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September 19, 2026

Adjudicator’s Jurisdiction to Order Payment by the Referring Party to the Responding Party

Introduction

1. The question is whether an adjudicator, having been appointed upon a reference by Party A against Party B, has jurisdiction to determine that money is in fact due from Party A to Party B and, if so, to order Party A to make payment accordingly.
2. An adjudicator may determine that money is due from the referring party to the responding party where that determination falls within the scope of the dispute referred. Whether the adjudicator may also order payment depends upon the scope of that dispute and the applicable contractual framework. Neither section 108 of the Housing Grants, Construction and Regeneration Act 1996 (“**the 1996 Act**”) nor the Scheme for Construction Contracts confines an adjudicator, as a matter of principle, to determining a monetary entitlement only in favour of the referring party.
3. The correct starting point is the scope of the dispute referred. An adjudicator derives jurisdiction from the dispute identified in the notice of adjudication, construed in its proper factual and contractual context. Where that dispute requires the adjudicator to undertake a valuation, accounting exercise or determination of the true financial position between the parties, the adjudicator is entitled, and may be required, to carry that exercise through to its proper conclusion.
4. It follows that the adjudicator is not necessarily required to stop at the point where the referring party’s entitlement is reduced to nil merely because the reference was made by the party asserting a positive entitlement to payment. If the proper determination of the referred dispute establishes that the balance lies in favour of the responding party, that conclusion may itself form part of the adjudicator’s decision.

   Workspace Management Ltd v YJL London Ltd **[2009] EWHC 2017 (TCC)**

5. The principal authority is *Workspace Management Ltd v YJL London Ltd* [2009] EWHC 2017 (TCC).
6. In that case, Workspace referred a dispute concerning the proper valuation of Architect’s Certificate No. 27. Its case was that YJL was required to repay money. The adjudicator undertook the valuation exercise and concluded that the true negative balance of the certificate was less than the amount YJL had already repaid. The consequence was that YJL had overpaid Workspace by £48,820.30 plus VAT.

7. The adjudicator considered that, although his valuation demonstrated that money was due to YJL, he did not have jurisdiction to order Workspace to repay it because the adjudication had been commenced by Workspace and the redress claimed had not included an affirmative claim by YJL for repayment.
8. Coulson J (as he then was) rejected that analysis. He held that the dispute identified in the notice was the proper valuation of Certificate No. 27 and that the adjudicator had determined precisely that dispute. The valuation necessarily required him to compare the proper valuation with the sums already paid. The fact that this exercise produced an adverse balance for the referring party did not take the adjudicator outside his jurisdiction.
9. Coulson J (as he then was) expressly rejected the submission that the adjudicator could value the certificate only until the result reached nil and then stop. He described the valuation as a "composite exercise" which had to be completed in full. *Workspace*, at [22]–[24].

10. The judge concluded:

> *"Accordingly, I conclude that the Adjudicator had the necessary jurisdiction to decide that, as a result of his valuation of Certificate 27, the Defendant had overpaid the Claimant and was entitled to a sum in return on the balance of the account between them. He could, therefore, have ordered that this sum be paid by the Claimant to the Defendant."*
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> *Workspace Management Ltd v YJL London Ltd* [2009] EWHC 2017 (TCC), at [24].

11. The significance of that passage is that the direction of the resulting payment does not, of itself, define or limit the adjudicator's jurisdiction. The jurisdictional question is whether the determination forms part of the dispute referred. The adjudicator's jurisdiction did not end merely because completion of the valuation demonstrated that money was due to the responding party rather than the referring party.
12. Coulson J (as he then was) further endorsed the proposition that the referring party must *"accept the consequences of its own reference"*. Applying that principle to the valuation before him, he held that Workspace was bound to accept the adverse financial result produced by the very exercise it had referred. *Workspace*, at [27].

13. Workspace is therefore direct authority that, where the referred dispute requires determination of a valuation or balance of account, the adjudicator is not deprived of jurisdiction merely because completion of that exercise demonstrates that money is due to the responding party rather than the referring party. In such circumstances, the adjudicator may determine the resulting balance and, as Coulson J (as he then was) held, may order payment accordingly.

***WRW Construction Ltd v Datblygau Davies Developments Ltd* [2020] EWHC 1965 (TCC)**

14. The decision in *WRW Construction Ltd v Datblygau Davies Developments Ltd* [2020] EWHC 1965 (TCC) is important because it demonstrates a related, but distinct, principle.
15. The adjudication concerned the valuation of a post-termination final account. The referring party sought a determination that money was due from the contractor to the employer. The responding party contended that the valuation exercise in fact produced the opposite result and that money was due to it.
16. The adjudicator carried out the valuation and concluded that the balance was indeed due to the responding party. He described the result as an amount due as a debt from the employer to the contractor. [10]-[11]

17. Significantly, the court proceeded on the basis that:

> "*the Adjudicator did not have jurisdiction to award a monetary sum to the Claimant as the responding party to the adjudication.*" [18]

18. Nevertheless, the court held that there was no obstacle to enforcing the monetary consequence of the valuation itself. Recorder Andrew Singer QC held:

> "*there is no bar ... to the Court enforcing a temporarily binding valuation in an adjudication award by making an order for payment of the monies due as a result of that valuation.*" [19]

19. The court therefore entered judgment for the responding party for the amount shown to be due pursuant to the binding valuation. [23]

20. *WRW* should be distinguished from, rather than treated as inconsistent with, *Workspace*. In *WRW*, the court held, on the basis of the authorities cited and in circumstances where the claimant did not argue otherwise, that the adjudicator lacked jurisdiction to make a positive monetary award in favour of the responding party. The court nevertheless held that the binding valuation could be enforced by an order for payment of the amount which necessarily flowed from it. *WRW* therefore establishes, at the least, that a valuation in favour of the responding party may have an enforceable monetary consequence even where the adjudicator has not made, or is treated as lacking jurisdiction to make, an express payment order. Whether the adjudicator himself may make such an order depends upon the scope of the dispute referred. The analysis in *Workspace* demonstrates that, where determination of the referred dispute requires completion of the valuation exercise and ascertainment of the resulting balance, the adjudicator may not be deprived of jurisdiction merely because the balance lies in favour of the responding party.

[*Bellway Homes Ltd v Surgo Construction Ltd* [2024] EWHC 269 (TCC)]

21. The principle is supported and developed by *Bellway Homes Ltd v Surgo Construction Ltd* [2024] EWHC 269 (TCC).
22. The Part 8 proceedings in *Bellway* squarely raised the question whether, in a true-value adjudication concerning an interim payment cycle, an adjudicator could determine that the contractor had been overpaid in an earlier payment cycle and require repayment of that overpayment.
23. The contractual payment provisions were material to the court's analysis. The contract provided that the employer was entitled to recover overpayments and that interim payments were payments on account only.

24. HHJ Stephen Davies held that, once the adjudicator had undertaken the true-value exercise, he was entitled to give effect to its financial consequences. At [106], the court described repayment as the:

> *"dispositive remedy flowing from the adjudicator's re-evaluation"*
>
> and held that, having determined the true value, the adjudicator:
>
> *"must be able to give effect to the financial consequences of his decision."*

25. The same reasoning underlies the court's conclusion at [111] that, following determination of the true entitlement, the adjudicator or the court may:

> *"order payment or repayment as the case may be."*

26. *Bellway* therefore reinforces *Workspace* in the context of a true-value adjudication. Where the adjudicator's valuation demonstrates an overpayment, and the contractual framework provides an entitlement to recover it, repayment may be ordered as part of the adjudicator's determination of the true-value dispute. A true-value adjudication is not confined to determining whether the referring party is entitled to some lesser or nil amount.

27. The reasoning at [110]–[112] also reflects the provisional nature of interim payments. Subject to the contractual terms and the jurisdiction conferred by the reference, an overvaluation or overpayment need not necessarily await final account stage before correction.

[*Bell Building Ltd v TClarke Contracting Ltd* [2024] EWHC 1929 (TCC)]

28. *Bell Building Ltd v TClarke Contracting Ltd* [2024] EWHC 1929 (TCC) provides further support for the broader jurisdictional principle, although it was not itself a reverse-payment case.
29. There, the adjudicator awarded a greater sum than the amount sought by the referring party. The responding party challenged the decision on jurisdictional and natural justice grounds. The court rejected that challenge.

30. The court held that the responding party's own submissions had opened up the possibility of a different and greater assessment of the amount due. The adjudicator was consequently:

> *"acting within his jurisdiction to determine the sum due as he saw fit in response to the submissions made by TCL."*
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> *Bell Building Ltd v TClarke Contracting Ltd* [2024] EWHC 1929 (TCC), at [26].

31. The decision is relevant because it confirms that an adjudicator is not necessarily confined to the precise financial consequence advanced by the referring party. The question remains whether the determination made falls within the dispute referred, as properly construed in light of the parties' submissions.

32. The judgment also restated the principle from *Cantillon Ltd v Urvasco Ltd* that the ambit of a reference may be widened by the nature of the defence advanced by the responding party. *Bell Building*, at [19] and [26].

Limits of the Principle

33. The authorities do not establish that a responding party may introduce any independent cross-claim, counterclaim or cause of action merely because it is raised in the response.
34. The adjudicator's jurisdiction remains bounded by the dispute referred, properly construed. An independent claim falling outside that dispute cannot be transformed into part of the adjudication merely by being labelled a defence or by reliance upon a general prayer for *"such further or other relief"*.
35. The critical distinction is therefore between:
    1. a financial consequence which emerges from deciding the dispute referred; and
    2. a distinct cause of action requiring determination of a different dispute.

36. The former may fall within the adjudicator's jurisdiction. The latter ordinarily will not, absent consent or some other proper jurisdictional basis.

Conclusion

37. The authorities support the following propositions:
    1. an adjudicator is not necessarily confined to determining a monetary entitlement in favour of the referring party; whether the adjudicator may make a positive payment order in favour of the responding party depends upon the scope of the dispute referred;
    2. the decisive question is the scope of the dispute referred;
    3. where the dispute requires a valuation, accounting exercise, true-value determination or assessment of the balance between the parties, the adjudicator must ordinarily complete that exercise in full;
    4. there is no jurisdictional rule which requires the adjudicator to stop at the point where the referring party's entitlement is reduced to nil;
    5. where the completed exercise establishes that money is due to the responding party, and that consequence falls within the dispute referred, the adjudicator may determine that consequence; *Workspace Management Ltd v YJL London Ltd* [2009] EWHC 2017 (TCC), particularly at [23]–[27], is direct authority that, in an appropriate case, the adjudicator may also order payment or repayment by the referring party;
    6. *WRW Construction Ltd v Datblygau Davies Developments Ltd* [2020] EWHC 1965 (TCC) establishes that, even where the adjudicator has not made a valid positive payment order in favour of the responding party, the court may enforce the monetary consequence of a binding valuation in that party's favour: [18]–[23];
    7. *Bellway Homes Ltd v Surgo Construction Ltd* [2024] EWHC 269 (TCC), particularly at [106] and [111], reinforces the principle in the context of true-value adjudication where the contractual machinery permits recovery of overpayments; and
    8. *Bell Building Ltd v TClarke Contracting Ltd* [2024] EWHC 1929 (TCC), particularly at [23]–[26], supports the wider proposition that the adjudicator's jurisdiction is governed by the dispute referred, properly construed in light of the parties' submissions, rather than by the precise monetary result claimed by the referring party.

38. Accordingly, where the dispute referred requires the adjudicator to determine a valuation, balance of account, true value or other financial consequence arising from that dispute, the adjudicator is not confined to dismissing the referring party's claim if the resulting balance is adverse to it. *Workspace Management Ltd v YJL London Ltd* [2009] EWHC 2017 (TCC) at [24]–[27] is direct authority that, where determination of the dispute referred requires completion of the valuation exercise and ascertainment of the resulting balance, the adjudicator is not deprived of jurisdiction merely because that balance lies in favour of the responding party and, in such circumstances, may order payment accordingly. *WRW Construction Ltd v Datblygau Davies Developments Ltd* [2020] EWHC 1965 (TCC) establishes, at the least, that where a binding valuation produces a balance in favour of the responding party, the court may enforce the monetary consequence of that valuation notwithstanding the absence of a valid express payment order by the adjudicator.