



Neutral Citation Number: [2026] EWHC 1057 (TCC)

**Case No: HT-2025-LDS-000013 and
HT-2025-LDS-000014**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
TECHNOLOGY AND CONSTRUCTION COURT (KBD)

Her Honour Judge Kelly sitting as a Judge of the High Court

Between :

HT-2025-LDS-000013

UNITED UTILITIES WATER LIMITED

Claimant

- and -

NORTHSTONE (NI) LIMITED
(TRADING AS FARRANS CONSTRUCTION)

Defendant

And

HT-2025-LDS-000014

NORTHSTONE (NI) LIMITED
(TRADING AS FARRANS CONSTRUCTION)

Claimant

- and -

UNITED UTILITIES WATER LIMITED

Defendant

**Ms Jennie Gillies (instructed by Addleshaw Goddard LLP) for United Utilities
Water Limited**

**Mr William Webb KC (instructed by Brodies LLP) for Northstone (NI) Limited
(trading as Farrans Construction)**

Hearing date: 24 June 2025

Date draft circulated to the Parties: 20 April 2026

Date handed down: 6 May 2026

APPROVED JUDGMENT

Her Honour Judge Kelly

1. This judgment follows the hearing of two connected matters, listed together for hearing. United Utilities Water Limited (“UU”) is a water and wastewater undertaker under the Water Industry Act 1991. Northstone (NI) Limited (trading as Farrans Construction) (“Farrans”) entered into a joint venture collaborative agreement with Roadbridge Limited (“the JV parties”) for the purpose of submitting a bid to UU which had invited tenders for works to its water supply infrastructure in West Cumbria (“the West Cumbria Supply Project”).
2. UU issued proceedings to enforce an adjudication award and applied for summary judgment. Farrans issued Part 8 proceedings to seek declarations which, if made, would defeat the application for summary judgment.
3. I had the benefit of having oral and written submissions from Ms Jennie Gillies for UU and Mr William Webb KC for Farrans, both of Counsel.

Background

4. A number of disputes arose between the parties, as a result of which there were amendments to the original contract. The details of the relevant contract terms in force between the parties at the relevant time are not in dispute. In a contract dated 30 March 2017, UU and the JV parties agreed to construct 32 kilometres of cross-country raw water aqueduct and 24 kilometres of network water mains pipelines as part of the West Cumbria Supply Project.
5. The original contract was in the form of an NEC3 Engineering and Construction Contract [April 2013] Option C with bespoke amendments. The total of the Prices was £85m. Thereafter, the parties made a settlement agreement dated 25 July 2018 (“the Settlement Agreement”) which increased the Prices to £95m. That was later followed by a Deed of Variation, settlement and release (“the Deed of Variation”) dated 30 September 2021 where the Prices were increased to £131.6m. Other terms were also amended by the Deed of Variation.

6. A summary of some of the key terms is set out below:
- a. Core Clause 30 dealt with starting, completion and key dates. The JV parties as contractor were obliged to complete work before completion dates so that the work was in the condition stated for each key date specified. The contractor would give the Project Manager seven days' notice of when completion will occur.
 - b. Core Clause 35.2 entitled UU to use any part of the works before completion had been certified but was not to be treated as having taken over any part of the works by using them unless UU directed otherwise.
 - c. Optional Clause X5.1 dealt with sectional completion. Unless stated as the whole of the works, each reference and clause relevant to the works, completion and completion date apply to the whole of the works or any section of the works.
 - d. Optional Clause X7.1 dealt with delay damages. The contractor pays delay damages, at the rate stated in the contract, from the completion date for each day until the earlier of completion and the day on which UU took over the works.
 - e. By paragraph 4.1 of Schedule 1 of the Settlement Agreement, the completion dates and key dates were adjusted as stated in the final column of the tables in Paragraph 1 of Appendix 2 to Schedule 1 of the Settlement Agreement.
7. The payment and notice provisions (after amendment) were contained within Core Clauses 50 and 51, and in option Y(UK)2 at Y2.2 and Y2.3:

Assessing the amount due

50.1 The Project Manager assesses the amount due at each assessment date. The first assessment date is:

- (a) the last Friday of the month of the starting date; or
- (b) if the last Friday is not a Business Day, the previous Business Day;

or

- (c) if the first assessment date would otherwise fall on the same day as (or precede) the starting date, the last Friday of the month following the month of the starting date.

Later assessment dates occur:

- on the last Friday of each subsequent month (or the previous Business Day if the last Friday is not a Business Day) until (and including) the last Friday (or previous Business Day) of the month following the month in which the Supervisor issues the Defects Certificate and
- at Completion of the whole of the works.

- 50.2 The amount due is
- the Price for Work Done to Date
 - plus other amounts to be paid to the Contractor
 - less amounts to be paid by or retained from the Contractor.
- Any tax which the law requires the Employer to pay to the Contractor is included in the amount due.

Payment Applications

- 50.4 The Contractor submits to the Project Manager applications for payment of the amount due, calculated to each assessment date. Subject to clause 51.1A, in assessing the amount due, the Project Manager considers the relevant application for payment. The Project Manager gives the Contractor details of how the amount due has been assessed. The Contractor may be required to submit applications for payment in such format and via such IT platforms as may be notified by the Employer (from time to time).

- 50.5 The Project Manager corrects any wrongly assessed amount due in a later payment certificate.

Payment

- 51.1 The Project Manager certifies a payment on or before each Certification Date. A **Certificate Date** occurs on the 14th day after both of the following occur:

- an assessment date; and
- receipt by the Project Manager of the Contractor's application for payment, calculated to that assessment date.

The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the Contractor to the Employer if the change reduces the amount due. Other payments are made by the Employer to the Contractor. Payments are in the currency of this contract unless otherwise stated in this contract.

- 51.1A If:
- (a) 7 days or more have elapsed after any assessment date; and
 - (b) the Contractor has not submitted to the Project Manager an application for payment in respect of the period to any assessment date (**relevant period**); and
 - (c) the amount due in respect of the relevant period is due from the Contractor to the Employer,
- clauses 51.1A.2 and 51.1A.3 apply.

- 51.1A.2 Where this clause 51.1A.2 applies, the Project Manager may, after giving the Contractor 3 clear days' notice of his intention to do so, certify a payment in respect of the relevant period, and a **Certification Date** occurs when the Project Manager certifies such payment. The Project

Manager gives the Contractor details of how the amount due has been assessed, and corrects any wrongly assessed amount in a later payment certificate.

- 51.1A.3 If the Project Manager certifies a payment under clause 51.1A.2 in respect of any relevant period, any Contractor's application for payment in respect of that period subsequently received by the Project Manager shall be of no effect.
- 51.2 The date upon which each payment becomes due and the final date for payment of payments becoming due are as provided in Option Y(UK)2. If a certified payment is late, or if a payment is late because the Project Manager does not issue a certificate which he should issue, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

OPTION Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996
Dates for payment

- Y2.2 The date on which a payment becomes due is 1 day after the Certification Date. The final date for payment is twenty days or a different period for payment if stated in the Contract Data after the date on which payment becomes due. The Project Manager's certificate is the notice of payment to the Contractor specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated.
- Y2.3 If in respect of any amount certified for payment (by the Employer) under clause 51, the Employer intends to pay less than the amount so certified, the Employer gives notice of such intention (**Payment Reduction Notice**) to the Contractor no later than 7 days before the final date for payment, stating:
- (a) the sum that the Employer considers to be due on the date such notice is served; and
 - (b) the basis on which the sum is calculated,
- it being immaterial that the sum the Employer intends to pay is zero.

In that event the amount the Employer pays the Contractor in respect of the relevant certificate, on or before the final date for payment, is the amount specified as due in the Payment Reduction Notice, but this does not affect the Contractor's rights in respect of any amount unjustifiably excluded from such payment or Payment Reduction Notice, as subsequently agreed by the Parties or determined under the disputes provisions of this contract.

8. In his witness statement, Mr Steven Crist ("Mr Crist") explained that initially the parties operated a 35-day payment cycle pursuant to the NEC3 Contract Option C with amendments.

9. Disputes between UU and the JV parties were leading to more frequent compensation events and, month on month, the forecast to complete (“FTC”) was increasing and the variance between the target cost and the FTC was increasing. As a result, the JV parties’ “forecast pain share” was worsening. This was affecting the parties’ behaviour on site such that UU was concerned of the knock-on impact and delays on other contracts.
10. The Settlement Agreement changed the basis of the contract from Option C to Option A and introduced a milestone schedule which regrouped the remaining activities in the activity schedule into milestones. In addition, the JV parties were also able to apply for payments as soon as each milestone was completed and they also benefited from an acceleration to the payment process, so it became a 15-day instead of a 35-day process.
11. As is set out in Schedule 3 of the Settlement Agreement, Mr Crist summarised the new process as:
- “(a) An assessment date when a milestone was completed.
 - (b) A Certification Date seven days after the later of:
 - (i) the assessment date; and
 - (ii) receipt by the Project Manager of an application for payment.
 - (c) A Due Date one day after the Certification Date.
 - (d) A final date for payment seven days after the Due Date.”
- As a result of those changes, the JV parties were entitled to apply for payment when a milestone had been completed which could result in more than one application per calendar month.
12. This case concerns a dispute which arose in respect of payment notice PA-70 (“PA-70”). On 4 October 2024, the JV parties applied for payment in respect of milestones 9 and 11. A single communication was issued for both milestones using CEMAR and enclosing two applications for payment, AFP77 (“AFP77”) and AFP 78 (“AFP78”). A cloud-based IT system to assist with managing the administrative needs of construction contracts was used by the parties (“CEMAR”). The CEMAR system had

been used by parties throughout the West Cumbria Supply Project. At the same time as sending the applications for payment, the JV parties sent a general communication GC-4525 (“GC-4525”) asserting that Milestone 11 had been achieved and requesting a “full completion certificate”.

13. In response to the general communication, the Project Manager agreed that milestone completion had been achieved in respect of Milestone 9 and the contractor was therefore permitted to submit AFP77. However, the Project Manager did not agree that milestone completion had been achieved in relation to Milestone 11. By general communication GC-4531 (“GC-4531”) on 11 October 2024 the Project Manager notified the contractor that it had “not yet achieved completion” and identified the aspects of the work which, in the Project Manager's opinion, remained incomplete.
14. On 11 October 2024, the Project Manager also issued PA-70, again using CEMAR, responding to the AFP77 and AFP78. As the JV parties had enclosed the two applications for payment in the same communication, the response PA-70 also had to deal with the two applications for payment in the same response communication. The Project Manager considered the “amount due” to be a negative payment in the sum of -£3,269,328.05. That sum had been calculated in accordance with the definition set out in Core Clause 50.2.
15. Core Clause 50.2 required the Project Manager to take into account three elements in assessing the amount due including the price for work done to date, other amounts to be paid to the contractor “*less amounts to be paid by or retained from the Contractor*”. The assessment done by the Project Manager for PA-70 was accompanied by two supporting schedules which had been uploaded to CEMAR on 10 October 2024 in which the Project Manager set out the assessment for each of AFP77 and AFP78.
16. The JV parties responded to PA-70 with general communication GC-4538 in which they purported to issue a payment reduction notice dated 17 October 2024 (and received on 18 October 2024). The payment reduction notice was said to be pursuant to clause Y2.3 of the contract and entirely without prejudice to the position of the JV

parties that no payment reduction notice was required. The communication stated "... in the interests of clarity and for the avoidance of doubt on your part we nonetheless consider that as at the date of this payment reduction notice the sum due to you is £0.00/£Nil/£Zero ("the Sum Due") which is calculated on the basis set out in the appendix to this payment reduction notice".

17. UU asserted that the reliance by Farrans on Clause Y2.3 is misplaced and that the JV parties have misdirected themselves in relation to the effect of the amendments recorded in the Deed of Variation and the interplay with the provisions of the Housing Grants, Construction and Regeneration Act 1996 ("the Act") and the Scheme. The last date for valid service under the contract as amended was 12 October 2024, as the sum was notified on 11 October 2024. The notified sum of minus £3,269,328.05 was payable on 19 October 2024. The purported payment reduction notice, which was served on 18 October 2024 (although it was dated 17 October 2024), was invalid because it was six days late.
18. UU asserted that the effect of PA-79 was that the JV parties were obliged to pay UU the sum of £3,269,328.05. The JV parties disagreed and the dispute was referred to adjudication by UU. The adjudicator made an award in favour of UU and Farrans was ordered to pay £3,269,328.05 plus VAT within seven days so the latest date for payment was 2 April 2025. Farrans did not pay and UU commenced enforcement proceedings. The enforcement proceedings were later amended so Farrans is the only Defendant.
19. Farrans initially asserted that there was a breach of natural justice by the adjudicator. Thereafter, Farrans abandoned that argument and issued this Part 8 claim, asserting that the adjudicator made an error of law. The Part 8 claim concerns the payment provisions of the contract and their interpretation. Farrans asserts that PA-70 was not valid and, if it was valid, asserts that it was not obliged to issue a payless notice if it wished to pay less than £3,269,328.05 plus VAT.
20. Farrans maintains that the error of law raised is a straight forward one, requiring consideration of the Act. Farrans submits that if it succeeds on its arguments

concerning interpretation of the contract, the adjudication award should not be enforced. Farrans now accepts that if its arguments fail, there must be summary judgment as sought by UU.

21. UU continues to assert that the nature of the assertions made in the Part 8 claim is such that the Part 8 claim may warrant transfer to Part 7. This matter was raised previously and, after hearing Counsel for both parties in May 2025, the court ordered the two sets of proceedings to be heard together. However, the court also noted in the recitals to the order that:

“...the Court’s present view that there is unlikely to be a need for contested oral evidence in the Part 8 claim, but that the final decision on this matter will remain with the Judge at the hearing...”

22. Farrans sets out the two issues for resolution in the Part 8 claim as follows:

(1) Issue 1: Was PA-70 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?

(2) Issue 2: If it was, was Farrans obliged to issue a pay less notice if it wished to pay less than £3,269,328.05?

23. UU does not agree that the two issues set out in the Part 8 claim are in fact straightforward. UU asserts that Issue 1 in fact comprises a number of sub-issues, including whether the information contained on CEMAR, used throughout on the Project by UU and Farrans, was incorrect and misleading.

24. UU also notes that at the directions hearing where the court listed the two claims together, the Judge reserved the final position on whether evidence would be needed to resolve the dispute to the Judge hearing the matters. UU also notes the recital recording that Counsel for Farrans confirmed:

“...in relation to the allegation of an incorrect date in the payment notice raised at Paragraph 24.3 of the Particulars of Part 8 Claim it contends (i) that the assessment of whether PA-70 was a valid payment notice is to be construed as constituting both the document referred to as PA-70 and the information displayed on CEMAR; (ii) that it was not aware of the circumstances in which the date of 8 November 2024 came to be included on CEMAR; (iii) that the incorrect date affects the context and validity of the notice; but (iv) is not running any case on estoppel.”

The Law

25. Happily, Counsel largely agree on the legal principles. The relevant provisions of the Act (as amended) are:

109.— Entitlement to stage payments.

- (1) A party to a construction contract is entitled to payment by instalments, stage payments or other periodic payments for any work under the contract unless—
 - (a) it is specified in the contract that the duration of the work is to be less than 45 days, or
 - (b) it is agreed between the parties that the duration of the work is estimated to be less than 45 days.
- (2) The parties are free to agree the amounts of the payments and the intervals at which, or circumstances in which, they become due.
- (3) In the absence of such agreement, the relevant provisions of the Scheme for Construction Contracts apply.
- (4) References in the following sections to a payment provided for by the contract include a payment by virtue of this section.

110.— Dates for payment.

- (1) Every construction contract shall—
 - (a) provide an adequate mechanism for determining what payments become due under the contract, and when, and
 - (b) provide for a final date for payment in relation to any sum which becomes due.

The parties are free to agree how long the period is to be between the date on which sum becomes due and the final date for payment...

- (3) If or to the extent that a contract does not contain such provision as is mentioned in subsection (1), the relevant provisions of the Scheme for Construction Contracts apply.

110A Payment notices: contractual requirements

- (1) A construction contract shall, in relation to every payment provided for by the contract—
 - (a) require the payer or a specified person to give a notice complying with subsection (2) to the payee not later than five days after the payment due date, or
 - (b) require the payee to give a notice complying with subsection (3) to the payer or a specified person not later than five days after the payment due date.
- (2) A notice complies with this subsection if it specifies—
 - (a) in a case where the notice is given by the payer—
 - (i) the sum that the payer considers to be or to have been due at the payment due date in respect of the payment, and
 - (ii) the basis on which that sum is calculated;

...

- (5) If or to the extent that a contract does not comply with subsection (1), the relevant provisions of the Scheme for Construction Contracts apply.

- (6) In this and the following sections, in relation to any payment provided for by a construction contract—
- “payee” means the person to whom the payment is due;
 - “payer” means the person from whom the payment is due;
 - “payment due date” means the date provided for by the contract as the date on which the payment is due;
 - “specified person” means a person specified in or determined in accordance with the provisions of the contract.

110B Payment notices: payee's notice in default of payer's notice

- (1) This section applies in a case where, in relation to any payment provided for by a construction contract—
- (a) the contract requires the payer or a specified person to give the payee a notice complying with section 110A(2) not later than five days after the payment due date, but
 - (b) notice is not given as so required.

111 Requirement to pay notified sum

- (1) Subject as follows, where a payment is provided for by a construction contract, the payer must pay the notified sum (to the extent not already paid) on or before the final date for payment.
- (2) For the purposes of this section, the “notified sum” in relation to any payment provided for by a construction contract means—
- (a) in a case where a notice complying with section 110A(2) has been given pursuant to and in accordance with a requirement of the contract, the amount specified in that notice;
 - (b) in a case where a notice complying with section 110A(3) has been given pursuant to and in accordance with a requirement of the contract, the amount specified in that notice;
 - (c) in a case where a notice complying with section 110A(3) has been given pursuant to and in accordance with section 110B(2), the amount specified in that notice.
- (3) The payer or a specified person may in accordance with this section give to the payee a notice of the payer's intention to pay less than the notified sum.
- ...
- (5) A notice under subsection (3)—
- (a) must be given not later than the prescribed period before the final date for payment, and
 - (b) in a case referred to in subsection (2)(b) or (c), may not be given before the notice by reference to which the notified sum is determined.
- ...
- (7) In subsection (5), “prescribed period” means—
- (a) such period as the parties may agree, or
 - (b) in the absence of such agreement, the period provided by the Scheme for Construction Contracts.
- ...
- (10) Subsection (1) does not apply in relation to a payment provided for by a construction contract where—
- (a) the contract provides that, if the payee becomes insolvent the payer need not pay any sum due in respect of the payment, and

- (b) the payee has become insolvent after the prescribed period referred to in subsection (5)(a).

112.— Right to suspend performance for non-payment.

- (1) Where the requirement in section 111(1) applies in relation to any sum but is not complied with, the person to whom the sum is due has the right (without prejudice to any other right or remedy) to suspend performance of any or all of his obligations under the contract to the party by whom payment ought to have been made (“the party in default”).

...

- (4) Any period during which performance is suspended in pursuance of, or in consequence of the exercise of, the right conferred by this section shall be disregarded in computing for the purposes of any contractual time limit the time taken, by the party exercising the right or by a third party, to complete any work directly or indirectly affected by the exercise of the right. Where the contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly.

26. For “smash and grab” adjudications, Farrans relied upon the following principles:

- (1) A party seeking to make a smash and grab must set out its interim payment claim with proper clarity. The document to be relied upon as an interim application must be free from ambiguity and it must be clear so that the parties know what to do about it and when. If the payer is to be put at risk that a failure to serve a payless notice at the appropriate time will render him liable in full for the amount claimed, he must be given reasonable notice that the payment period has been triggered (see *Caledonian Modular Ltd v Mar City Developments* [2015] EWHC 1855 (TCC) and *Henia Investments Ltd v Beck Interiors Ltd* [2006] [2015] EWHC 2433 (TCC));
- (2) A payment notice must state the amount due - a claiming party cannot take a payment notice and perform some mathematical exercise or additional calculation to reach the sum being claimed (see *Severfield (UK) Ltd v Duro Felguera UK Ltd* [2015] EWHC 3352 (TCC) at [29] to [32]);
- (3) The relevant due date must be clear. “Whilst it is not absolutely necessary to specify the due date in the Interim Certificate, it must be clear and unambiguous that an application relating to a specific due date is being made”. Stating a date which was agreed to be one day late under the terms of the contract the notice will be invalid (see *Henia Investments Ltd*).

27. UU Relied upon the summary of principles as set out by Joanna Smith J in *Advance*

JV v Enisca Limited [2022] EWHC 1152 (TCC) at paragraphs 46 and 47 when she said:

“46. I was taken during the hearing to a number of authorities in the context of the proper approach to be taken by the court to the interpretation of contractual notices, including *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 (“*Mannai*”), *Thomas Vale Construction Plc v Brookside Syston Ltd* [2006] EWHC 3637 (TCC) (“*Thomas Vale*”), *Henia Investments Ltd v Beck Interiors Ltd* [2015] BLR 704 (“*Henia*”), *Jawaby, Surrey and Sussex Healthcare NHS Trust v Logan Construction (South East) Ltd* [2017] BLR 189 (“*Surrey and Sussex*”), *Grove Developments Ltd v S&T (UK) Ltd* [2018] BLR 173 (“*Grove Developments*”) and *S&T (UK) Ltd v Grove Developments Ltd* [2019] BLR 1 (“*S&T*”) (in which the Court of Appeal upheld the reasoning of the Judge on this issue at [57]). There is no need to set these out at length; the principles that they establish and which I must apply in this case are uncontroversial.

47. In summary, the approach to be taken by the court as gleaned from these authorities is as follows:

- i) In considering the true construction of a contractual notice (including notices under the payment regime in the Act – see *Grove Developments* per Coulson J at [21]-[22] and *S&T* in the Court of Appeal at [58] per Sir Rupert Jackson), the question is not how its recipient in fact understood it. Instead “the construction of the notices must be approached objectively. The issue is how a reasonable recipient would have understood the notices”, i.e. a reasonable recipient “circumstanced as the actual parties were” (see *Mannai* at 767 G-H and 768B-C per Lord Steyn)
- ii) The notice must be construed taking into account the “relevant objective contextual scene”, i.e. the court must consider “what meanings the language read against the contextual scene will let in” (see *Mannai* at 767H and 768A-B). This means that, amongst other things, the reasonable recipient will be credited with knowledge of the relevant contract (see *Mannai* at 768B-C).
- iii) The purpose of the notice will be relevant to its construction and validity (*Mannai* at 768E)
- iv) 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” (*Thomas Vale* per HHJ Kirkham at [43]; *Grove* at [26]). Instead, as Sir Peter Coulson says in paragraph 3.36 of his book on Construction Adjudication (4th ed. 2018), focusing specifically on Pay Less Notices: “The courts will take a commonsense, practical view of the contents of a payless notice and will not adopt an unnecessarily restrictive interpretation of such a notice... It is thought that, provided that the notice makes tolerably clear what is being held and why, the court will not strive to intervene or endeavour to find reasons that would render such a notice invalid or ineffective”.
- v) There is no principled reason for adopting a different approach to construction in respect of different kinds of payment notices (for example because some may give rise to more draconian consequences than others) as that would be contrary to the guidance in *Mannai* (see *Grove* at [27]).

However:

"the particularly adverse consequences for an employer that follow from, say, a contractor's unanswered application/payment notice are relevant to the test of the reasonable recipient".

vi) To qualify as a valid notice, any payment notice must comply with the statutory (and, if more restrictive, the contractual) requirements in substance and form (*Henia* per Akenhead J at [17]). Payment notices and Pay Less Notices must clearly set out the sum which is due and/or to be deducted and the basis on which the sum is calculated. Beyond that, the question of whether a notice is or is not a valid notice is "a question of fact and degree" (*Grove* at [29] and S&T at [53]).

vii) Over and above the question of whether a notice has achieved the required degree of specificity, will be the additional question of whether the document that is alleged to constitute a valid notice was in fact intended to be such and whether it is "free from ambiguity" (*Henia* at [17] and *Grove* at [42]). The sender's intention is a matter to be assessed objectively taking into account the context. (*Jawaby* at [43], [59] and [63]).

viii) Although in *Grove*, Coulson J observed that payment notices must make plain what they are, there is no requirement for a particular type of notice, such as a Pay Less Notice, to have that title or to make specific reference to the contractual clause in order to be valid: "[t]he question is whether, viewed objectively, it had the requisite intention to fulfil that function" (*Surrey & Sussex* at [65]).

ix) One way of testing the validity or otherwise of a Pay Less Notice will be to see whether it "provided an adequate agenda for an adjudication as to the true value of the Works..." (*Henia* at [32] and *Grove* at [26])."

28. In addition, UU relies upon *Costain Ltd and ors v Bechtel Ltd and ors* [2005] EWHC 1018 (TCC). That case concerned the Channel Tunnel rail link and the contract was substantially also in NEC3 terms with obligations included. In that case, the employer was different to the Project Manager and contractor. There was a recital to the contract providing that the employer, the contractor and the Project Manager would "act in the spirit of mutual trust and cooperation so as not to prevent compliance by any of them with the obligations each was to perform under the contract".

29. As with this contract, the Project Manager was to assess the amounts due at various assessment dates and was to issue payment certificates. A question arose as to whether the Project Manager had a duty to act impartially. Jackson J (as he then was) decided the duty was one of fairness and impartiality between employer and contractor, using the Project Manager's own professional skill to form and act upon his own opinion. That duty includes instances where a Project Manager has to

exercise his own independent judgment to determine whether particular criteria were met and what should be paid to or deducted from a contractor.

30. *Everwarm Ltd v BN Rendering Ltd* [2019] EWHC 3060 (TCC) made clear that the amendments to the Act in force from 2011 and the introduction of statutory definitions for “payee” and “payer” demonstrate clearly that Parliament has decided that a contractor can be regarded as both payer and payee dependent upon the particular contractual payment provisions applicable.

Issue 1: Was PA-70 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?

The Parties’ Submissions

Farrans

31. Mr Webb asserts that Issue 1 is “a pure question of the validity of PA-70”. The usual process pursuant to the Act is that a contractor makes a payment application, the employer responds with a payment notice, but if it misses the window for doing so, the contractor has the chance to issue one (and its application will often stand automatically as the payment notice). The employer then gets a further chance to respond by way of a pay less notice.
32. UU asserts that PA-70 is a payment notice. In this case, there is an extremely short deadline for a response from the contractor. A pay less notice had to be served within one day. In those circumstances, Mr Webb asserts that the notice itself must be absolutely explicit about what is said to be done and when. The notice must be free from ambiguity and clear so that the parties know what to do about it and when. In addition, the dates to which a notice relates must also be clear and unambiguous. If an incorrect date is set out, a notice would be invalid.
33. Farrans relies upon the witness statements of Mr David Scott Arnott (“Mr Arnott”) dated 25 April 2025, Mr Daniel Harrison (“Mr Harrison”) dated 9 June 2025 and Mr Kurt Lewis Hodgson (“Mr Hodgson”) dated 10 June 2025. Mr Arnott exhibited the

relevant contract documents and the payment application documents. He asserts a conflict between the documents uploaded to CEMAR constituting PA-70 on 11 October 2024 and the assertion that any pay less notice had to be served the next day, 12 October 2024. The asserted date of 12 October 2024 conflicts with the date shown on CEMAR which identifies the due date as 8 November 2024. That later due date would have permitted a much later pay less notice if PA-70 was valid.

34. Mr Harrison is employed by Farrans and has been involved in the West Cumbria Supply Project since March 2022. Mr Harrison was the individual who uploaded AFP77 and AFP78 to CEMAR on 4 October 2024. Mr Harrison states at paragraph 5 of his witness statement that he had been asked “to comment upon the way in which the payment conditions in the contract as amended by the deed of variation, settlement and release... have in practise been operated generally and in relation to” AFP77 and AFP78.
35. Both Mr Harrison and Mr Hodgson had seen the witness statement of Mr Crist at the time they prepared their own witness statements as they comment upon it in relation to the contract amendments and the current status of the West Cumbria Supply Project. They then comment on how documents are uploaded to CEMAR and explain that CEMAR compiles information about the payment application into one document with information on different tabs. However, it does not include information contained in the supporting documents. They are available in CEMAR but need to be downloaded using the attachments tab in order to be viewed.
36. Mr Webb explains the grounds for impugning the payment notice PA-70. In this case, PA-70 was not served by post or e-mail. It was simply uploaded to CEMAR. CEMAR showed the incorrect date of 8 November 2024. UU chose to use CEMAR, and the JV parties had no say in the use of CEMAR. Insofar as there are technical issues leading to incorrect information being presented on CEMAR, those technical issues cannot be used as an excuse for failing to meet the contractual requirement and providing accurate information. Failing to provide the JV partners with the correct due date is a material failing which invalidates the notice.

37. Further, Mr Webb submits that the use of CEMAR and the manner of providing PA-70 is not clear nor free from ambiguity. Information is initially provided by e-mail to inform the JV parties that PA-70 is complete and has been uploaded to CEMAR. The JV parties then have to negotiate a series of tabs to locate information. On the assessment tab is shown the certification date of 11 October 2024 and the incorrect due date of 8 November 2024. If the wrong date is used to calculate the date when a pay less notice is due, the pay less notice will not be provided in time.
38. The information contained in PA-70 is confusing because on the assessment tab, whilst there are details provided of how the Project Manager has come to the two different figures (minus £3,269,328.05 in respect of Milestone 9 and NIL in respect of Milestone 11), there is only a single payment notified of minus £3,269,328.05 on the assessment tab under the heading “this payment”. A statement that a negative figure is due does not equate to a valid payment notice asserting a right to be paid.
39. Mr Webb accepted that there was a contractual right in this particular case for UU to be paid by the JV parties if there had been an overpayment. However, he submits that the recording of a negative figure does not automatically mean that the employer is demanding repayment. As a matter of “simple English”, saying that I owe you minus £3m is not the same as saying you owe me £3m. These are common sense, everyday terms and doing a calculation which demonstrates an overpayment does not carry a connotation of a demand of payment for the amount overpaid.
40. Mr Webb asserts there are further difficulties as a result of section 111 of the Act. Notices have to be objectively interpreted, even if subjectively understood. What is shown on the PA-70 screen is part of the notice. And the information shown on there is wrong. The fact that UU says the system couldn’t be changed without affecting earlier records is not an answer to the question as the PA-70 could have been sent by email. The information provided would have been correct then.

UU

41. Before dealing with the legal issues raised by a Part 8 claim, Ms Gillies raised again the question as to whether the issues posed were in fact suitable for dealing with under Part 8 rather than Part 7.
42. Ms Gillies submitted that there were two misconceptions on which the submissions made on behalf of Farrans were predicated. These were who the parties to the contract are and the relevant contextual scene to determine if PA-70 is valid. UU maintains that it is relevant UU is a water and wastewater undertaker and thus is subject to and heavily regulated by Acts of Parliament. Those were codified in 1991 by the Water Industry Act 1991 pursuant to which UU has various statutory duties.
43. The purpose of the West Cumbria Supply Project was to replace three sources of water which were historically unreliable and environmentally problematic. The contract in this case was contract six of 11 contracts in the West Cumbria Supply Project. The *Advance* case determined by Joanna Smith J was also one of the 11 contracts in the West Cumbria Supply Project and was based on the same NEC3 contract where CEMAR was utilised. This background information is relevant both to the nature and size of the contract but also to the parties to the contract.
44. This contract, number 6, was the largest of the 11 contracts in the West Cumbria Supply Project, with the agreed Prices initially being £85m, rising to £131.6m by virtue of the Deed of Variation. These were not small contractors who were unrepresented when negotiations were taking place. Everybody had lawyers who advised throughout all of the negotiations. The employer, the contractor, the Project Manager and the supervisor were all required to act as stated in the contract and in a spirit of mutual trust and cooperation.
45. Both the contractor and the Project Manager were required to give an early warning notifying the other if either became aware of any matter which could increase the Prices, delay completion, delay meeting a key date and of other risk matters.

46. Pursuant to clause 30.2, the Project Manager decided the date of completion and would certify completion within one week of completion. Pursuant to clause 30.3, the contractor was obliged to do the work so that the condition stated for each key date was met by the key date. There were various other examples in the contract where the Project Manager had power which he was required to exercise independently.
47. The Project Manager in issuing the notices was acting independently and the submissions made on behalf of Farrans assume unity of the Project Manager with UU when in fact that was not the position. There was no evidence that the Project Manager was anything other than independent. Moreover, uniting the position of the Project Manager with UU affected the consideration by Farrans as to the possibility of any movement between the identity of payer and payee in the contract. As was plain from this contract, it anticipated that UU and Farrans could be both payer and payee.
48. Perhaps the more difficult point is that the interpretation of contractual notices requires an assessment of what the reasonable recipient of the notice would consider when receiving it. Inevitably, that would require the knowledge possessed by the actual recipient in order to assess interpretation by a reasonable recipient “circumstanced as the actual parties were”. That is simply not possible on the evidence presently available before the court.
49. Both in its skeleton and in oral argument, Mr Webb submitted that the amendments made in particular by the Deed of Variation were not something that the court really needed to consider in order to assess the legal issues raised. Ms Gillies asserted that submission was wrong and the amendments were directly relevant to what a reasonable recipient would have understood notices to mean against the background of and reasons for the various amendments. The contractual terms were agreed between two experienced and sophisticated parties in a complicated and high value contract.
50. Farrans’ attempts to distance itself from the amendments, and the reasons for them, were necessary in order to attempt to simplify the legal issues concerning how a reasonable recipient would have understood the notices. The only evidence

concerning the background came from Mr Crist. Mr Crist's evidence was briefly acknowledged by Farrans' witnesses in relation to the initial contract as amended by the Deed of Variation and the background to the West Cumbria Supply Project.

51. However, neither of the witnesses disputed the other evidence given by Mr Crist about the background to the amendments being agreed between the parties, including evidence concerning the impact that the disputes and compensation event disagreements were having on the parties' behaviour on site. No evidence was provided by Farrans dealing with the concern expressed by UU (about the impact delays on this part of the project would have on other separate contracts in the project). The concerns provided a commercial incentive to UU to change the basis of the contract to Option A, to regroup the remaining activities into milestones and significantly accelerate payments terms such that the cash flow of Farrans would be benefited as the payment cycle was 16 to 46 days less than originally agreed, depending on when in a month a milestone was achieved.
52. Mr Crist also gave evidence that as a result of the new bespoke timescales agreed in the Deed of Variation, the milestone payments were not reflected on CEMAR. CEMAR was set up in 2017 to reflect the original terms of the contract when populating automatically generated "payment due by" dates. Those dates did not reflect the updated payment terms agreed between the parties. All parties were fully aware of that at the relevant times. In addition, it was understood by the JV parties that there was this mismatch of dates, but it was not realistic to change the automatically generated dates by reprogramming CEMAR because that could corrupt historic payment information.
53. In addition, Farrans did not engage with the assertions made by Mr Crist about the fact that the balance between the target cost and the ongoing increases in costings meant that the profit share for Farrans was diminishing, such that it was necessary to improve the likely profit for the joint venture in order to keep to time on this project so as not to jeopardise other contracts in this project. The evidence from Mr Crist showed that the amendments agreed were very advantageous to Farrans. More time was allowed for works, payment terms were increased, the speed of payment was

accelerated and the financial risk to the contractor was removed. More specifically, Mr Crist gave evidence about the realities and the difficulties of the new arrangements for UU. The commercial team at UU would have to administer payment quickly as soon as assessed by the Project Manager and then liaise with the finance payment team to process speedy payments. None of this was agreed lightly by UU.

54. Whilst the contractor had to provide a notice within one day, the contractor also knew when it was going to make an application for payment and so knew the time scale when it was likely to require payments from it to an employer. In other words, it had the advantage of knowing when a repayment was likely to be required and was able to get its house in order in advance. To assert now that the information in the notice PA-70 was not clear and unambiguous, in the absence of any relevant evidence, is simply perverse.
55. It is right that, as noted in the recitals to the amendments, the new contractual arrangements were intended to draw a line in the sand. However, that does not equate to what had happened previously being entirely irrelevant to interpreting the contract. That background was all the more important to deciding how a reasonable recipient would have understood the relevant notices under the new regime.
56. Miss Gillies asserted all of this was relevant and important in terms of interpreting contractual terms from the point of view of the reasonable recipient. The requirement of a notice one day after payment became due would be viewed differently against the background of a significantly faster payment cycle for the JV parties. Evidence concerning the background to the use of CEMAR, what was understood by Mr Harrison when he submitted AFP77 and AFP78 and any evidence about what in fact was understood by whoever received PA-70 in response was simply absent. Further, there was no evidence about any applications for payment made before the amendments to the contract. In short, Farrans simply did not engage with or provide any evidence about the relevant background factual matrix.
57. As it is agreed that the payment date displayed on CEMAR was 8 November 2024, the relevance of the evidence of Mr Hodgson noting the payment date and what could

be seen in terms of the dates on different documents on different pages is uncertain. It could not be relevant unless it was being suggested that the JV parties placed reliance on the date displayed of 8 November 2024 when deciding when to serve a pay less notice. A further difficulty is that Farrans specifically agreed that it was not running any case on estoppel at the directions hearing in May 2025, whilst also asserting that it was not aware of the circumstances in which the date of 8 November 2024 came to be included on CEMAR. A further problem is that Mr Hodgson appears to raise a challenge to the substantive entitlement of UU to levy liquidated damages. Not only is this assertion entirely counter to the unchallenged decision of the adjudicator but would also inevitably require wide and extensive factual inquiry such that the court must disregard that piece of evidence.

58. Ms Gillies then went on to consider and counter the legal arguments raised on behalf of Farrans.

Decision

59. I accept the arguments raised by Ms Gillies as to the nature of the assertions made and the evidence provided by Farrans. In my judgment, having heard the arguments and factual matrix as set out by Ms Gillies, and considered the arguments raised in respect of the two issues posed by Farrans, these issues are not suitable for determination under Part 8.

60. In particular, I am unable to accept the submission made by Mr Webb that the issues are straightforward, such that all the court has to do is consider the words of the contract itself, the words and requirements of the Act and observe the fact that there are plain inconsistencies when clarity is required. I am concerned in particular that the evidence currently available does not permit this court to determine how a reasonable recipient would have understood the notices.

61. Whilst UU has provided evidence detailing some of the background to the various amendments which were made, the evidence provided by Farrans is insufficient to enable the court to determine how the relevant notices were received against the background of the knowledge of the actual parties. There is no evidence provided to

enable the court to interpret the language chosen in the contract by the parties within the relevant factual matrix. As Lord Wilberforce famously said in *Reardon Smith Line Ltd v Hansen-Tangen* [1976] 1 WLR 989, “No contracts are made in a vacuum; there is always a setting in which they have to be placed”.

62. In my judgment, it is relevant that the parties to the contract were sophisticated and experienced and were required to act in the spirit of mutual trust and cooperation. The lack of evidence dealing with the original contract, the circumstances leading to the amendments to the contract and how CEMAR was used in practise before and after the amendments have prevented the court from making the relevant legal assessment of how the reasonable recipient would understand a notice. There was an absence of any evidence about what was understood by the JV parties to be the procedure using CEMAR after the amendments to the contract. The Farrans witnesses failed to deal with the various assertions in the evidence of Mr Crist about the understanding of both UU and the JV parties that CEMAR would not be reprogrammed and dates generated would therefore be wrong. The factual matters are key to the interpretation of the notices and what would be understood by the reasonable recipient.

63. I reject the submission made on behalf of Farrans that as the amendments were intended to draw a line in the sand, what happened before those amendments is irrelevant to interpretation of the notices. In my judgment, the reasons for and effect of the amendments are central to determining how a reasonable recipient would have understood the relevant notices under the new regime agreed between the parties.

64. In those circumstances, it is not necessary to consider the substantive submissions made by Miss Gillies concerning the adequacy and validity of PA-70.

Issue 2: If it was, was Farrans obliged to issue a pay less notice if it wished to pay less than £3,269,328.05?

65. Having decided that it is not appropriate to determine Issue 1 posed by Farrans by Part 8 proceedings, it is not appropriate to determine the follow up Issue 2 by Part 8

proceedings either. There may well be considerations arising from any findings made while determining Issue 1 which affect the determination of Issue 2.

Conclusion

66. Summary judgment for UU in respect of the adjudication enforcement proceedings is granted in the sum of £3,269,328.05 plus VAT, plus the interest as awarded by the Adjudicator between 19 October 2024 and 2 April 2025, plus £62,254.69 plus VAT in respect of the Adjudicator's fees. In addition, interest at the rate of 8.1% shall be paid from 3 April 2025.

67. I am grateful to Counsel for their very able assistance in this matter.