



Neutral Citation Number: [2025] EWHC 2224 (TCC)

Case No: HT-2025-LDS-000008

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN LEEDS**  
**TECHNOLOGY AND CONSTRUCTION COURT (KBD)**

The Business and Property Courts in Leeds  
Westgate House  
6 Grace Street  
Leeds  
LS1 2RP

**Before :**

**Her Honour Judge Kelly sitting as a Judge of the High Court**

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**Between :**

**RNJM LIMITED**  
**- and -**  
**PURPOSE SOCIAL HOMES LIMITED**

**Claimant**

**Defendants**

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**Mr Adam Beaumont** (instructed by **Ward Hadaway LLP**) for the **Claimant**  
**Ms Felicity Dynes** (instructed by **Freeths LLP**) for the **Defendant**

Hearing date: 4 April 2025  
Date draft circulated to the Parties 18 August 2025  
Date handed down: 27 August 2025  
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**APPROVED JUDGMENT**

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on 27 August 2025.

**Her Honour Judge Kelly**

1. This judgment follows the hearing of the Claimant's application for summary judgment to enforce the decision of the adjudicator Mr Wood dated 18 December 2024 to award the Claimant a payment of £132,884.72.
2. The Defendant seeks to defend these enforcement proceedings relying on a lack of jurisdiction argument. It argues that there "is a strong prima facie case that the Claimant deliberately or recklessly made a false statement in the process of applying to the Adjudicator Nominating Body in order to seek an advantage, meaning that the application is invalid and the appointment a nullity, such that the Adjudicator did not have jurisdiction" (relying on the principle in the case of *Eurocom v Siemens* [2014] EWHC 3710). If the lack of jurisdiction argument fails, the Defendant also seeks a stay on the basis of the Claimant's inability to re-pay any sum enforced by way of summary judgment.
3. I had the benefit of hearing from Mr Beaumont, Counsel, for the Claimant and Ms Dynes, Counsel, for the Defendant. Both counsel had provided helpful skeleton arguments before the hearing. Miss Dynes had also provided a chronology and a document comparing changes which she asserted had been made in respect of facts asserted by the Claimant in various witness statements. That document also posed a number of questions which Miss Dynes asserted surprisingly remained unanswered by the Claimant's evidence.

**The Law**

4. The test for summary judgment is set out in CPR 24.3:  
"The court may give summary judgment against a Claimant or Defendant on the whole of a claim or on an issue if—  
(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and  
(b) there is no other compelling reason why the case or issue should be disposed of at a trial."

5. To succeed against an application for summary judgment, a Respondent must show a real, as opposed to fanciful, prospect of successfully defending the case (*Swain v Hillman* [2001] 1 All ER 91). The defence must have some degree of conviction and be more than merely arguable (*ED&F Man Liquid Products v Patel* [2003] EWCA Civ 472).
6. The court must not conduct a mini trial but does not have to take a party's case at face value. The court must take into account both the evidence actually placed before it and also evidence which can reasonably be expected to be available at trial. The court should hesitate to make a final decision without trial if reasonable grounds exist for believing that a full investigation into the facts would add to or alter the evidence available to the trial judge. The court is entitled to reject implausible evidence or that which is not supported by contemporaneous documents.
7. I was referred to the following materials:
  - a. *Eurocom v Siemens* [2014] EWHC 3710 and EWHC 685 (TCC);
  - b. *Porter v Magill* [2001] UKHL 67;
  - c. *Derry v Peek* [1889] 14 App Cas 337 ;
  - d. *Linnett v Halliwells LLP* [2009] EWHC 319 (TCC) ;
  - e. *Dimmock v Hallett* (1866) LJJ 21 ;
  - f. *Amec v Whitefriars* [2004] EWCA Civ 1418;
  - g. *Lanes Group Plc v Galliford Try Infrastructure Ltd (t/a Galliford Try Rail)* [2011] EWCA Civ 1617;
  - h. *R.G.Carter v Nuttall* (No. 2) [2002] BLR 359;
  - i. *Jacobs UK Ltd v Skansa Construction UK Ltd* [2017] EWHC 2395 (TCC);
  - j. *Wimbledon v Vago* [2005] EWHC 1086 (TCC);
  - k. *Gosvenor London Ltd v Aygun Aluminium UK Ltd* [2018] 227 (TCC);
  - l. *A&V Building Solutions Limited v J&B Hopkins Ltd* [2024] EWHC 2295 (TCC);
  - m. Section 123 of the Insolvency Act 1986 and
  - n. Coulson on Construction Adjudication, 4<sup>th</sup> edition, at paragraphs 12.08, 12.09 & 12.18.
8. In respect of the jurisdictional challenge, I derive the following principles:
  - a. if a false representation is made, in respect of an asserted conflict of interest when applying to an adjudicator nominating body, the resulting adjudication is invalid and any decision is a nullity due to lack of jurisdiction of the adjudicator;
  - b. it is irrelevant whether or not the adjudicator nominating body is deceived by the false representation or not;

- c. it is only if a potential adjudicator has a clear conflict of interest that the nominating body should be warned;
- d. a materially incomplete statement can still be a misrepresentation;
- e. the test for apparent bias is whether a fair-minded and informed observer, having considered all of the circumstances of the assertion that the adjudicator is biased, would conclude that there was a real possibility that the adjudicator is biased;
- f. even if an adjudicator (in relation to the same dispute) has been challenged successfully on the basis of jurisdiction, if the dispute is re-referred to him, that is not sufficient to give rise to apparent bias;
- g. the failure of a party to pay the costs of previous adjudications as directed by an adjudicator is an example of unreasonable and oppressive behaviour. An adjudicator's decision on allocation of his fees is final even if the decision on the dispute is subsequently overturned;
- h. in order to prove fraud, it is necessary to prove that a false representation has been made, that the representation was made knowingly, or without belief in its truth, or recklessly;
- i. there must be an honest belief in the truth of the representations made to prevent a false statement being fraudulent.

9. In respect of the application for a stay:

- a. each case turns on its own facts;
- b. special circumstances on the facts are required before it is appropriate to grant a stay;
- c. those facts will include the fact that adjudication and adjudication enforcement are intended to be quick and inexpensive methods to provide temporary results for a winning Claimant;
- d. the probable inability of a Claimant to repay the sum enforced by way of summary judgment on an adjudicator's award may make it appropriate to grant a stay;
- e. if a Claimant is in insolvent liquidation, a stay of execution will usually be granted;
- f. a stay would not usually be granted if the Claimant's financial position is the same or similar to its financial position when the contract was made;
- g. a stay would not usually be granted if the Claimant's financial position is due wholly or in significant part to the Defendants failure to pay the sums awarded by the adjudicator; and
- h. if the evidence shows there is a real risk of a Claimant dissipating or disposing of the adjudication sum to avoid repayment, that would also justify the grant of a stay of execution.

**Evidence**

10. I had the benefit of reading the following substantive witness statements:
  - (1) Mr Nicholas James Bailey, dated 14 February 2025 and 25 March 2025, for the Claimant;
  - (2) Mr Michael Birchall, dated 26 March 2025, for the Claimant; and
  - (3) Mr Philip Henry Warr, dated 20 March 2025, for the Defendant.
11. In addition, I read the witness statement of Mr Stephen Radcliffe of the Claimant's solicitors dated 26 March 2025 in support of the Claimant's application for relief from sanctions and to rely upon the witness statement of Mr Birchall which was served late. Permission was granted at the start of the hearing.
12. As well as reading the witness statements, I also read the various documents to which I was taken during the course of the hearing and directed to in skeleton arguments.
13. I do not propose to rehearse all of the arguments raised, nor all of the evidence referred to during the course of the hearing. However, I record that I read and considered the evidence as a whole, as well as various documents within the bundle to which my attention was drawn, in addition to all those arguments before coming to my decision.
14. The dispute between the parties arose out of a construction contract entered into on or around 14 November 2022 concerning the construction of a three-storey block of six one-bedroom apartments in Harrogate. The contract was in the form of a JCT Minor Works Building Contract 2016. Pursuant to that contract, clause 7.2 allowed either party to refer a dispute to adjudication.
15. The decision of Mr Wood arises from the fifth adjudication between these parties (all in 2024) in respect of this contract. It is not necessary to set out all of the details of the earlier adjudications. Some background, however, is relevant.
16. The first adjudication brought by the Claimant was, in effect, abandoned by the Claimant without any explanation being given. Both parties were asked by the

adjudicator appointed to provide security for his fees after the Defendant had provided its response to the adjudication. The Defendant provided the security requested. The Claimant did not provide security. On being chased by the adjudicator for the security, the Claimant's representative stated that he was not in receipt of full and proper instructions in respect of the request for security. The Claimant provided its reply in the adjudication but did not pay or mention the security. The adjudicator again requested the security. There was no response from the Claimant to that request and the adjudicator resigned.

17. Three days after the first adjudicator resigned, the Claimant referred the same dispute to a second adjudication and requested the RICS appoint an adjudicator who would not seek money on account or security for fees and whose terms did not provide for that.
18. A different adjudicator, Mr Bunker, was appointed. As is usual, Mr Bunker's terms and conditions provided for joint and several liability of the parties in respect of his costs. Mr Bunker dealt with three adjudications (the second, third and fourth adjudications) between the parties. In the second adjudication, Mr Bunker found for the Claimant and directed the Defendant to pay the costs of that second adjudication. The costs were directed to be paid immediately by the Claimant and, if the Claimant had paid those costs, the costs paid by the Claimant were then to be repaid by the Defendant. The Defendant paid the costs to the Claimant when they were requested by the Claimant (subject to the withholding of an agreed sum of £4,366 which the Claimant had previously agreed to be owed from the Claimant to the Defendant).
19. The RICS appointed Mr Bunker in respect of the third and fourth adjudications when the Claimant commenced those adjudications which were intended to be "smash and grab" adjudications. Mr Bunker found against the Claimant and in favour of the Defendant in the third and fourth adjudications. He directed the Claimant to pay his costs in respect of those two adjudications immediately. The decision in the third adjudication was given on 19 August 2024 and in the fourth adjudication on 24 September 2024.

20. The fourth adjudication was commenced by the Claimant almost immediately after receiving the decision in the third adjudication. The application to RICS to appoint an adjudicator for the fourth adjudication was made before the Claimant had paid the costs (directed to be paid by the Claimant to the adjudicator) of the third adjudication. The Claimant did not make any reference to a conflict of interest with Mr Bunker in either of the application forms submitted to RICS for an adjudicator to be appointed, nor during the third and fourth adjudications.
21. On 30 September 2024, Mr Bunker wrote to the Claimant's then representative (copying in the Defendant's solicitors) stating that he had not been paid in respect of the third and fourth adjudications. The Claimant did not respond. Mr Bunker then sought payment from the Defendant pursuant to his terms and conditions. The Defendant's solicitor wrote to Mr Bate who was the Claimant's representative in the third and fourth adjudications. Mr Bate responded that he was now "...not instructed in relation to these matters, please do not correspond with us or contact us about them again". The Defendant then wrote to the Claimant's directors directly and to previous representatives of the Claimant asking about the non-payment of the adjudicator's fees. The Defendant received no response to that correspondence.
22. On 14 October 2024, Mr Bunker wrote to both parties threatening legal proceedings as the parties were jointly and severally liable for his fees. On 31 October 2024, Mr Birchall (now representing the Claimant) wrote to the Defendant and threatened a claim for £361,000 following the first adjudication. The Defendant paid Mr Bunker's fees in respect of the third and fourth adjudications on 5 November 2024. By letter dated 6 November 2024, the Defendant wrote asking the Claimant to set out its position as to why it had not paid Mr Bunker's fees, setting out details of alleged defective works and asking for details of the Claimant's insurer.
23. On 7 November 2024, the Claimant started a fifth adjudication claiming damages. In the application form to the RICS, Mr Birchall (representing the Claimant) stated on the form that there was a conflict of interest between the Claimant and Mr Bunker, with the stated reason being "Dispute over payment with Referring Party". There was

also an identified conflict between the Claimant and another person which is not of relevance to this dispute.

24. The guidance given by the RICS in respect of conflicts of interest on its adjudication form is as follows:

*“Conflict of Interest*

*RICS will take reasonable steps to ensure the adjudicator nominated is free from conflict of interest. It is therefore essential that you provide details of the parties involved (including any companies or related entities that a prospective adjudicator would need to consider in their conflict checks). Adjudicators are required to disclose involvement or potential conflicts of interest to RICS prior to nomination. RICS will never knowingly nominate an adjudicator who has a conflict of interest.*

*If there are any adjudicators who in your view would have a conflict of interest in this matter, you should list them below. Please provide, for each person, brief but clear reasons for this statement.*

*Your attention is drawn to the decision in Eurocom Ltd -v- Siemens Plc [2014] EWHC 3710 (TCC) to the effect **the misrepresentation in this statement could void the process in its entirety**, rendering any outcome made by the dispute resolver unenforceable” [emphasis added].*

25. In addition, the RICS issued guidance in the second edition of its guidance “Conflicts of interest for members acting as dispute resolvers” in November 2020. That document defined various terms:

“Conflict of interest:

An involvement between the dispute resolver and one of the parties, one of the parties and representatives or the subject matter of the dispute, or any other circumstances that raises justifiable doubts of bias or apparent bias.

“Apparent bias:

A situation where the fair-minded and informed observer, having considered the facts, concludes that there is a real possibility that the dispute resolver is biased.

“Bias:

A situation where the dispute resolver has a direct (usually pecuniary) interest in the case, and would realistically be affected by its outcome”.

26. The Defendant’s solicitors emailed the RICS and Mr Birchall (copying in the Claimant) stating that there was not a conflict or any dispute concerning Mr Bunker’s fees as between the Claimant and Mr Bunker. The position was simply that the Claimant had chosen not to discharge its liability to pay those fees when directed to do so by Mr Bunker.



27. The Claimant did not respond to the Defendant's solicitor email or seek to explain the basis for an alleged conflict to the RICS. A different adjudicator, Mr Wood, was appointed by the RICS. Mr Wood awarded payment of damages which are the subject of these enforcement proceedings. Mr Wood was bound by the previous decision of Mr Bunker in the second adjudication when Mr Bunker determined the issue of repudiatory breach in favour of the Claimant.
28. On 8 November 2024, the Defendant issued a statutory demand against the Claimant in respect of Mr Bunker's fees which the Defendant had discharged despite the Claimant being ordered to pay them.
29. During the course of the fifth adjudication, the Defendant invited the Claimant to "...better particularise how and why a conflict is said to have arisen" in respect of Mr Bunker's fees. The Claimant did not respond to that invitation. After Mr Wood's decision had been given, the Defendant contacted the Claimant's representative on three occasions seeking particularisation of the Claimant's position on the alleged conflict and/or bias. No particularisation was provided until the third witness statement of Mr Bailey dated 25 March 2025, and the first statement of Mr Birchall dated 26 March 2025.

### **The Issues**

30. The parties broadly agree on the issue to be determined. Does the Defendant have a real prospect of successfully arguing that the Claimant either deliberately or recklessly made a false statement in the process of applying to the RICS for the appointment of an adjudicator for the fifth adjudication?
31. In order to consider this issue, it is necessary to consider the following in the context of the application for summary judgment:
- (1) What was the information provided by the Claimant to the RICS asserting that there was a dispute between the Claimant and Mr Bunker?
  - (2) Was the information provided false or, in other words, do the facts relied upon establish a dispute between the Claimant and Mr Bunker?

(3) Was the false information given either deliberately or recklessly as to its truth?

32. In addition to that false statement issue, the Defendant also asserts that there would in any event be a breach of an implied term to act honestly and transparently in respect of the nomination process when seeking an adjudicator. Further and in any event, if the Defendant is not successful in its primary arguments, in the circumstances of this case, the Defendant asserts that enforcement of the sum should be stayed in any event.

### **Submissions**

(1) What was the information provided by the Claimant to the RICS asserting that there was a dispute between the Claimant and Mr Bunker?

33. There is no dispute about the information provided. In respect of Mr Bunker, Mr Birchall completed the RICS nomination form in the conflict of interest section stating “Dispute over payment with Referring Party”. No further information relating to the alleged conflict of interest was provided at or around the time the dispute was referred.

(2) Was the information provided false or, in other words, do the facts relied upon establish a dispute between the Claimant and Mr Bunker?

(3) Was the false information given either deliberately or recklessly as to its truth?

### **The parties’ submissions**

34. It is convenient to deal with these two questions together. The parties approach these questions in slightly different ways. Both parties referred extensively to the *Eurocom* case.

35. In that case the Claimant, *Eurocom*, sought summary judgment to enforce the decision of an adjudicator. Ramsey J considered the effect upon an adjudication where a referring party’s representative had made fraudulent representations when applying to the RICS for an adjudicator to be nominated. *Eurocom* had represented on the application form seeking the appointment of an adjudicator that no fewer than 13 potential adjudicators had conflicts of interest, when in fact this was not true.

36. It was held that “[75]... the fraudulent misrepresentation would invalidate the process of appointment and make the appointment a nullity so that the adjudicator would not have jurisdiction”.
37. He found on the evidence that the Defendant had established “[83]... a sufficiently strong case that the nomination of the adjudicator in this case was invalid and therefore the adjudicator was not properly appointed because there was a fraudulent misrepresentation by those acting on behalf of Eurocom in making the application for the appointment of an adjudicator.”
38. On that basis he found the Defendant had established real prospects of successfully defending the claim to enforce the adjudicator’s decision. Accordingly, for that and other reasons the application for summary judgment failed.
39. The Claimant submits that the Defendant’s assertion that there was a false representation is misplaced and seeks to distinguish *Eurocom*. The Claimant submits that the distinguishing features are that in *Eurocom* the representative named numerous people – the 13 entries on the form about conflicts of interest included “anyone connected with Fenwick Elliott solicitors who have advised the Referring Party”. The Claimant relies upon the fact that there was no reasoning given for the inclusion of many of the 13 entries at all, never mind a reason which would amount to a conflict. The justification given by the representative in *Eurocom* was that he used the conflict box “as a means of stating to which adjudicators, based on past experience, I would not send a referral document”.
40. While it is true in *Eurocom* that in 11 cases there was no reasoning given on the form, in respect of two potential adjudicators, a fees issue was raised.
41. The Claimant seeks to distinguish the *Eurocom* case on the basis that Mr Birchall only asserted a conflict of interest against two potential adjudicators. In addition, Mr Birchall explains the reason for the inclusion of Mr Bunker in the section dealing with conflict of interest. He stated:

“RJNM and I had a genuine belief that the payment dispute with Mr Bunker over his fees on the previous adjudications was a potential conflict and, if this was not the case, the RICS procedure entails that it would disregard the notification as they are not bound by representations made about individual adjudicators”.

42. The Claimant also argues that on the basis of the reasons given by Mr Birchall, it was reasonable for him to conclude that a fair-minded observer would conclude that Mr Bunker would be biased. In addition, no evidence or confirmation has been provided from Mr Bunker to say that he would not have been biased on the facts of this particular dispute. The fact that both witnesses asserted they each held an honest belief sufficed.
43. In response, the Defendant identifies a number of reasons for submitting that it has a realistic prospect of successfully arguing at trial that:
- a. there was in fact no dispute; and/or
  - b. in the circumstances, neither the Claimant nor Mr Birchall could honestly have held the belief that there was a dispute with Mr Bunker which could amount to a conflict of interest; and/or
  - c. the statements given by Mr Birchall and Mr Bailey were either given knowingly or being reckless as to whether or not there was in fact a dispute between the Claimant and Mr Bunker.
44. In laying out the various reasons why Ms Dynes asserted that the Defendant had a realistic prospect of success in its defence, she provided the court with a chronology and a detailed comparison and analysis of the Claimant’s witness statements in response to the statement of Mr Warr. Adjacent to the individual comparisons between the paragraphs of the witness statements of both Mr Bailey and Mr Birchall, she noted the very high amount of duplication and exact wording between the two statements.
45. She also listed numerous “unanswered questions” and made observations about the inadequacy of the Claimant’s evidence, even after the statement of Mr Warr. She asserted that the paucity of the evidence provided in response by the Claimant spoke volumes. In effect, the Claimant’s evidence in response only served to underline the inadequacy of explanation and reasoning given by the Claimant as to:

- (1) why it was considered that there was a dispute at all;
- (2) what in fact that dispute was; and
- (3) why the Claimant and Mr Birchall held a genuine belief that the alleged dispute which would have justified objecting to Mr Bunker as the adjudicator on the basis of a conflict of interest.

46. The Defendant further argued that the Claimant has never set out any adequate explanation as to why it asserts that there was a dispute. There is no evidence or assertion by the Claimant that it disagreed with or argued with Mr Bunker about his fees, or challenged the underlying entitlements to the amount of fees. The Claimant simply did not pay them.
47. When Mr Bunker chased payment of his fees. Mr Bunker chased both the Claimant and the Defendant. The Defendant questions why the Claimant thinks there is a risk that it would be singled out when both parties were responsible for paying Mr Bunker's fees. Further, and in any event, any dispute there may have been about fees was only between the Claimant and the Defendant. Once the Defendant had paid Mr Bunker's fees (before the Claimant requested an adjudicator for the fifth adjudication), Mr Bunker drops out of the dispute picture.

#### **Decision on Issues (2) and (3)**

48. Was the information provided false? In order to determine whether or not the Defendant has a realistic prospect of successfully arguing that it was false, it is necessary to examine and assess the adequacy of the evidence given by the Claimant.
49. In support of its assertions, the Claimant relies upon the evidence of Mr Birchall and Mr Bailey. Unfortunately, neither of them deal at all with why it is asserted that the Claimant was in dispute with Mr Bunker. In the referral form, no details are beyond the bare assertion that there is a dispute over payment between the Claimant and Mr Bunker. When this assertion was made on the referral form, the Defendant specifically asked the Claimant to identify the alleged dispute. Thereafter, repeated requests were made by the Defendant to identify the dispute. Those requests for information were ignored.

50. Unfortunately for the Claimant, in my judgment, it remains the situation that the Claimant has never set out any adequate explanation as to why it asserts that there was a dispute. There is no evidence or assertion by the Claimant that it disagreed with or argued with Mr Bunker about his fees, or challenged the underlying entitlements to the amount of fees. The Claimant simply did not pay them.
51. Thereafter, as I would expect, Mr Bunker chased payment of his fees. Mr Bunker chased both the Claimant and the Defendant. When the fees were still not paid, Mr Bunker threatened legal action against both the Claimant and the Defendant. At that stage, although the Claimant had been directed to pay the fees, the Defendant knew that it was jointly and severally liable for the fees and so the Defendant paid them. Once he had been paid, Mr Bunker had no fee dispute with either party. It cannot have mattered to him who paid his fees. It is quite possible (without descending into speculation) that there was an agreement between the Claimant and the Defendant to the effect that the Defendant would pay the fees and the Claimant would reimburse or set the payment off against another agreed debt.
52. It is asserted that the Claimant was “concerned” that the steps taken by Mr Bunker to pursue payment of his fees constituted a “risk” that there would be a perception of apparent bias against the Claimant by both Mr Bailey and Mr Birchall. However, there is no attempt whatsoever to justify this bald assertion. There is no evidence from either witness about:
- (1) the circumstances alleged to give rise to bias;
  - (2) what information was given to Mr Birchall, and by whom, for him to be able to advise the Claimant as to whether realistically referring to a potential conflict of interest with Mr Bunker was justified;
  - (3) what advice was given by Mr Birchall;
  - (4) why Mr Birchall considers that there was a risk of apparent bias; and
  - (5) why Mr Birchall considered it justifiable to include the potential conflict of interest on the form.
53. Mr Birchall states that he “genuinely believed at the time of the adjudication that it was appropriate to bring the above issues to the attention of RICS...” and that he had

“no reason to believe that the concerns raised by RNJM did not meet the definition of conflict of interest as stated in the RICS guidance note”. However, he does not state that he had considered the *Eurocom* case and the warning set out therein and on the form itself.

54. Mr Birchall said that the Claimant told him that it was “concerned that Mr Bunker had chased for payment of his fees and had threatened court proceedings against them”. The Claimant then asked if that information should be raised with RICS as a potential conflict of interest. Mr Birchall set out the guidance of which he said he was aware from the RICS “Conflicts of interest for members acting as dispute resolvers” second edition, November 2020.

55. As a result of that guidance, Mr Birchall asserts that he was “concerned” that the steps taken by Mr Bunker to pursue payment of his fees “constituted a risk that there would be a perception of apparent bias against the Claimant”. He asserts that it was therefore reasonable that the Claimant’s “concerns of potential bias were set out to RICS in the nomination form”. As a result of following the RICS definition, Mr Birchall asserts he had a genuine belief that there was a conflict of interest between the Claimant and Mr Bunker.

56. In addition, Mr Birchall asserted that he had formed the view that if he was mistaken about the potential conflict, RICS would disregard the representation. He formed this view because he was aware that the RICS “make their own independent decision” as to the adjudicator they nominate and he relied on the wording on the form at page 4: “Please note: while RICS and/or the president/chairman will give careful consideration to any representations, they will reach their own decision as to who is nominated. Notwithstanding any such statements, the RICS and/or the president/chairman of RICS always retains an unfettered discretion to nominate any adjudicator they regard as suitable. RICS sometimes received representations as to the identity of an adjudicator. However, each case is considered on an individual basis and RICS will not be bound by representations made”.

57. In my judgment, it is relevant that the severe consequences (if a potential conflict was not justified that the adjudication will be void) are not addressed by the Claimant’s evidence. The consequences are set out on the face of the form itself. The process of

appointment and any subsequent decision will be void. It is surprising that, if Mr Birchall considered at the time that if he could be mistaken about the potential conflict, he simply assumed that the RICS would disregard the representation about Mr Bunker. There is no evidence about Mr Birchall warning the Claimant of this consequence.

58. In such circumstances, it is surprising that the potential conflict was set out in such minimum detail as is seen on the form without any further explanation. It is the Claimant that chose not to answer any of the questions raised by the Defendant about the dispute alleged.
59. The evidence provided by the Claimant is wholly inadequate to establish the nature of and reason for asserting that there was an alleged dispute. The numerous questions raised by the Defendant are legitimate. The fact that the Claimant chose not to answer any questions nor provide any evidence about the nature of the dispute is telling. The questions remain concerning the Claimant identifying a potential but unjustified conflict on the form, why the Claimant that asserted any dispute amounted to a conflict of interest with Mr Bunker and on what basis the Claimant asserted an “honest” belief that it had a conflict of interest with Mr Bunker.
60. For all of the reasons set out above, I have no hesitation in refusing the Claimant’s application for summary judgment. I find that the Defendant has a realistic prospect of successfully arguing the various points it raised about the lack of jurisdiction of the adjudicator on the basis that the Claimant made a false statement about a conflict of interest on the adjudication referral form.
61. Having made that finding, it is not necessary to consider whether or not there was an implied term to act honestly during the nomination process when making a referral to adjudication. It is also not necessary to determine whether or not it is appropriate to grant a stay of execution.
62. The Claimant’s application for summary judgment is dismissed.