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"If-Then" Means Exactly That – No NCR, No Delay Payment – Disclosure and Barring Service v Tata Consultancy Services Ltd [2025] EWCA Civ 380

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Key Words:

Condition Precedent, Non-conformance Report (NCR), Delay Payments, Contractual Interpretation, "If-Then" Structure, Conditionality, Bremer Handelsgesellscheft, Commercial Sense, Flexibility in Time Limits, Symmetry of Obligations

Summary

This appeal by the Disclosure and Barring Service (DBS) concerned an IT modernisation contract with Tata Consultancy Services (TCS) that went awry [1-2]. The issue was whether clause 6.1 required DBS to issue a Non-conformance Report (NCR) as a condition precedent to claiming Delay Payments [3, 4(5.5 & 5.6), 5, 10(d)(94), 11]. The Court of Appeal upheld the High Court's view that clause 6.1 did impose such a condition. DBS had issued no NCRs and thus could not recover Delay Payments [10(a)-(b), 29, 31, 70]. The appeal was dismissed [70-73].

Key Themes:

1. ***Interpretation of Contractual Clauses:*** *The court considered how to determine if a clause creates a condition precedent [12-13, 26, 35].*
2. ***Conditions Precedent:*** *Legal principles from case law, including Bremer, were applied to assess clause 6.1 [3, 6, 10(d)(90-92), 26(b)-(c)].*
3. ***The Importance of Contractual Language:*** *The "if-then" structure strongly suggested conditionality [10(d)(90-91), 26(b)-(c)(e), 35, 75].*
4. ***Practical Context and Commercial Sense:*** *Commercial rationale and practical effects supported interpreting clause 6.1 as conditional [10(d)(91-92), 18, 29-31, 60].*
5. ***The Role of Non-Conformance Reports (NCRs):*** *NCRs were central to the contract's operation—defining issues, informing parties, and enabling remedy options [10(a)-(b), 29, 10(d)(91-92), 29-31, 10(c)(87), 27].*

6. ***Distinction from Other Contractual Provisions:*** *Clause 5.6's different wording did not undermine the finding that clause 6.1 was a condition precedent [60, 10(d)(92), 57, 61-63, 81].*
7. ***Flexibility in Time Limits:*** *Words like "promptly" or "within a reasonable time" did not disqualify clause 6.1 from being a condition precedent [10(d)(92-93), 20, 26(c)-(e), 49-51, 82].*

Background

DBS and TCS entered a 2012 contract for modernising DBS's manual systems [1]. Delays led to TCS claiming £125m, with DBS counterclaiming over £100m [2]. A 2023 High Court trial (EWHC 1185 (TCC)) led to a net payment of under £5m from DBS to TCS [2]. Permission to appeal was granted solely on clause 6.1's interpretation [3]. Constable J had previously dismissed the condition precedent argument as unarguable [11].

Legal Issues and Analysis

The issue was whether clause 6.1 created a condition precedent—i.e. whether DBS had to issue an NCR to claim Delay Payments under clause 6.2.3 [3, 4(5.6), 10(d)(94)].
The Court, led by Coulson LJ, applied contractual interpretation principles, including those from Bremer Handelsgesellscheft [13, 6], focusing on clause structure and context [10(d)(90), 26(e), 27].

Clause 6.1's "if-then" wording—"If a Deliverable does not satisfy… the Authority shall promptly issue…" followed by "The Authority will then have the options…"—was key [6(6.1), 27, 28]. The "then" indicated that the remedies in clause 6.2, including Delay Payments, were conditional on issuing an NCR [10(d)(90–91, 94), 11, 27–31, 38, 75].

DBS argued that issuing an NCR was mandatory but not a condition precedent [16, 42]. The court disagreed, emphasising the NCR's role in the contractual process [10(a)-(b), 10(c)(87), 10(d)(91–92), 27, 29–30, 41, 82]. Without an NCR, the remedies in clause 6.2 would be unworkable [30–33, 39, 79–80].

DBS also claimed that the absence of a fixed deadline ("promptly") undermined conditionality [19(4)-(5), 20, 47–49]. The court held otherwise, noting that flexible timing doesn't negate a condition precedent if the clause's structure supports it [10(d)(92–93), 20, 26(c)-(e), 49–51, 82].

DBS cited clause 5.6's explicit cross-referencing to suggest that clause 6.1 should be interpreted differently [4, 57, 6(6.3)-7]. However, the court found the function and commercial purpose of clause 6.1 supported conditionality regardless [10(d)(92), 59–64, 81].

DBS also cited *Yuanda v Multiplex* [25, 29, 66–68], but the court distinguished it. Instead, it aligned the case with *Steria Ltd v Sigma* and *WW Gear v McGee*, where "if-then" language signified conditions precedent even with time flexibility [23–24, 26(e)–27, 29–30, 68].

In a concurring judgment, Lewison LJ reinforced that the "if-then" format indicated conditionality [35–36, 75–76]. He added that DBS's interpretation would effectively rewrite clause 6.1, which courts should avoid [38, 44–45, 78–79] and reiterated that the clause 6.2 remedies made no sense without an NCR [39–40, 79–80].

Conclusion

The appeal was dismissed. Clause 6.1 was a condition precedent: without issuing an NCR, DBS had no right to Delay Payments under clause 6.2.3 [31–32, 70–73]. DBS had issued none, so its claim failed [10(a)-(b), 28–29, 70–71].

Key Takeaway:

Precise language—especially "if-then" structures—is crucial in contracts. Procedural obligations like issuing detailed NCRs may be conditions precedent to claiming remedies [10(d)(90–91)(94), 11, 26(b)-(c), 35–36, 75]. Flexible deadlines do not undermine conditionality where the clause structure indicates it [10(a)-(b), 10(c)(87), 10(d)(91–93), 20, 26(c)-(e), 27–31, 49–51, 60, 82].

Parting Thoughts

In the end, the Court of Appeal did what every contractual purist secretly longs for: it read the words on the page, gave them their ordinary meaning, and declined the tempting invitation to perform grammatical gymnastics on a clause that already bent over backwards to say what it meant. Clause 6.1 was found to be a condition precedent because, frankly, it strutted around the contract wearing a sash that said Condition Precedent and shouting "If-then" at anyone who would listen.

DBS, for its part, attempted the legal equivalent of asking for dessert without having touched its vegetables—insisting on Delay Payments without having issued a single Non-conformance Report. The Court, understandably unmoved, reminded everyone that procedures exist for a reason, and that "promptly" issuing an NCR does not mean "eventually, if we feel like it."

The clause didn't need to wave a flag marked "CONDITION PRECEDENT" in Comic Sans. As Lewison LJ elegantly put it, it had the protasis, it had the apodosis, and it had more linguistic inevitability than a Jane Austen marriage plot. Once again, judicial patience for parties who ignore the machinery of their own contracts was, shall we say, limited.

The message is clear: if your contract says "If you do X, then you get Y," do X. If you don't, prepare to be told, very politely but at great length, that you have no Y. And possibly no leg to stand on either.

#ContractualInterpretation #ConditionPrecedent #NonConformanceReport #DelayPayments #IfThenClause #CommercialContracts #BremerHandels #Clause6Point1 #ContractualObligations #LegalPrecedent #Promptly #ITProjects #CoA #CourtofAppeal #TCC #EnglishLaw #DisputeResolution #DDAlegal

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