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Smash, Grab, and Sorted: VMA Services Ltd v Project One London Ltd [2025] EWHC 1815 (TCC)

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Date: 18 July 2025

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

Key Words:

Smash and Grab Adjudication, Notified Sum, True Value Adjudication, Payment Notice, Pay Less Notice, Jurisdiction, Adjudicator's Powers, HGCRA 1996, Para.20(b) of the Scheme, Bresco Principle, WRW Construction, Subjugation Principle, Enforcement, Cash Flow in Construction, Adjudication Procedure, Summary Judgment, Natural Justice, Excess of Jurisdiction, Interim Payment, TCC

Summary of the Case

In *VMA Services Ltd v Project One London Ltd* [2025] EWHC 1815 (TCC), the High Court (Adrian Williamson KC) considered whether an adjudicator had jurisdiction to order payment of a "notified sum" to a responding party in a True Value Adjudication (TVA).

The dispute arose under a JCT Design and Build Sub-Contract Agreement (2016 Edition) entered into in October 2023 between VMA Services Ltd ("VMA") and Project One London Ltd ("POL") for mechanical works [4]. VMA submitted Application for Payment No. 8 on 21 June 2024, seeking £106,434.88 net. POL failed to serve either a Payment Notice or a Pay Less Notice [5–6].

On 16 December 2024, POL initiated a TVA. In response, VMA asserted its entitlement to the unpaid notified sum, both as a defence and by way of counterclaim [8–9].

The adjudicator determined that VMA's payment application was valid, that POL had failed to issue the necessary notices, and that £106,434.88 was therefore due as a notified sum [11]. The adjudicator declined to engage with POL's TVA, citing the priority of immediate payment obligations under the Act [11(4.6.5)]. He ordered POL to pay the notified sum, plus interest [13].

Legal Framework and Submissions

The court examined the Housing Grants and Construction Regeneration Act 1996 ("the Act") and the Scheme for Construction Contracts 1998 ("the Scheme"), which collectively aim to maintain cash flow in the construction industry [14].

Pursuant to sections 110A and 111 of the Act, a payer must pay the full sum stated in a valid application unless a compliant Payment Notice or Pay Less Notice is issued in time [15].

POL's principal argument was that the adjudicator lacked jurisdiction to make a monetary award in favour of VMA as a responding party [2]. This triggered a detailed analysis of several overlapping legal themes.

Established Principles Reaffirmed

1. The "Smash and Grab" Framework and Notified Sums

The judgment restates the core principle of "smash and grab" adjudications: if no timely Payment Notice or Pay Less Notice is served, the sum applied for becomes a "notified sum" and is immediately payable [14–15]. This obligation exists regardless of any dispute over the true value of the works [16].

Here, POL's omission in serving valid notices triggered precisely this result. As a matter of law, the notified sum was due and payable [11].

2. The Principle of Subjugation

The court endorsed the subjugation principle established in *Bexheat Ltd v Essex Services Group Ltd* [2022] EWHC 936 (TCC): an employer's right to initiate a TVA under s.108 of the Act is subjugated to the immediate payment obligation under s.111 [17]. Importantly, this applies whether or not the contractor has already secured an adjudication award in its favour, as confirmed in *AM Construction v The Darul Amaan Trust* [2022] EWHC 1478 (TCC) [18].

In this case, the adjudicator applied this principle directly: POL's TVA was effectively barred by its failure to comply with the s.111 obligation [11–12].

3. Scope of Adjudication and Responding Party's Rights

The judgment recaps the permissible scope of defences in adjudication, relying on *Global Switch Estates 1 Limited v Sudlows Limited* [2020] EWHC 3314 (TCC) [19]. A responding party may raise wide-ranging defences to rebut the referring party's claim but may not expand the dispute by introducing unrelated matters.

As confirmed in *Bresco Electrical Services Ltd (in liq) v Michael J Lonsdale (Electrical) Ltd* [2020] UKSC 25, a responding party may deploy a set-off as a defence—but cannot usually recover a separate monetary award [20].

Nevertheless, VMA argued it was entitled to precisely that—payment of the notified sum as a direct award. This created a potential jurisdictional tension with Bresco.

Did the Adjudicator Have Jurisdiction to Award Payment?

VMA's Position and WRW Construction

VMA relied on paragraph 20(b) of the Scheme and the High Court's reasoning in *WRW Construction Limited v Datblygau Davies Developments Limited* [2020] EWHC 1965 (TCC) [24–25]. While the judge declined to accept that paragraph 20(b) alone conferred jurisdiction to award payment to a respondent [23], he found WRW Construction persuasive in context [26].

In WRW, the court enforced an adjudicator's binding valuation in the respondent's favour without requiring a second adjudication [25(18–20)]. The court in VMA adopted the same approach, finding it

inefficient and contrary to the Act's purpose to require VMA to pursue a further adjudication for recovery of a sum already determined to be due [26–27].

The High Court's Reasoning

The Court found that this case fell outside the Bresco principle: the adjudicator had found that a specific sum was immediately payable as a matter of law. In such circumstances, the court held it would be "an arid exercise" to insist on a separate adjudication for the same amount [27].

POL's suggestion that some new defence might emerge in a future adjudication was dismissed as "Micawberish"—a speculative grasp at potential arguments rather than an actual legal obstacle [28].

On Jurisdiction and Natural Justice

The court summarily rejected POL's remaining arguments, characterising them as a classic example of a losing party attempting to "comb through the adjudicator's reasons" in search of jurisdictional or procedural flaws [30], a practice disapproved of since Carillion Construction Ltd v Devonport Royal Dockyard [2005] EWCA 1358 [31–32].

No breach of natural justice was found. The adjudicator gave both parties full opportunity to argue their cases, and nothing in the process exceeded his jurisdiction [31–32].

Conclusion

The High Court concluded that the adjudicator had jurisdiction to award the notified sum to VMA and that the decision was binding and enforceable [33].

Key Themes

1. "Smash and Grab" Adjudications and Notified Sums

- ***Why it matters**: It enforces immediate payment obligations where proper notices are absent [14–15].*
- ***Recent case law**: Applied directly here, following the 2011 amendments to the HGCRA [14–16].*
- ***Policy aim**: Maintain liquidity within the construction supply chain [14, 27].*

2. Principle of Subjugation

- ***Why it matters**: Establishes the priority of s.111 payment obligations over s.108 valuation rights [17].*
- ***Recent case law**: Bexheat and AM Construction [17–18].*
- ***Policy aim**: Prevents abuse of TVA as a payment avoidance tactic.*

3. Scope of Adjudication and Responding Party's Rights

- ***Why it matters**: Clarifies what defences respondents can raise [19–20].*
- ***Recent case law**: Global Switch and Bresco [19–20].*
- ***Policy aim**: Legal predictability and procedural efficiency.*

4. Adjudicator's Jurisdiction to Order Payment to a Responding Party

- ***Why it matters****: Core issue in this case [2].*
- ***Recent case law****: WRW Construction provided persuasive authority for enforcement [24–26].*
- ***Policy aim****: Avoids redundant adjudications and supports swift resolution [27].*

5. Enforcement of Adjudication Decisions and Challenges

- ***Why it matters****: Ensures adjudicators' decisions are upheld promptly [27].*
- ***Recent case law****: Carillion v Devonport and the present judgment affirm a strict approach to enforcement [30–32].*
- ***Policy aim****: Preserves the adjudication regime's integrity and utility.*

Key Takeaway

While a responding party to adjudication generally cannot obtain a direct monetary award, VMA v POL confirms that where an adjudicator determines a notified sum is due, that determination is enforceable—regardless of which party initiated the adjudication. The judgment reinforces the Act's purpose: speed, finality (albeit temporary), and, above all, cash flow.

Because in construction law, as in plumbing, if the pipe is blocked, someone's getting soaked.

Parting Thoughts

When all is said and done—and quite a bit was—this judgment confirms a deceptively simple point that some construction clients persistently pretend not to understand: if you don't issue a Payment Notice or a Pay Less Notice, then yes, you must pay the amount in the contractor's application. No, not next week. No, not after a "true value" adjudication. And definitely not once Mercury is out of retrograde.

In this case, Project One London Ltd (POL) tried to leapfrog the immediate payment obligation by launching a True Value Adjudication without first settling the Notified Sum. The adjudicator quite rightly said, "Nice try," and ordered payment of £106,434.88 to VMA Services Ltd. POL, unhappy with the result, invited the High Court to have another go—arguing, with admirable optimism, that perhaps the adjudicator had overreached by awarding the money to the responding party.

The High Court disagreed, briskly. It upheld the adjudicator's jurisdiction to award the Notified Sum to VMA, invoking WRW Construction as persuasive authority and dismissing POL's other arguments as the legal equivalent of shaking the biscuit tin in case something tasty remains.
The court reiterated that construction adjudication is meant to keep cash flowing, not to indulge procedural hobbyists looking to defer payment indefinitely. Once the Notified Sum is due, it's due—like death, taxes, and engineers insisting it's "only a crack."

This case, therefore, is not merely a restatement of smash-and-grab orthodoxy. It is a sharp reminder that adjudication is not a parlour game. Responding parties can indeed win money—so long as what they're owed is blindingly obvious and already determined by law, contract, and their opponent's tactical blunders.

In short: You started it. You lost it. You pay it. Next.

Postscript

I was asked about this judgment whilst I was writing the above and thought it might be helpful if I include my responses to the questions below.

The questions about VMA v Project One London [2025] EWHC 1815 (TCC) highlight a real tension between procedural propriety and practical enforcement under the HGCRA. Here's a structured response to each of the points raised, with reference to the judgment and legal context:

1(a). Why is a defence in a true value adjudication raising the issue of a notified sum not a standalone counterclaim (i.e. a different dispute)?

*Because **raising the notified sum as a defence is directly responsive to the referring party's claim**, not an attempt to widen the adjudication.*

*Under Global Switch v Sudlows [2020] EWHC 3314 (TCC), respondents may raise any properly arguable defence, including payment entitlements, provided they don't introduce an entirely separate dispute. VMA's argument was **not a new claim** but a **jurisdictional and substantive defence:** that the referring party (POL) was barred from pursuing a true value adjudication due to non-payment of the notified sum, per the Bexheat subjugation principle.*

1(b). If that defence was a set-off and not a counterclaim, how can it result in a money award to VMA, the adjudication respondent?

*Here's the crux. It **wasn't treated merely as a set-off** or general counterclaim.*

*The adjudicator decided the notified sum was lawfully due under s.111 HGCRA because of POL's failure to serve notices. That obligation was already fixed by statute—**not a disputed valuation**.*

*This enabled the judge to follow WRW v DDD [2020] EWHC 1965, and **distinguish it from Bresco**, which prohibits counterclaims for payment by respondents. In VMA, **the adjudicator wasn't valuing works in VMA's favour**, but enforcing a **statutory entitlement already crystallised** by POL's omission.*

2. Why was the adjudicator allowed to award money to the respondent, despite Bresco saying that's generally not allowed?

Because this wasn't a counterclaim award in the usual sense. The court held:

- ***Bresco applies to respondents seeking affirmative monetary relief through a valuation claim.***
- *Here, the **adjudicator ruled that a specific sum was already payable under statute** due to POL's default.*
- *That transforms the situation: **the amount was not contingent or disputed**. It was "immediately due" as a matter of law, and thus **enforceable—even in favour of a respondent**.*

*So, while Bresco limits counterclaims by respondents, this judgment carves out a **narrow exception** for notified sums already due by operation of statute, not determined by the adjudicator's valuation.*

3. Did the court sidestep the jurisdiction issue by assuming the adjudicator had jurisdiction once the sum was decided to be due?

*There's force in this concern, but **the court's logic was sequential**:*

- *The adjudicator determined, as a **preliminary issue**, that POL had failed to serve a notice, and that the notified sum became due under s.111 HGCRA.*
- *That decision itself became the "**matter in dispute**" within the adjudication and fell within the adjudicator's jurisdiction.*
- *The judge accepted WRW as authority that once such a binding determination is made, **it can carry enforceable consequences, including payment**.*

*So, while it may seem circular, the judge treats the statutory payment obligation (s.111) as **prior and determinative**, not something the adjudicator "awarded" in the Bresco sense.*

4. Doesn't this prioritise cash flow over the procedural integrity of adjudication?

*Yes—but **deliberately so**.*

*The judgment strongly reinforces the **cash flow imperative**, noting that requiring VMA to launch a new adjudication to obtain the same notified sum would be "an arid exercise" and contrary to the purpose of the HGCRA.*

*It explicitly privileges **pragmatism and purpose over formality**. While arguably messy in principle, this aligns with long-standing policy: **adjudication is rough justice, focused on speed and liquidity** (see Carillion v Devonport, cited at para. 30).*

5. If POL had no right to bring a TVA before paying the notified sum (per Bexheat), did the adjudicator have jurisdiction at all?

That's a key tension.

*The judge accepts that **POL had no right to pursue the true value claim due to non-payment of the notified sum** (Bexheat) but doesn't treat that as invalidating the entire adjudication. Instead, the adjudicator:*

- *Heard the dispute on whether POL was entitled to proceed.*
- *Determined it was **barred** under Bexheat.*
- *Then ordered payment of the notified sum that **had been raised in defence**.*

*In effect, the **TVA was hijacked and flipped**—but lawfully so, says the judge. Once POL initiated the adjudication, the entire dispute (including whether they could proceed and what was owed) was properly before the adjudicator.*

*So, **while POL's claim failed on jurisdictional grounds**, the adjudicator was still seized of the matter—and empowered to award what was already legally due to VMA.*

Summary

- ***Bresco** prohibits monetary awards to respondents based on valuations or cross-claims, **not enforcement of statutory entitlements** like notified sums under s.111.*
- ***VMA's "defence" was not a claim—it was the raising of a statutory debt** triggered by POL's failure to serve notices.*
- *The judge relied on WRW to say **courts can enforce that outcome**, even if the award favours the respondent.*
- *The case affirms that **the adjudicator's jurisdiction covers determining whether a***

***notified sum is due**, even in a TVA.*

- *And the court preferred **cash flow and efficiency** over rigid adherence to process, in line with adjudication's founding principles.*

Postscript 2

The response to our recent update on *VMA Services Ltd v Project One London Ltd* [2025] EWHC 1815 (TCC) has been exceptional. A flurry of insightful questions followed—from the doctrinal to the "does this even make sense anymore?" variety. This article revisits those key issues in light of the judgment, the case law, and a strong cup of tea.

Q1: Could the outcome have been different if the notified sum related to a *different* payment application than the one referred to adjudication?

Short answer: Yes—possibly.

Under *Bexheat* and *Grove*, a party cannot commence a valid *True Value Adjudication* (TVA) **unless all prior notified sums have been paid**. This principle applies regardless of whether the TVA concerns an earlier, same, or later valuation period.

However, **raising a notified sum from a different period as a defence in an adjudication** may not be permissible if it introduces a new dispute. That risks stepping into *Bresco* territory—i.e. a standalone counterclaim disguised as a defence. For the defence to be effective, it must be **part of the same or substantially the same dispute**. Otherwise, the adjudicator may not be "seized" of it, and jurisdiction could fail.

The court in *VMA* avoided that complexity because the notified sum and the TVA claim arose from the same application (AFP No. 8). But where the two differ in scope or period, things get trickier.

Q2: Can a respondent be awarded money in adjudication without breaching *Bresco*?

Yes—**but only in narrow circumstances**.

In *VMA*, the adjudicator didn't make a valuation-based award or uphold a counterclaim. He enforced a **statutory debt** arising under s.111 HGCRA—crystallised when the payer failed to serve a valid Pay Less Notice.

This fits squarely within the reasoning in *WRW v DDD* [2020] EWHC 1965 (TCC): where the adjudicator determines that a notified sum is due as a matter of law, **enforcement can follow**, even if the successful party is the respondent. That's not a valuation; it's a statutory trigger. *Bresco* prohibits counterclaims—not defences that reveal a fixed obligation already due.

Q3: Does starting a TVA without paying the notified sum invalidate the adjudicator's jurisdiction entirely?

No—but it neutralises the referring party's position.

As Aaron rightly summarised, *Bexheat* and *Grove* don't say adjudicators lose jurisdiction altogether. Instead, t**he referring party's claim fails at the threshold**, because they're seeking to rely on s.108 (right to adjudicate valuation) while in breach of s.111 (failure to pay notified sum). That contradiction is fatal.

The adjudicator remains validly appointed, but the dispute is **flipped**: from a question of "What's the true value?" to "Are you barred from asking?"

The adjudicator, still seized of the overall dispute, can then determine that the notified sum is due—and order payment accordingly, as happened in *VMA*.

Q4: Should we rethink calling this a 'hierarchy' between s.111 and s.108?

Yes. Conceptually, *hierarchy* is imprecise.

As Aaron noted, it's more accurate to view s.111 as a **threshold condition**: payment of the notified sum is a precondition to engaging in a TVA. The courts haven't said that s.111 "trumps" s.108 in some absolute legislative pecking order—but rather that a party **can't rely on one part of the Act while in breach of another**.

So it's not top-down; it's **sequential**. You pay the notified sum (s.111). *Then you* adjudicate valuation (s.108). The logic is less about primacy and more about preconditions—fail those, and your adjudication is stillborn.

Q5: Has the term "True Value Adjudication" changed in meaning?

Informally—yes.

Originally, the term referred to an adjudication seeking to determine the "true value" of a previously applied-for sum (e.g. a response to a smash-and-grab). But the usage has broadened.

Now, *TVA* often refers to **any valuation dispute referred to adjudication**, whether interim or final. The courts haven't formally adopted the label, but it's useful shorthand in practice.

That said, we must be precise: not every valuation adjudication is a TVA in the *Grove/Bexheat* sense. Only those that seek to reassess a previously applied-for (and potentially unpaid) amount fall within that doctrinal niche—complete with its statutory preconditions.

Summary Takeaways

1. **You can't adjudicate the value of what you haven't paid**. Statutory payment obligations under s.111 are gatekeepers.
2. **A responding party can win money in adjudication**—but only if it's a fixed, statutory entitlement, not a valuation-based counterclaim.
3. **Adjudicator jurisdiction is preserved**, but the claim may be turned inside out by operation of law.
4. **Framing matters**. Subjugation is best understood not as hierarchy, but as sequence: no payment, no valuation.
5. **The term TVA is a practical tool**, but context is everything. Not all TVAs are born alike.

If *VMA* reaffirmed anything, it's that **construction adjudication is not a parlour game**. Procedural form must give way to statutory function—especially when liquidity is at stake.

So if you haven't served a Pay Less Notice?

Don't serve a Referral Notice.

Serve payment. Then talk.

#LegalUpdate #DDAlegal #ConstructionLaw #Adjudication #SmashAndGrab #NotifiedSum #TrueValueAdjudication #HGCRA1996 #TCC #PaymentDisputes #CashFlowMatters #Jurisdiction #VMA #ProjectOne #BrescoPrinciple #WRWConstruction #UKCaseLaw #SummaryJudgment #LegalUpdate #ConstructionDisputes #AdjudicatorPowers #ConstructionAct #Enforcement #PayLessNotice

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