



Pay Now, Argue Later – challenges to Adjudicator's Decisions

Introduction

The Security of Payment Ordinance (SOPO), which came into force on 28 August 2025, introduces a statutory mechanism for the rapid resolution of payment disputes within the construction industry. The primary objective of this legislation is to address the pervasive issue of protracted payment delays. This paper will examine the grounds for challenging an adjudicator's determination under the SOPO and analyse relevant case law from other common law jurisdictions to anticipate potential challenges to adjudicator's decisions.

Section 48 of the SOPO provides limited grounds upon which the Court may set aside an adjudicator's determination. These are:

- a) Fraud or bribery;
- b) Denial of natural justice;
- c) The adjudicator has not acted independently or impartially; or
- d) The adjudicator has acted in excess of their jurisdiction.

Given the nascent state of SOPO jurisprudence in Hong Kong, an examination of established case law in the United Kingdom provides valuable insight into how these grounds, particularly the denial of natural justice, are interpreted by the courts.

Clegg Food Projects Ltd v Prestige Car Direct Properties Ltd. [2025] EWHC 2173 (TCC)

Brief Facts

Clegg Food Projects Ltd. (The Contractor) was engaged by the Prestige Car Direct Properties (The Employer) under a JCT contract for the construction of a leisure and retail centre in UK. A dispute arose regarding the assessment of the Contractor's payment application, as a consequence, the Contractor referred the dispute to adjudication. A Chartered Quantity Surveyor was nominated as the adjudicator to decide on the valuation of the payment application. The paying party and the claiming party submitted their proposed valuations respectively, both caveating their assessments with "or such other sum as the adjudicator may decide".

Adjudicator's Decision and the Paying Party's Reply

The adjudicator rejected both parties' valuation figures, instead he applied his own "fair and reasonable rate" without seeking further submissions from either of the parties.

The Employer failed to pay the adjudicated amount, the Contractor sought to enforce the adjudicator's decision. The Employer also argued that adjudicator had provided inadequate reasoning for his valuation and had breached the principles of natural justice.

The UK Court Decision

At the summary judgement hearing in August 2025, the court ruled in favour of the Contractor. It held that the adjudicator was entitled to reach his own valuation with his own expertise as a



QS. The adjudicator was not required to consult the parties on every aspect of his reasoning, especially when his valuation fell within the range of figures submitted.

In fact, many rates assessed by the adjudicator was more favourable to the employer, therefore, no material prejudice could be shown. The adjudicator's decision was therefore upheld on the ground that there had been no breach of natural justice.

This case is an illustration of the high bar required to overturn adjudicators' decisions. Having said that the UK court case - *Balfour Beatty Construction Ltd v London Borough Council of Lambeth* [2002] EWHC 597 (TCC) remains good law.

Balfour Beatty Construction Ltd v London Borough Council of Lambeth [2002] EWHC 597 (TCC)

Brief Facts and the Adjudicator's Decision

Balfour Beatty was the Contractor and was engaged by London Borough Council of Lambeth (The Employer) under a JCT contract for the refurbishment of Falmouth House in London. The case involved the deduction of Liquidated Damages (LDs) due to the delays in completion by the Contractor. The adjudicator was nominated to determine the EOT entitlement of the Contractor and the reasonable amount of the LDs.

The adjudicator was unable to make use of the as-built programme provided by the parties and relied on his own assessment of the critical path. The adjudicator then gave a decision in favour of the Contractor. Like the Clegg Food case, neither party was given the opportunity to review the basis of his judgement.

London Council's Argument and Court Decision

The Employer claimed that the adjudicator had not acted impartially and claimed breach of natural justice. The UK Court accepted the argument and held that the adjudicator's decision should be overturned because he had not given the parties the opportunity to consider the arguments upon which his decision was based – i.e., the delay analysis. The Judge concluded that the adjudicator not only took the initiative in ascertaining the facts, but also applied his own knowledge and experience to an appreciation of them. (i.e., did Balfour's work for them)

TCGL comment

The juxtaposition of “Clegg Food Projects” and “Balfour Beatty case” illustrates the fine line an adjudicator must tread. Whilst the courts encourage a more proactive approach from adjudicators in cost assessment, this is not a license to make a case for one party or to introduce new evidence or analysis without giving the parties an opportunity to respond. The line is drawn at the point where the adjudicator's intervention becomes a material part of the decision-making process and creates a risk of substantial injustice.

The principle that an adjudicator must not act in a way that is materially unfair to one party, and must give parties an opportunity to comment on a new line of reasoning or analysis that is a departure from the submissions, still stands. Given the adjudicator's power to review time-related dispute for public contracts under the SOPO, the information available to the adjudicator in reaching the decision for time-related issues should be handled with care.

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