Neutral Citation No: [2025] NIKB 47	*Ref:* **HUM12814**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **27/06/2025**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

KING'S BENCH DIVISION
(COMMERCIAL LIST)

_____

Between:

PIPERHILL CONSTRUCTION LIMITED

Plaintiff

and

NORTHERN IRELAND HOUSING EXECUTIVE

Defendant

_____

David Dunlop KC & Anna Rowan (instructed by McIldowies) for the Plaintiff
Robert McCausland (instructed by Cleaver Fulton Rankin) for the Defendant

_____

HUMPHREYS J

Introduction

[1] The plaintiff seeks summary judgment, pursuant to Order 14 of the Rules of the Court of Judicature (Northern Ireland) 1980, to enforce an adjudicator's award dated 14 April 2025 whereby it was determined that the defendant should pay to the plaintiff the sum of £725,568.35 plus VAT where applicable.

[2] The defendant seeks to resist enforcement of the award on the grounds that the adjudicator lacked jurisdiction to make the subject award.

The contract

[3] In August 2022 the plaintiff and the defendant entered into a contract for the refurbishment of social housing, known as 'CT0106 – EDRF Retrofit Programme 2022 – Lot 3.' The contract was in the form of the NEC4 Term Service Contract June 2017, with amendments January 2019, and with the parties' own amendments.

[4] The core contract clause 5 provides for monthly payments to the contractor, and by clause 13.11 any notice given for the purposes of clause 5 or as a pay less notice must be delivered by hand or sent by email and, on the same day, sent by first class post. Clause 13.7 requires notifications or certificates to be communicated separately from other communications.

[5] Clause 50.2.1 states that the contractor must submit an application for payment by 12 noon before the assessment date (defined as the third Thursday of each month). This application must state the amount which the contractor says is due and how it has been assessed. Under clause 51.1, the employer's service manager certifies a payment within 14 days of the assessment date, and each certified payment is made three weeks after the assessment date.

[6] Clause Y2.2 provides that the service manager's certificate is the notice of payment specifying the amount due at the payment due date and stating the basis on which this was calculated.

[7] Clauses 50.6 and Y2.3 both say that if a party intends to pay less than the notified sum, it must notify the other party no later than seven days before the final date for payment stating the amount considered to be due and the basis upon which that sum is calculated. Payments cannot be withheld unless such a pay less notice has been served.

[8] Clause W2.2 provides that a dispute arising under or in connection with the contract is referred to and decided by the adjudicator. Before the referral, a party gives a notice of adjudication to the other party "with a brief description of the dispute and the decision which it wishes the adjudicator to make" (clause W2.3). The contract then provides for a timetable for the conduct of the referral to adjudication.

[9] On 17 February 2025 the plaintiff issued an application for payment, no. 19, in the sum of £718,699.11 plus VAT where applicable. This was in respect of works carried out at two sites, namely Rooney's Meadow and Lurgantarry. On 6 March 2025 the defendant issued documents which purported to be two payment certificates and two pay less notices, accompanied by an employer's communication.

[10] Each of the pay less notices and payment certificates in respect of Rooney's Meadow certified the amount due to the plaintiff as being nil. The relevant documents for Lurgantarry stated the revised amount due as being £118,148.23.

[11] On 14 March 2025 a representative of the plaintiff company, Reece Kelly, sent an email in the following terms:

> "We dispute the contents of your purported pay less notice. We also dispute that your purported pay less notice was served in accordance with the Contract.

> Yesterday was the final date for payment in relation to our application for payment 19, and payment was not received. As such, a dispute has now crystallised as to its contents."

The adjudication

[12] On 21 March 2025 the plaintiff served a notice of adjudication. It stated, at paragraph 2.4:

> "The dispute concerns NIHE's failure to pay the notified sum specified in an application for payment issued by Piperhill. In short:
>
> (a) On 17 February 2025, Piperhill issued an application for payment in accordance with the requirements of the Contract;
>
> (b) On 6 March 2025, NIHE issued a single email containing two purported payment certificates, two purported pay less notices, and an "*Employers Communication.*" These documents were not served in accordance with the requirements of the Contract and are therefore invalid and of no effect.
>
> (c) In accordance with the Contract and the Construction Contracts (Northern Ireland) Order 1997 (as amended), the amount specified in Piperhill's application for payment is the notified sum and must be paid in full."

[13] The notice also set out, at paragraph 3.2, that the dispute arose when the NIHE failed to pay the notified sum, specified in the application for payment, on or before the final date for payment which was 13 March 2025.

[14] The redress sought in the notice was an order requiring payment of the notified sum, together with interest, and payment of the adjudicator's costs.

[15] On 22 March 2025 the Royal Institution of Chartered Surveyors appointed Mr Simon McKenny as adjudicator to determine the dispute.

[16] The plaintiff served a referral notice on 24 March 2025. It contended that the notices served by the defendant on 6 March 2025 were not valid and legally effective for the reason that they were not served in accordance with the provisions of clauses 13.11 and 13.7. Accordingly, it was stated, the amount specified in the application for payment was the notified sum and had to be paid in full by 13 March 2025.

[17] In its response to the referral, the NIHE made the case, at paragraph 8, that there were no actual defects in the notices themselves. Issue was joined with the plaintiff's case on service of the notices, and it was asserted that the plaintiff was estopped from relying on the strict terms of clause 13.11 and 13.7 in relation to the methods of service.

[18] The plaintiff served its reply on 4 April 2025, disputing the assertion that the notices were not defective. The express case was made that the notices failed to comply with clauses 50.6 and Y2.2, requiring the basis for the amount said to be due to be set out. It was asserted that there was no detail provided as to how NIHE arrived at its assessment and no basis for the plaintiff to understand how or why money was being withheld.

[19] In a rejoinder served on 8 April 2025, the defendant stated that it was not permissible for the plaintiff to now make the case that the notices were defective and that the adjudicator had no jurisdiction to determine the issue. In any event, it was reiterated, the notices were not defective.

[20] On 14 April 2025 Mr McKenny delivered his decision. He acknowledged that he was not empowered to determine the issue of his own jurisdiction but formed the view that he did have jurisdiction to decide whether the notices were invalid on the basis the contents did not comply with the contractual requirements. He found that no basis was set out for the calculation of how the sums said to be due, contrary to clauses 50.6 and Y2.2.

[21] In particular, the adjudicator stated, at paragraph [35]:

> "I consider however that the natural meaning of the phrase "served in accordance with requirements of Contract" is not limited in the manner suggested by the NIHE and must be read as relating to all requirements of the Contract including those which relate to the content of the Notices…This is particularly the case given the broad description of the dispute in the opening sentence of paragraph 2.4."

[22] Mr McKinney rejected the plaintiff's arguments in relation to clauses 13.7 and 13.11 and the manner in which the notices were provided. He found these to be directory requirements only, noting that there was nothing in the contract to the effect that any failure to comply would render notices invalid. In relation to the contents issue, he found that there was a failure to comply with the contractual terms and this did render the pay less notices and certificates invalid and of no contractual effect.

[23] For this reason, the amount claimed in the application for payment became the notified sum and the adjudicator ordered that the defendant pay this to the plaintiff, together with interest and the adjudicator's fees.

The statutory framework

[24] The 2011 amendments to the 1997 Order provide for the statutory regulation of payment notices in the construction industry. Article 9A provides:

> "(1) A construction contract shall, in relation to every payment provided for by the contract—
>
> (a) require the payer or a specified person to give a notice complying with paragraph (2) to the payee not later than 5 days after the payment due date, or
>
> (b) require the payee to give a notice complying with paragraph (3) to the payer or a specified person not later than 5 days after the payment due date.
>
> (2) A notice complies with this paragraph if it specifies—
>
> (a) in a case where the notice is given by the payer—
>
> (i) the sum that the payer considers to be or to have been due at the payment due date in respect of the payment, and
>
> (ii) the basis on which that sum is calculated;
>
> (b) in a case where the notice is given by a specified person—
>
> (i) the sum that the payer or the specified person considers to be or to have been due at the payment due date in respect of the payment, and
>
> (ii) the basis on which that sum is calculated.
>
> (3) A notice complies with this paragraph if it specifies—
>
> (a) the sum that the payee considers to be or to have been due at the payment due date in respect of the payment, and
>
> (b) the basis on which that sum is calculated.

(4) For the purposes of this Article, it is immaterial that the sum referred to in paragraph (2)(a) or (b) or (3)(a) may be zero.

(5) If, or to the extent that, a contract does not comply with paragraph (1), the relevant provisions of the Scheme apply.

(6) In this and the following Articles, in relation to any payment provided for by a construction contract—

"payee" means the person to whom the payment is due;

"payer" means the person from whom the payment is due;

"payment due date" means the date provided for by the contract as the date on which the payment is due;

"specified person" means a person specified in or determined in accordance with the provisions of the contract."

[25] Article 9B states:

"(1) This Article applies in a case where, in relation to any payment provided for by a construction contract—

(a) the contract requires the payer or a specified person to give the payee a notice complying with Article 9A(2) not later than 5 days after the payment due date, but

(b) notice is not given as so required.

(2) Subject to paragraph (4), the payee may give to the payer a notice complying with Article 9A(3) at any time after the date on which the notice referred to in paragraph (1)(a) was required by the contract to be given.

(3) Where, pursuant to paragraph (2), the payee gives a notice complying with Article 9A(3), the final date for payment of the sum specified in the notice shall for all purposes be regarded as postponed by the same number of days as the number of days after the date referred to in paragraph (2) that the notice was given.

(4) If—

(a) the contract permits or requires the payee, before the date on which the notice referred to in paragraph (1)(a) is required by the contract to be given, to notify the payer or a specified person of—

(i) the sum that the payee considers will become due on the payment due date in respect of the payment, and

(ii) the basis on which that sum is calculated, and

(b) the payee gives such notification in accordance with the contract,

that notification is to be regarded as a notice complying with Article 9A(3) given pursuant to paragraph (2) (and the payee may not give another such notice pursuant to that paragraph)"

[26] Article 10 of the 1997 Order then imposes the obligation to pay the notified sum:

"(1) Subject as follows, where a payment is provided for by a construction contract, the payer must pay the notified sum (to the extent not already paid) on or before the final date for payment.

(2) For the purposes of this Article, the "notified sum" in relation to any payment provided for by a construction contract means—

(a) in a case where a notice complying with Article 9A(2) has been given pursuant to and in accordance with a requirement of the contract, the amount specified in that notice;

(b) in a case where a notice complying with Article 9A(3) has been given pursuant to and in accordance with a requirement of the contract, the amount specified in that notice;

(c) in a case where a notice complying with Article 9A(3) has been given pursuant to and in accordance

with Article 9B(2), the amount specified in that notice.

(3) The payer or a specified person may in accordance with this Article give to the payee a notice of the payer's intention to pay less than the notified sum.

(4) A notice under paragraph (3) must specify—

(a) the sum that the payer considers to be due on the date the notice is served, and

(b) the basis on which that sum is calculated.

It is immaterial for the purposes of this paragraph that the sum referred to in sub-paragraph (a) or (b) may be zero.

(5) A notice under paragraph (3)—

(a) must be given not later than the prescribed period before the final date for payment, and

(b) in a case referred to in paragraph (2)(b) or (c), may not be given before the notice by reference to which the notified sum is determined.

(6) Where a notice is given under paragraph (3), paragraph (1) applies only in respect of the sum specified pursuant to paragraph (4)(a).

(7) In paragraph (5) "prescribed period" means—

(a) such period as the parties may agree, or

(b) in the absence of such agreement, the period provided by the Scheme.

(8) Paragraph (9) applies where in respect of a payment—

(a) a notice complying with Article 9A(2) has been given pursuant to and in accordance with a requirement of the contract (and no notice under paragraph (3) is given), or

(b) a notice under paragraph (3) is given in accordance with this Article,

but on the matter being referred to adjudication the adjudicator decides that more than the sum specified in the notice should be paid.

(9) In a case where this paragraph applies, the decision of the adjudicator referred to in paragraph (8) shall be construed as requiring payment of the additional amount not later than—

(a) 7 days from the date of the decision, or

(b) the date which apart from the notice would have been the final date for payment,

whichever is the later.

(10) Paragraph (1) does not apply in relation to a payment provided for by a construction contract where—

(a) the contract provides that, if the payee becomes insolvent the payer need not pay any sum due in respect of the payment, and

(b) the payee has become insolvent after the prescribed period referred to in paragraph (5)(a).

(11) Paragraphs (2) to (5) of Article 12 apply for the purposes of paragraph (10) of this Article as they apply for the purposes of that Article."

[27] The contract in this case is compliant with Article 9A(1)(b) of the 1997 Order. As a result, if the payee gives the requisite notice, and the payer fails to serve a valid pay less notice under the provisions of the contract and Article 10(3), the payer becomes liable to pay the sum in the payee's notice.

[28] The policy of the legislation is to ensure that payments are made to contractors in the construction industry in a timeous manner and if there are disputes, these are identified at an early stage and can be swiftly referred to adjudication. If the payer fails to issue a pay less notice, even if he has valid grounds for a dispute, he must pay the sum claimed by the payee and argue about it later.

Jurisdiction – the legal principles

[29] It is well established that adjudicators' awards will be enforced through the courts by the summary judgment mechanism, even when they are wrong in fact or

law. It is only in limited circumstances that a court will refuse to enforce such an award and one of those circumstances is where the adjudicator lacked jurisdiction.

[30] The right to refer a matter to adjudication only arises where a dispute has crystallised under a construction contract by virtue of the provisions of article 7 of the Construction Contracts (Northern Ireland) Order 1997 ('1997 Order').

[31] In *Amec Civil Engineering v Secretary of State for Transport* [2004] EWHC 2339 (TCC), Jackson J commented that the mere notification of a claim does not automatically and immediately give rise to a dispute. It does not arise unless and until it emerges that the claim is not admitted.

[32] In *Carillion Construction Ltd v Devonport Royal Dockyard Ltd* [2006] BLR 15, the Court of Appeal observed:

> "85. The objective which underlies the Act and the statutory scheme requires the courts to respect and enforce the Adjudicator's decision unless it is plain that the question which he has decided was not the question referred to him or the manner in which he has gone about his task is obviously unfair. It should be only in rare circumstances that the courts will interfere with the decision of an adjudicator. The courts should give no encouragement to the approach adopted by DML in the present case; which (contrary to DML's outline submissions…) may, indeed aptly be described as "simply scrabbling around to find some argument, however tenuous, to resist payment."
>
> 86. It is only too easy in a complex case for a party who is dissatisfied with the decision of an Adjudicator to comb through the Adjudicator's reasons and identify points upon which to present a challenge under the label of 'excess of jurisdiction' or 'breach of natural justice.' It must be kept in mind that the majority of Adjudicators are not chosen for their expertise as lawyers. Their skills are as likely (if not more likely) to lie in other disciplines. The task of the Adjudicator is not to act as arbitrator or judge. The time constraints within which he is expected to operate are proof of that. The task of the Adjudicator is to find an interim solution which meets the needs of the case. Parliament may be taken to recognise that, in the absence of an interim solution, the contractor (or sub-contractor) or his sub-contractors will be driven into insolvency through a wrongful withholding of payments properly due. The statutory scheme provides a means of meeting the

> legitimate cash-flow requirements of contractors and their sub-contractors. The need to have the 'right' answer has been subordinated to the need to have an answer quickly. The Scheme was not enacted in order to provide definitive answers to complex questions. Indeed, it may be open to doubt whether Parliament contemplated the dispute in evolving difficult questions of law would be referred to adjudication under the statutory scheme; or whether such disputes are suitable for adjudication under the Scheme. We have every sympathy for an adjudicator faced with the need to reach a decision in the case like the present.
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> 87. In short, in the overwhelming majority of cases, the proper course to the party who is unsuccessful in an adjudication under the Scheme must be to pay the amount that he has been ordered to pay by the Adjudicator. If he does not accept the adjudicator's decision is correct (whether on the facts or in law), he can take legal or arbitration proceedings in order to establish the true position. To seek to challenge the Adjudicator's decision on the ground that he has exceeded his jurisdiction or breached the rules of natural justice (save in the plainest cases) is likely to lead to a substantial waste of time and expense — as, we suspect, the costs incurred in the present case will demonstrate only too clearly."

[33] In *Fastrack Contractors Ltd v Morrison Construction* [2000] BLR 168, Judge Thornton QC considered the identification of the dispute which had been referred to the adjudicator:

> "…During the course of a construction contract, many claims, heads of claim, issues, contentions and causes of action will arise…A vital and necessary question to be answered, when a jurisdictional challenge is mounted, is what was actually referred? That involves a careful characterisation of the dispute referred to be made. This exercise will not necessarily be determined solely by the wording of the notice of adjudication since this document, like any commercial document having contractual force, must be construed against the underlying factual background from which it springs and which will be known to both parties."

[34] It is necessary therefore for an adjudicator to consider the scope of what has been referred to him for determination. The decision of Akenhead J in *Cantillon v Urvasco* [2008] EWHC 282 (TCC) arose out of claims for an extension of time and

related loss and expense. It was argued by the employer that the decision was unenforceable as the adjudicator had trespassed outside the ambit of the dispute which was referred to him. The learned judge commented:

> "(a) Courts (and indeed adjudicators and arbitrators) should not adopt an over legalistic analysis of what the dispute between the parties is.
>
> (b) One does need to determine in broad terms what the disputed claim or assertion (being referred to adjudication or arbitration as the case may be) is.
>
> (c) One cannot say that the disputed claim or assertion is necessarily defined or limited by the evidence or arguments submitted by either party to each other before the referral to adjudication or arbitration.
>
> (d) The ambit of the reference to arbitration or adjudication may unavoidably be widened by the nature of the defence or defences put forward by the defending party in adjudication or arbitration." (para [55])

[35] The court made it clear that it was open to a respondent to raise any defence, including set-off, which he may have against the referring party's claim. Equally, a referring party was not limited to the arguments and evidence put forward by it prior to the referral to adjudication. Akenhead J concluded:

> "The adjudicator…must then resolve the referred dispute, which is essentially the challenged claim or assertion but can consider any argument, evidence or other material for or against the disputed claim or assertion in resolving that dispute."

[36] The defendant in this case accepts that it was a party to a construction contract and that a dispute had crystallised. It contends that the adjudicator's decision in relation to the compliance of the notices with the contractual requirements was outwith the scope of the dispute which was referred to him.

[37] As Coulson J stated in *Penten Group v Spartafield* [2015] EWHC 317, an adjudicator derives his jurisdiction from the terms of the notice of adjudication. One must therefore construe this document to determine the scope of what has been referred.

Consideration

[38] In the instant case, the existence of a crystallised dispute is established by the email of 14 March 2025. The plaintiff has made an application for payment which has been met by pay less notices which were disputed. As that email makes clear, the plaintiff took issue with both the contents of the notices and the validity of service.

[39] Paragraph 2.4 of the notice of adjudication states that the dispute concerns the failure to pay the notified sum specified in the application for payment. It then says that "in short", "these documents were not served in accordance with the requirements of the Contract and are therefore invalid and of no effect."

[40] On the defendant's analysis, the scope of the dispute referred to the adjudicator was limited to the issue of the service of the relevant documents and the operation of clause 13.7 and 13.11. The plaintiff says that the dispute encompassed the validity of the notices and certificates and, therefore, whether the defendant was liable to pay the sum in the application for payment.

[41] It is common case that the adjudicator's jurisdiction derives from the notice of adjudication and not from some antecedent or subsequent exchange or document. Like any document of this nature, it is to be construed in accordance with established principles. The court must ascertain what a reasonable person, with all the background knowledge available to the parties at the time, would have understood the words in the document to mean.

[42] The underlying factual background in this case, known to both parties, was evident from the email of 14 March 2025. The plaintiff clearly disputed both the contents of the pay less notices and their service.

[43] The fundamental dispute referred to in the notice of adjudication was the failure by the defendant to pay the notified sum. The legal obligation to pay this sum is set out in Article 10 of the 1997 Order. It arises when a payee has served the requisite notice of payment, unless the payer has served a valid pay less notice under Article 10(3). In order to be effective, it must state the basis upon which the figure in the pay less notice was calculated. If a valid pay less notice is served, then the obligation to pay the notified sum is limited to the figure in that notice by Article 10(6). As such, the validity of the pay less notices was critical to the adjudicator's decision since if these notices were legally ineffective, the plaintiff was entitled to payment of the sum claimed in the application for payment.

[44] The plaintiff's referral was focussed squarely on the issue of service of the documents. However, the dispute referred was not limited to this question – it concerned the failure to pay the notified sum. In order to determine this issue, the adjudicator had to consider, as a matter of law, whether the pay less notices which emanated from the defendant complied with the relevant contractual provisions and the terms of the 1997 Order.

[45] Even if the referral were limited in the manner suggested by the defendant, it put the validity of the notices in issue by making the express case that there were no defects in the notices in the course of its response to the referral. It was entitled, of course, to advance any defence open to it but, as the authorities recognise, this may cause the ambit of an adjudication to be unavoidably widened.

[46] As a matter of construction therefore, I find that the notice of adjudication encompassed the issue of the contents of the pay less notices and therefore their validity. In the alternative, the scope of the adjudication was widened by the defendant's response and the issue of validity therefore fell for determination. On either basis, this was a matter which came within the scope of the dispute which the adjudicator was obliged to decide.

True value adjudication

[47] The defendant also advanced a case, not pursued at hearing, that the court should stay the enforcement of any award pending the outcome of a 'true value' adjudication which the defendant intends to commence imminently. Such an argument is wholly without merit and runs contrary to the decision of O'Farrell J in *Bexheat v Essex Services Group* [2022] EWHC 936 (TCC) at para [76]. As this judgment illustrates, the established line of authority is that a party to a construction contract must comply with its obligation to pay a sum ordered in an adjudication before commencing a true value adjudication.

Conclusion

[48] For the reasons outlined, the adjudicator had jurisdiction to make the decision in relation to the validity of the contents of the notices. The adjudication award must be enforced and therefore I enter judgment for the plaintiff as follows:

Principal Sum	£718,669.11
Interest to today's date	£25,872.15
VAT as applicable	£143,733.82
TOTAL	**£888,275.08**

[49] I also order the defendant to pay the plaintiff's costs to be taxed in default of agreement.