



Neutral Citation Number: [2026] EWHC 1796 (TCC)

Case No. HT-2026-LDS-000008

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

Leeds Combined Court Centre
1 Oxford Row, Leeds, LS1 3BG

Date: 16/07/2026

Before :

THE HONOURABLE MR JUSTICE CONSTABLE

Between:

BDP CONSTRUCTION LIMITED

Claimant

-and-

CYGNET BEHAVIOURAL HEALTH LIMITED

Defendant

Adam Beaumont (instructed by **MD Law**) for the **Claimant**
William Lacey (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the
Defendant

Hearing date: 7 July 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 16 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Constable:

Introduction

1. This is the Claimant's application for summary judgment to enforce the decision of an adjudicator ('the Adjudicator') dated 9 March 2026, arising out of a dispute concerning the construction of a hospital at 140 Wolverhampton Road, Wolverhampton. The Claimant, BDP Construction Limited ("BDP"), was engaged by the Defendant, Cygnet Behavioural Health Limited ("Cygnet"), under an amended JCT Design and Build Contract 2016.
2. The adjudication concerned Cygnet's claims to retain monies on account of alleged liquidated damages and defects, and BDP's claim for the release of retention monies. By his decision dated 9 March 2026, the Adjudicator determined that Cygnet was not entitled to recover liquidated damages, had failed to establish its defects claim, and was required to pay the substantial balance of the retention to BDP. He further ordered Cygnet to bear a share of his fees. The sums awarded have not been paid.
3. BDP seeks to enforce the adjudicator's decision. Cygnet contends that the Adjudicator's treatment of the liquidated damages issue involved a jurisdictional excess and/or a material breach of natural justice, such that enforcement should be refused.

The Facts

4. The parties entered into a contract under which BDP was engaged to design and construct a hospital development for Cygnet. Practical completion was achieved on 18 July 2024.
5. On 8 July 2025 Cygnet sent BDP a "Notice of Liquidated Damages Deductions" which stated that (1) the Contract Completion date was 29 February 2024, (2) Practical Completion was 18 July 2024 and (3) the intervening period of 141 days attracted (4) liquidated damages at £1,000 per day (equating to a total of £141,000.00) ('the LAD Claim'). On 9 July 2025 Cygnet provided BDP with a notice that it had identified defects in the Works and required BDP's proposal of making good, pursuant to clause 2.35 of the Contract ('the Defects Claim'). The Defects Claim is not relevant to the matters presently in dispute.
6. On 4 September 2025 BDP sent Cygnet a letter in response to the LAD Claim and Defects Claim. BDP argued that the LAD Claim was invalid as the notice provided did not conform to the Contract requirements, including (1) stating the incorrect Completion Date, (2) stating the incorrect daily rate; and (3) the entitlement to any such deductions on the basis of delay was refuted as numerous delays were caused by Cygnet entitling it to an extension of time.
7. On 19 January 2026 BDP served a Notice of Intention to Refer to Adjudication ('the Notice'). This asserted that the Contract between the parties was formed of:

(1) A JCT Design and Build Contract 2016;

- (2) The amendments provided on or around 13 March 2024 and accompanying the Responding Party's letter, dated 13 March 2024 ('the BDP Amendments');
- (3) Appendices 1-8 to the Contract Particulars.
8. The BDP Amendments provided for a completion date of 26 April 2024 and liquidated damages at £14,500 per week. The Contract was not executed. The Amendments included the following clause 2.29.2:
- "2.29.2 A notice from the Employer under clause 2.29.1 shall state that for the period between the Completion Date and the date of practical completion of the Works (or the relevant Section) by the Contractor, or the date of termination of the Contractor's employment under this Contract (whichever is earlier):*
- 2.29.2.1 he requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or lesser rate stated in the notice, in which event the Employer may recover the same as a debt; and/or*
- 2.29.2.2 that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Contractor."*
9. The Notice described the position of the parties by reference to the contents of the letters of 8 July 2025 and 4 September 2025, as described above. It then sought the following redress in respect of the LAD Claim:
- "13.1.1. The LAD Claim is invalid and does not allow the Responding Party to claim liquidated damages as so claimed;*
- 13.1.2. The Responding Party is not entitled to claim liquidated damages as specified in its LAD Claim in respect of 141 days of delay;*
- 13.1.3. The Referring Party is entitled to an extension of time of 141 days to the Completion Date, or some other period as the Adjudicator finds appropriate."*
10. On 22 January 2026 the Royal Institution of Chartered Surveyors appointed the Adjudicator.
11. The Referral Notice was served on 23 January 2026. In the usual way, this expanded upon the Notice. It included legal submissions setting out the requirement for a party seeking liquidated damages to demonstrate that it has satisfied the contractual provisions for doing so, and quoting clause 2.29. In asserting that the notice provided by Cygnet was invalid, it pointed to what it contended was the citing of an incorrect Completion Date, incorrect duration of calculated delay and a failure to have specified whether the damages were to be recovered as a debt or as a deduction from amounts due. It did not expressly repeat the allegation in the Notice that the notice was incorrect in using £1,000 per day as the rate. The Referral repeated the redress sought.

12. On 6 February 2026 Cygnet provided its Response (the “Response”). The Response asserted that:

(1) The contract was entered into on around 27 September 2022, stating

“Both parties acknowledge that a JCT Design & Build 2016 contract amended by a form of Cygnet’s standard form amendments applies to the Works. However, the parties dispute which version applies and, critically, the Date for Completion and the rate of applicable Liquidated Damages (“LADs”)”;

(2) The correct version of the contract amendments applicable to the Works were provided to BDP around 27 September 2022. The relevant document was uploaded to Viewpoint (a document viewing system) by Cygnet, shared via a link and the Activity Log had records of the document being downloaded externally. It was understood by Cygnet that this was BDP downloading the document externally;

(3) pursuant to the terms of the 27 September 2022 contract documents:

(a) The completion date was 29 February 2024;

(b) The liquidated damages were £1,000.00 per day;

(4) Cygnet did not recognise the version of the contract put forward by BDP in the Referral *“and nothing in this Response should be taken as an acceptance by the Responding Party of BDP’s alternative version”*. Cygnet had no record of the documents said by BDP to have been forward on 13 March 2024;

(5) the contemporaneous project record supported Cygnet’s position that the contract Date for Completion is 29 February 2024, citing various documents such as valuations, payment notices, progress minutes and a Programme.

13. The Reply stated that:

“It is correct that the parties dispute which version of the JCT Design & Build 2016 applies and governs the parties’ relationship. BDP repeats its position set out in the Referral that the version is that sent by Cygnet to BDP on or around 13 March 2024, accompanied with a covering letter, and was accepted by BDP by way of undertaking the works.”

14. BDP relied on different contemporaneous documents from the project supporting its position.

15. A Rejoinder and Surrejoinder were served, (characteristically) adding little to the debate.

16. The Adjudicator's Decision was issued on 9 March 2026. This identified the relevant dispute between the parties variously as follows:

“6. BDP and CBH disagree; (i) the Contract Completion Date said to be 26th April 2024 by BDP and 29th February 2024 by CBH and (ii) the Liquidated and Ascertained Damages said to be £14,500.00 per week by BDP and £1,000,00 per calender [sic] day by CBH....

...

11. It is plainly clear to me that the dispute referred to me surrounds; (i) liability or otherwise of BDP to pay liquidated damages together with the costs associated with correcting defective works, (ii) repayment or otherwise of retention, (iii) BDP extension of time entitlement and (iv) the cost claimed by CBH relating to a Health and Safety file.

...

18. From the submissions I have received the following issues fall to be determined:
(i) Contract Date for Completion of Works?
(ii) Contract Rate for Liquidated Damages?...”

17. The Adjudicator considered the question of the Completion Date, and by reference to contemporaneous records, determined that the date was 29 February 2024. When dealing with the rate question at paragraphs 24-29, the Adjudicator observed:

“26. It seems to me that both BDP and CBH share common ground that an agreed contract has not been executed. I accept what BDP advance in that a contract agreement does not need to be executed for the intended contract agreement to apply. Having said that in such circumstances there must be clear and unequivocal evidence as to what forms the intended contract agreement. It is plainly clear to me that the positions of BDP and CBH are totally polarised and as such there is no agreement at all as to what forms the intended contract agreement.”

18. Unsurprisingly, neither counsel defended the third sentence as representing an orthodox understanding of the civil standard of proof. The last sentence is ambiguous: did the Adjudicator mean the polarised position meant that a contractual agreement did not exist, or was he merely recording that the parties did not presently agree what the contractual position was? In any event, the Adjudicator went on recording the evidential difficulties, as he saw it, faced by each side in establishing that their document had in fact been transmitted to the other side. He then concluded:

“28. In consideration of para. 27 above together with all the sub-paras. neither BDP or CBH has persuaded me that BDP and CBH have agreed to include in the Contract liquidated damages at the rate of £14,500.00 per week (BDP) or £1,000.00 per calender [sic] day (CBH).

29. I Decide that BDP or CBH have not evidenced the rate for liquidated damages agreed by BDP and CBH or intended to be included in the Contract.”

19. In relation to the extension of time, the Adjudicator determined that BDP had not evidenced causation and as such has not proven that BDP was entitled to the extension of time claimed or any other extension of time. In relation to liquidated damages, the Adjudicator determined:

“In consideration of paras. 24 to 29 above and that CBH has not adjusted the Contract Completion Date for any delay I find that CBH is not entitled to claim the liquidated damages claimed or any other amount of liquidated damages.

I Decide that CBH is not entitled to claim liquidated damages at the rate and amount claimed or any other amount.”

The Law

20. Mr Lacey and Mr Beaumont were in agreement that, as a starting point:

- (1) The courts take a robust approach to adjudication enforcement, enforcing the decisions of adjudicators by summary judgment regardless of errors of procedure, fact or law, unless the adjudicator has acted in excess of their jurisdiction, or there has been a serious breach of natural justice (Bexheat Limited v Essex Services Group Limited [2022] EWHC 936 (TCC) at [38]);
- (2) the decision of an Adjudicator will be enforced 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 (Carillion Construction Limited v Devonport Royal Dockyard Limited [2005] EWCA Civ 1358 [85-87]).

21. As to questions of jurisdiction, the following relevant principles can be stated:

- (1) The starting point when deciding an adjudicator’s jurisdiction will be the Notice, any defences available to the defendant will also be included within that jurisdiction (Pilon Limited v Breyer Group Plc [2010] EWHC 837 (TCC) at [25]);
- (2) upon the parties agreeing a particular fact or basis upon which a determination should be predicated, the adjudicator will exceed their jurisdiction if they decide the dispute contrary to that agreed position (Shimizu Europe Ltd v LBJ Fabrications Ltd [2003] BLR 381 and Primus Build Limited v Pompey Centre Limited [2009] EWHC 1487 (TCC)).

22. In relation to natural justice, the following relevant principles can be stated:

- (1) In order for there to be a breach of natural justice, the adjudicator must have strayed significantly outside the ambit of the materials and matters advanced before him

without giving the parties an opportunity to comment (Stellite Construction Limited v Vascroft Contractors Limited [2016] EWHC 792 (TCC) at [59] and [80];

- (2) There is no rule that an adjudicator must decide a case only by accepting the submissions of one party or the other. The adjudicator can reach a decision on a point of importance on the material before them on a basis for which neither party contended, provided that the parties were aware of the relevant material and the issue had been canvassed by the parties (Roe Brickwork Limited v Wates Construction Limited [2013] EWHC 3417 (TCC) (at [24]));
- (3) Any purported breach of natural justice has to be shown to be significant or causative of potential prejudice (i.e. material). Breaches of the rules will be material in cases where the adjudicator has failed to bring to the attention of the parties a point or issue which they ought to be given the opportunity to comment upon if it is one which is either decisive or of considerable potential importance to the outcome of the resolution of the dispute and is not peripheral or irrelevant. Cantillon Ltd v Urvasco Ltd [2008] EWHC 282 at [57];
- (4) There may be circumstances in which it is possible to demonstrate on summary judgment that the answer the adjudicator arrived at was so obviously correct, that the failure to have allowed the point to be properly ventilated is not material: permitting a party to make submissions could not have changed the outcome. However, generally, it is sufficient for a party to show that the substance of the point with which they were deprived of the opportunity to engage with was properly arguable i.e. it had reasonable prospects of success. Corebuild Limited v Cleaver [2019] 186 ConLR 203.

Jurisdiction

23. A suitable starting point for discussion is the analogy proffered by Mr Lacey in his written submissions that was the source of some debate during oral submissions. He suggested that two parties might ask an adjudicator to resolve their dispute about the colour of a building. The Notice of Adjudication calls for the adjudicator to decide whether the building is red or yellow. The referring party argues for red, and the responding party argues for yellow. Mr Lacey then submitted that there are two or three possible answers open to the adjudicator: (1) red; (2) yellow; or, in appropriate circumstances, (3) somewhere between red and yellow – for example, orange. The adjudicator might even form the provisional view that the correct answer is (4) purple, in which case the rules of natural justice require him or her to invite further submissions from the parties on whether the building is, arguably, purple. What the adjudicator cannot do, Mr Lacey says, is to give an answer such as: (5) the parties have not persuaded me that the building exists.
24. At the height of his argument, Mr Lacey suggested that the Adjudicator's determination in this case amounted to a finding that the building did not exist. Mr Lacey characterised the Adjudicator as having decided that there was no mechanism for LADs in the

Contract at all, in circumstances where both sides had agreed that (a) there was a mechanism and (b) the only dispute was as to the applicable date and rate. This argument was reflected in his drafting of the first ‘issue’ I have to decide: whether there was a dispute between the parties as to whether their contract made provision for liquidated damages to be paid in the event of delay. I do not agree that this characterisation of the dispute or the Decision is correct: the Adjudicator focussed upon the dispute as set out at (b), which Mr Lacey accepts as existing. To revert to Mr Lacey’s analogy, the adjudicator found that he was not persuaded that the building was either red or yellow. He made no wider finding as to the existence of the building, nor concluded that it was purple.

25. Perhaps in recognition of this, Mr Lacey accepted in oral submissions that in order to succeed on his jurisdictional point, it was necessary for him to establish that the parties had agreed a premise that the correct liquidated damages rate was, and could only be, either £1,000 per day or £14,500 per week; put another way, the parties agreed that there was a binary outcome, and the jurisdiction of the Adjudicator was limited to choosing between the two outcomes. If there were such an agreement, it can more readily be seen that opting for a third outcome (i.e. that neither case was proved) would be an excess of jurisdiction, or, relatedly, a breach of natural justice if the possibility of the third outcome being right had not been canvassed with the parties in advance of determination.
26. In order to establish the existence of such an agreement, Mr Lacey pointed to (1) the fact that there were only two competing contentions; (2) the contention within the Reply that the dispute was ‘which’ of the competing arguments was correct; and (3) the absence of any language broadening the dispute to include, for example, ‘such other rate as the Adjudicator may determine’.
27. This is insufficient to establish an agreed ringfence to the jurisdiction of the Adjudicator so as to exclude the possibility of a finding that neither side had established their case. The starting point is that jurisdiction was not expressly defined by reference to a binary choice between two outcomes: the redress the Notice sought was a declaration of invalidity of the notice of deduction of LADs. The argument in support of that redress included the contention that the rate contended for by Cygnet was not the contractually agreed rate. BDP bore the burden of establishing that its contended for rate (£14,500 per week – ironically a higher rate) was the contractually agreed rate. Cygnet contended that the rate was £1,000. In the ordinary way, it bore an evidential burden in respect of that contention. The failure by BDP to establish its case did not necessitate a finding that Cygnet had discharged the evidential burden upon it.
28. It is ordinarily open to an Adjudicator, in assessing the evidence, to conclude that a party has not proved that which it has asserted. It would require clear words in the documents by which the jurisdiction of the Adjudicator is established to remove from the Adjudicator the potential of finding, in the ordinary way, that a party has not proven its case. An agreement between the parties which restricts an Adjudicator’s jurisdiction may come about by assertion followed by admission. This was the case in Shimizu, in

which the referral stated that the terms were as per those in a letter of intent, and this proposition was expressly accepted by the other party in their response. The contractual terms were therefore not in issue and as a result the adjudicator therefore did not have jurisdiction to decide the matter on different contractual terms to those set out in the letter of intent, which he did.

29. However, there was no agreed basis in this case. Cygnet did not state that, if it was wrong on its case, it accepted the rate was £14,500; indeed, it asserted in terms that nothing in this Response should be taken as an acceptance by the Responding Party of BDP's alternative version. Its evidence was that it had never seen the document on which BDP relied. Mr Beaumont may be right that Cygnet did not make such a concession in the alternative because acceding to BDP's case could have had implications as to the validity of the notice irrespective of the contractual right. Whether this is so is, of course, irrelevant: the fact is that there was nothing which bound the Adjudicator to determine that the rate was that contended for by BDP if the Adjudicator determined that Cygnet had not proven that it was as it contended for.
30. Similarly, BDP did not accept that if it was wrong about its contract formation, it accepted Cygnet's case: its evidence was also that it had never seen the document relied upon by Cygnet. The mere fact that each party had single, opposing contentions might well have limited (at least without notice to the parties) the Adjudicator from reaching a positive answer contended for by neither (e.g. that the rate was £10,000 per month); but it did not preclude the Adjudicator from finding that each side's contentions about the other's case was correct. Far from exceeding his jurisdiction, he answered the question asked precisely in accordance with *both* sides' case: he effectively accepted what BDP said about Cygnet's case, and accepted what Cygnet said about BDP's case. This did not amount to a finding that, to return to Mr Lacey's analogy, the building did not exist; merely that neither side had persuaded him of what the colour of the building was. That finding then had implications for the validity of the notice of LADs.
31. By way of metaphorical footnote, I add that although the Adjudicator used infelicitous language when describing what he needed to be satisfied of in order to establish the existence of an agreement, assuming that he did impose some higher burden of proof on the parties, that would have been at most an error of law which does not amount to a basis upon which to resist enforcement. It was not an error in relation to jurisdiction; it was an error in answering the question the Adjudicator had jurisdiction to decide.

Natural Justice

32. The first way Mr Lacey put his natural justice argument was that, in circumstances where there was an agreed basis upon which the determination should be made, if the Adjudicator was intending to depart from the agreement, he ought properly to have notified the parties before doing so. This argument, Mr Lacey accepted, was predicated on his prior argument as to there having been such an agreement (and in a sense, therefore, strictly unnecessary: had there been such an agreement, the jurisdiction argument would have succeeded and the natural justice argument would be otiose). No

such agreement existed. This is fatal to this, first, way of putting the natural justice argument.

33. A second way of putting the case stood independently from the question of an agreement. Mr Lacey contended that, notwithstanding the fact that it was open to him to do so, it was incumbent upon the Adjudicator to inform the parties in advance that he was going to reject both sides' case on what the appropriate rate was.
34. I do not agree that, in circumstances where the Adjudicator was merely determining that neither party had come up to proof in respect of its respective contentions, he was required to flag this up in advance and to give the parties an opportunity to comment. He was not, as I have already indicated, proposing to identify a different, positive answer to the question he had been asked for which neither side contended (the purple house). Similarly, he was not relying on evidence which had not already been canvassed by the parties; he was, instead, rejecting evidence that had been canvassed. The failure to have reverted to the parties was not a breach of natural justice.
35. In any event, even if I am wrong about this, this would not have been material. Mr Askham, a Partner at CMS Cameron McKenna Nabarro Olswang LLP gave the following limited evidence on behalf of Cygnet, in respect of materiality:

"Had they been afforded such an opportunity, they would plainly have confirmed that the Adjudicator was not required to address whether or not there was an LADs mechanism in the contract, as the parties had already agreed there was such a mechanism (with the dispute around the validity of notices and the amount of applicable LADs).

It follows that the Adjudicator's breach of natural justice has had a material impact on the outcome of the Decision."

36. For the reasons already given, the characterisation of finding that no mechanism existed is not correct. Had Cygnet reacted in the way suggested having been given advance notice of the finding, the Adjudicator would have been entitled to respond that the characterisation of his decision was incorrect and he did not intend to change course.
37. Mr Lacey developed a different argument in respect of materiality in his written and oral submissions. He contended, first, that the Adjudicator should have invited their submissions as to whether (a) he should be released by consent from dealing with that issue, or (b) they could offer him further assistance in the form of additional submissions, witness statements, documents, or solutions. This argument demonstrates neatly why it was not a breach of natural justice not to have reverted to the parties: the submissions and evidence already ran through to a Surrejoinder. The parties had said, one must assume, everything they thought relevant to prove their respective cases. Not only was the Adjudicator not obliged to give the parties a yet further opportunity, in the context of materiality it is noticeable that Cygnet does not provide an indication of what further evidence it would have submitted had it been given the chance.

38. Secondly, Mr Lacey contends that Cygnet would have submitted that the Adjudicator could adopt the solution provided by the JCT Contract itself, in relation to situations where there is uncertainty about the intended contractual rate of LADs: Clause 2.29.2.1 (which both parties agreed had been successfully incorporated into the Contract) states that the employer can put in a notice stating that it requires the contractor to pay LADs “*at the rate stated in the Contract Particulars, or at the lesser rate stated in the notice*”. Mr Lacey argues that this offered the Adjudicator a clean and straightforward solution rooted in the undisputed wording of the Contract: i.e. even if the rate was £14,500, the employer was entitled to state a different, lower rate in the notice, and hence the notice (which stated £1,000 per day) remained valid. For the purposes of materiality, Mr Lacey contends that the Court does not have to conclude that this argument would have been acceded to, merely that it had reasonable prospects of success (on the basis of Corebuild).
39. This argument would not have had a reasonable prospects of success. It is plainly wrong. The Adjudicator had concluded that neither had established what the contractually agreed rate was. In these circumstances, both conceptually and numerically, it is impossible for there to be a ‘lesser’ rate for the purposes of the Clause. Clause 2.29.2 would not have saved Cygnet, even if they had been given the opportunity to make the submission.

Conclusion

40. The Adjudicator had jurisdiction to resolve the dispute in the manner he did. There was no, or no material, breach of natural justice. The application for summary judgment succeeds in the sum of £136,769 plus £4,779 for the Adjudicator’s costs, together with interest.