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May 08, 2026

United Utilities Water Ltd v Northstone (NI) Ltd (t/a Farrans Construction) [2026] EWHC 1057 (TCC): When CEMAR's Wrong Date Was Not a Golden Ticket

United Utilities Water Ltd v Northstone (NI) Ltd (t/a Farrans Construction) [2026] EWHC 1057 (TCC)

HHJ Kelly sitting as a Judge of the High Court, 6 May 2026

Key Words

Adjudication enforcement; Part 8 proceedings; payment notices; payment reduction notice; pay less notice; smash and grab adjudication; NEC3; CEMAR; contractual interpretation; reasonable recipient; construction contract.

1. **Headnote**
    1. This was an application by an employer, United Utilities Water Ltd ("UU"), to enforce an adjudicator's decision by summary judgment, together with linked Part 8 proceedings brought by the contractor, Northstone (NI) Ltd trading as Farrans Construction ("Farrans"), seeking declarations intended to defeat enforcement. [1]–[2], [19]–[20]
    2. The dispute arose under an NEC3 contract, originally Option C but later amended by a settlement agreement and deed of variation. The amendments increased the Prices and introduced a milestone-based payment regime with a materially accelerated payment cycle. [5], [10]–[11]
    3. The immediate dispute concerned payment notice PA-70, issued through CEMAR, which assessed the amount due as a negative sum of £3,269,328.05, said by UU to be repayable by Farrans. [12], [14]–[18]
    4. Farrans contended that PA-70 was invalid because CEMAR displayed an incorrect due date and because, properly construed, the notice did not amount to a clear demand for payment by Farrans to UU. [22], [33], [36]–[39]
    5. UU argued that the notice had to be construed objectively, by reference to how a reasonable recipient, circumstanced as the actual parties were, would have understood it. That included the parties' knowledge of the NEC3 amendments, the accelerated payment machinery, and the limitations of CEMAR after the bespoke changes to the payment regime. [27], [48]–[52], [56]
    6. HHJ Kelly held that the issues raised by Farrans were not suitable for determination under

Part 8. The validity of PA-70 could not be determined as a neat point of law divorced from the factual matrix. The court required evidence as to the contractual background, the commercial purpose of the amendments, how CEMAR had been used in practice before and after the amendments, and what the parties understood about CEMAR's automatically generated dates. [59]–[63]

7. Accordingly, the court declined to determine Farrans' Part 8 issues and granted UU summary judgment enforcing the adjudicator's decision. [64]–[66]

2. **Material Facts**
    1. UU engaged joint venture parties, including Farrans, in connection with works forming part of the West Cumbria Supply Project. The works included substantial water infrastructure, namely cross-country raw water aqueduct and network water mains pipelines. [1], [4]
    2. The original contract was an NEC3 Engineering and Construction Contract, April 2013 edition, Option C with bespoke amendments. The Prices were initially £85 million. A settlement agreement dated 25 July 2018 increased the Prices to £95 million. A later deed of variation dated 30 September 2021 increased the Prices to £131.6 million and made further amendments. [5]
    3. The settlement agreement changed the payment structure from Option C to a milestone-based Option A arrangement. It allowed the contractor to apply for payment when milestones were completed and accelerated the payment cycle from a 35-day process to a much shorter process. [8]–[11]
    4. The parties continued to use CEMAR, a cloud-based contract administration system which had been used throughout the project. CEMAR had originally been configured by reference to the original contractual payment cycle. UU's evidence was that, after the bespoke amendments, CEMAR's automatically generated payment dates no longer reflected the amended payment regime, and that the parties understood this. [12], [52]
    5. On 4 October 2024, the JV parties submitted applications for payment in respect of Milestones 9 and 11. The Project Manager responded on 11 October 2024 by issuing PA-70 through CEMAR. PA-70 assessed the amount due as a negative sum of -£3,269,328.05. [12]–[15]
    6. Farrans responded with what it described as a payment reduction notice, dated 17 October 2024 and received on 18 October 2024. UU contended that the notice was out of time and that the notified sum was payable by Farrans. The dispute was referred to adjudication, and the adjudicator awarded UU £3,269,328.05 plus VAT. Farrans did not pay, and UU commenced enforcement proceedings. [16]–[18]
    7. Farrans then brought Part 8 proceedings contending that PA-70 was invalid and, alternatively, that even if it was valid, Farrans was not obliged to serve a pay less/payment reduction notice in order to avoid liability for the notified sum. [19]–[22]

3. **Issues**
    1. The two issues identified by Farrans for determination in the Part 8 claim were:
        1. Whether PA-70 was a valid payment notice requiring payment by Farrans of £3,269,328.05, with a due date of 13 October 2024 and a final date for payment of 20 October 2024. [22]
        2. If PA-70 was valid, whether Farrans was obliged to issue a pay less/payment reduction notice if it wished to pay less than £3,269,328.05. [22]
    2. UU disputed the premise that these were straightforward points of law. It argued that the first issue involved factual sub-issues, including whether the information displayed on CEMAR was incorrect or misleading in the relevant contractual and commercial context.

[23]–[24], [41]–[43], [48]–[56]

4. **Decision**
    1. The court held that the issues raised by Farrans were not suitable for determination under Part 8. [59]
    2. HHJ Kelly rejected the submission that the court simply had to consider the contract, the statutory provisions, and the apparent inconsistency between PA-70 and the CEMAR date. The judge was concerned that the evidence before the court did not permit a proper determination of how a reasonable recipient would have understood the notice. [59]–[61]
    3. The court held that the relevant factual matrix included the original NEC3 contract, the circumstances leading to the amendments, the commercial purpose and effect of the settlement agreement and deed of variation, and the way CEMAR was used in practice before and after the amendments. [60]–[63]
    4. The court also considered it relevant that the parties were sophisticated and experienced commercial parties, and that the contract required them to act in a spirit of mutual trust and cooperation. [44]–[48], [62]
    5. Farrans' evidence was insufficient to allow the court to determine how PA-70 would have been understood by a reasonable recipient with the knowledge of the actual parties. In particular, Farrans had not properly engaged with UU's evidence that the parties understood that CEMAR would not be reprogrammed after the amendments and that automatically generated dates would therefore be wrong. [52], [56], [61]–[62]
    6. The court therefore declined to determine Issue 1. Having declined to determine Issue 1, it also declined to determine Issue 2, because findings on Issue 1 might affect the answer to Issue 2. [64]–[65]
    7. UU was granted summary judgment in the sum of £3,269,328.05 plus VAT, together with interest awarded by the adjudicator, the adjudicator's fees of £62,254.69 plus VAT, and further interest at 8.1% from 3 April 2025. [66]
5. **Ratio Decidendi**
    1. The validity and interpretation of a payment notice must be assessed objectively by reference to how a reasonable recipient, circumstanced as the actual parties were, would have understood it. [27], [48]
    2. Where that assessment depends on disputed or insufficiently evidenced matters forming part of the factual matrix, including the contractual background, commercial purpose, parties' course of administration, and shared understanding of an IT platform, the issue is not suitable for summary determination under Part 8. [59]–[63]
    3. A party resisting adjudication enforcement cannot defeat enforcement merely by recasting fact-sensitive issues as short points of contractual or statutory interpretation. Where the Part 8 challenge requires factual investigation, the adjudicator's decision will ordinarily be enforced, leaving the underlying issues to be determined in appropriate proceedings. [59]–[66]

Comment

The judgment is a brisk reminder that adjudication enforcement is not readily derailed by presenting a fact-sensitive dispute as a short Part 8 point.

Farrans sought to frame PA-70 as raising a neat issue of law: wrong date on CEMAR, no clear demand, no valid payment notice, and therefore no obligation to pay. [22], [33], [36]–[39] HHJ Kelly was not prepared to determine the issue on that basis.

The court's central point was not that PA-70 was definitively valid, nor that Farrans was necessarily bound to serve a payment reduction notice. Rather, the court held that those questions could not sensibly be answered on the evidence before it. The validity of the notice depended on how a reasonable recipient, circumstanced as the actual parties were, would have understood it. [27], [48], [59]–[62]

That required consideration of the NEC3 contract, the settlement agreement, the deed of variation, the accelerated payment machinery, the parties' use of CEMAR, and the alleged shared understanding that CEMAR's auto-generated dates no longer reflected the bespoke amended payment regime. [5], [10]–[12], [48]–[52], [56], [61]–[63] This was not a pure point of law; it was a fact-sensitive question requiring a proper evidential foundation.

The decision therefore reinforces a practical proposition: payment notices are not interpreted in a hermetically sealed glass box. The court will look at the contractual and commercial machinery in which the notice operated, particularly where sophisticated parties have altered the bargain, accelerated the payment regime, and continued using a legacy contract administration platform which, on UU's evidence, was known to generate dates inconsistent with the amended regime. [52], [59]–[63]

A rogue platform date may matter. But whether it matters depends on context, knowledge and practice, not merely on the fact that the date appearing on the screen was wrong.

For adjudication enforcement, the message is equally direct. A losing party cannot usually avoid prompt enforcement by recasting a disputed factual matrix as a tidy declaratory claim under Part 8. If the challenge requires evidence about what the parties knew, how the system worked, and how the notice would reasonably have been understood, it is unlikely to be suitable for Part 8 determination. [59]–[65]

Until then, the adjudicator's award remains enforceable.

*In the result, UU obtained summary judgment for **£3,269,328.05 plus VAT**, interest, and the adjudicator's fees. Farrans' Part 8 challenge did not determine the validity of PA-70; it failed because the court was not prepared to decide that question without the factual foundation needed to answer it. [66]*

#ConstructionLaw #Adjudication #PaymentNotices #PayLessNotice #Part8Proceedings #SmashAndGrab #NEC3 #ContractLaw #ReasonableRecipient #TCC #DisputeResolution #CEMAR #UKLaw #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Interpretation and Validity of Contractual Payment Notices (Objective "Reasonable Recipient" Test)

1. ***Mannai Investment Co. Limited v Eagle Star Life Insurance Co. Limited*** [1997] UKHL J0521-3, [1999] AC 749 [27(i)–(ii)] – *The case established that contractual notices must be construed objectively by reference to how a reasonable recipient, circumstanced as the actual parties were, would have understood the notice, rather than by reference to the subjective intention or understanding of either party.*
2. ***Advance JV v Enisca Limited*** [2022] EWHC 1152 (TCC) [27], [48] – *The case provided a consolidated statement of principles governing the interpretation of contractual notices, including that notices must be construed against the relevant objective contextual scene and*

that courts should adopt a practical, common-sense approach rather than an artificial or overly technical analysis.

3. ***Thomas Vale Construction PLC v Brookside Syston Limited*** [2006] EWHC 3637 (TCC) [27] *– The case supported the principle that courts should not invalidate contractual notices on contrived or overly technical grounds where the substance and purpose of the notice are tolerably clear.*
4. ***Jawaby Property Investment Ltd v The Interiors Group Ltd & Anor*** [2016] EWHC 557 (TCC) [27]*– The case was cited for the proposition that the intention behind a contractual notice must be assessed objectively, taking account of the surrounding context.*
5. ***Surrey and Sussex Healthcare NHS Trust v Logan Construction (South East) Ltd*** [2017] EWHC 17 (TCC), [2017] BLR 189 [27] *– The case was cited for the proposition that a notice need not bear a particular title or refer expressly to the relevant contractual clause, provided that, viewed objectively, it had the requisite intention to fulfil the relevant contractual function.*
6. ***Grove Developments Limited v S&T (UK) Limited*** [2018] EWHC 123 (TCC), [2018] BLR 173 [27] *– The case confirmed that payment notices must be interpreted objectively; that validity is a question of fact and degree; that payment notices and pay less notices must clearly set out the sum due or to be deducted and the basis of calculation; and that the court should adopt a realistic and commercially sensible approach rather than an artificial or formalistic one.*
7. ***S&T (UK) Limited v Grove Developments Limited*** [2018] EWCA Civ 2448, [2019] BLR 1 [27] *– The Court of Appeal upheld the objective approach to construing payment notices. It also confirmed that there is no principled basis for adopting different rules of construction for different types of payment notice, although the particularly adverse consequences of an unanswered notice may be relevant to the reasonable recipient test.*

Smash and Grab Adjudication Principles and Payment Notice Clarity

1. ***Caledonian Modular Ltd v Mar City Developments Ltd*** [2015] EWHC 1855 (TCC) [26(1)] *– The case was relied upon for the principle that a party seeking the benefit of a "smash and grab" adjudication must ensure that the relevant interim payment claim is clear, unambiguous, and sufficient to alert the responding party to what must be done and when.*
2. ***Henia Investments Limited v Beck Interiors Limited*** [2015] EWHC 2433, [2015] BLR 704 [26(1), (3)], [27] *– The case was relied upon for the proposition that payment notices must be free from ambiguity and that, although a notice need not necessarily specify the due date expressly, it must be clear and unambiguous that the notice or application relates to a specific due date. It was also cited in support of the "adequate agenda" test when considering whether a notice provides a sufficient basis for dispute resolution.*
3. ***Severfield (UK) Ltd v Duro Felguera UK Ltd*** [2015] EWHC 3352 (TCC) [26(2)] *– The case was cited for the principle that a payment notice must itself state the sum due, and that a party should not be required to perform a further mathematical exercise or additional calculation to identify the notified sum.*

Role of Context, Contractual Background, and Factual Matrix in Construction Contracts

1. ***Reardon Smith Line Ltd v Hansen-Tangen*** [1976] 1 WLR 989 [61] *– The case was cited for the principle that contracts are not construed in a vacuum and must be interpreted against their factual and commercial background. Lord Wilberforce's well-known statement was quoted: "No contracts are made in a vacuum; there is always a setting in which they have to be placed."*

NEC Contracts and Duties of Fairness and Independence

1. ***Costain Ltd v Bechtel Ltd*** [2005] EWHC 1018 (TCC) [28-29] – *The case concerned NEC-style contractual machinery and was relied upon for the proposition that, where the Project Manager is required to exercise independent judgment, the Project Manager owes a duty of fairness and impartiality between employer and contractor when assessing matters such as what should be paid or deducted.*

Statutory Payment Framework and Dual Payer/Payee Status

1. ***Everwarm Ltd v BN Rendering Ltd*** [2019] EWHC 3060 (TCC) [30] – *The case confirmed that, following the amendments to the Housing Grants, Construction and Regeneration Act 1996, a contractor may occupy the position of both payer and payee depending on the particular contractual payment provisions. This supported UU's answer to Farrans' argument that the payment machinery could not operate where the notified sum was a negative amount.*

Legislation:

Statutory Payment Regime Governing Construction Contracts

Housing Grants, Construction and Regeneration Act 1996 (as amended)

The Housing Grants, Construction and Regeneration Act 1996 provided the statutory framework governing payment mechanisms, payment notices, pay less notices, and the obligation to pay the notified sum under construction contracts. [17], [19], [25]

Section 109 *was set out as confirming that parties to a construction contract are entitled to stage, instalment or periodic payments, unless the statutory exceptions apply, and that the parties are free to agree the amounts of payments and the intervals or circumstances in which they become due. [25]*

Section 110 *was set out as requiring every construction contract to provide an adequate mechanism for determining what payments become due and when, and to provide a final date for payment in relation to any sum which becomes due. [25]*

Section 110A *was set out as prescribing the contractual requirements for payment notices, including that a notice must specify the sum considered due at the payment due date and the basis on which that sum is calculated. [25]*

Section 111 *was set out as imposing the obligation to pay the "notified sum" on or before the final date for payment, subject to the pay less notice mechanism and other statutory qualifications. [25], [40]*

The statutory definitions of "payer", "payee", and "payment due date" were relevant to the parties' arguments concerning whether, under the amended contractual payment machinery, Farrans could be treated as the payer in respect of a negative payment assessment. [25], [30]

The statutory payment regime under the 1996 Act formed the central legal context for Farrans' Part 8 claim concerning the validity and consequences of PA-70 and whether Farrans was obliged to issue a pay less/payment reduction notice. [19], [22], [25], [59]–[65]

Water Industry Statutory Context

Water Industry Act 1991

The Water Industry Act 1991 was referred to in establishing that United Utilities Water Ltd was a water and wastewater undertaker. [1], [42]

UU relied on that statutory status as part of the wider contextual background, including the regulatory setting and significance of the West Cumbria Supply Project. [42]–[43]

That context was relied upon by UU as part of the factual and commercial background relevant to the contract and the parties' dealings. However, the court's actual decision turned principally on the insufficiency of the evidence needed to determine how a reasonable recipient would have understood PA-70 in context. [48], [59]–[63]

Default Statutory Payment Mechanism

Scheme for Construction Contracts (England and Wales) Regulations 1998

The Scheme was referred to as the default statutory mechanism applying where a construction contract does not comply with the payment provisions required by the 1996 Act. [17], [25]

The Scheme formed part of the statutory background to the parties' arguments concerning the payment regime, but it was not directly applied by the court to determine the validity of PA-70, because the court declined to determine Farrans' Part 8 issues. [17], [25], [59]–[65]

Legal Texts & Commentary:

Interpretation and Validity of Contractual Payment Notices (Practical and Common-Sense Approach)

Sir Peter Coulson, Construction Adjudication, 4th ed. (2018), paragraph 3.36

The text was cited for the proposition that courts will take a practical, common-sense approach to the construction of pay less notices and will not adopt an unnecessarily restrictive or technical interpretation. [27(iv)]

The commentary was quoted in support of the principle that, provided the notice makes tolerably clear what is being withheld and why, the court will not strive to find reasons to render the notice invalid or ineffective. [27(iv)]

Read with the wider principles summarised in Advance JV v Enisca Ltd, the passage supported the broader approach that payment notices and pay less notices are construed objectively, in their contractual and commercial context, with attention to substance rather than artificial or contrived objections. [27(iv)]

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