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Jurisdiction Challenges at the beginning of an Adjudication: Substance, Not Technical Ambush

DDA Curated Series

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Summary:

Jurisdictional challenges remain the most frequently invoked — and most frequently misunderstood — basis for resisting enforcement of adjudicators' decisions. This article focuses on jurisdictional objections to the adjudicator's authority which must be taken at the outset, as distinct from challenges based on alleged errors of fact, law or reasoning.

The authorities draw a sharp and consistent line:

- An adjudicator is **entitled to be wrong** — but only **within** the dispute referred.
- Courts will enforce adjudicators' decisions **save in the plainest cases** of excess of jurisdiction or serious breach of natural justice.
- Attempts to repackage dissatisfaction with the outcome as a "jurisdiction" or "natural justice" point are treated with **increasing scepticism**.

The modern case law is not merely pro-enforcement. It is actively hostile to technical ambush.

1. The Fundamental Starting Point: An Adjudicator May Be Wrong

The core principle is neatly stated by HHJ Seymour QC in *Shimizu Europe Ltd v Automajor Ltd* [2002] EWHC 1571 (TCC):

An adjudicator "has jurisdiction to make a mistake", provided he is answering the question (or questions) actually referred to him.

Jurisdiction is therefore not about whether the adjudicator got the answer right. It is about whether he addressed **the right question**.

If he does, errors of fact, law or procedure are part of the statutory bargain.

That distinction continues to be applied with full rigour in recent authority. In ***Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd*** **[2025] EWHC 2173 (TCC)**, the court rejected a detailed, forensic attack on the adjudicator's reasoning and valuation methodology, holding that the adjudicator was doing precisely what he had been asked to do and had not strayed beyond the dispute referred. The case provides a modern illustration of the principle that **disagreement with reasoning is not a jurisdictional defect** and that an adjudicator does not exceed his jurisdiction merely because he adopts his own evaluative approach to the material before him.

2. When and How a Jurisdictional Objection Must Be Taken

A recurring issue in enforcement proceedings is whether the jurisdictional objection was:

- raised **at the time of appointment**, and
- raised **clearly and on proper grounds**.

If it were not, the court may conclude that:

- the parties conferred **ad hoc jurisdiction**, or
- the right to object has been **waived**.

2.1 The Gold Standard: A Proper, Reasoned Objection

The textbook example remains The Project Consultancy [1999] BLR 377, where the responding party:

- explained precisely **why** jurisdiction was said to be absent, and
- made it clear that participation was **under protest** and subject to that objection.

2.2 General Reservations: Sometimes Enough, Always Risky

In *Bothma & Anor (t/a DAB Builders) v Mayhaven Healthcare Ltd* [2007] EWCA Civ 527; [2007] 114 Con LR 131, Waller LJ held that a widely drafted reservation was sufficient to cover a successful jurisdictional argument — even though the specific ground (multiple disputes) was not identified.

But this is a dangerous comfort blanket.

In *Ale Heavy Lift v MSD (Darlington) Ltd* [2006] EWHC 2080 (TCC), HHJ Toulmin CMG QC held that where a particular jurisdictional ground had not been raised, the right to rely on it was waived.

Practical lesson:

If you want to rely on a jurisdictional objection, **say so — and say so properly**. The importance of identifying and articulating **true jurisdictional gateways**, rather than merits-based objections, is well illustrated by cases such as ***RBH Building Contractors Ltd v James & Anor*** **[2025] EWHC 2005 (TCC)**, where the court was concerned with the residential occupier exception in section 106 of the HGCRA — a paradigm example of a jurisdictional objection which, if made out, goes to the adjudicator's authority to act at all.

3. The Core Jurisdictional Framework

The following propositions are now settled:

1. Jurisdictional challenges must be taken **expressly and clearly** at the outset.
2. An adjudicator may consider their own jurisdiction but their ruling is **not binding** on the court, unless the adjudication rules (e.g. the TECSA Rules provide otherwise).
3. The adjudicator's appointment must comply with the **HGCRA 1996** or the contractual machinery.
4. The adjudicator only has jurisdiction over **the dispute identified in the notice of adjudication**.
5. That dispute must have **crystallised** before the notice — though the courts take a generous view of this.
6. The dispute must be a **single dispute**, but multi-stranded disputes commonly qualify.
7. The adjudicator must not **stray beyond** the referred dispute.
8. There must be a **clear nexus** between what is referred and what is decided.
9. The adjudicator must not **re-open matters** already decided in earlier adjudications between the same parties under the same contract.

Compromise Arguments

If it is said that a claim has already been compromised, the adjudicator is entitled to investigate that issue. Depending on their conclusion:

- They may lack jurisdiction, or
- They may proceed to decide the underlying dispute — subject to later court review at enforcement stage.

Recent authority illustrates the same distinction in other jurisdictional boundary contexts. In ***London Eco Homes Ltd v Raise Now Ealing Ltd*** **[2025] EWHC 1505 (TCC)**, the court was required to consider whether an adjudicator had jurisdiction where the dispute arose in the context of a settlement agreement said to fall outside the statutory regime. The court's analysis, which focused on whether the settlement agreement was itself a construction contract or was sufficiently connected to the underlying construction contract, provides a contemporary example of the courts' approach to **true gateway jurisdiction questions**, as distinct from objections going merely to the correctness of the decision reached.

McLaughlin & Harvey Ltd v LJJ Ltd **[2024] EWHC 1032 (TCC)** provides a further contemporary example of the strict limits of an adjudicator's jurisdiction once a decision has been issued. There, the court held that a purported "revised decision" issued under the slip-rule was invalid because the adjudicator had gone beyond correcting a clerical error — reinforcing that an adjudicator may not re-open substance or reasoning once the decision has been delivered, and that post-decision amendments do not expand jurisdiction.

4. Carillion v Devonport: The Modern Enforcement Philosophy

In *Carillion Construction Ltd v Devonport Royal Dockyard Ltd* [2005] EWCA Civ 1358; [2006] BLR 15, the Court of Appeal approved Jackson J's structured approach.

4.1 The Four General Propositions (Chadwick LJ at [52])

1. Adjudication does not finally determine parties' rights (unless they agree otherwise).
2. Adjudicators' decisions are enforced even if they contain errors of fact, law or procedure (*Bouygues (UK) Limited v Dahl-Jensen (UK) Limited* [2001] All ER Comm 1041, [2000] BLR 522,

C&B Scene Concept Design Limited v Isobars Limited [2002] EWCA Civ 46, [2002] BLR 93 and *Levolux AT Limited v Ferson Contractors Limited* [2003] EWCA Civ 11, 86 Con LR 98). (The continued vitality of that approach is illustrated, for example, by ***VMA Services Ltd v Project One London Ltd* [2025] EWHC 1815 (TCC)**, where the court enforced a decision ordering payment by the referring party to the responding party, rejecting the suggestion that the identity of the paying party raised any jurisdictional difficulty.)

3. Decisions will not be enforced where there is **excess of jurisdiction** or **serious breach of natural justice** (*Discain Project Services Limited v Opecprime Development Limited* [2000] BLR 402, *Balfour Beatty Construction Limited v Lambeth London Borough Council* [2002] BLR 288 and *Pegram Shopfitters Ltd v Tally Weijl (UK) Ltd* [2003] EWCA Civ 1750, [2004] 1 All ER 818).
4. Courts must treat technical defences with scepticism, consistent with the policy of the 1996 Act (*Pegram Shopfitters* and *Amec Capital Projects Limited v Whitefriars City Estates Limited* [2004] EWCA Civ 1418, [2005] BLR 1).

4.2 The Five More Detailed Propositions (Chadwick LJ at [53])

Including:

- Excluding evidence thought to be irrelevant is not a breach of natural justice — even if the adjudicator is wrong (*Bill Biakh v Hyundai Corporation* [1988] 1 Lloyds Reports 187).
- Failure to consult parties on provisional conclusions is only exceptionally fatal (*Balfour Beatty Construction Limited v Lambeth London Borough Council* [2002] BLR 288).
- Planning law authorities on reasons have limited relevance because:
  - adjudicators do not finally decide rights,
  - wrong reasons usually do not matter, and
  - reasons are often not required at all.
- Where reasons are required, **brief reasons suffice** (Scheme para 22), and only extreme inadequacy (e.g. *Gillies Ramsay Diamond v PJW Enterprises* [2004] BLR 131) will justify non-enforcement — and only if **substantial prejudice** is shown.

At [84]–[85], Chadwick LJ confirmed the Court of Appeal's broad agreement and emphasised that **enforcement is the norm**.

5. The Court's Warning Against Technical Point-Scoring

Chadwick LJ's well-known passage at [85]–[87] is now canonical. In essence:

- Courts will enforce adjudicators' decisions **unless it is plain** that the wrong question was answered or the process was obviously unfair.
- Adjudication is about **speed, not perfection**.
- The system prioritises **cash flow** over legal elegance.
- Parties who comb through decisions trying to manufacture jurisdiction or natural justice points are usually wasting time and money.

6. "Save in the Plainest Cases" Means Exactly That

In *Charles Henshaw and Sons Ltd v Stuart & Shields Ltd* [2014] CSIH 55, the Inner House confirmed that the phrase "save in the plainest cases" applies to:

- jurisdiction challenges, and
- natural justice challenges alike.

Lady Smith said at [4]:

"it appears to us inconceivable that the phrase… was not intended to apply to jurisdictional challenges just as much as to those based on breaches of natural justice."

And at [17] warned that adjudication:

"ought not to be derailed by the pursuit of technical legal arguments, particularly where those arguments are patently without merit".

The appeal in that case delayed payment by almost nine months and was, in substance, entirely hollow.

Key Takeaways

Across the authorities, the following themes are unmistakable:

1. *Adjudicators are allowed to be **wrong**, but not to decide the **wrong dispute**.*
2. *Jurisdictional objections must be **taken early, clearly and properly**.*
3. *Courts will enforce decisions **even if they are legally or factually flawed**.*
4. *"Excess of jurisdiction" and "natural justice" are **not appeal routes in disguise**.*
5. *Save in the plainest cases, **the correct course is to pay now and argue later**.*

Conclusion: The Law's Blunt Instrument (And Why You Should Stop Hitting Yourself With It)

Jurisdiction in adjudication is not a parlour game, a debating society, or an after-dinner opportunity for forensic archaeology. It is a gate, not a labyrinth.

The courts have spent more than two decades explaining — patiently, repeatedly, and now with a faint air of menace — that adjudication is not designed to produce perfect answers. It is designed to produce **answers in time to stop businesses going bust**. If you want perfection, you can have it later, at leisure, and at ruinous cost.

What you cannot have is this:

- lose on the merits,
- then rummage through the adjudicator's reasoning like a disappointed antiques dealer,
- and finally announce, with theatrical gravitas, that what you have actually discovered is a "jurisdiction point".

The modern authorities treat this behaviour with something approaching judicial eye-rolling.

The rulebook is now brutally simple:

- If the adjudicator answered the right question, the decision stands — even if the answer is wrong.
- If you wanted to object to jurisdiction, you had to do it **early, clearly, and properly** — not

later, vaguely, and creatively.

- If you lost, your remedy is not semantic gymnastics. It is **paying first and arguing later**.

And the phrase “save in the plainest cases” is not a charming literary flourish. It means what it says. If your jurisdiction argument requires diagrams, footnotes, and a long walk through the undergrowth of the reasons, it is almost certainly not one of them.

Adjudication, in short, is a **cash-flow machine**, not a justice-themed escape room.

The courts will continue to defend it with enthusiasm, enforce its outputs with vigour, and treat attempts to derail it with technical cleverness as what they usually are: **expensive ways of being wrong twice**.

Or, more simply:

If you want to win on jurisdiction, you’d better be obviously right.

If you’re not, you’d better get your chequebook out.

And that, in the end, is the system working exactly as Parliament intended.

#ConstructionLaw #ConstructionAdjudication #Jurisdiction #ExcessOfJurisdiction #GatewayJurisdiction #Enforcement #PayNowArgueLater #HGCRA #NaturalJustice #TCC #CaseLaw #DisputeResolution #ConstructionDisputes #UKConstructionLaw #DDALegal

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