



Neutral Citation Number: [2020] EWHC 1413 (TCC)

Case No: HT-2020-000026

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)

Rolls Building
London, EC4A 1NL

Date: 05/06/2020

Before:

MRS JUSTICE O'FARRELL DBE

Between:

| | |
|--|-------------------------|
| MW HIGH TECH PROJECTS UK LIMITED | <u>Claimant</u> |
| - and - | |
| BALFOUR BEATTY KILPATRICK LIMITED | <u>Defendant</u> |

William Webb (instructed by **Gowling WLG (UK) LLP**) for the **Claimant**
Piers Stansfield QC (instructed by **Pinsent Masons LLP**) for the **Defendant**

Hearing dates: 21st May 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

“Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties’ representatives by email and release to Bailii. The date and time for hand-down is deemed to be Friday 5th June 2020 at 10:30am”

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MRS JUSTICE O'FARRELL DBE

Mrs Justice O'Farrell:

1. This is the claimant's Part 8 claim seeking a declaration that an adjudicator did not have jurisdiction to resolve the defendant's claim referred on 7 August 2019 with the result that the decision which followed was of no legal effect.
2. The claim arises out of a sub-contract ("the Contract") between the claimant ("MW") and the defendant ("BBK") pursuant to which MW engaged BBK to carry out mechanical and electrical services in relation to the construction of a new laboratory building at Dansom Lane, Hull for a contract price of £23,370,077.
3. Delays occurred to the works and in August 2019 BBK referred to adjudication its claim for an extension of time. On 10 October 2019 the adjudicator published his decision, awarding BBK the full extension of time sought and ordering MW to pay the adjudicator's fees.
4. MW's case is that the adjudicator did not have jurisdiction to decide the dispute and the adjudication decision was invalid. BBK served a new and substantial delay report ("the Goodman Report") on MW eight days before commencing the adjudication. The Goodman Report introduced a new relevant event giving rise to 71 out of the 282 days total extension of time claimed and a new critical delay analysis. Under the Contract MW was entitled to up to 16 weeks to assess such a claim; no dispute could crystallise until a reasonable time had elapsed for MW to consider the claim and either accept or reject it. Eight days fell far short of the agreed contractual allowance or a reasonable time necessary to assess the Goodman Report. Accordingly, no dispute had crystallised when BBK sought to refer the claim to adjudication.
5. BBK's case is that the adjudicator had jurisdiction to determine the dispute and the adjudication decision was valid. BBK gave MW notice of delay and claimed an extension of time by letters dated 2 March 2018, 13 April 2018, 29 June 2018, 1 October 2018 and 27 February 2019, in compliance with the contractual requirements. MW did not seek further particulars of any of the delays, or their causes, failed to address the claims for an extension of time and failed to make any response to the notices within the contractual period of 16 weeks. By letter dated 30 July 2019, BBK provided MW with the Goodman Report in support of its claims and invited MW to grant the extension of time within seven days. MW failed to respond to the letter. Accordingly, on 7 August 2019 BBK served its Notice of Adjudication. At the time that the adjudication was commenced, there was a crystallised dispute as to BBK's entitlement to an extension of time. The service of additional evidence in support of BBK's claim did not affect the existence of that dispute or amount to a new claim.
6. The issues for determination by the Court are:
 - i) whether there was a crystallised dispute as to the matters referred to adjudication:
 - a) whether service of the Goodman Report constituted a new notification for the purpose of clause 2.17 of the Contract, or further particulars of the notified claim;

- b) whether MW was entitled to a further period of 16 weeks under the Contract (or other reasonable period) to consider and respond to the claim before a dispute could be inferred;
- ii) whether BBK is entitled to reimbursement of part or all of the adjudicator's fees, which it has paid.

The Contract

- 7. The Contract was in the form of the JCT Design and Build Sub-Contract 2011 with bespoke amendments.
- 8. The Contract provided for sectional completion in five sections.
- 9. The subject of the adjudication was Section 3, which involved the refurbishment of an existing building called the KWN building. The KWN building primarily consisted of four floors (ground floor to third floor). BBK divided each floor into two areas for the purposes of its programming.
- 10. The partition walls in the KWN building were constructed by MW and the M&E services were installed by BBK. Accordingly, it was necessary for the parties to coordinate their works so that they worked alternately on any given section of wall in the following sequence:
 - i) MW would install the horizontal and vertical studwork for the partition wall, mountings for the back boxes of the electrical sockets and outlets, and plasterboard to one side of the wall (first side boarding);
 - ii) BBK would then install the conduits and back boxes for the sockets and outlets into the partition;
 - iii) MW would install the second side of the partition wall and apply a sealing, mist coat (second side boarding); and
 - iv) BBK would carry out its final fix of service points on the outside of the partition wall.
- 11. The contractual completion date for Section 3 was 11 December 2017. That date was revised by agreement to 15 May 2018.
- 12. The Contract contained provisions for extensions of time to be granted, including the following material provisions:
 - 2.17.1 "If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works or such works in a Section is being or is likely to be delayed the Sub-Contractor shall forthwith give notice to the Contractor of the material circumstances, including, insofar as the Sub-Contractor is able, the cause or causes of the delay, and shall identify in the notice any event which in his opinion is a Relevant Sub-Contract Event.

2.17.2 In respect of each event identified in the notice the Sub-Contractor shall, if practicable in such notice or otherwise in writing as soon as possible thereafter, give particulars of its expected effects, including an estimate of any expected delay in the completion of the Sub-Contract Works or such works in any Section beyond the relevant period or periods for completion stated in the Sub-Contract Particulars (Item 5) or any previously revised period or periods.

2.17.3 The Sub-Contractor shall forthwith notify the Contractor of any material change in the estimated delay or any other particulars and supply such further information as the Contractor may at any time reasonably require.

2.18.1 If on receiving a notice and particulars under clause 2.17 the Contractor properly considers that:

- .1 any of the events which are stated to be a cause of delay is a Relevant Sub-Contract Event;
- .2 completion of the Sub-Contract Works or such works in a Section is likely to be delayed thereby beyond the period or periods stated in the Sub-Contract Particulars (item 5) or any revised period or periods; and
- .3 the delay is not concurrent with another delay for which the subcontractor is responsible which originated from an act and/or omission that occurred before the 1 June 2016.

then, save where these Conditions expressly provide otherwise, the Contractor shall give an extension of time by fixing such revised period or periods for completion as he then estimates to be fair and reasonable ...

2.18.2 Whether or not an extension is given, the Contractor shall notify the Sub-Contractor of his decision in respect of any notice under clause 2.17 as soon as is reasonably practicable and in any event within 16 weeks of receipt of the required particulars. Where the period from receipt to the expiry date of the relevant period for completion is less than 16 weeks, he shall endeavour to do so prior to that expiry date.”

13. Article 4 of the Contract contains an adjudication agreement:

“If any dispute or difference arises under this Sub-contract either Party may refer it to adjudication in accordance with the provisions set out in clause 8.2.”

14. Clause 8.2 provides:

“If a dispute or difference arises under this Sub-Contract which either Party wishes to refer to adjudication, the Scheme shall apply...”

15. Reference to the Scheme is to Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

The Claims for EOT

16. On 2 March 2018, BBK issued a notice of delay to MW, seeking an extension of time of seven weeks as follows:

“Material Circumstances and Cause of Delay to Completion

The cause of the delay is the late installation of preceding builders-work which has prevented BBK progressing our sub-contract works. We identify the following key causes:

- Delays to first side boarding partition installations.
- Delays to mist coating.
- Delays to ceiling installations.
- Delays to stud work alterations.

These points are 'Relevant Sub-contract Events' as identified in clause 2.19.2.9, namely an 'impediment, prevention or default, whether by act or omission, by the Contractor'.

Effect of Delay

The following table indicates the planned and actual (or forecast) dates for the completion of the items which BBK identify as being the cause of the delay. The preceding work is required to enable BBK to progress the M&E subcontract works. The Programme Completion dates below are taken from BBK's Contract Programme reference CEC16001/KWN/001 Rev-. This programme was included in the agreement between BBK and M+W in respect of Acceleration and Extension of Time to Sections 2, 3, 4 & 5 dated 15 January 2018.

Forecast dates in the table below are as advised by the M+W site team.

...

It can be seen from the attached cause and effect analysis programme that the 'lead' delays are those associated with the Third Floor Area 1 and the Ground Floor Area 1. These result in a critical path delay of 7 weeks to the BBK Sectional Completion date of 15 May 2018 for Sections 2, 3, 4 & 5...”

17. On 13 April 2018, BBK issued a further notice of delay to MW, seeking an increased extension of time of thirteen weeks. The basis for the claim was materially identical to that submitted in the March notice.
18. On 29 June 2018, BBK issued a further notice of delay to MW, seeking an increased extension of time of twenty-three weeks, based on the same events.
19. On 1 October 2018 BBK sought an extension of time of a further eight weeks in respect of new events:

“In respect of the period up to 22 June 2018, we have previously notified you that completion of Sections 2, 3, 4, 5 was being delayed. We provided you with the causes of such delay and confirmed where such causes were Relevant Sub-Contract Events. In respect of the period up to 22 June 2018, the cumulative expected delaying effect of the delays was 23 weeks.

In the period from 22 June 2018 to 18 August 2018 (the "Period"), progress to Sections 2, 3, 4, & 5 was further delayed. In short, we were unable to properly progress the following critical activities which formed part of our works in Sections 2, 3, 4 & 5 in the Period:

1) Programme Ref: CEC16001/KWN/001/- Activity 68: 'Containment within walls to Level 2, Area 2'.

This impacts upon BBK's completion of containment within the walls. The impact of this continues through remaining critical path activities thus delay the completion of the Sub-Contract works.

We currently estimate that the delay to this critical activity in the Period will cause a further delay of 8 weeks to the completion of Sections 2, 3, 4 & 5.

The lack of progress on this activity in the Period was caused by:

a) No progress by M+W on Stud work alterations to release containment in the Period...”

20. On 27 February 2019, BBK issued a notice of delay to MW, seeking an extension of time of a further eight weeks, relying on the same causes of delay as set out in the October notice, namely, containment to Level 2, Area 2 caused by delays to studwork alterations.
21. MW did not seek further particulars of the notified claims or respond to the claims, granting or refusing any extension of time. In fact, MW did not send any reply to any of the notices.
22. On 30 July 2019 BBK sent a copy of the Goodman Report to MW, under copy of a covering letter stating:

“We refer to our previous submissions in respect of the above matter dated 1 October 2018 (the "October Notice") and 27 February 2019 (the "February Notice"). Copies of both are enclosed for your reference.

You will recall that:

i. in the October Notice, we requested (in respect of the period up until 18 August 2018) a cumulative total of 217 days (31 weeks) extension of time to Section 3 of the Sub-Contract Works in respect of delays that had been caused to Section 3 during that period. You did not award such an extension of time. In fact, you have not troubled to respond to our October Notice at all; and

ii. in the February Notice, we requested (in respect of the period from 18 August 2018 up until 18 November 2018) a further 56 days (8 weeks) extension of time to Section 3 of the Sub-Contract Works in respect of delays that had been caused to Section 3 during that period. You did not award such an extension of time. In fact, you have not troubled to respond to our February Notice at all.

The deadlines for you to have responded to the October Notice and the February Notice have long since passed. The foregoing amounts to breaches of clause 2.18.2 of the Sub-Contract, which provides for you to respond to any application for an extension of time within 16 weeks.

In support of our proper entitlement to an extension of time in respect of Section 3 of the Sub-Contract Works for the period 15 January 2018 to 18 November 2018, and in a bid to avoid formal proceedings, we enclose a copy of the (front-end) independent expert report of David Goodman of Blackrock Expert Services Limited ...

As you will see, Mr Goodman's expert opinion is that 282 days critical delay was caused to Section 3 of the Sub-Contract Works in the period from 15 January 2018 to 18 November 2018.

...

If we do not receive your written confirmation that you will so extend the date for completion of Section 3 of our Sub-Contract Works within 7 days of the date of this letter, we will take such formal steps as we deem appropriate, without any further notice ...”

23. The Goodman Report included a critical path windows analysis and identified the following causes of critical delay to Section 3:

- i) slower than planned progress to MW's first side boarding and stud work alterations, causing 58 days' critical delay during window 1;
 - ii) slower than planned progress to MW's second side boarding, taping and jointing, causing 71 days' critical delay during window 2;
 - iii) slower than planned progress to MW's first side boarding and stud work alterations, causing 107 days' critical delay during window 3;
 - iv) MW's lack of sufficient resources to progress its works in all floors and areas simultaneously as originally intended, causing 46 days' critical delay during window 4.
24. MW did not respond to the letter dated 30 July 2019 or to the Goodman Report within seven days as requested.

The Adjudication

25. On 8 August 2019 BBK served a notice of adjudication on MW, which described the dispute as follows:
- “A dispute has arisen between the Parties in relation to BBKL's entitlement (as at 18 November 2018) to an extension to the period of completion for Section 3 of the Sub-Contract Works and MW's ability to deduct liquidated damages in relation to Section 3.”
26. Derek Pye was appointed as the adjudicator. On 14 August 2019 BBK served its referral document, relying on the contents of the Goodman Report.
27. By letter dated 15 August 2019 MW raised the issue on which it relies in these proceedings, namely, that there was no crystallised dispute and therefore the adjudicator had no jurisdiction to decide the reference. MW's participation in the adjudication was stated to be without prejudice to its primary position that the adjudicator lacked jurisdiction to determine the matters referred.
28. MW requested, and was granted, an extension of time to serve its response document. On 5 September 2019 MW served its response document, relying on the expert report of Richard Tysler of Quantex Consulting.
29. Both parties served additional expert reports and on 4 October 2019, the adjudicator held an adjudication meeting.
30. On 10 October 2019 the adjudicator published his decision, in which he accepted the conclusions of Mr Goodman “in their entirety” and awarded the full extension of time claimed of 282 days to BBK.
31. The adjudicator directed BBK to pay his fees but ordered that MW should be ultimately responsible for 100% of the fees.

Part 8 proceedings

32. On 22 January 2020 MW issued these Part 8 proceedings, seeking a declaration that the adjudicator did not have jurisdiction to resolve the claim referred to him by BBK and that the decision was a nullity and of no effect.
33. By a consent order dated 8 April 2020 the parties agreed that the Court should also determine which party should be responsible for the adjudicator's fees.
34. There is no substantive issue of fact but short, background statements were filed. Mr Ken Farey, general manager at MW, made two witness statements dated 21 January 2020 and 12 March 2020 respectively; Mr Craig Morrison, a partner at Pinsent Masons LLP, solicitors for BBK, made a witness statement dated 27 February 2020.

Applicable principles

35. The robust approach taken by the courts to adjudication enforcement was summarised in *Carillion v Devonport Royal Dockyard* [2005] EWCA 1358 per Chadwick LJ:

“[26] The purpose for which the provisions in Part II of the 1996 Act ("Construction Contracts") were enacted - and the 1998 Regulations made - is not in doubt. It was explained by Mr Justice Dyson in *Macob Civil Engineering Limited v Morrison Construction Limited* [1999] BLR 93, 97, (1999) 64 Con LR 1, 6 (para 14), in a passage to which the judge referred at paragraphs 58 and 59 of his judgment:

‘...The intention of Parliament in enacting the Act was plain. It was to introduce a speedy mechanism for settling disputes in construction contracts on a provisional interim basis, and requiring the decisions of adjudicators to be enforced pending final determination of disputes by arbitration, litigation or agreement: see section 108(3) of the Act and paragraph 23(2) of Part 1 of the Scheme’.

...

[85] The objective which underlies the Act and the statutory scheme requires the courts to respect and enforce the adjudicator's decision unless it is plain that the question which he has decided was not the question referred to him or the manner in which he has gone about his task is obviously unfair. It should be only in rare circumstances that the courts will interfere with the decision of an adjudicator.”

36. In this case Mr Webb, counsel for MW, has confirmed that MW does not challenge the adjudication process on grounds of any breach of the rules of natural justice. The challenge is limited to the issue of jurisdiction and turns on whether or not there was a crystallised dispute in respect of the claim referred to adjudication.
37. The principles to be applied when considering whether a dispute has crystallised were set out by Jackson J in *Amec Civil Engineering Ltd v The Secretary of State for*

Transport [2004] EWHC 2339 (TCC) at [68] (approved by Clark LJ in *Collins Ltd v Baltic Quay Management (1994) Ltd* [2004] EWCA Civ 1757):

“From this review of the authorities, I derive the following seven propositions:

1. The word "dispute" which occurs in many arbitration clauses and also in section 108 of the Housing Grants Act should be given its normal meaning. It does not have some special or unusual meaning conferred upon it by lawyers.

2. Despite the simple meaning of the word "dispute", there has been much litigation over the years as to whether or not disputes existed in particular situations. This litigation has not generated any hard-edged legal rules as to what is or is not a dispute. However, the accumulating judicial decisions have produced helpful guidance.

3. The mere fact that one party (whom I shall call "the claimant") notifies the other party (whom I shall call "the respondent") of a claim does not automatically and immediately give rise to a dispute. It is clear, both as a matter of language and from judicial decisions, that a dispute does not arise unless and until it emerges that the claim is not admitted.

4. The circumstances from which it may emerge that a claim is not admitted are Protean. For example, there may be an express rejection of the claim. There may be discussions between the parties from which objectively it is to be inferred that the claim is not admitted. The respondent may prevaricate, thus giving rise to the inference that he does not admit the claim. The respondent may simply remain silent for a period of time, thus giving rise to the same inference.

5. The period of time for which a respondent may remain silent before a dispute is to be inferred depends heavily upon the facts of the case and the contractual structure. Where the gist of the claim is well known and it is obviously controversial, a very short period of silence may suffice to give rise to this inference. Where the claim is notified to some agent of the respondent who has a legal duty to consider the claim independently and then give a considered response, a longer period of time may be required before it can be inferred that mere silence gives rise to a dispute.

6. If the claimant imposes upon the respondent a deadline for responding to the claim, that deadline does not have the automatic effect of curtailing what would otherwise be a reasonable time for responding. On the other hand, a stated deadline and the reasons for its imposition may be relevant

factors when the court comes to consider what is a reasonable time for responding.

7. If the claim as presented by the claimant is so nebulous and ill-defined that the respondent cannot sensibly respond to it, neither silence by the respondent nor even an express non-admission is likely to give rise to a dispute for the purposes of arbitration or adjudication.”

38. In *Cantillon Ltd v Urvasco Ltd* [2008] EWHC 282, having considered the relevant authorities, Akenhead J provided the following additional guidance at [55]:

- “(a) Courts (and indeed adjudicators and arbitrators) should not adopt an over legalistic analysis of what the dispute between the parties is.
- (b) One does need to determine in broad terms what the disputed claim or assertion (being referred to adjudication or arbitration as the case may be) is.
- (c) One cannot say that the disputed claim or assertion is necessarily defined or limited by the evidence or arguments submitted by either party to each other before the referral to adjudication or arbitration.
- (d) The ambit of the reference to arbitration or adjudication may unavoidably be widened by the nature of the defence or defences put forward by the defending party in adjudication or arbitration.

...

In my view, one should look at the essential claim which has been made and the fact that it has been challenged as opposed to the precise grounds upon which that it has been rejected or not accepted. Thus, it is open to any defendant to raise any defence to the claim when it is referred to adjudication or arbitration. Similarly, the claiming party is not limited to the arguments, contentions and evidence put forward by it before the dispute crystallised. The adjudicator or arbitrator must then resolve the referred dispute, which is essentially the challenged claim or assertion but can consider any argument, evidence or other material for or against the disputed claim or assertion in resolving that dispute.”

39. When considering the effect and adequacy of contractual claims notices, the Court is entitled to take account of the factual background, including the parties' knowledge and understanding of the material events giving rise to the notices: *Walter Lilly & Co Ltd v MacKay* [2012] EWHC 1773 (TCC) per Akenhead J at [467].

The parties' submissions

40. Mr Webb, on behalf of MW, submits that the Goodman Report amounted to a new notification for the purpose of clause 2.17 of the Contract. The five notices served between 2 March 2018 and 27 February 2019 relied on delays to first side boarding and delays to studwork alterations as the critical delaying events. The critical path was identified as running through Third Floor Area 1 and Ground Floor Area 1 (for the first three notices) and through Second Floor Area 2 (for the fourth and fifth notices). In contrast, the Goodman Report introduced a new relevant sub-contract event, namely, delay to second side boarding, causing 71 days' critical delay. Further, the Goodman Report included a new delay analysis, indicating that the critical path ran through the entire building (except the West Wing) during windows 1 and 2 and through the West Wing only during windows 3 and 4. Even if the Goodman Report did not amount to a new notification, it contained further particulars of the earlier notifications.
41. Mr Webb submits that Clause 2.18 of the Contract required MW to notify BBK of its decision in respect of any notification within 16 weeks of receipt of both the notice of delay and the particulars. Until expiry of that period (or MW's response), there could be no crystallised dispute. The adjudication was started eight days after service of the Goodman Report, before expiry of the contractual period and before expiry of a reasonable time; hence before there was any dispute that could be the subject of a valid reference. On a proper construction of the adjudication reference, it was a claim for an extension of time based on the Goodman Report. The Goodman Report was accepted by the adjudicator in its entirety and formed the basis for his decision. In the absence of a crystallised dispute, the adjudication decision was invalid.
42. Mr Stansfield QC, leading counsel for BBK, submits that the five notices served on MW provided adequate notice and particulars of the delays in accordance with clause 2.17 of the Contract. MW's failure to respond within the 16-week contractual period gave rise to a crystallised dispute before commencement of the adjudication. The notices must be read against the background that, as the contractor, MW was aware of the programme and sequence for BBK's works and their interdependence with MW's works. MW was involved in carrying out its own works and well-placed to assess delays to BBK's work on site, the causes of such delays and the likely impact on completion of the same. Indeed, as Mr Stansfield noted, the forecast dates set out in BBK's notices were "as advised by MW".
43. Mr Stansfield submits that on a proper construction of the Contract, the 16-week period within which MW must respond is triggered by the notice of delay required by clause 2.17.1 and particulars required by clause 2.17.2. Clauses 2.17.1 and 2.17.2 require the claim for an extension of time to be identified in broad terms, bearing in mind that the recipient contractor will be well acquainted with what is happening on the project. Clause 2.17.3, which obliges the sub-contractor to notify any material changes in the estimated delay or other particulars does not require a fresh delay notice under clause 2.17.1. Notification of such changes or further information does not create a new dispute or prevent a dispute from crystallising. He submits that MW's construction is wrong, based on an ordinary and natural interpretation of the Contract and having regard to the Housing Grants, Construction and Regeneration Act 1996, as amended ("the 1996 Act").

Clauses 2.17 and 2.18 of the Contract

44. Clause 2.17.1 requires any delay notice issued by the sub-contractor to identify the material circumstances of any delay, the cause or causes of the delay and any event which the sub-contractor considers to be a relevant event.
45. Clause 2.17.2 requires the sub-contractor, either in the clause 2.17.1 notice or as soon as possible thereafter, to give particulars of the expected effects of each relevant event identified, including an estimate of any expected delay in the completion of any section of the sub-contract works.
46. Clause 2.18.1 requires the contractor to consider the request for an extension of time "*on receiving a notice and particulars under clause 2.17*". On an ordinary reading of those words, the "*notice*" must be the notice referred to in clause 2.17.1 and "*particulars*" must be a reference to the particulars required by clause 2.17.2. Therefore, in order to trigger clause 2.18, it is necessary for the sub-contractor to provide to the contractor both a notice under clause 2.17.1 and particulars of the delay notified as set out in clause 2.17.2, although the particulars may be contained in the notice; they do not have to be in a separate document.
47. The contractor's obligation under clause 2.18.1 is to give an extension of time "*as he then estimates to be fair and reasonable*" if the sub-contract works or a section thereof is "*likely to be delayed*" by a relevant event. As a consequence of the prompt notification required under clause 2.17, any extension of time is likely to be based on an estimate by reference to expected delay, which may or may not be realised. I accept Mr Stansfield's submission that absolute precision and certainty is not required in the contractor's assessment, or in the sub-contractor's notice and particulars.
48. Clause 2.18.2 stipulates that the contractor must notify the sub-contractor of its decision in respect of any clause 2.17 notice "*as soon as is reasonably practicable and in any event within 16 weeks of receipt of the required particulars*". The "*required particulars*" must be a reference back to the particulars required by clause 2.17.2.
49. Clause 2.17.3 requires the sub-contractor to notify the contractor of any material change in the estimated delay or other particulars provided under clauses 2.17.1 and 2.17.2. BBK is also obliged to supply "*such further information as [MW] may at any time reasonably require*".
50. Mr Stansfield submits that any notification of a change under clause 2.17.3 would not give the contractor a fresh period within which to make a decision. In my judgment, that puts his case too high. The words of clause 2.17.3 indicate that it is envisaged that any additional information will be supplementary to the notice and particulars already supplied, having regard to subsequent developments on site or the availability of new details. Although it is not inevitable that such notification would re-start the sixteen-week period, the obligation under clause 2.17.3 arises where there has been a material change. There might be cases where the notification of a material change could produce a claim that was so different to the original notified claim that it amounted to a new notice, displacing the original. It is a matter of fact and degree whether in any given case, a proper analysis leads to the conclusion that information provided under clause 2.17.3 supplements a notified claim or gives rise to a new claim.
51. Section 108 of the 1996 Act contains a mandatory provision for either party to refer a dispute to adjudication at any time. Clauses 2.17 and 2.18 must be construed in a

manner which is compatible with the 1996 Act. If they cannot be so construed, they will be invalid and the Scheme substituted: *Midland Expressway Limited v Carillion Construction Limited* [2005] EWHC 2963 (TCC) per Jackson J at [65]. The possibility that a notification under clause 2.17.3 might re-start the period for the contractor to consider a claim would not be contrary to the purpose and intention of the 1996 Act because it would only arise if the notification amounted to a new claim, displacing the original claim. If the additional notification did not change the fundamental nature and basis of the claim, the contractor would remain under an obligation to respond within the timeframe set out in clause 2.18. However, if the additional information, objectively assessed, gave rise to a new claim, the contractor would be entitled to a fresh sixteen-week period to consider such new claim before there could be any dispute.

52. Such a construction maintains the balance between allowing the contractor a reasonable period of time to respond to a claim and allowing the sub-contractor to seek a speedy determination of any claim that is not agreed. That can be distinguished from the facts in *Midland Expressway* where the contractor was seeking to exploit the contractual procedure to restrict any reference to adjudication by artificially defining when a dispute could arise.
53. Mr Stansfield correctly submits that it is necessary to construe these provisions in a sensible and commercial way. He postulates that if any notification of particulars under clause 2.17.3 gave the contractor a further period of 16 weeks to consider a request for an extension of time, and if the sub-contractor provided such additional information more frequently than once every sixteen weeks, then the contractor would never be required to make a decision as to the sub-contractor's entitlement to the claimed extension of time. That potential scenario cannot be excluded, although it suggests extreme facts. However, an unmeritorious attempt by the contractor to treat additional notifications as serial new claims in order to postpone any decision under clause 2.18, would not indicate that the provisions were contrary to the 1996 Act. Rather, it would give rise to a dispute between the contractor and sub-contractor as to whether the notifications constituted fresh claims or the contractor was in breach of clause 2.18.
54. As set out in *Amec* above, where there is no express acceptance or rejection of a claim, the point at which a dispute can be inferred is very heavily dependent on the facts of each case.

BBK's notified claim

55. Each of the five notices of delay served by BBK on MW set out the cause or causes of delay, the material circumstances relied on, the material relevant event and particulars of the expected effects, including an estimate of the expected delay in completion of Section 3. Therefore, they provided the notice of delay required by clause 2.17.1 and the particulars required by clause 2.17.2 of the Contract.
56. Clause 2.18.1 obliged MW to consider each of the delay notices and to notify BBK of its decision in respect of each notice as soon as reasonably practicable and, at the latest, within 16 weeks of the date of each notice.
57. Mr Farey's suggestion that MW was not obliged to reply to the notices until particulars were provided is misconceived. He has not identified any information that was required by clause 2.17 but outstanding at the time that each delay notice was sent to MW. MW

did not request any additional information from BBK. MW did not notify BBK at any stage between March 2018 and February 2019 that it was waiting for further particulars of the claim or other information before determining the notified claim for an extension of time.

58. MW was in breach of its obligations under clause 2.18 in failing to notify BBK of any decision in respect of each delay notice within 16 weeks of such notice. MW's silence gave rise to an inference that the delay claim set out in the notices was not admitted. The notices indicated that the delays were cumulative. A dispute in respect of the cumulative delay crystallised on the expiry of the sixteen-week period following receipt of the February 2019 notice.
59. The Goodman Report did not amount to a fresh notification, whether under clause 2.17.1, clause 2.17.2 or clause 2.17.3. It contained a detailed critical path analysis and the total extension of time claimed was marginally longer than the previous cumulative extension claimed but it was not materially different to the delay claim advanced in the earlier notices. The reference to second side boarding was not a new relevant event; the earlier notices relied on delays to the mist coating which formed part of the second side boarding. The causes of delay remained delays to MW's preceding works.
60. The Goodman Report was evidence by way of expert analysis to support BBK's claim for an extension of time to Section 3 of the works in respect of which there was a crystallised dispute.
61. The dispute referred to adjudication was BBK's disputed claim for an extension of time to Section 3 of its works. It follows that the adjudicator had jurisdiction to determine the dispute and the adjudication decision was valid.

Adjudicator's fees

62. MW accepts that if the decision is enforceable in full then it has no defence to the claim for the adjudicator's fees.
63. For the reasons set out above, the adjudication decision is valid and enforceable in full. It follows that the adjudicator's fees are payable by MW.

Conclusion

64. The Court grants the following declarations:
 - i) The adjudicator had jurisdiction to determine the dispute referred to him by the defendant on 7 August 2019.
 - ii) The adjudicator's decision dated 10 October 2019 is valid and binding on the parties.
65. The claimant shall pay to the defendant the sum of £37,251.66, being the amount paid by the defendant to the adjudicator in respect of his fees.