

Construction Law Update

Stick to the Script! Adjudicator's Detour into Unargued Points Breaches Rules of Natural Justice

In *LMND Group Ltd v John Henry Group Ltd* [2025], the TCC affirmed the well-established principle that an adjudicator who decides a dispute on a point neither party has argued, without giving the parties a chance to address it, will have breached the rules of natural justice, and the decision will not be enforced.

Key takeaways:

- While adjudication can be rough and ready, adjudicators cannot decide issues using reasoning or authorities the parties were never given the opportunity to address.
- A breach of natural justice defeats enforcement only if it is material and could have changed the outcome. Such occasions are likely to remain rare, and they are fact sensitive.
- One material breach of natural justice is enough to defeat enforcement, even where other challenges fail.

Factual Background

In May 2023, LMND Group Limited ("LMND") and John Henry Group Limited ("John Henry") entered into a framework agreement for the provision of sub-contract services. Two sub-contract works directions were issued under that framework, and the works were carried out and completed on that footing.

Following completion of the works, LMND launched a series of adjudications against John Henry. This case concerns the fifth in that sequence, a notified

sum (smash and grab) claim covering 15 separate payment applications, for which LMND obtained an award of just under £238,000 plus interest.

When LMND applied to the TCC for summary judgment to enforce, John Henry resisted on two natural justice grounds: first, that the adjudicator had rejected a key defence by relying on points and an authority that neither party had raised, without inviting submissions; and second, that he had failed to engage with a material part of that defence.

Held

The application was heard by HHJ Stephen Davies who sided with John Henry on the natural justice point and refused to enforce the decision.

1. The estoppel defence

In the adjudication, John Henry had argued that LMND should be prevented from challenging the validity of the payment certificates, on the basis that 120 earlier certificates in substantially the same format had been accepted without complaint.

The adjudicator rejected that defence, but in doing so he (i) reasoned that because the estoppel defence had not been raised in the earlier adjudications between the parties, that history discounted the defence in this adjudication, and (ii) relied on the decision in *Spencer v MW High Tech Projects Ltd* as a key authority on why the estoppel defence should fail, **even though neither point had been advanced by the parties and they had not been given the opportunity to make submissions on them.**

The Court held that this was a material breach of natural justice. John Henry's defence was a substantive one: had it succeeded, LMND's notified sum claim would have failed. Therefore, it could not properly be determined by reference to reasoning and authority introduced by the adjudicator without prior input from the parties.

HAWKSWELL KILVINGTON LIMITED

Leeds | Manchester | London

Tel: +44 113 543 6700 | enquiries@hklegal.co.uk | www.hklegal.co.uk

BE
BEYOND
LAW GROUP
beyondlawgroup.co.uk

Construction Law Update

2. The part-payment defence

John Henry also contended that, taking into account payments it had already made of about £209,000, any enforcement should be limited to the remaining balance of the adjudicator's award.

The adjudicator rejected that position on the basis that this was a 'smash and grab' adjudication and the adjudicator could not take into account arguments like this, unless the notified sum liability had been discharged.

The Court held this did not amount to a breach of natural justice as the adjudicator had made a decision which was clearly right. In a notified sum adjudication, payment comes first, and arguments about re-valuing the work or netting off other payments belong in a separate 'true value' process.

In any event, it was ultimately immaterial that this second challenge failed since John Henry succeeded on the first natural justice ground.

Comment

Adjudication can be rough and ready, but it still has to give each party a fair chance to deal with the reasoning that will decide the case. An adjudicator who wants to rely on a new point or authority, especially when considering a defence that could knock out the claim, must first put that material to the parties and invite submissions.

The Court keeps the bar for natural justice challenges high, and only a material breach that could have changed the outcome will derail enforcement. However, on the rare occasions when that threshold is crossed, even a straightforward notified sum decision will not be enforced.

This article contains information of general interest about current legal issues but does not provide legal advice. It is prepared for the general information of our clients and other interested parties. This article should not be relied upon in any specific situation without appropriate legal advice. If you require legal advice on any of the issues raised in this article, please contact one of our specialist construction lawyers.

© Hawkswell Kilvington Limited 2026

HAWKSWELL KILVINGTON LIMITED

Leeds | Manchester | London

Tel: +44 113 543 6700 | enquiries@hklegal.co.uk | www.hklegal.co.uk

BE
BEYOND
LAW GROUP
beyondlawgroup.co.uk