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CONSTRUCTION LAW

Construction Law Update

Court Rules Payment Notice Dispute Too Fact-Heavy for Part 8

The question of when it is appropriate to use CPR Part 8 to attack an adjudicator's decision is a familiar one in construction litigation. However, sometimes we need reminding of how narrow the gateway is for showing a "short, self-contained issue" of law that can be decided without substantial factual evidence.

In *United Utilities Water Ltd v Northstone (NI) Ltd (t/a Farrans Construction) [2026]*, a fact-sensitive dispute about how payment notices were understood in practice was framed by Farrans as a standalone legal question. The Technology and Construction Court disagreed, holding that this is not what Part 8 is for, and enforced the adjudicator's award.

Key takeaways:

- A payment notice will be judged on what a reasonable recipient would have understood, taking into account the full factual context, not just a literal reading of its wording. Where the meaning of a notice is disputed, Courts will usually need full evidence to resolve it.
- A Part 8 challenge needs a clean, standalone legal question; if the judge needs witness evidence and contract history to work out what happened, that is not a Part 8 case, and the paying party can still be on the hook for the adjudicator's award in the meantime.

Factual Background

In March 2017, United Utilities Water Limited ("**United Utilities**") employed a joint venture, including Northstone (NI) Ltd, trading as Farrans Construction ("**Farrans**"), to build water infrastructure in West Cumbria under an NEC3 Engineering and Construction Contract. The contract was originally Option C, worth £85m, later rising to over £130m.

A growing number of disputes and compensation events drove up the pain share, leading to a 2018 settlement and a 2021 deed of variation. This changed the payment basis from Option C to Option A and introduced a milestone schedule, with payment due as soon as each milestone was completed, and cut the payment period from 35 days to 15 days.

In October 2024, Farrans applied for payment on two milestones via CEMAR, the cloud-based contract administration platform used on the project. CEMAR automatically inserted a due date of 8 November, in line with the original, unamended contract terms. United Utilities accepted one milestone but rejected the other, then issued payment notice PA-70 via CEMAR showing a single negative "amount due" of roughly -£3.27m.

United Utilities argued that, under the amended contract terms, Farrans had effectively only one day to respond with a pay less notice, and on that basis Farrans' notice, issued six days after that deadline, was too late. The Adjudicator agreed and found for United Utilities, ordering Farrans to pay £3.27m plus VAT and fees.

When Farrans failed to pay, United Utilities began enforcement proceedings. Farrans' main defence was a Part 8 claim, arguing that PA-70 was not a valid payment notice and that, as a result, no pay less notice had been required at all.

Whether that argument could properly be resolved through Part 8 proceedings, rather than at a full trial with witness evidence, became the central issue for the Court.

Held

The application was heard by HHJ Kelly who enforced the adjudicator's decision and ordered that

Farrans' Part 8 issues be transferred to Part 7 proceedings for a full trial.

Farrans' Case

Farrans argued that PA-70 was not a valid payment notice at all, pointing to:

- A CEMAR-generated due date of 8 November that didn't match the amended payment terms;
- Defective service of the notice, given the absence of separate service by post or email; and
- A negative "amount due" figure that did not, in plain English, obviously mean United Utilities was demanding money back. As Farrans' barrister put it: "...*saying that I owe you minus £3m is not the same as saying you owe me £3m*."

These problems meant that the notice was too ambiguous to count as valid, Farrans argued. And if PA-70 was not a valid payment notice, then Farrans was never required to issue a pay less notice in response at all, meaning it couldn't be in breach for issuing one late.

The Court's Approach

The Judge did not resolve any of this on its merits. Instead, she held that the questions could not properly be decided in Part 8 proceedings at all.

The test for whether PA-70 was valid was not simply a matter of reading the contract and the notice; it depended on how a reasonable recipient, standing in Farrans' shoes, would have understood it. Answering that required factual evidence going well beyond the contract wording, including how CEMAR had actually been used before and after the 2021 amendments, what the parties understood about the known mismatch between CEMAR's dates and the new payment regime, and the commercial logic behind the shift from Option C to Option A.

The Judge noted that both parties were sophisticated and experienced, and that NEC contracts require them to act in a spirit of mutual trust and cooperation. What Farrans and United Utilities each understood they were agreeing to when they signed the deed of variation, and why they kept using CEMAR despite knowing its dates didn't match the new terms, was itself part of the evidence the Court would need to see.

Farrans had not put forward sufficient evidence on any of this. As such, the Judge could not say it had a realistic prospect of showing that PA-70 was invalid or that no pay less notice was required.

Outcome

That meant the dispute was not the kind of a "short, self-contained" legal issue Part 8 is designed for, and the claim was rejected on that basis. Summary judgment was entered for United Utilities, with Farrans ordered to pay the principal sum of c. £3.27m plus VAT, adjudicator's fees, interest and costs.

Comment

This case makes clear that Part 8 is not a shortcut to avoid paying an adjudicator's award. Unless there is a short and self-contained issue with no substantial dispute of fact, the TCC will simply enforce the decision and leave the deeper quarrels for another day.

On the practical side, this is yet another illustration that bespoke contract amendments need to be reflected in the communication systems used to administer them. A mismatch between the two is exactly the kind of issue that ends up in Court.