

**Atkin
Chambers**
Barristers

Construction Law Update: An Overview of Recent Cases and Developments

29th April 2026

Mathias Cheung
Atkin Chambers



Key Cases and Developments in 2025 / 2026:

1. Interpretation of Contracts

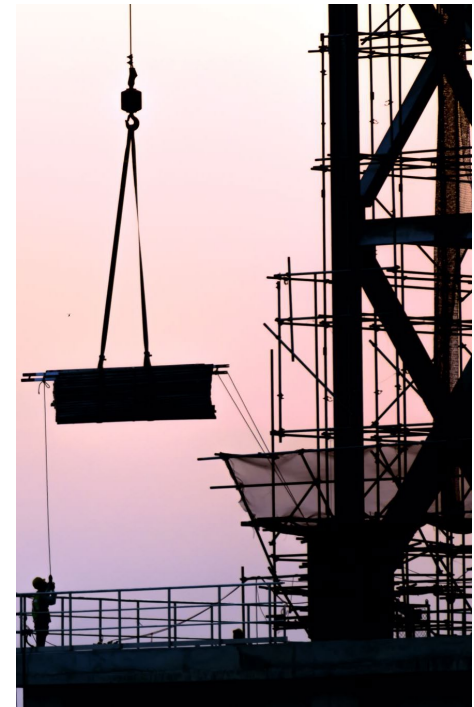
- Design obligation – *John Sisk and Son Ltd v Capital & Centric (Rose) Ltd* [2025] EWHC 594 (TCC) and *Mace Construct Ltd v Baltic Investment Holdings Ltd* [2026] EWHC 976 (TCC)
- Termination – *Providence Building Services Ltd v Hexagon Housing Association Ltd* [2026] UKSC 1
- Notice requirements – *Disclosure and Barring Service v Tata Consultancy Services Ltd* [2025] EWCA Civ 380 and *Uniform Building Contractors Ltd v The Water and Sewerage Authority of Trinidad and Tobago* [2026] UKPC 2

2. Building Safety Defects

- Scope of DPA / BSA: *URS Corporation Ltd v BDW Trading Ltd* [2025] UKSC 21 and *Adriatic Land 5 Ltd v Long Leaseholders At Hippersley Point* [2025] EWCA Civ 856
- Test for BLOs / RCOs: *Triathlon Homes LLP v Stratford Village Development Partnership and Another* [2025] EWCA Civ 846
- Building Information Orders: *BDW Trading Ltd v Ardmore Construction Ltd* [2025] EWHC 434 (TCC)

3. Adjudications:

- Requirements for payment notices: *Jaevee Homes Ltd v Fincham* [2025] EWHC 942 (TCC), *RBH Building Contractors Ltd v James & Another* [2025] EWHC 2005 (TCC) and *1st Formations Ltd v Lapp Industries Ltd* [2025] EWHC 1526 (TCC)
- Natural justice: *Project One London Ltd v VMA Services Ltd* [2025] EWHC 3304 (TCC) and *Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd* [2025] EWHC 2173 (TCC)
- Who has the right to adjudicate: *Paragon Group Limited v FK Facades Limited* [2026] EWHC 78 (TCC), *Grove Construction (London) Ltd v Bagshot Manor Ltd* [2025] EWHC 591 (TCC) and *Darchem Engineering Ltd v Bouygues Travaux Publics & Another* [2026] EWHC 220 (TCC)



1. Interpretation of Contracts – Design Obligations

Ambiguity in scope of design obligations / design risk:

John Sisk and Son Ltd v Capital & Centric (Rose) Ltd [2025] EWHC 594 (TCC)

- Dispute about the scope of Sisk’s responsibility for risks relating to the existing structures on site. Amended clause 2.24 of JCT D&B Contract 2016 provided that Sisk was deemed to have inspected the site and ensured that the site was suitable for the works, and that C&C made no warranty as to site conditions or the accuracy of any surveys or reports. This was expressly “*subject to item 2 of the Clarification*”.
- HHJ Davies decided on a Part 8 claim that Sisk did not bear the risk of unsuitable site structures:
 - **[65]-[74]**: No basis for having regard to pre-contractual negotiations as admissible as this was “*an illegitimate exercise*”.
 - **[75]-[82]**: “*Clarification*” defined as the “*Contract Clarification*” contained within section 2.9 of the Employer’s Requirements, and that was a specific reference to the “*contract clarifications*” worksheet of that Excel file.
 - **[83]-[106]**: item 2 of the contract clarification refers to the “*Existing Structures Risk*” as “*Employer Risk*” and states that “*Employer is to insure*” those works and “*obtain warranty from Arup with regard to suitability*”.
 - The capitalised terms, though undefined can be understood “*in their normal and natural meaning*”.
 - Most likely meaning is that C&C was the “*risk owner*” who bore the risk as to the suitability of the existing structures as a “*limited carve out to the otherwise wide ambit of clauses 2.24.1 to 2.24.3*”.

1. Interpretation of Contracts – Design Obligations

Hot off the press: *Mace Construct Ltd v Baltic Investment Holdings Ltd* [2026] EWHC 976 (TCC)

- Dispute about the scope of Mace’s design responsibility for certain “derogation items” under an amended JCT D&B Contract 2016. Baltic argued that Mace took on the entirety of the design responsibility for those items, either at the time of contract or when the initial design period expired on 2 February 2024.
- The Schedule of Derogations stated that Mace was “*unable to take design responsibility, associated risk of any discrepancies, inconsistencies and inadequacy of the below listed items until the period of initial design development is complete on the 2nd February 2024*” (para 1), and that “*once the derogations listed in this document have been concluded and approval from all parties obtained, and formal instruction received Mace Construct Ltd will take design responsibility on the items listed*” (para 2).
- An adjudicator decided that under amended clause 1.3 of the Contract, the Conditions (and the general provisions that Mace took on the entirety of the design responsibility) took precedence over the Schedule of Derogations because it stated that nothing in the other contract documents shall override or modify the Conditions.
- DHCJ Adrian Williamson KC decided on a Part 8 claim that the adjudicator was wrong:
 - **[23]**: the purpose of the Schedule of Derogations was clearly to limit Mace’s obligations on the listed items.
 - **[24]-[27]**: the Court should seek to give effect to the entirety of the agreement, and it would be an odd result not to give effect to the words in para 2 of the Schedule of Derogations and impose a cut-off on 2 February 2024.
 - **[30]**: the Schedule of Derogations does not “modify” the Conditions, but simply supplements and clarifies the way in which Mace performs its obligations and undertakes design responsibility.

1. Interpretation of Contracts – Termination Clauses

Ambiguity in termination provisions for repeated defaults:

***Providence Building Services Ltd v Hexagon Housing Association Ltd* [2024] EWCA Civ 962 / [2026] UKSC 1**

- In December 2022, Providence issued a notice under clause 8.9.1 of a JCT D&B Contract 2016 in respect of Hexagon's failure to pay the amount specified in Payment Notice 27 by the final date for payment. Hexagon paid the amount before the 28-day period under clause 8.9.3 had expired.
- In May 2023, Hexagon failed to pay the amount specified under Payment Notice 32 by the final date for payment. Providence gave notice that Hexagon had repeated a specified default and terminated its employment under clause 8.9.4. Hexagon paid the amount due and asserted that Providence had repudiated the contract.
- In **[2024] EWCA Civ 962**, Stuart-Smith LJ held that the termination based on the repeated default was valid:
 - **[29]**: The natural meaning of the conditional words at the commencement of clause 8.9.4 (*"If the Contractor ... does not give the further notice referred to in Clause 8.9.3"*) are broad enough to cover any state of affairs other than one where the Contractor does give notice, which is reinforced by the words "for any reason".
 - **[32]–[33]**: Clauses 8.4 and 8.9 are structurally similar and their conditional words must carry the same meaning. Clause 8.4.3 uses the phrase *"whether as a result of the ending of any specified default or otherwise"*, which is also broad enough to cover cases where no right to give a further notice accrued.

1. Interpretation of Contracts – Termination Clauses

- In **[2026] UKSC 1**, the Supreme Court reversed the Court of Appeal's decision and held that the termination based on the repeated default was invalid.
- Lord Burrows held that:
 - **[26]**: In interpreting an industry-wide standard form contract, the admissible background context may include past decisions of the courts on, and practice in relation to, clauses in an earlier version of the standard form (e.g. where the standard form has been amended to depart from a decision of a court).
 - **[28]**: However, the general position is that, subject to exceptions, an examination of what has been termed the “archaeology of the forms” is to be discouraged.
 - **[30]**: A standard-form contract should usually be interpreted consistently for all contracting parties using that form and, subject to bespoke amendments, that interpretation is unlikely to be contradicted by the objective intentions of the particular contracting parties.
 - **[32]-[33]**: Opening words of clause 8.9.3 (“*If the Contractor for any reason does not give the further notice referred to in clause 8.9.3*”) show that clause 8.9.4 is parasitic on clause 8.9.3 and that the contractor must have had an accrued right to terminate under clause 8.9.3 before clause 8.9.4 applies. On the contractor's interpretations, those words would be otiose and obscure.
 - **[34]-[35]**: It is only where the earlier breach went uncured for 28 days, and was in that sense particularly serious, that the Contractor can terminate immediately for a further late payment – this is a rational and less extreme outcome.
 - **[37]**: reliance on clause 8.4 was misplaced because clauses 8.4 and 8.9 were clearly not symmetrical and different language was used by the drafters.

1. Interpretation of Contracts – Notice Requirements

Effect of a notice requirement as a condition precedent

Disclosure and Barring Service v Tata Consultancy Services Ltd [2025] EWCA Civ 380

- Contract for implementing a new digital system to modernise the paper-based Disclosure and Barring processes. Clause 6.1 provided that if a deliverable did not satisfy the acceptance test criteria or a milestone was not achieved due to the contractor's default, the authority shall promptly issue a non-conformance report and will then require, *inter alia*, payment of delay damages.
- Coulson LJ upheld TCC's decision and held that this was a condition precedent for any LDs claim:
 - **[26]**: The following principles can be identified from the authorities:
 - (a) The issue will turn on the precise words used, set within their contractual context;
 - (b) A clause needs something that makes the relief conditional upon the requirement;
 - (c) Clear words will usually be necessary for a clause to be a condition precedent. That said, it is not necessary for the clause to say in terms "this is a condition precedent";
 - (d) It will usually be necessary for the link between the two steps to be expressed in the language of obligation (i.e. shall) but that will not on its own be sufficient to amount to a condition precedent.
 - (e) It is not necessary for the step one condition to be expressed in a finite number of days or weeks. More flexible periods – "timely", "within a reasonable time" etc - have been included in clauses which courts have found to be a condition precedent (see for example Steria and WW Gear).
 - **[27]-[29]**: Words of clause 6.1, when seen in context, are clear. The NCR is not just a procedural box-ticking exercise, it will categorise the test issues described in the testing procedures or set out the non-conformities of the deliverable where no testing has taken place, any other reasons the milestone was not achieved, and the consequential impact.
 - **[31]-[32]**: the other options/remedies under clause 6.2 would not work without an NCR.
 - **[48]-[56]**: absence of fixed time limit did not prevent clause 6 from being a condition precedent, especially where use of mandatory "*shall*" was linked to the "*if*" part of the clause.

1. Interpretation of Contracts – Notice Requirements

Uniform Building Contractors Ltd v The Water and Sewerage Authority of Trinidad and Tobago [2026] UKPC 2

- Design, supply and install a total of 28.43km of pipeline from Rio Claro to Mayaro under a FIDIC Yellow Book Contract (1999 Edition). The contractor’s variation claims were held by the trial judge to be time-barred, but the Court of Appeal in Trinidad overturned that decision.
- The Privy Council (Sir Peter Coulson) held that clause 20.1 was a condition precedent for the variation claims, and there was no waiver or estoppel on the facts:
 - **[54]**: An oral instruction may not be in accordance with the contract, but if it was intended to bind the contractor, the breach could be waived by both parties.
 - **[55]-[56]**: However, the contractor was in any event required to notify the additional costs under clause 3.6, and seek a determination under clause 3.5. The need for such a determination is paramount.
 - **[59]**: The first procedural failure was the failure by the contractor to give any proper notice of the likely increase in costs or seek a determination under clause 3.6.
 - **[60]-[63]**: The second and fatal procedural failure by the contractor was the failure to make a claim under clause 20.1, the language of which is in “*classic condition precedent form*”, applying the principles summarised in *Disclosure and Barring Services v Tata*. Clause 20.1 has been treated as such in previous cases.
 - **[70]-[75]**: waiver / estoppel raised too late for the first time in CoA, it must be properly pleaded and supported by evidence, and the minimum requirements in *MWB v Rock Advertising Ltd* [2018] UKSC 24 have to be met.
 - **[76]-[83]**: the Engineer did not have authority to waive or amend contractual terms, and this is designed to provide certainty for both parties.

2. Building Safety Defects – *URS v BDW* [2025] UKSC 21

Recap – *URS Corporation Ltd v BDW Trading Ltd*: developer who sold off properties to third-parties and had no obligation to carry out remedial works brought claim in negligence against engineers and then sought to amend pleadings to add a Defective Premises Act (DPA) claim. In [2023] EWCA Civ 772, CoA found for the developer.

- **Issues regarding pleading amendments to add DPA Claim:**

- **Retrospectivity of Building Safety Act 2022 (BSA):** Coulson LJ held that BSA s.135(3) is express and clear and **there is no carve-out from retrospectivity for ongoing litigation**: see [160]–[171].
- **Scope of DPA:** Coulson LJ considered that there is **nothing in DPA s.1(1) which confines it to individual purchasers** and excludes developers: see [179]. The lack of DPA claims by developers historically is irrelevant: see [181].
- **Contribution Claim (amendments to pass down claims against developers from purchasers):**
 - Coulson LJ held that the right to bring contribution claim arises even if no primary claim has yet been brought upstream: see [198]–[206].
 - Further, **liability under the primary claim is assessed as at trial date, such that extended limitation under BSA now applies** even though liability had ceased at the time of incurring costs in 2020; in any case, **BSA s.135(3) applies**: see [217]–[218].
 - The primary claims from purchasers are therefore not time-barred and BDW is entitled to bring a contribution claim against URS on that basis.

2. Building Safety Defects – *URS v BDW* [2025] UKSC 21

Supreme Court decision in [2025] UKSC 21 upheld the CA's decision.

- **Retrospectivity of extended limitation under DPA s.135:**
 - [99]-[100]: BSA s.135(3) not restricted to actions under DPA s.1, but “*can equally apply to actions dependent on section 1, such as where the claim made is for damages for the tort of negligence or for contribution under the Contribution Act*”, and this is supported by the wider title, wording and context of s.135.
 - [124]: A broad interpretation is necessary here to achieve the purpose of the BSA.
 - [119]-[121]: s.135(3) only deemed the enforceability of DPA claims to exist at the time of the repair works, but it did not alter any facts which may be relevant to the questions of causation or mitigation.
- **Scope of DPA s.1(1):**
 - [139]-[150]: the wording of DPA s.1(1) concluded that the duty was owed to “*a person who has ordered the dwelling to be built, most obviously the first owner*”, taking into account the Law Commission's report.
 - [154]-[155]: “*there is no inconsistency, or logical fallacy, in saying that a developer can both owe a DPA duty (eg to a subsequent purchaser) and be owed that duty (by the builder/architect/engineer)*”, and there are other situations where a party may both owe and be owed a duty under DPA s.1.

2. Building Safety Defects – *URS v BDW* [2025] UKSC 1

- **Timing of right to bring a contribution claim:**

- **[212]**: Lord Leggatt held that on the correct interpretation of the Civil Liability (Contribution) Act 1978 :
 - The right of a first defendant to recover contribution from a second defendant arises **when the claimant has suffered damage for which both defendants are each liable, and the first defendant has paid or been ordered or agreed to pay compensation in respect of the damage to claimant.**
 - There is no requirement that the first defendant’s liability to pay has been established by a judgment, an admission or a settlement.
- **[225]-[226]**: noteworthy that s.1(2) of the Contribution Act referred to the first defendant being liable for the damage in question immediately before “*he made or was ordered or agreed to make the payment*”, and this extended to “*a payment in kind*”.
- **[264]-[265]**: a “***policy choice to allow contribution to be recovered without requiring D1's total liability to be ascertained is not irrational or unreasonable***”, and BDW was not precluded from bringing a contribution claim simply because there had been no judgment against BDW or no third party had ever asserted any claim against BDW.

2. Building Safety Defects – *Adriatic Land* [2025] EWCA Civ 856

- The recent decision of *Adriatic Land 5 Ltd v Long Leaseholders At Hippersley Point* [2025] EWCA Civ 856 concerns the impact of para 9 of BSA Schedule 8 on service charges, but a few points are of wider interest:
 - [34]: Newey LJ noted that in URS at [105], Lords Hamblen and Burrows were “*under a misapprehension*” when they said that “*the Explanatory Notes to the Bill and to the BSA... were in materially the same terms*”, as the Supreme Court was in fact only referring to the explanatory notes in respect of the BSA which the Government published after the BSA had already been enacted (which were different from the notes to the Bill).
 - [194]-[205]: the majority of the Court (Nugee and Holgate LJJ) preferred an intermediate interpretation which limited the retrospectivity of paragraph 9 of Schedule 8 to the BSA, such that its effect was that no further service charges relating to the remediation of relevant building safety defects would be payable after 28 June 2022, but service charges paid before that date would not be disturbed. **This can be contrasted with the retrospective effect given by URS to BSA s.135.**
 - **N.B.** the Supreme Court has granted permission to appeal.

2. Building Safety Defects – Test for BSA Remedies

Guidance on “just and equitable” test: *Triathlon Homes LLP v Stratford Village Development Partnership & Others* [2024] UKFTT 26 (PC) / [2025] EWCA Civ 846

- Long leaseholder of the social housing in the Olympic Village applied for a remediation contribution order (RCO) under BSA s.124. SVDP was the developer ultimately owned by Get Living.
- Recap – the FTT held in [2025] EWCA Civ 846 that it was “*just and equitable*” to make the RCO:
 - **[246]**: It is not relevant to consider the applicant’s motivation in bringing the applications, their identity or the basis of their eligibility to make the application. Parliament had made the remedies available and that the applicant was entitled to take advantage of them.
 - **[251]–[255]**: No weight should be given to the changing ultimate beneficial ownership of the respondents in the period since the development was undertaken, and the source and extent of the respondents’ assets/liabilities are also unlikely to carry much weight.
 - **[256]**: The ability or inability of a respondent to pass on liability to some other party who may be responsible under the general law is not a matter to which much weight should be given.
 - **[261]**: The availability to the applicant of other claims or potential claims should not disqualify it from making a claim for an RCO.
 - **[264]–[265]**: The policy of the BSA is that primary responsibility for the cost of remediation should fall on the original developer, and that others who have a liability to contribute may pass on the costs they incur to the developer.
 - **[266]**: It was just and equitable to make a RCO against Get Living as SVDP would be unable to comply with the RCO without Get Living’s financial support.

2. Building Safety Defects – Test for BSA Remedies

FTT decision was upheld by the Court of Appeal in [2025] EWCA Civ 846:

- **Unexpressed presumption in favour of granting RCO:**
 - [61]: FTT rightly observed that “*the policy of the Act was to place primary responsibility on the developer*” which can be “*clearly seen from the Act*” (as confirmed in *URS v BDW*).
 - [64]: Building Safety Fund not intended to displace the BSA provisions which regulate which parties should, if able to, contribute to the cost, and so FTT was “*entirely justified*” in concluding that the developer and its associates should fund the works.
- **Basis for passing on costs to developers:**
 - [67]-[74]: it was relevant that Leaseholder Protections (Information etc.) (England) Regulations 2022 allowed alternative recovery against SVDP’s trustees who are the superior landlords, as it illustrates the policy of the BSA that costs should fall on developers.
- **Irrelevance of Triathlon’s motivations:**
 - [75]-[82]: *parties with legal rights / remedies are generally entitled to pursue them without explaining their subjective reasons*. Triathlon, as the owner of long leaseholds, clearly had an interest in the defects being remedied.
- **The public purse as last resort:**
 - [87]-[88]: purpose of the BSA is not just to ensure that the required works are done, but also who pays for those works. *FTT is right to say that the Building Safety Fund is a “last resort”*.

2. Building Safety Defects – Test for BSA Remedies

- **Pursuing other claims:**
 - [94]-[98]: FTT was entitled to conclude that the primary responsibility fell on developers under the BSA, and **that was not contingent on waiting for the outcome of complex, lengthy, and expensive litigation against third parties.**
- **Context of BSF applications:**
 - [99]-[106]: the fact that the parties cooperated on the BSF application was not determinative of whether a RCO should be granted, and Triathlon did not promise not to apply for RCO or otherwise preclude themselves from doing so.
 - [110]-[111]: **BSF was not an out-and-out grant** but required (under clause 5.4.1 of the standard BSF agreement) applicants to use reasonable endeavours to pursue claims. It is only intended to be a *“temporary funding pending recovery from those who can be made legally liable”*.
- **Changing identity of beneficial owners:**
 - [115]-[121]: **Get Living’s predecessor acquired SVDP’s assets and liabilities and willingly assumed the risk,** and this was not changed by the fact that the project was initially publicly owned.

2. Building Safety Defects – Test for BSA Remedies

The *Triathlon* approach has now been applied by the TCC when making a BLO:

- First BLO was made by the TCC in ***381 Southwark Park Road RTM Company Ltd and Others v Click St Andrews Ltd and Another*** [2024] EWHC 3179 (TCC) – Jefford J at [9]-[15] applied guidance from *Triathlon* decision of the FTT on “just and equitable” test, emphasising financial position of the defendant and not on the assets of the associated company.
- The most recent BLO was made by TCC in ***Crest Nicholson Regeneration Ltd & Ors v Ardmore Construction Ltd & Others*** [2026] EWHC 789 (TCC), where Constable J specifically referred to and followed the approach taken by the Court in *Triathlon* and *Click St Andrew* at [34]-[49], [80], [97] and [203].

2. Building Safety Defects – Information Order for BLO

Information order under BSA s.132: *BDW Trading Ltd v Ardmore Construction Ltd and Others* [2025] EWHC 434 (TCC)

- BDW applied for information order under BSA s.132 against parties who are potentially liable for building safety claims, but without proper evidence of a "relevant liability". HHJ Keyser KC rejected the application:
 - **[17]**: an information order can only be made against a corporate body who is subject to a relevant liability, as per BSA s.132(3)(a), and **such an order cannot be made if there is no basis for supposing that the party has any relevant liability as defined in BSA .130.**
 - **[18]-[19]**: **the corporate body required to give information is the corporate body subject to the relevant liability, not the associate of that corporate body.** The explanatory notes cannot override the statute.
 - **[25]-[30]**: whilst it is not necessary for the relevant liability to have been established already, applications under BSA s132 ought to be short and uncomplicated, and the court simply has to form a view on the question of liability for the purposes of the application.
 - **[35]**: an applicant must satisfy the condition in s132(3)(a) in respect of a relevant liability relating to a specified building in respect of which it is making a BLO application.
 - **[43]-[50]**: the court would have in any event refused the requests for information e.g. on corporate structure, group security structure details on purpose of incorporation of companies, financial allowances / provisions for remedial works on this and other projects, management accounts/reports, banking and lending facilities, value of ongoing contracts, profit and loss forecasts etc.

3. Adjudications – Payment Disputes

What is sufficient for the basis of calculation in payment applications?

Jaevee Homes Ltd v Fincham [2025] EWHC 942 (TCC)

- On a Part 8 claim for declarations, the TCC found that the contract was agreed by an exchange of WhatsApp messages and that the parties had agreed that Fincham was entitled to submit an application for payment by way of invoice at any stage during each month cycle. The issue then was whether the invoices were valid payment applications under HGCRA ss.110A/110B.
- DHCJ Roger ter Haar KC held that all of the invoices were valid (except one where two invoices were issued in the same month):
 - **[131]-[139]**: each of the invoices set out the works done to date without any breakdown of the sums attributed to those works, but **when read together with the quotations for those works, the first two invoices were sufficiently clear, the third invoice was for the remaining contract sum, and the fourth invoice was for extras.**
 - **[140]-[142]**: the claimant understood the invoices to be applications for payment and never complained that they were unclear or required more information, and if a stricter approach were taken then few contractors would be ever be able to comply with the HGCRA or the Scheme.

3. Adjudications – Payment Disputes

RBH Building Contractors Ltd v James & Another [2025] EWHC 2005 (TCC)

- Part 8 claim for declarations in adjudication enforcement proceedings – issue as to whether a purported pay less notice sufficiently set out the basis of calculation under HGCRA s.111(4).
- DHCJ Roger ter Haar KC held that the pay less notice was valid:
 - **[54]**: The employers’ letter set out in 11 bullet points the items of dispute in relation to each of the corresponding 11 items claimed in the payment application, and the value of the disputed items exceeded the sum said to be due.
 - **[55]**: the letter would have been *”understood by any reasonably objective reader who had knowledge of the contract works, and... those bullet points set an adequate agenda for an adjudication by identifying specifically which elements of the payment application were not accepted and, briefly, why they were not accepted”*. Importantly:

“I do not accept that the letter had to set out an arithmetical calculation... That would be to read into the statute an additional requirement that does not appear in section 111 and would be to take an overly prescriptive approach to the contents of a notice which would be contrary to the case law as summarised in Advance JV and also by reference to the comment in Sir Peter Coulson’s book.”

3. Adjudications – Payment Disputes

1st Formations Ltd v Lapp Industries Ltd [2025] EWHC 1526 (TCC)

- The claimant, 1st Formations, sought to overturn an adjudicator’s decision awarding a notified sum of £100,000 plus VAT to Lapp in a “smash and grab” adjudication by challenging the validity of the payment application, relying on the “on account” sum stated in the application.
- DHCJ Adrian Williamson KC held that the payment notice was valid:
 - **[29]**: The mischief which has concerned the Judges of this court in the previous cases is that payees may take unfair advantage of the post-2011 regime, and that could occur where payers are simply not put on notice that an interim payment is being sought, such that they cannot be expected to be ready with their own notices.
 - **[34]-[39]**: Lapp had accurately complied with paragraph 2 of the Scheme, and the fact that it also went on to seek a lesser sum "on account" given the state of the parties’ commercial negotiations over the final account did not render it ambiguous or not in substance, form, and intent a payment application. Nor did it matter that the valuation was said to be “*provisional*” or stated the wrong due date or final date for payment.
 - **[41]**: **One should avoid the trap of nice points of textual analysis or arguments. Provided that the notice makes tolerably clear what is being claimed and why, the court will not strive to intervene or endeavour to find reasons that would render such a notice invalid or ineffective.**

3. Adjudications – Natural Justice

Project One London Ltd v VMA Services Ltd [2025] EWHC 3304 (TCC)

- In a true valuation adjudication regarding one of VMA's applications for payment, the adjudicator decided that VMA was required to repay the sum of £102,656.67 to Project One.
- VMA sought to resist enforcement by alleging that the adjudicator acted in breach of natural justice by (i) making adjustments for which neither party had provided evidence or arguments, or (ii) by failing to consider what was said to be undisputed evidence.
- DHCJ Adrian Williamson KC rejected the natural justice arguments:
 - **[20]-[21]**: the issue of defective pipework was ventilated extensively before the adjudicator, and the adjudicator had to make its own adjustment to the valuation of the works because the parties' evidence was imprecise and *“he had to do the best he could to achieve the rough justice which adjudication requires”*.
 - **[25]-[26]**: the fact that the Adjudicator may have misunderstood or overlooked relevant undisputed evidence is not a ground to resist enforcement, as there was not deliberate failure to consider the evidence, and this was *“really an attempt to dress up an alleged error of law or fact as a breach of natural justice”*.
 - **[37]**: in any event, none of the alleged breaches went to the heart of the dispute.

3. Adjudications – Natural Justice

Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd [2025] EWHC 2173 (TCC)

- The defendant sought to resist enforcement by alleging a breach of natural justice on the basis that the adjudicator’s valuation of the disputed payment application adopted his own “fair and reasonable rates” and a single remeasurement which the defendant did not have the opportunity to comment on.
- HHJ Kelly rejected the natural justice arguments:
 - **[37]-[38]**: The adjudicator was asked by the parties to determine the overall valuation of the payment application, and *“it is acceptable for an adjudicator to come to a different view from the parties in respect of the value of a particular item which he considers “fair and reasonable” using the documentation provided and submissions made by the parties”*.
 - **[40]-[41]**: The issues determined were *“fairly canvassed during the course of the adjudication”*, and the values adopted by the adjudicator were *“an intermediate position between those contended for by the parties, or was more favourable to the Defendant”*.
 - **[43]**: The parties chose to instruct a quantity surveyor to assess the gross valuation for the payment application. It was not necessary for the adjudicator to seek further submissions or to set out his detailed methodology in his decision.

3. Adjudications – Right to Adjudicate

Disputes as to whether a party has the right to adjudicate:

- **Assignees – *Paragon Group Limited v FK Facades Limited* [2026] EWHC 78 (TCC):**
 - Article 6 of the JCT Minor Works Contract provided that “[i]f any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.2”. Clause 7.2 then provided that the Scheme for Construction Contracts shall apply. FK argued that (1) an assignee does not become a party to the construction contract and does not fall within the Scheme; and (2) the assigned claim was not a dispute arising under the contract.
 - HHJ Davies held that the assignee did have the right to adjudicate under the Contract:
 - **[63]:** A statutory assignment of the benefit of a contract passes the legal right to the thing and all legal rights and other remedies for the same, which are transferred to the assignee as if they had been theirs from the beginning, and (absent express provision to the contrary) would include the right to adjudicate.
 - **[64]-[74]:** The potential practical complications raised by FK were more apparent than real and do not in any event provide a compelling reason not to allow an assignee to adjudicate.
 - **[75]:** Difficulties would arise if the only way an assignee could adjudicate a claim was by forcing or persuading the assignor to lend their name to an adjudication against the other original party. That is potentially fraught with difficulty and delay.
 - **[77]:** The contract and the Scheme can be read as if the words “or any legal assignee of such party, where applicable” are read into the definition of a party.
- **Contrast *Grove Construction (London) Ltd v Bagshot Manor Ltd* [2025] EWHC 591 (TCC)**, where District Judge Baldwin held at [31]-[37] that an assignee of the Employer’s rights cannot be adjudicated against because the assignee is not a party to the contract and did not take on the burden under the assignment.

3. Adjudications – Right to Adjudicate

- **Constituent entities in unincorporated joint venture – *Darchem Engineering Ltd v Bouygues Travaux Publics & Another* [2026] EWHC 220 (TCC)**
 - Amended NEC3 Subcontract, under which Darchem and Framatome were the Subcontractor “*acting jointly and severally*”. Darchem referred a number of disputes to a series of adjudications and sought to enforce those decisions. The Main Contractor (BYLOR) argued that the party to the Subcontract was the Subcontractor, and that only Darchem and Framatome acting jointly had the right to refer a dispute to adjudication.
 - Constable J found for BYLOR and held that:
 - **[17]-[20]**: the bulk of the provisions were drafted in a way which indicated that the Subcontract was bilateral between two parties (e.g. references to “*either*” or “*neither*” party, and the insolvency provisions which provides that if a party is a JV, then insolvency of a constituent of the JV suffices).
 - **[24]**: because the unincorporated JV is not a separate entity, it is natural and necessary for each constituent entity to execute the contract, but that does not make each entity a party.
 - **[31]**: clause 12.6 provides for a JV leader to be notified, failing which BYLOR was entitled to rely on each constituent as having authority to bind the other. This would be otiose if there is an automatic right to act severally.
 - **[38]-[41]**: there are potential complications – if each constituent JV entity was indeed a separate party, each of them could separately commence an adjudication against each of the other JV entities, nominating a different adjudicator for each in relation to an identical issue. There is no mechanism for preventing this situation, and one would expect clearer and more comprehensive procedural safeguards.

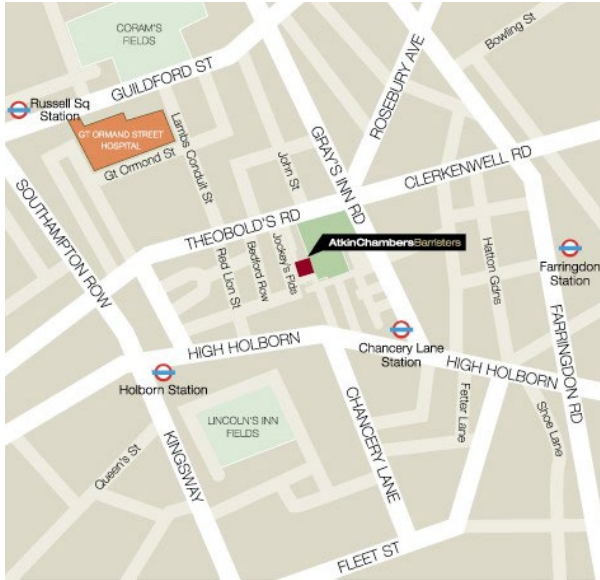
4. Legislative Developments

- **Construction Products Regulation Reform**

- Chapter 7 of Dame Judith Hackitt’s “Building a Safer Future” report (2018) and Morell and Day “Testing for a Safer Future” report (2023)
- Consultation on “Construction Products Reform Green Paper” from February to May 2025
- Consultation on “Construction Products Reform White Paper” from February to May 2026
 - General safety requirement that applies to all currently unregulated construction products, requiring all manufacturers to conduct e.g. risk assessments based on intended/foreseeable use
 - Mandatory compliance with designated standards for products currently subject to such standards / technical assessments
 - Digital product passport
 - Mandatory minimum requirements for UK-based third-party certification schemes
 - National Regulator and Building Safety Regulator with enhanced powers/resources for enforcement
 - New civil and criminal penalties for non-compliances

- **Retention Reform**

- “Late Payment Consultation: Time to Pay Up” from February to October 2025
- Government Response on 24 March 2026:
 - Withholding / retention payments to be banned in construction contracts
 - 60-day cap on payment terms for “large firms” paying “smaller firms”
 - Mandatory interest at 8% above base rate on late payments under all commercial contracts



Atkin Chambers

1 Atkin Building
Gray's Inn
London
WC1R 5AT
United Kingdom

Office hours

8.00am - 7.00pm
Monday to Friday

Telephone

+ 44 (0)20 7404 0102

Fax

+ 44 (0)20 7405 7456

E-mail

clerks@atkinchambers.com

If you need to contact us out of hours or in an emergency situation, please use the following number:

+44 (0)7843 561737

© Copyright 2025 Atkin Chambers All Rights Reserved

The information provided in this presentation is intended to give general information about legal topics as at the end of May 2025. It should not be relied on as a substitute for specific legal advice on any particular topic. Legal comment is from an English law perspective, unless otherwise stated. No responsibility for the accuracy and/or correctness of the information and commentary set out in this presentation, or for any consequences of relying on it, is assumed or accepted by any member of Chambers or by Chambers as a whole.

The content of this presentation is the copyright of Atkin Chambers. Atkin Chambers authorises the intended recipient to hold this presentation on any intranet database but it should not be amended or provided to anyone outside your organisation without the prior permission of Atkin Chambers.

Please address all enquiries of this nature to: clerks@atkinchambers.com.

Mathias Cheung



Call Date: 2015

mcheung@atkinchambers.com

Mathias' domestic and international commercial practice covers all areas of Chambers' work, including construction, engineering and infrastructure, energy and utilities, information technology, professional negligence, and international arbitration. In addition to these specialist areas, he has also gained experience in a wide range of commercial disputes, including cases on banking, insolvency, fraud, insurance, assignment, subrogation, conflicts of law and airline claims.

Mathias has recently been ranked by Chambers and Partners UK and by The Legal 500 (London Bar) as a leading junior in Construction Law and a rising star in Energy Law, "who is fast becoming a favorite among solicitors" and regarded as "one to watch" and "a very impressive junior who is clearly going places" in construction, infrastructure and commercial matters. As a native of Hong Kong, Mathias is fluent in both Cantonese and Mandarin, and he is therefore able to take instructions for cases involving Chinese-speaking parties and Chinese documentation in Hong Kong, Macau, Mainland China, Singapore, and other jurisdictions. He is recognized for his international practice by The Legal 500 (Asia Pacific) and is ranked as a Tier 1 "rising star" who "understands highly complex and technical subject matter and is very detail-oriented and organized in working with witnesses". Mathias also has working proficiency in French.

Mathias was the winner of the SCL Hudson Prize 2015 for his essay entitled 'Shylock's Construction Law: the Brave New Life of Liquidated Damages?' on the Supreme Court decision regarding penalty clauses. He has also published in the Construction Law Journal, International Construction Law Review, TECBAR Review and Construction Law newsletter.