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Premier Modular Ltd v Maidstone and Tunbridge Wells NHS Trust [2026] EWHC 1404 (TCC): Natural Justice and Unargued Bases in Adjudication

Premier Modular Ltd v Maidstone And Tunbridge Wells NHS Trust

[2026] EWHC 1404 (TCC)

Technology and Construction Court (King's Bench Division)
Adrian Williamson KC sitting as a Deputy Judge of the High Court, 10 June 2026

Key Words

Adjudication, Enforcement, Breach of Natural Justice, Summary Judgment, NEC4 Contract, Compensation Event, Accepted Programme, Frolic of his own.

1. **Headnote**
    1. The claimant contractor applied for summary judgment to enforce an adjudicator's decision awarding £1,655,385.49 in respect of delay allegedly caused by the defendant employer's failure to provide a permanent water supply. [1], [13]
    2. The defendant resisted enforcement on the basis that the adjudicator had determined the central issue in breach of natural justice by deciding the dispute on a contractual and factual basis not advanced by either party. [2]
    3. The adjudicator concluded that a compensation event arose under clause 60.1(3) of the NEC4 contract by reference to a revised programme which they found had become the Accepted Programme, notwithstanding that both parties had proceeded on the basis that no such revised programme had been accepted. [30], [31], [35]
    4. Held, dismissing the application for summary judgment, that the Trust had a real prospect of establishing that the adjudicator had materially breached the rules of natural justice by determining the dispute on an unargued basis without giving the parties an opportunity to comment, such that the decision was not summarily enforced. [42], [48], [51]
2. **Material Facts**
    1. The parties entered into an NEC4 Option A contract for the design and construction of a barn theatre at Maidstone Hospital. [11]
    2. The dispute arose from the claimant's contention that the defendant failed to provide a permanent mains water supply by 30 October 2023, causing delay to testing and

commissioning. [13]

3. The claimant advanced its case in adjudication on the basis that the alleged delay constituted a compensation event under clauses 60.1(1), 60.1(14), and 60.1(18) of the contract. [21], [25]
4. Both parties proceeded on the express footing that the only Accepted Programme was that contained in Appendix 3 to the contract and that no revised programme had been accepted by the Project Manager. [14], [25]
5. The adjudicator, however, found that a revised programme dated 30 October 2023 had become the Accepted Programme and that it fixed the date for provision of the water supply. [30]
6. On that basis, the adjudicator concluded that a compensation event arose under clause 60.1(3) because the defendant had failed to provide the water main by the date shown in that programme. [31]

3. **Issues**
    1. Whether the adjudicator breached the rules of natural justice by determining the dispute on a basis not advanced by the parties and not properly canvassed during the adjudication. [5], [6]
    2. Whether the adjudicator failed to address a defence based on notification requirements under clause 61.3. [2(ii)], [45]
    3. Whether the defendant had a real prospect of successfully resisting enforcement under CPR Part 24.3. [47]
4. **Decision**
    1. The court held that the adjudicator determined the central issue on a contractual and factual basis which had not been argued by either party. [35]
    2. The adjudicator’s reliance on clause 60.1(3) represented a departure from the issues as framed and argued in the adjudication. [39(ii)]
    3. The conclusion that a revised programme had become the Accepted Programme was contrary to the common position of the parties. [35]
    4. The adjudicator had not put this reasoning to the parties for comment nor had the issue been fairly canvassed. [39(iv)]
    5. The court characterised the adjudicator’s approach as, in effect, going off on a “frolic” by determining the dispute on a basis not advanced by the parties. [36], [42]
    6. The alleged failure to address the notification defence did not amount to a breach of natural justice. The adjudicator had addressed the point, even if they may have misunderstood it or confused aspects of the contractual regime. [46]
    7. The defendant had a real prospect of successfully establishing a material breach of natural justice. [48]
    8. The application for summary judgment was dismissed. [51]
5. **Reasoning**
    1. The court reiterated that an adjudicator must not decide a dispute on a factual or legal basis not advanced by the parties without giving them an opportunity to comment. [6], [7]
    2. A breach of natural justice is material where the unargued point is decisive or of considerable potential importance to the outcome. [6(c)]
    3. An adjudicator is not confined to accepting one party’s submissions or the other’s, but may only depart from them where the relevant issues have been fairly canvassed. [7]

4. The adjudicator's decision depended upon propositions not advanced by either party, namely the applicability of clause 60.1(3) and the status of the revised programme as the Accepted Programme. [35], [42]
5. Those propositions were central to the finding that a compensation event existed and were determinative of the outcome. [42]
6. The clarification process did not adequately raise these matters for submissions, since the question posed did not fairly identify the determinative clause 60.1(3) case ultimately adopted. [39(iii)]
7. The court distinguished between errors of fact or law, which do not ordinarily prevent enforcement, and procedural unfairness, which may do so where it is material. [46], [49]
8. Applying *Carillion*, the court confirmed that enforcement will ordinarily follow unless the adjudicator's conduct was obviously unfair. [9], [48]
9. This was one of the rare cases in which that threshold was met because the decision rested on an unargued and untested basis going to the heart of the compensation event finding. [49], [50]

6. **Held**
    1. The adjudicator determined the existence of a compensation event under clause 60.1(3) by reference to a revised programme which neither party had contended was the Accepted Programme. [35], [42]
    2. That basis had not been advanced and had not been fairly canvassed in the adjudication. [39(iv)]
    3. The parties were not given an opportunity to address that basis before the decision was reached. [39(iv)]
    4. The court held that the adjudicator had, in effect, gone off on a "frolic" by determining the dispute on a case not advanced by PML. [36], [42]
    5. The breach of natural justice was material because it went to the central issue in the dispute, namely whether a compensation event existed. [42]
    6. The defendant had a real prospect of successfully resisting enforcement under CPR Part 24.3. [47], [48]
    7. The case fell within the limited category of decisions where summary enforcement should be refused due to obvious unfairness. [49]
    8. The application for summary judgment was dismissed. [51]
7. **Ratio Decidendi**
    1. An adjudicator commits a material breach of natural justice if they decide a dispute on a contractual or factual basis not advanced by either party and not fairly canvassed, without giving the parties an opportunity to address that basis. [6(e)], [7], [42]
    2. Such a breach, where central to the outcome, gives the resisting party a real prospect of opposing summary enforcement notwithstanding the general policy of robust enforcement of adjudicators' decisions. [42], [48]
8. **Disposition**
    1. The claimant's application for summary judgment was dismissed and the adjudicator's decision was not summarily enforced. [51]

Comment

This decision reaffirmed the established limits of procedural fairness within adjudication. It confirmed that, although adjudication is intended to provide a rapid and interim resolution of disputes, it must

still operate within the requirements of natural justice. [5]–[7]

The judgment recognises the pressures under which adjudicators operate. The court did not refuse enforcement because the adjudicator may have made an ordinary error of fact or law, but because the decisive reasoning had not been fairly put to the parties. [8]–[9], [46], [48]–[50]

The court drew a clear distinction between an error within jurisdiction and a breach of natural justice. An adjudicator is entitled to reach conclusions which may involve errors of fact or law, and such errors will ordinarily be enforced. However, where the adjudicator determines a dispute on a basis that the parties have not had a fair opportunity to address, the position is materially different. [6], [7], [46], [49]

The present case illustrated that principle directly. The adjudicator relied upon clause 60.1(3) and treated a revised programme as the Accepted Programme, notwithstanding that neither party advanced that case. Those propositions were central to the finding that a compensation event existed and therefore formed the foundation of the decision. [30]–[35], [39(ii)]–[39(iv)], [42]

The decision therefore fell within the category identified in Cantillon, where an adjudicator goes off on a "frolic of his own" by deciding a case on a factual or legal basis not argued by either side and without giving the parties an opportunity to comment. The court held that this occurred here because the adjudicator determined the dispute on a basis not advanced or tested in submissions. [6(e)], [35]–[36], [42]

The judgment also reinforced the approach in Carillion, namely that courts will enforce adjudicators' decisions in all but rare cases. This was one such exception. The unfairness did not arise from imperfect reasoning, overlooked material, or a merely debatable construction of the contract. It arose because the adjudicator decided the key issue by reference to a case with which the Trust had no proper opportunity to deal. [9], [46], [48]–[50]

For practitioners, the position remains clear. An adjudicator may analyse the material independently and is not confined to adopting a party's submissions. However, if the adjudicator proposes to determine the dispute on a basis not previously advanced, and that basis may be decisive or of substantial importance, the issue should be put to the parties for comment. Failure to do so creates a material risk that summary enforcement will be refused. [6(c)], [7], [39(iv)], [42], [48]

The practical lesson is straightforward. Adjudication may be fast, compressed and deliberately robust, but it must remain procedurally fair. A decision may survive imperfect reasoning or errors within jurisdiction, but it is unlikely to withstand enforcement scrutiny where the determinative reasoning rests on a basis that the parties have not had a fair opportunity to address. [46], [49]–[51]

#Adjudication #Enforcement #NaturalJustice #SummaryJudgment #NEC4 #CompensationEvent #AcceptedProgramme #ConstructionLaw #DisputeResolution #TCC #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Natural Justice in Adjudication: Unargued Bases/ "Frolic"

1. ***Cantillon Ltd v Urvasco Ltd* [2008] BLR 250** — ***Judgment refs:*** *[6].* ***Status:*** *This was the principal authority relied upon for the natural justice principles applicable where an adjudicator decides a dispute on a factual or legal basis not argued by either party. It confirms that a material breach may arise where the adjudicator adopts an unargued basis without giving the*

parties an opportunity to comment, particularly where the point is decisive or of considerable importance. It is also the source of the familiar description of an adjudicator going off on a "frolic of his own".

Application and Elaboration of Natural Justice Principles

1. ***Roe Brickwork Ltd v Wates Construction Ltd*** **[2013] EWHC 3417 (TCC)** — ***Judgment refs:*** *[7].* ***Status:*** *This authority was cited for the practical application of the natural justice principle. It confirms that an adjudicator must not decide a point on a basis not advanced in submissions without inviting comment, but may reach conclusions not expressly argued where the underlying issues have nevertheless been fairly canvassed between the parties.*
2. ***Balfour Beatty Construction Ltd v London Borough of Lambeth*** **[2002] EWHC 597 (TCC); [2002] BLR 288** — ***Judgment refs:*** *[7].* ***Status:*** *This authority, referred to in Roe Brickwork and cited in the judgment, reinforces the principle that it is contrary to natural justice for a decision-maker to determine a dispute on a basis not put forward in the parties' submissions without giving the parties an opportunity to address it.*

Enforcement Policy and Limits

1. ***Carillion Construction Ltd v Devonport Royal Dockyard Ltd*** **[2005] EWCA Civ 1358; [2006] B.L.R. 15 (CA)** — ***Judgment refs:*** *[9], [48]–[50].* ***Status:*** *This authority was relied upon for the court's robust approach to enforcement of adjudicators' decisions. It confirms that adjudication decisions should ordinarily be enforced, even if they contain errors of fact or law, unless it is plain that the adjudicator acted outside jurisdiction or in a manner that was obviously unfair. It also emphasises that only in rare cases will the court decline enforcement on natural justice grounds.*

Delay Assessment / Programme Analysis Context

1. ***Northern Ireland Housing Executive v Healthy Buildings (Ireland) Ltd*** **[2017] NIQB 43** — ***Judgment refs:*** *[22].* ***Status:*** *This authority was referred to as part of the claimant's argument on retrospective delay assessment and programme analysis. It supported the proposition that, when delay is assessed retrospectively, actual data may be relevant rather than merely forecast data. It did not form part of the court's decisive reasoning on natural justice or enforcement.*

Prioritisation Summary

1. ***Cantillon Ltd v Urvasco Ltd*** *— core governing principle on material breach of natural justice where an adjudicator decides the dispute on an unargued factual or legal basis.*
2. ***Roe Brickwork Ltd v Wates Construction Ltd****, together with* ***Balfour Beatty Construction Ltd v London Borough of Lambeth*** *— clarification of the boundary between permissible independent reasoning by an adjudicator and impermissible reliance on a new, uncanvassed basis.*
3. ***Carillion Construction Ltd v Devonport Royal Dockyard Ltd*** *— overarching enforcement policy and the high threshold of obvious unfairness.*
4. ***Northern Ireland Housing Executive v Healthy Buildings (Ireland) Ltd*** *— Cited in the factual background in support of retrospective delay assessment using actual rather than forecast data. Not part of the court's reasoning on natural justice.*

Legislation:

Procedural Framework – Summary Judgment

***Civil Procedure Rules, Part 24.3** — [47]*

CPR Part 24.3 provided the applicable procedural test for the claimant's application for summary judgment. The court could grant summary judgment only if the defendant had no real prospect of successfully defending the claim, and there was no other compelling reason why the matter should proceed to trial.

The court applied that test in the adjudication enforcement context. It held that the Trust had a real prospect of establishing that the adjudicator's decision involved a material breach of natural justice, because the adjudicator had determined the central issue on a basis not advanced by either party and not fairly put to them for comment. The threshold for summary judgment was therefore not met, and the application was dismissed. [47]–[51]

Legal Texts & Commentary:

No Identified Legal Texts or Commentary Cited in the Judgment

The judgment does not cite or rely upon any recognised legal textbooks, practitioner commentaries, or academic writings.

The legal principles applied by the court were drawn from:

1. *established case law authorities on natural justice and adjudication, in particular **Cantillon, Roe Brickwork, Balfour Beatty,** and **Carillion**; and*
2. *the procedural framework under **CPR Part 24.3**. [5]–[9], [47]–[50]*

No passages in the judgment refer to, quote from, or extract principles from any legal textbook, practitioner guide, academic commentary, or other secondary legal material.

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RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
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