based on an alternative gross valuation, in addition to or instead of straightforward deductions for matters such as liquidated damages.

A Hollywood ending?

Turning back to my original question: *will a pay less notice be ineffective if it starts with a valuation contained in an invalid payment notice?* No. Provided the pay less notice clearly sets out the sum considered due and the basis of its calculation, it can still operate effectively, even if it draws on a valuation found in an earlier, invalid notice. The decision is another example of the TCC adopting a practical, common-sense approach to construction payment provisions. While the outcome will not surprise those familiar with the courts' approach to payment mechanisms, it's a helpful reminder of the issues that continue to arise in adjudications and enforcement proceedings: ensure clarity and avoid overcomplicating what is, at its core, a requirement to explain "what is due, and why".

So, not quite a Hollywood ending, but certainly a reassuringly pragmatic one.

That's all folks!



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