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Adjudication: Jurisdiction, Sequencing and Procedural Boundaries

Key Words:

UK construction adjudication, Smash and Grab adjudication, True Value adjudication, Adjudicator jurisdiction UK, HGCRA 1996 Section 108, HGCRA 1996 Section 111, Construction Act adjudication, Catch-all wording in referrals, Adjudication enforcement TCC cases, Pay now argue later principle, Multiple disputes rule adjudication, Procedural fairness in adjudication, Time-bar clauses construction contracts

Summary

Adjudication under the **Housing Grants, Construction and Regeneration Act 1996 (HGCRA)** continues to raise recurring questions regarding jurisdiction, scope, and procedure. Recent cases have sharpened the boundaries on what adjudicators can and cannot do — and what the courts will enforce. This article draws together five themes.

1. Jurisdiction and the "Catch-All" Formula

A common drafting practice in referrals is to claim a specific sum "**or such other sum as the adjudicator may decide**." What if those saving words are omitted?

- **Jurisdiction attaches to the dispute, not the figure.** An adjudicator remains entitled to determine what, if anything, is due under the dispute referred.
- **Enforcement depends on consequence.** If the adjudicator produces only a bare valuation without ordering payment, enforcement may fail unless payment is the "necessary and inevitable consequence."

Authorities:

- ***Level 1 Raised Flooring Ltd v JM Construction (SW) Ltd* [2023] EWHC 2841 (TCC)** — *The adjudicator valued the account but didn't make (or have jurisdiction to make) an order for payment, and the court refused enforcement because payment wasn't the "necessary and inevitable consequence" of the decision. In short: if you don't ask for payment (or include a catch-all), you may end up with a bare valuation that's not enforceable by summary judgment.*

Two helpful contrasts that map the boundary:

- ***Workspace Management Ltd v YJL London Ltd* [2009] EWHC 2017 (TCC)** — *Even without an express order to pay, the court enforced because payment was the inexorable/necessary*

consequence of what the adjudicator had decided. This shows the court will step in only where the decision logically compels a payment.

- ***WRW Construction Ltd v Datblygau Davies Developments Ltd* [2020] EWHC 1965 (TCC)** *— Recorder Andrew Singer QC held the adjudicator lacked jurisdiction to order payment to the responding party (WRW) where the notice sought payment the other way; but the court nevertheless entered judgment because payment followed from the adjudicator's binding valuation under the contract. See esp. [18]–[20] and the court's conclusion.*

This was relied on in VMA Services Ltd v Project One London Ltd [2025] EWHC 1815 (TCC)*. A technical payment (pejoratively referred to as "smash & grab" or "**S&G**") decision in a true value adjudication (**TVA**). The adjudicator ordered payment. The Court declined to rely on Scheme Part 1, para.20(b) but did rely on WRW v DDD.*

***Takeaway**: The absence of the saving words does not limit the adjudicator's jurisdiction: they remain entitled to decide what, if anything, is due under the dispute referred. What they cannot do is instruct payment different to that sought, such as directing payment to the responding party. But the court can address that subsequently at enforcement if it is a **necessary and inevitable** consequence of the decision.*

2. One Dispute: Smash & Grab and True Value in the Alternative

In ***Bellway Homes Limited v Surgo Construction* [2024] EWHC 10 TCC,** the court held that a referring party may frame an adjudication as:

a) a smash & grab claim for the notified sum, and

b) a true value adjudication, in the alternative.

This does not breach the "one dispute" rule, since both claims arise from the same payment application.

But sequencing still matters:

- ***S&T v Grove* [2018] EWCA Civ 2448***:confirmed that payment of the notified sum is a precondition to TVA [107].*
- ***Bexheat v ESG* [2022] EWHC 936 (TCC)***: described s.111 as "subjugating" the TVA ([76(iv)]).*
- ***AM Construction v Darul Amaan Trust* [2022] EWHC 1478 (TCC):** *reinforced "pay now, argue later." ([57-59])*

***Implication**: Parties may draft referrals more flexibly, but adjudicators must respect the statutory order: **S&G first, TVA only after payment**.*

3. The VMA v Project One Lesson

A recent illustration comes from ***VMA Services Ltd v Project One London Ltd* [2025] EWHC 1815 (TCC)** *([27, 4.6.3–4.6.5])*:

- The adjudicator awarded the notified sum but did not address true value.
- The court enforced, noting it would be "an arid exercise" to force a second adjudication on the same notified sum.
- However, the judgment did **not** collapse S&G and TVA into a single process; rather, it preserved the sequential model.

***Conclusion**: Adjudicators cannot offset true value against the notified sum in the same adjudication. To do so would unlawfully undermine the HGCRA's cashflow imperative.*

4. Should the HGCRA Prescribe Pleadings?

A recurring suggestion is to amend the legislation to entitle each party to a **Response, Reply, Rejoinder, and Surrejoinder**.

- **No statutory right exists.** The HGCRA and Scheme leave procedure to the adjudicators' discretion.
- **Courts emphasise contextual fairness**:
  - ***Discain Project Services Ltd v Opecprime Development Ltd* [2001] BLR 285** [22]: *adjudicators have wide discretion.*
  - ***Cantillon Ltd v Urvasco Ltd* [2008] EWHC 282 (TCC)**: *Akenhead J explained that fairness requires only a reasonable opportunity to respond on material points, not litigation-style exchanges ([27, 29, 70]).*
  - ***Balfour Beatty Construction Ltd v Lambeth LBC* [2002] EWHC 597 (TCC)** [29]: *procedural fairness is required but adjudication is not bound by court-like rules.*

***Takeaway**: Prescribing fixed pleading rights would over-formalise adjudication and risk breaking the 28-day timetable. Flexibility remains the system's strength.*

5. Limitation Clauses: Jurisdiction or Defence?

Another jurisdictional trap arises where a contract requires claims to be made within a set time after practical completion.

- **Not jurisdictional:** Such provisions create a contractual limitation defence, not a bar to adjudication or jurisdiction.
- **The adjudicator must proceed:** They should decide whether the clause bites but resignation would be wrong.

Jurisdiction depends on whether there is a dispute under a construction contract within the scope of the HGCRA 1996, properly referred under s.108. A time-bar provision affects whether the claim succeeds, not whether the adjudicator has power to hear it.

Authorities:

- ***Jacobs UK Ltd v Skanska Construction UK Ltd* [2017] EWHC 2395 (TCC)**: *explained, limitation provisions are substantive defences, not jurisdictional obstacles ([34–36]).*
- ***Pilkington United Kingdom Ltd v CGU Insurance plc [2004] EWCA Civ 23*** at [56–57]: *contractual limitation clauses do not oust jurisdiction; they provide a defence which the tribunal must decide.*
- ***Bouygues (UK) Ltd v Dahl-Jensen (UK) Ltd [2000] EWCA Civ 507*** at [24, 27]: *if the adjudicator answers the right question in the wrong way, the decision still binds.*

***Takeaway**: Adjudicators should hear the case, not resign. Whether the claim is time-barred is a merits issue.*

Conclusion

Recent case law confirms three constants in adjudication:

1. ***Jurisdiction follows the dispute, not the sum claimed.***
2. ***Sequencing under the HGCRA is strict: pay now, argue later.***
3. ***Flexibility and speed trump procedural formality.***

For practitioners, the lessons are clear: draft referrals carefully, respect statutory sequencing, and resist attempts to turn adjudication into mini-litigation. The courts remain willing to enforce adjudicators' decisions — but only where payment is the necessary and inevitable consequence.

#Adjudication #ConstructionLaw #SmashAndGrab #TrueValueAdjudication #PayNowArgueLater #Jurisdiction

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