



Neutral Citation Number: [2026] EWHC 2189 (TCC)

Case No: HT-2026-000164

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 18/08/2026

Before:

MRS JUSTICE O'FARRELL DBE

Between:

WESTGREEN CONSTRUCTION LIMITED

Claimant

- and -

MRS IRINA KIRYUKHINA

Defendant

Mek Mesfin (instructed by **Holmes and Hills LLP**) for the **Claimant**
Caroline Greenfield (instructed by **Beyond Corporate Law**) for the **Defendant**

Hearing date: 11th August 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on Tuesday 18th August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....
MRS JUSTICE O'FARRELL

Mrs Justice O'Farrell:

1. The matter before the court is the claimant's application for summary judgment to enforce the adjudication decision of Mr Donald Pugh dated 7 May 2026 ("the Decision").
2. The application for summary judgment is opposed by the defendant on the grounds that:
 - i) the Decision was reached in excess of the Adjudicator's jurisdiction because he decided matters which were not referred to him;
 - ii) there were breaches of the rules of natural justice in that the defendant was not given adequate opportunity to deal with: (a) whether the defendant was in breach of contract; and (b) a new claim raised in the claimant's reply.
3. If judgment is granted to the claimant, the defendant seeks a stay of enforcement pursuant to CPR 83.7(1).
4. The court has the benefit of the witness statements of Samuel Bawden of Holmes and Hills LLP, solicitors for the claimant, dated 20 May 2026 and 13 July 2026 respectively, and of Gareth Noonan of Beyond Corporate Law, solicitors for the defendant, dated 29 June 2026.

The Dispute

5. The underlying dispute arises out of a contract for construction and refurbishment works to a residential property in St John's Wood, London NW8.
6. The claimant was engaged by the defendant for the works under a JCT Standard Building Contract without Quantities, 2016 edition, with bespoke amendments, executed on 24 June 2024.
7. The contract sum was £9,989,324.55, subject to adjustment in accordance with the terms and conditions of the contract.
8. Clause 4.7 of the contract provided:

"Where the Contract Particulars state that clause 4.7 applies, and an advance payment is to be made, it shall be paid to the Contractor on the date and reimbursed to the Employer on the terms stated in the Contract Particulars ..."
9. The Contract Particulars provided at clause 4.7 for two advance payments to be made to the claimant: (i) £350,000 on appointment and (ii) £300,000 at 25% contract duration, totalling £650,000. Advance payment 1 was certified on 6 March 2024 in the sum of £350,000 and advance payment 2 was certified on 19 August 2024 in the sum of £300,000. Both sums were stated to be included as part of the gross valuation of the works. Both certified sums were paid by the defendant.
10. Contract Particulars 4.7 provided for reimbursement of the Advance Payments:

- i) upon agreement of the final account and receipt of payment in full for the final account, (less the retention amount stated in this contract), or as otherwise agreed by the parties;
 - ii) upon joint issue of the Making Good Defects Certificate and the Final Certificate along with payment of monies owing to the contractor under the Final Certificate; or
 - iii) in the event of termination by either party, by formal agreement and valued in accordance with the termination provisions set out in clause 8.12; any disagreement could be referred to adjudication by either party, the decision from which process would be final and binding.
 - iv) the total sum to be reimbursed was £650,000 via the mechanism described above.
11. Clause 4.14 provided that the gross valuation for each interim payment should, subject to any agreement between the parties as to stage payments, be the total of the amounts referred to in clauses 4.14.1 (work properly executed by the contractor plus specified items) and 4.14.2 (various costs and expenses incurred by the contractor), less the deductions referred to in clause 4.14.3, each calculated as at the relevant interim valuation date.
12. In interim applications for payment after the payment of the advance payments, up to and including interim application 22, the advance payment amounts were recorded on interim payment applications and certificates as part of the gross valuation. They were also included in the total of sums certified for the purpose of calculating the net sum due.
13. On 1 May 2025 the Contract Administrator requested the claimant's agreement to vary the terms of clause 4.7, to allow the defendant to claw back the advance payments prior to the final account:

“As discussed, we are seeking agreement to amend the current wording of Clause 4.7 - the advance payments clause. The current wording (below) provides for the advance payments to be repaid once the final account monies have been paid across by the Employer. This risks placing our client in the position of being owed money by Westgreen, albeit fleetingly.

As we discussed and agreed, this was not the intention of the original re-wording of this clause. Normally, as you are aware, were advance payments to be held in Escrow, these would be drawn down against payments from that account for significant plant equipment, deposits etc. Failing that, (and the client was not willing to enter in to an Escrow arrangement as we know) advance payments would be reclaimed during interim valuations.

Accordingly agreement is sought to use and draw down advance payments to pay the final one or more certificates (up to the

maximum available advance payment contribution of £650k) to ensure that these are fully reclaimed by PC / final account agreement.”

14. The claimant responded the same day, refusing to amend the contract:

“As you know, a robust surety was a key requirement for us to enter into the building contract.

...

The clause drafting was designed to prevent the depletion of the surety until we are paid in full, including Retention.

...

In respect of your request to retrospectively amend the building contract, I trust you'll understand that I'm unable to agree to that. Whilst I agree (& I'm delighted to say) that relationships are strengthening, the surety arrangements remain important to us.”

15. From interim certificate 23 onwards, the Contract Administrator did not include the second advance payment within the gross valuation on the interim certificate.
16. In Interim Certificate 25 dated 25 March 2026, the Contract Administrator did not include either of the advance payments within the gross valuation on the interim certificate but they were included in the amounts previously certified. This had the effect of clawing back the advance payments, as confirmed by the Contract Administrator in his email dated 30 March 2026.
17. Practical completion of the works was certified as achieved on 27 March 2026.

The adjudication

18. On 7 April 2026 the claimant issued a Notice of Adjudication in respect of the dispute concerning Interim Certificate 25:

“Westgreen did not agree with the omission of the ‘Advance Payment’ amount of £650,000.00 from the Gross Valuation of Interim Certificate No. 25, and a dispute has therefore arisen between Westgreen and the Employer in respect of the above matter.

The CA issued Interim Certificate No.25 on 25 March 2026 which showed a payment due to Westgreen of £106,062.40 (excluding VAT). The CA's Interim Certificate No.25 did not include for the agreed ‘Advance Payment’ amounting to £650,000.00. Therefore the Gross Valuation of the Interim Certificate No.25 should have been in the sum of £11,569,204.42 (i.e. £10,919,204.42 plus £650,000.00) and not in the sum of £10,919,204.42 as stated on Interim Certificate No.25. ”

19. The claimant's position was that as at the date of issue of Interim Certificate 25 on 25 March 2026, none of the above criteria for reimbursement of the advance payments to the defendant had arisen. Therefore the advance payments should have been included as part of the gross valuation for the purpose of the interim certificate.
20. The claimant sought a declaration that the payment due to it arising from Interim Certificate 25 should have been £756,062.40, that is, the amount certified of £106,062.40 plus the advance payment amount of £650,000. Further, the claimant sought a declaration that, taking into account a Pay Less Notice served by the defendant on 31 March 2026, a further payment of £650,000 was due from the defendant to the claimant.
21. The claimant claimed an award of any sum found due to be paid by the defendant to the claimant, together with interest and the Adjudicator's fees and expenses.
22. Mr Donald Pugh was appointed as the Adjudicator. The parties filed submissions in writing with supporting documents.
23. The defendant's position in the adjudication was that the intention of the parties was for the advance payments to be a ring-fenced escrow-style arrangement; they were intended to be dealt with outside the contract valuation process. The Contract Administrator was correct not to include them in the gross valuation for the purpose of Interim Certificate 25. The gross valuation of £10,919,204.42 reflected the value of work properly executed as at the date of the certificate. The Contract Administrator calculated the gross valuation and the sum due under the interim certificate correctly and in accordance with the requirements of the contract.
24. On 7 May 2026 the Adjudicator published the Decision in which he decided:
 - i) The payment due to the claimant under Interim Payment Certificate 25 ought to have been £756,062.40 (excluding VAT); not the sum certified of £106,062.40 (excluding VAT).
 - ii) The sum stated as payable in the Employer's Pay Less Notice dated 31 March 2026 was not £83,062.40 but was £733,062.40 (excluding VAT).
 - iii) The amount properly due for payment due on 7 April 2026 ought to have been £733,062.40 (£83,062.40 + £650,000.00) (excluding VAT).
 - iv) Accordingly, the defendant was ordered to make payment to the claimant of the sum of £733,062.40 without abatement or set-off, plus any applicable VAT, within seven days from the date of the Decision, together with interest and the Adjudicator's fees and expenses.
25. Before the Decision was issued, the defendant paid the claimant the sum notified in its Pay Less Notice in respect of the interim payment, namely, £83,062.40 exclusive of VAT.
26. The defendant failed to pay the balance of the sums awarded by the Adjudicator within seven days of the Decision.

The proceedings

27. On 20 May 2026 the claimant issued these proceedings, seeking to enforce the Decision.
28. On 15 May 2026 the claimant served a notice of suspension on the defendant in respect of the omission of the advance payments from the gross valuation of the works. On 26 May 2026 the claimant suspended the works, as a result of the defendant's failure to comply with the Decision.
29. On 24 June 2026 the defendant served on the claimant a letter purporting to terminate the contract for repudiatory breaches on the part of the claimant in failing to complete the works and abandoning the same.

Second Adjudication

30. On 23 June 2026 the defendant served a notice of intention to refer a further dispute to adjudication on the claimant. The defendant expressly stated that she did not seek to re-adjudicate the issue of the advance payment. The dispute concerned specific elements of Interim Certificate 27, namely, the gross valuation of the works (leaving aside the advance payments), the valuation of variations, loss and expense, retention and liquidated damages.
31. Mr Pugh was again appointed as the Adjudicator. On 7 August 2026 he published his decision, in which he decided:
 - i) the value of Measured works was £9,981,806.80 (£9,989,324.55 less £7,517.75);
 - ii) the value of Loss and Expense to which the claimant was entitled was £91,595.98;
 - iii) the value of Variations was £987,483.72;
 - iv) the Adjudicator had no jurisdiction to decide the issue relating to retention;
 - v) the amount of liquidated damages to which the defendant would be entitled if the requisite notice had been issued was £48,000.00.

Applicable principles

32. The courts take a robust approach to adjudication enforcement. The relevant legal principles are well-established and clear, as summarised by Jackson J in *Carillion v Devonport Royal Dockyard* [2005] EWHC 778 (TCC) at [80]:
 - “1. The adjudication procedure does not involve the final determination of anybody's rights (unless all the parties so wish).
 2. The Court of Appeal has repeatedly emphasised that adjudicators' decisions must be enforced, even if they result from errors of procedure, fact or law: see Bouygues, C&B Scene and Levolux.

3. Where an adjudicator has acted in excess of his jurisdiction or in serious breach of the rules of natural justice, the court will not enforce his decision: see Discaint, Balfour Beatty and Pegram Shopfitters.
 4. Judges must be astute to examine technical defences with a degree of scepticism consonant with the policy of the 1996 Act. Errors of law, fact or procedure by an adjudicator must be examined critically before the Court accepts that such errors constitute excess of jurisdiction or serious breaches of the rules of natural justice: see Pegram Shopfitters and Amec.”
33. The Court of Appeal approved the above summary and explained that the grounds for resisting summary judgment are circumscribed and limited: *Carillion v Devonport Royal Dockyard* [2005] EWCA 1358 per Chadwick LJ:
- “[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...
- ...
- [87] In short, in the overwhelming majority of cases, the proper course for 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 as 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 ...”
34. The scope of an adjudicator’s jurisdiction was considered in *McAlpine PPS Pipeline Systems Joint venture v Transco Plc* [2004] EWHC 2030 (TCC), a case in which the dispute referred was a claim for interest by reason of late certification or payment of the certified amount but the adjudicator embarked on an investigation to determine the underlying entitlement to the sums certified. In refusing to enforce the decision, His Honour Judge Toulmin CMG QC stated:
- “[129] What constitutes a dispute will depend in each case on the circumstances and the context in which the referral is made. In some cases the issues are very specific. In other cases, it is

clear that the issues are more general and have been so treated by the parties and that there is significantly more room for the case to be developed. The test in each case is, first, what dispute did the parties agree to refer to adjudication? and, secondly, on what basis? If the basis which is argued in the adjudication is wholly different to that which the defendant has had an opportunity to respond to in advance of the adjudication, this may constitute a different dispute not referred to the adjudicator or, put another way, in so far as the adjudicator reaches a decision on new issues, it is not responsive to the issues referred to him...

[130] The problem in these cases is often not whether there is a dispute...but what is the nature of the dispute or difference which has been referred to the adjudicator? In particular, where the parties are represented by experienced solicitors it may be unrealistic to say that the basis on which the claim is made and discussed and on which it has been referred to the adjudicator does not form part of the dispute on which the adjudicator must give his decision. Each case must be considered separately.

...

[146] Unfortunately, it is not enough for the adjudicator to say that he was sure that both parties would want to conclude the matter without recourse to further proceedings. If the existing referral does not enable him to deal with the dispute in the way in which he wishes, he is powerless to alter the terms of the referral in the absence of the agreement of both parties. So long as the dispute remains before him, he must decide only the issues referred to him..."

35. The proper approach to determining the scope of the dispute referred to adjudication was considered in *Cantillon Ltd v Urvasco Ltd* [2008] EWHC 282 (TCC), by Akenhead J:

"[54] It is, I believe, accepted by both parties, correctly in my view, that whatever dispute is referred to the Adjudicator, it includes and allows for any ground open to the responding party which would amount in law or in fact to a defence of the claim with which it is dealing. Authority for that proposition includes KNS Industrial Services (Birmingham) Ltd -v- Sindall Ltd [2001] 75 Con LR 71.

[55] There has been substantial authority, both in arbitration and adjudication, about what the meaning of the expression "dispute" is and what disputes or differences may arise on the facts of any given case. Cases such as *Amec Civil Engineering Ltd v Secretary of State for Transport* [2005] BLR 227 and *Collins*

(Contractors) Ltd v Baltic Quay Management (1994) Ltd [2004] EWCA Civ 1757 address how and when a dispute can arise. I draw from such cases as those the following propositions:

- (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.

...

In my view, one should look at the essential claim which has been made and the fact that it has been challenged as opposed to the precise grounds upon which that it has been rejected or not accepted. Thus, it is open to any defendant to raise any defence to the claim when it is referred to adjudication or arbitration. Similarly, the claiming party is not limited to the arguments, contentions and evidence put forward by it before the dispute crystallised. The adjudicator or arbitrator 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. In *Cantillon* the court also considered what would amount to a breach of the rules of natural justice in the context of adjudication:

“[57] ... in relation to breaches of natural justice in adjudication cases:

- (a) It must first be established that the Adjudicator failed to apply the rules of natural justice.
- (b) Any breach of the rules must be more than peripheral; they must be material breaches.

(c) 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.

(d) Whether the issue is decisive or of considerable potential importance or is peripheral or irrelevant obviously involves a question of degree which must be assessed by any judge in a case such as this.

(e) It is only if the adjudicator goes off on a frolic of his own, that is wishing to decide a case upon a factual or legal basis which has not been argued or put forward by either side, without giving the parties an opportunity to comment or, where relevant put in further evidence, that the type of breach of the rules of natural justice with which the case of Balfour Beatty Construction Company Ltd -v- The Camden Borough of Lambeth was concerned comes into play. It follows that, if either party has argued a particular point and the other party does not come back on the point, there is no breach of the rules of natural justice in relation thereto.”

Jurisdiction issue

37. Mr Mesfin, counsel for the claimant, submits that the Notice of Adjudication identified a straightforward complaint, namely, that the advance payments of £650,000 had been omitted, wrongly, from Interim Certificate 25. The claimant disagreed with that approach and claimed payment of that outstanding sum.
38. Ms Greenfield, counsel for the defendant, describes the dispute referred in slightly different terms, namely, whether the gross valuation in Interim Certificate 25 should have included the advance payments of £650,000.
39. The distinction is not material. The essential claim by the claimant was for payment of the sum of £650,000, which it said should have been included in the gross valuation for Interim Certificate 25. In responding to that claim, it was open to the defendant to raise as an issue the contractual mechanism in clause 4.14 which, it was said, set out the components of the gross valuation but did not include the advance payments. The Adjudicator was required to resolve that dispute but could consider any additional argument, evidence or other material deployed by the parties in their submissions to resolve such dispute.
40. Ms Greenfield's submission is that in the Decision, the Adjudicator went outside the ambit of the dispute and determined other matters not referred to him, namely, the course of dealing by the parties in respect of earlier interim certificates. In doing so, it is said that he thereby exceeded his jurisdiction.
41. As submitted by Mr Mesfin, the Referral by the claimant reflected the simple dispute, whether the agreed advance payments had been wrongly omitted from Interim

Certificate 25 and should be repaid. As part of its case, in the Referral the claimant stated that the advance payments had previously been included and paid under earlier interim certificates. This was not disputed by the defendant and is a matter of common ground. It was also not disputed by the defendant that, as set out in the Referral, the contractual conditions for reimbursement in the Contract Particulars had not been met.

42. The defendant's Response in the adjudication was that the advance payments were subject to a separate, bespoke contractual mechanism, falling outside the contractual mechanism for determining the gross valuation of the works contained in clause 4.14. Clause 4.14 did not identify the advance payments as components of the gross valuation. As such, the advance payments were excluded correctly from the gross valuation set out in Interim Certificate 25.
43. In addition to the above argument as a matter of construction of the contract, the defendant also referred in her Response to documents, relied on as evidencing the original intention of the parties for the advance payments to be a ring-fenced escrow-style arrangement, held as security by the claimant, outside the contractual mechanism for the gross valuation for interim certificates.
44. The claimant's Reply noted that the defendant did not deny that the claimant continued to be entitled to the advance payments. In reply to the claimant's argument on clause 4.14, it was said that the advance payments were agreed stage payments, thereby falling within clause 4.14, and that previous interim certificates had included the advance payments in the gross valuation. As Mr Mesfin points out, reliance on earlier interim certificates was foreshadowed in the Referral.
45. In the Rejoinder filed by the defendant, she objected to the claimant's reliance on the previous certificates as evidence of the parties' agreement or understanding of the contractual mechanism. Notwithstanding that objection, the defendant stated that, following initial payment, the advance payments were no longer treated in the strict escrow-like manner contemplated by the contract; effectively, they became regular advance payments made on account of the claimant to be used towards the costs of works under the contract.
46. The Adjudicator addressed the above matters in the Decision. At paragraphs 7 and 8, the Adjudicator identified the dispute and relief sought as that set out in the Notice of Adjudication. At paragraph 46, the Adjudicator identified the basis of the defence to the claim by reference to the defendant's Response, including her reliance on the intention of the parties regarding the advance payments. This served to identify the issues separating the parties.
47. Having considered the documents showing how the advance payments were treated in the interim certificates during the project until the end of 2025, the Adjudicator noted at paragraph 58 that, although he recognised some merit in the defendant's analysis of the contractual mechanism, it was not reflected in the operation of the contract by the parties. Against the defendant's reliance on what was said to be the intention of the parties, based on correspondence during the project, it was open to the Adjudicator to consider these matters.
48. The Adjudicator's conclusions on this issue were:

“66. Taking account of the above I am satisfied that the Parties treated the two Advance Payments as amounts to be certified by the CA for payment in interim payment certificates. Indeed, given the terms of the Contract and the duties of the CA to certify payments and the Employer’s duty to make payment upon such certificates issued by the CA it would be surprising if the Parties adopted any other course.

67. I therefore reject the contention of the Responding Party at paragraph 3.5 of the Response that: “The AP Condition is not a component of the Gross Valuation mechanism under clause 4.14”. ”

49. Following consideration of the rules of construction and the relevant terms of the contract, the Adjudicator found, at paragraph 81, that the parties and the Contract Administrator did not treat clause 4.7 as creating a stand-alone contractual obligation; they regarded the clause as part of the Contract Administrator’s duties of certification, not only regarding the interim payment but also certification of the advance payments. On that basis, the Adjudicator stated at paragraph 82 that the reimbursement of the advance payments must also be made in accordance with the contract but subject to the conditions noted in clause 4.7 (the Contract Particulars). This addressed both the claimant’s and the defendant’s arguments as to the proper construction of clause 4.7.

50. The Adjudicator’s conclusions were set out at paragraph 85:

“My view is that the CA by issuing an IPC which reduced the gross amount certified so as to allow reimbursement prematurely to the Employer of the two Advance Payments before the operative conditions in clause 4.7 (that is (a) agreement of the final account and (b) receipt of payment [from the Employer] in full for the final account) had been fulfilled by the Employer was a breach of contract...”

51. The operative part of the Decision at paragraph 94 responded to each of the grounds of relief sought by the claimant in its Notice of Adjudication.

52. Thus, the Adjudicator addressed the issues that were raised by the parties, in their submissions and the documents relied on, as part of his reasons for determining the dispute in the way that he did. The consensual operation of the interim certificate mechanism and treatment of the advance payments, were matters that were raised by both parties as relevant; the claimant by reference to the inclusion of the advance payments in earlier interim certificates; the defendant by reference to documents evidencing the intention of the parties regarding the purpose and treatment of the advance payments.

53. For the above reasons, I reject the defendant’s argument that the Adjudicator exceeded his jurisdiction. He decided the dispute referred to him by reference to the arguments raised by the parties.

Breach of natural justice

54. The defendant's case is that the Adjudicator gave her no, or no adequate, opportunity to deal with (a) the issue whether there was a breach of clause 4.7 of the contract; and/or (b) the new case in the Reply.
55. In respect of the first complaint at (a), Ms Greenfield's submission is that the focus on whether the advance payments were wrongfully recovered in breach of clause 4.7 was not a dispute or construction which the defendant had an opportunity to consider or make submissions on. The dispute referred, and so the focus of the defendant's submissions, was on whether interim application 25 was invalid because its gross valuation did not include the advance payment. Had the claimant wished to pursue the defendant for breach of clause 4.7 of the Contract, it could have but did not do so.
56. Mr Mesfin's submission is that the Adjudicator raised with the parties the decision of Coulson J (as he then was) in *JPA v Sentosa* [2009] EWHC 2312 (TCC), a case in which the court considered the contractor's obligation to repay advance payments. He invited submissions on the authority and received them. An adjudicator may raise authorities of his own motion provided he gives a fair opportunity to address them: *Cantillon v Urvasco* at [57]. That happened here.
57. There is some force in Ms Greenfield's contention that the Adjudicator went further than required, in determining whether there was any breach of clause 4.7. It was not raised as an issue in dispute and neither party invited a finding of breach or sought damages for the same. It was not a necessary element to determine in order to resolve the dispute referred to adjudication because the issue had been framed as whether the advance payments were wrongly omitted from Interim Certificate 25.
58. However, that does not assist the defendant in this case. Firstly, as recognised by Mr Noonan in his witness statement at paragraph 17, the Adjudicator invited both parties to respond to this new point. Secondly, although the Adjudicator made a finding of breach at paragraph 85, he was careful to note that no claim was made for damages for any breach. Thirdly, it did not form part of the formal decision reached or the basis of any relief awarded.
59. In respect of the second complaint at (b), Ms Greenfield's submission is that the defendant was given inadequate time to respond by way of Rejoinder to a new claim raised in the Reply. The new claim is said to be the claimant's reference to inclusion of the advance payments in earlier interim certificates as evidencing an agreed method for dealing with the advance payments.
60. Mr Mesfin submits that this complaint is misconceived. The defendant had a full opportunity to address the course of dealing evidence in her Response but chose not to do so. Following the Reply, she was granted the opportunity to respond further in the Rejoinder and again chose not to engage with it. Having declined two opportunities to address the evidence, she cannot now complain that she was denied a fair hearing.
61. For the reasons set out above, I do not consider that the claimant's reliance on the inclusion of the advance payments in earlier interim certificates was a new case. The point was made first in the Referral. The further reference in the Reply was in response to the defendant's case in its Response as to the parties' intention that the advance payments would be excluded from the gross valuation mechanism. In any event, the defendant had an adequate opportunity to respond to the relatively short Reply served

by the claimant, including any additional interim payment certificates on which it wished to rely.

62. It follows that I reject the defendant's arguments that there was any breach of natural justice.

Conclusion on summary judgment

63. The claimant seeks to enforce the Decision by way of summary judgment. For the reasons set out above, I am satisfied that there is no real prospect of succeeding on the defence. It is not suggested that there is any other compelling reason for the case to be disposed of at trial. The claimant is entitled to summary judgment.

Application for stay

64. The defendant applies for a stay of enforcement of the judgment pursuant to CPR 83.7(1).
65. CPR 83.7 empowers the court to grant a stay of execution of a judgment for payment of money if it is satisfied that (a) there are special circumstances which render it inexpedient to enforce the judgment or (b) the applicant is unable from any reason to pay the money.
66. The relevant principles are set out in *Wimbledon Construction Company 2000 Ltd v Vago* [2005] EWHC 1086 per Coulson J (as he then was) at [26]:

“(a) Adjudication (whether pursuant to the 1996 Act or the consequential amendments to the standard forms of building and engineering contracts) is designed to be a quick and inexpensive method of arriving at a temporary result in a construction dispute.

(b) In consequence, adjudicators' decisions are intended to be enforced summarily and the claimant (being the successful party in the adjudication) should not generally be kept out of its money.

(c) In an application to stay the execution of summary judgment arising out of an adjudicator's decision, the court must exercise its discretion under Order 47 with considerations (a) and (b) firmly in mind (see *AWG*).

(d) The probable inability of the claimant to repay the judgment sum (awarded by the adjudicator and enforced by way of summary judgment) at the end of the substantive trial, or arbitration hearing, may constitute special circumstances within the meaning of Order 47 rule 1(1)(a) rendering it appropriate to grant a stay (see *Herschell*).

(e) If the claimant is in insolvent liquidation, or there is no dispute on the evidence that the claimant is insolvent, then a stay of execution will usually be granted (see *Bouygues* and *Rainford House*).

(f) Even if the evidence of the claimant's present financial position suggested that it is probable that it would be unable to repay the

judgment sum when it fell due, that would not usually justify the grant of a stay if:

(i) the claimant's financial position is the same or similar to its financial position at the time that the relevant contract was made (see *Herschell*);
or

(ii) The claimant's financial position is due, either wholly, or in significant part, to the defendant's failure to pay those sums which were awarded by the adjudicator (see *Absolute Rentals*)."

67. In *Gosvenor London Ltd v Aygun Aluminium UK Ltd* [2018] EWCA Civ 2695 Coulson LJ confirmed at [37] that the above should be supplemented as follows:

"(g) If the evidence demonstrates that there is a real risk that any judgment would go unsatisfied by reason of the claimant organising its financial affairs with the purpose of dissipating or disposing of the adjudication sum so that it would not be available to be repaid, then this would also justify the grant of a stay."

68. In this case, the defendant does not assert that the claimant is insolvent or there is any risk of dissipation or any other risk that the sums paid might not be recovered.
69. The defendant's case is that the advance payment is imminently repayable to the defendant and, on that basis, execution of the judgment should be stayed. Ms Greenfield submits that if the defendant is correct that the contract has been terminated at common law, there is an immediate right to repayment of the advance payment in a termination account. I reject that argument. It ignores the express terms of clause 4.7 of the Contract Particulars, which makes provision for the circumstances in which the advance payments will be reimbursed. Those circumstances include contractual termination but not common law termination. Even if a contractual termination, the condition for reimbursement is agreement of the final account, by a formal agreement or final and binding adjudication. Neither has occurred.
70. The defendant's alternative argument is that practical completion took place over four months ago such that the parties should be seeking to agree the final account for the purposes of the release of part of the advance payments pursuant to clause 4.7(i). The final account process should be well under way, with the claimant to provide the documents necessary for the adjustment of the contract sum by no later than 27 September 2026. That implicitly recognises that there is no accrued entitlement to reimbursement and ignores the conditions in the Contract Particulars at clause 4.7(i) that the final account has to be agreed and paid, events for which there is no imminent or fixed timetable.
71. Ms Greenfield correctly observes that the decision in the second adjudication informs the final payment due between the parties. It is clear that the second adjudication decision will assist the parties in reaching agreement on the final account but interim certificate 27 was not the final account, the defendant consciously limited its referral in the second adjudication to specified elements of the interim valuation, and there are outstanding claims in respect of loss and expense and liquidated damages. Therefore,

although this decision is likely to narrow the areas of dispute between the parties on the final account, that process remains outstanding.

72. Finally, Ms Greenfield relies on the decision in *JPA v Sentosa* (above), in which the imminent reimbursement of advance payments was considered a material factor in the court's decision to stay execution. That case can be distinguished on its facts. First, the court found that the claimant's "*dire financial position*" gave rise to an overwhelming risk that the defendant would not be reimbursed the advance payments in accordance with the terms of the contract. It is common ground that there is no such risk in this case. Second, the court found that the claimant was at fault in not progressing the final account which was then long overdue. There is no evidence that the claimant in this case has failed to take the necessary steps to progress the final account or prevented the agreement of the final account.
73. In conclusion, none of the conditions that would entitle the defendant to reimbursement of the advance payments has occurred. There are no other special circumstances which render it inexpedient to enforce the summary judgment. The application for a stay of execution is refused.

Conclusion

74. For the reasons set out above:
- i) Summary judgment is granted on the claim, enforcing the Decision in the sum of £650,000 plus VAT of £43,615, together with the Adjudicator's fee of £19,866, and interest as awarded in the Decision in the sum of £2,493.12 and continuing to accrue on the amount of £650,000 at a daily rate of £155.82.
 - ii) The application to stay execution of the judgment is refused.
 - iii) The defendant shall pay the claimant's costs on the indemnity basis.
75. The parties are invited to draw up and agree an order, including an agreed sum for interest and costs. Failing agreement, the court will deal with any consequential issues in a further hearing or on paper.