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Reasonably Clear, Commercially Sensible, and Fully Payable: 1st Formations Ltd v Lapp Industries Ltd [2025] EWHC 1526 (TCC) (19 June 2025)

1st Formations Ltd v Lapp Industries Ltd [2025] EWHC 1526 (TCC)

Date: 19 June 2025

Judge: Adrian Williamson KC sitting as a Deputy Judge of the High Court

Key Words:

Construction contracts, HGCRA 1996, Scheme for Construction Contracts, Interim applications, Notified sum, Payment/Pay Less Notices, Smash & Grab, Adjudication, Objective construction, Clarity, "Payment on account", Provisional valuations, Commonsense interpretation, Summary judgment, Part 8 proceedings

Summary

In Part 8 proceedings, Formations sought declarations that LAPP's interim payment application dated 14 April 2023 ("the Application") was invalid [1]. LAPP had succeeded in adjudication, securing £100,000 + VAT, enforced by summary judgment [2]. Formations now sought to reverse that decision [2].

The core issue was whether the Application met the requirements of the HGCRA and the implied terms of the Scheme [6, 17–22]. As the contract lacked adequate payment terms, the Scheme applied [20]. Formations argued that the Application was ambiguous, relied on provisional valuation, sought "payment on account," and thus failed to comply with the Scheme [30].

The court rejected these arguments. It held that the Application identified a clear valuation, stated a sum claimed, and was clearly intended as an interim payment application [32–42]. The judge stressed a commonsense, practical approach to interpreting payment notices [41]. The Application was valid and Formations' claim was dismissed [43].

Authorities:

Case Law:

- ***1st Formations Ltd v Lapp Industries Ltd* [2025] EWHC 943 (TCC)**: *This refers to earlier*

judgments in the same case, dated 25th March 2025 (extempore) and 16th April 2025, which provide background to the current proceedings and decided there was a single contract [2, 5].

- ***Jawaby Property Investment Ltd v The Interiors Group Ltd. and others*** **[2016] EWHC 557 (TCC)**: *Cited, by Carr, J (as she then was), for summarising the interim payment provisions and the consequences of failing to give relevant notice [22]. Also referred to regarding sender's intention being assessed objectively and provisional notices [26vii, 27, 39].*
- ***Kersfield Developments v Bray and Slaughter*** **[2017] EWHC 15 (TCC)**: *O'Farrell, J's explanation of an application for interim payment needing to be "sufficiently clear and unambiguous in form, substance and intent," setting out the sum claimed and its basis [25, 29, 42].*
- **Advance JV v Enisca Ltd** **[2022] EWHC 1152 (TCC)**: Joanna Smith, J's summary of relevant principles for interpreting contractual notices, including objective construction, contextual scene, purpose of notice, and avoiding "nice points of textual analysis" [26, 29, 41].
  This case also references:
  - ***Grove Developments Ltd v S&T (UK) Ltd*** **[2018] EWHC 123 (TCC)** *(emphasised the need for objective interpretation of notices, and that formal labels (e.g. "Pay Less Notice") are not required if the document performs the function and conveys its purpose clearly) [26(i), (iv), (v), (vi), (vii), (viii), (ix)].*
  - ***S&T (UK) Ltd v Grove Developments Ltd*** **[2018] EWCA Civ 2448** *(cited for objective construction and validity as a question of fact and degree) [26(i), (vi)].*
  - ***Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd*** **[1997] AC 749** *(Foundational authority for the objective test in interpreting notices: the issue is not how the recipient subjectively understood the notice, but how a "reasonable recipient" would interpret it in the "relevant objective contextual scene" [26(i)–(iii), (v)]*
  - ***Thomas Vale Construction Plc v Brookside Syston Ltd*** **[2006] EWHC 3637 (TCC)** ***per HHJ Kirkham*** (*The court will be "unimpressed by nice points of textual analysis or arguments which seek to condemn the notice on an artificial or contrived basis*") [26iv].
  - ***Henia Investments Inc v Beck Interiors Ltd*** **[2015] EWHC 2433 (TCC)** ***per Akenhead J****(cited for payment notices complying in substance and form, being "free from ambiguity," and providing an "adequate agenda for an adjudication") [26(vi), (vii), (ix)].*
  - ***Surrey and Sussex Healthcare NHS Trust v Logan Construction (South East) Ltd*** **[2017] EWHC 17 (TCC)** *(cited for no requirement for a specific title or contractual clause reference for a valid notice) [26(viii)].*
- ***J & B Hopkins Ltd v Trant Engineering Ltd*** **[2020] EWHC 1305 (TCC)**: *Fraser, J (as he then was) observed that the "notified sum" regime has been in place for over a decade, is well known, is not a Herculean task, and failure to comply has clear unavoidable consequences mandated by Parliament, regardless of any subjective disapproval [27(ii)].*

Legislation:

- ***Housing Grants, Construction and Regeneration Act 1996*** *(as amended) [6, 17, 22, 25, 26, 38, 43]*

  Sections 109–111: interim payments, notice obligations, and payment of the notified sum.

- ***Local Democracy, Economic Development and Construction Act 2009*** *(amendments to HGCRA) [17]*

- ***Scheme for Construction Contracts 1998*** *(as amended) [6, 17–18, 20–21, 30, 32–38, 43]*

Paragraphs 2, 4, 7, 8: valuation, due date, final date for payment.

Legal Texts & Commentary:

Sir Peter Coulson, Construction Adjudication (4th ed. 2018) *[26(iv), 41]*

Courts should not adopt overly restrictive interpretations of notices.

Key Themes:

1. ***Application of Statutory Payment Regimes****: Strict enforcement of the HGCRA and the Scheme where contract terms are inadequate [6, 20, 21].*
2. ***"Notified Sum" and Consequences****: Failure to issue valid Payment/Pay Less Notices results in the applied-for sum becoming due [22-23].*
3. ***Objective Interpretation of Payment Notices****: Validity assessed by how a "reasonable recipient" would interpret the notice, contextually and purposively [26(i)-(v), 41-42].*
4. ***Substance over Form****: Notices must be clear in substance and intent, not technically perfect or titled precisely [25, 26(vi)-(ix), 27].*
5. ***"Smash and Grab" Adjudications****: Court upholds statutory mechanisms even amid concerns of unfair advantage [22, 24-26(i)-(ii), 27].*

Background

- **Contract & Works**: In 2022, Formations appointed LAPP to refurbish 71–75 Shelton Street, London. The works expanded and were treated as a single contract [4–6].
- **No Payment Terms**: The Scheme applied by default [5–6, 21].
- **The Application**: Email from LAPP on 14 April 2023 enclosed three documents:

1. Invoice for £100,000 + VAT [10];
2. Final account totalling £588,590.60 [11];
3. Interim application stating full valuation, previous payments, and request for £100,000 on account [12].

- **No Responsive Notice**: Formations issued no valid Payment or Pay Less Notice [13].
- **Adjudication**: LAPP commenced adjudication on 22 Nov 2024. On 24 Dec 2024, the adjudicator awarded £120,000. Judgment enforcing that followed on 16 April 2025 [14–15].

Legal Issues and Analysis

1. **Validity Under Paragraph 2 of the Scheme** [30–34]

   Formations argued the Application sought an arbitrary “on account” sum. The court held it did state the gross valuation and prior payments and merely elected to claim less. This complied with paragraph 2 [32–34].

2. **Ambiguity or Lack of Clarity** [30(ii), 35–36, 40–42]

   Despite terms like “provisional” or “on account,” the Application clearly requested a definite

interim payment. A reasonable recipient would understand it as such [35–41].

3. **Errors in Stating Due/Final Dates** [30(ii)(2), 37–38]

   Incorrect payment dates did not invalidate the Application. The Scheme governed actual timing [38].

4. **Reference to Provisional Valuation** [30(ii)(3), 39]

   Although parts of the valuation were provisional, the Application sought a definite amount. This did not undermine its validity [39].

5. **Impact on Adjudicator's Decision and Summary Judgment** [1–3, 43]

   Since the Application was valid, a notified sum arose. The adjudicator's award and the judgment enforcing it stood. The Part 8 claim failed [42–43].

Conclusion

The court held LAPP's 14 April 2023 Application valid under the HGCRA and the Scheme [1–3, 6, 21]. Despite references to "provisional valuation," "payment on account," and errors in payment dates, the Application was sufficiently clear in intent and content [30, 32–36, 40–42].

Applying established authority, the court rejected overly technical objections and upheld a practical, objective interpretation [26, 33–34, 39]. Failure to issue responsive notices meant the notified sum became payable [19–23, 43].

The Part 8 claim was dismissed. The adjudicator's decision and the earlier summary judgment remained in force [43].

Key Takeaway:

An interim payment application under the Scheme need not claim the full amount due. If it clearly sets out a sum and basis, even if labelled "on account" or based on a provisional valuation, it can be valid [32–34, 35–39]. Courts favour a practical, commonsense approach over technical invalidity arguments. If no Payment or Pay Less Notice is served, the notified sum must be paid — reflecting the strict statutory regime [19–23, 41–42].

Parting Thoughts

This case is a sharp reminder that English construction law still prizes clarity over complexity. If you're waiting for a perfectly crafted, fully calculated, finalised application before the statutory gears engage — you're basically waiting for Godot in a hard hat.

Formations tried to argue that because LAPP only asked for £100,000 "on account" — rather than the full £341,854.32 — the Application should be binned. The court didn't bite.

Williamson KC swatted away the objections with judicial calm and a flick of logic:

- *No magic words? Still a payment application.*

- *Provisional valuation? Still a valuation.*
- *Sent by email? Still sent.*
- *Wrong due date? Not fatal.*

The judgment underscored — once again — that the "notified sum" regime is brutal only to those who ignore it. Clarity trumps ceremony. Form beats substance only when substance is missing — and here, it wasn't.

Formations tried to unravel the adjudicator's decision with linguistic nitpicking. What they got was the blunt end of a doctrine rooted in common sense and commercial reality.
Result?

- *LAPP gets its £120,000.*
- *Formations gets a lesson: when faced with a payment application, don't ghost it.*

This is the court backing payees' cashflow over payers' procedural silence. If you're going to dodge your notice obligations, don't expect sympathy — and certainly don't expect relief.

Next time? Send a Pay Less Notice. Or better yet: pay.

#LegalUpdate #DDAlegal #1stFormations #LappIndustries #ConstructionLaw #Adjudication #PaymentDisputes #HGCRA1996 #SchemeForConstructionContracts #SmashAndGrab #NotifiedSum #InterimPayments #TCCJudgment #ContractualNotices #CommonsenseConstruction #StatutoryRegime

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