IS PREMIER MODULAR THE DAWN OF A NEW HORIZON?

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Introduction

Is the recent decision in Premier Modular Limited v Maidstone and Tunbridge Wells NHS Trust [2026] EWHC 1404 (TCC) the dawn of a new horizon for the rules of natural justice in enforcement proceedings? Let me explain.

Premier Modular Limited ("Premier" and "PML"), by way of CPR Part 24 summary judgment proceedings, sought to enforce payment of £1,655,385.49 by Maidstone and Tunbridge Wells NHS Trust ("the Trust" and "M&TW") plus other relief, in respect of a re-corrected adjudicator's Decision issued on the 26 February 2026. The Trust defended the proceedings on grounds the central findings in the Decision were reached in breach of the rules of natural justice. The Decision was not enforced.

The law on natural justice

The general legal rules on natural justice are well-known. The issue in Premier was the Trust's proposition that the Adjudicator had decided the dispute upon a basis which the Trust did not have adequate opportunity to deal with.

The learned Judge set out the relevant law at [6] to [9]. As a refresher, it is worthwhile setting out that material again here. An issue is a contested point of fact and/or law. A point is a legal argument to answer the issue.

> *6. … The law in this respect was summarised in Cantillon Ltd v Urvasco Ltd [2008] B.L.R. 250 where Akenhead, J said this, with emphasis added:*
>
> > *57. From this and other cases, I conclude as follows in relation to breaches of natural justice in adjudication cases:*
> >
> > > *(a) It must be first established that the Adjudicator failed to apply the rules of natural justice;*

(b) Any breach of the rules must be more than peripheral; they must be material breaches;

(c) Breaches of the rules will be material in cases where the adjudicator has failed to bring to the attention of the parties a point or issue which they ought to be given the opportunity to comment upon if it is one which is either decisive or of considerable potential importance to the outcome of the resolution of the dispute and is not peripheral or irrelevant.

(d) Whether the issue is decisive or of considerable potential importance or is peripheral or irrelevant obviously involves a question of degree which must be assessed by any judge in a case such as this.

(e) It is only if the adjudicator goes off on a frolic of his own, that is wishing to decide a case upon a factual or legal basis which has not been argued or put forward by either side, without giving the parties an opportunity to comment or, where relevant put in further evidence, that the type of breach of the rules of natural justice with which the case of Balfour Beatty Construction Company Ltd v The Camden Borough of Lambeth was concerned comes into play. It follows that, if either party has argued a particular point and the other party does not come back on the point, there is no breach of the rules of natural justice in relation thereto.

7. The position was further illuminated by the decision of Edwards-Stuart, J in Roe Brickwork Limited v Wates Construction Limited [2013] EWHC 3417 (TCC) as follows, again with emphasis supplied:

22. It is also well understood that an adjudicator must observe the rules of natural justice. In this context, that means that he should not decide a point on a factual or legal basis that has not been argued or put forward in the submissions made to him: see Balfour Beatty Construction v London Borough of Lambeth [2002] BLR 288. However, this rule is often easier to state than to apply.

> *23. If an adjudicator has it in mind to determine a point wholly or partly on the basis of material that has not been put before him by the parties, he must give them an opportunity to make submissions on it. For example, he should not arrive at a rate for particular work using a pricing guide to which no reference had been made during the course of the referral without giving the parties an opportunity to comment on it.*
>
> *24. By contrast, there is no rule that a judge, arbitrator or adjudicator must decide a case only by accepting the submissions of one party or the other. An adjudicator can reach a decision on a point of importance on the material before him on a basis for which neither party has contended, provided that the parties were aware of the relevant material and that the issues to which it gave rise had been fairly canvassed before the adjudicator. It is not unknown for a party to avoid raising an argument on one aspect of its case if that would involve making an assertion or a concession that could be very damaging to another aspect of its case.*

8. These observations have to be set in the broader context that the courts have made clear in numerous cases that they have every sympathy for the difficult task which adjudicators have to perform, seeking to deal with complex disputes under great pressure of time. By contrast, the courts regard with scepticism losing parties who, rather than paying now and arguing later seek to resist enforcement on unmeritorious grounds.

9. For example the Court of Appeal expressed these matters robustly in Carillion Construction Limited v Devonport Royal Dockyard Limited [2006] BLR 15:

> *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. The courts should give no encouragement to the approach adopted by DML in the present case; which … may indeed, aptly be described as "simply scrabbling around to find some argument, however tenuous, to resist payment."*

86. It is only too easy in a complex case for a party who is dissatisfied with the decision of an adjudicator to comb through the adjudicator's reasons and identify points upon which to present a challenge under the labels "excess jurisdiction" or "breach of natural justice" … The task of the adjudicator is not to act as arbitrator or judge. The time constraints within which he is expected to operate are proof of that. The task of the adjudicator is to find an interim solution which meets the needs of the case.

87. In short, in the overwhelming majority of cases, the proper course for the party who is unsuccessful in an adjudication under the scheme must be to pay the amount that he has been ordered to pay by the adjudicator. If he does not accept the adjudicator's decision as correct (whether on the facts or in law), he can take legal or arbitration proceedings in order to establish the true position. To seek to challenge the adjudicator's decision on the ground that he has exceeded his jurisdiction or breached the rules of natural justice (save in the plainest cases) is likely to lead to a substantial waste of time and expense as, we suspect, the costs incurred in the present case will demonstrate only too clearly.

The Contract

The Parties entered a contract for the design and construction of a new theatre building at Maidstone Hospital based on the NEC Option A (Priced contract with activity Schedule) with the tendered total of the Prices being £19,793,700.41 ("the Contract").

The Dispute

In short, Premier asserted it required a permanent mains water supply to be made available no later than 30 October 2023 for testing and commissioning and the Trust provided it on the 20 February 2024 thereby causing Premier a 14 week critical delay to the Completion Date and associated additional defined cost. The Trust admitted it was responsible for the mains water supply but asserted there was no requirement for it to be made available by any particular date.

The Trust's defence to enforcement

The learned Judge summarised the Trust's Defence grounds at [2]. For present purposes, the material parts say;

The Defendant Trust submits that the central findings in the Decision were reached in breach of natural justice. Three grounds are relied upon:

> *i) The Adjudicator's central finding that there had been a Compensation Event was made on a contractual basis that had not been raised by the parties and on which neither party had made submissions. The Trust says that this was "an unforeseen and unforeseeable aspect of the Decision that goes to its heart".*
>
> *ii) …*
>
> *iii) The Adjudicator made a finding that the Accepted Programme had been updated. This was not part of the Adjudication and, moreover, was entirely contrary to the clear position of both parties in the Adjudication that the Accepted Programme had not been updated.*

Analysis

A good starting point, to give what follows context, is what the learned Judge said at [42] when summarising his findings on the Trust's Defence for Grounds 1 and 3;

In summary, the Adjudicator determined that there was a compensation event within the meaning of clause 60.1(3) because the Trust had not provided the water main by the dates set out in a revised programme which neither party said was an Accepted Programme. By contrast, the Accepted Programme contained no such dates. This startling conclusion was clearly material to the Decision, and it should have been put to the parties for comment. It was a breach of the rules of natural justice not to do so: the Adjudicator went off on a "frolic" by, in effect, inventing a case for PML which he considered to be superior to that which they actually advanced.

The learned Judge then said under his Section E Conclusions;

> *47. At this stage, I remind myself that this is an application for summary judgment. CPR Part 24.3 provides that:*

The court may give summary judgement against a claimant or defendant on the whole of a claim or an issue if –

(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial.

48. I have concluded that the Trust does have a real prospect of succeeding on its contention that the Decision was arrived at in breach of the rules of natural justice. In so concluding, I have had very much in mind the guidance from the Court of Appeal in Carillion Construction Limited v Devonport Royal Dockyard Limited [2006] BLR 15 that it is for "the courts to respect and enforce the adjudicator's decision unless it is plain that … 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."

49. However, in my view, this is one of those rare cases where there has been obvious unfairness, for the reasons set out above.

50. I have also had very much in mind the difficult task which adjudicators face in dealing with substantial disputes in very short order, a point also emphasised in Carillion. However, I think that this factor weighs more heavily in favour of the enforcement of a decision where it is said that a point has been overlooked or misunderstood. In the present case, the Adjudicator did not neglect a matter under pressure of time. Rather, he sought to create a case for PML which PML had not made and with which the Trust had no proper opportunity to deal, even by the hectic standards of adjudication.

<u>The clause 60.1(3) point</u>

It is uncontroversial the Contract made provision for compensation events at clause 60.1 (see [15]). Premier's Referral asserted at paragraph 35 its case on the water main gave rise to a compensation event under clause 60.1(1), and/or

(14) and/or (18) (see [21]). The Trust's Response asserted no compensation event arose within the meaning of clause 60.1(1), and/or (14) and/or (18) (see [24] and [25]).

The Parties submitted a Reply and a Rejoinder (see [27]).

The Adjudicator then wrote to the parties and said this (see [26]);

> *1. I am currently reading in and starting to draft parts of my decision. I need some clarification on the following points.*
>
> *2. The purpose of these clarifications is to enable me to fully understand the respective cases in order to make my decision.*
>
> **Compensation event**
>
> *60.1 The following events are compensation events.*
>
> *(3) The Client does not provide something which it is to provide by the date shown in the Accepted Programme.*
>
> …

The Parties replied to the Adjudicator's request for clarification (see [27]). The Judgment does not say what the Parties said, if anything, about the clause 60.1(3) point.

The Adjudicator then said this in his Decision about the clause 60.1(3) point (see [29] & [31]) (bold in text, underlining by the Judge);

> Issue 2 – Is there a Compensation Event?
>
> 76.00 The case from PML is simple. There is a provision in clause 60.1(3) which is simply a provision that provides where there is a failure to provide something that the employer was to provide.
>
> 77.00 It is that simple. It requires no more.
>
> …
>
> 117.00 This issue separates the mere existence of a Compensation Event from its impact.
>
> 118.00 For a Compensation Event to exist is there a regime of notices of any sort required in order for an occurrence to become a Compensation Event?
>
> 119.00 Compensation Event 60

60.1 The following events are compensation events

(3) The Client does not provide something which it is to provide by the date

Reasons

120.00 M&TW agreed to provide the water main. Who was doing what in connection with the provision of the water main is contained in the Responsibility Matrix in Appendix 1.4 of the Scope.

121.00 The water main was to be provided by South West Water and WMM. Both were employed by M&TW.

122.00 They were not in the control of PML.

123.00 These are items to be provided by the Client. They were within Client control.

124.00 They were not provided in accordance with the requirements of dates on Accepted Programmes …

126.00 The Compensation Event exists simply on the basis of the provision in clause 60.1(3). When M&TW failed to provide the water main by the required date a Compensation Event came into existence.

I Find That *a Compensation Event did arise when M&TW failed to provide the water main on the date on the Accepted Programme.*

Plainly, the Adjudicator thought that clause 60.1(3) was relevant, material, and required "*clarification*" by the Parties *"to enable [him] to fully understand the respective cases in order to make [his] decision."*

The learned Judge took the view the Adjudicator's "request for clarification, set out above, did not ask the parties to consider whether clause 60.1(3) was in play. It referred, confusingly, to that sub-clause, but *actually asked for assistance on the status of Contract Programme Rev 2 dated 14 July 2023. Both parties agreed that this was not an Accepted Programme*" (see [39 iii)]). Further, the learned Judge found, on the facts, the Adjudicator devised a case under clause 60.1(3) and decided a key point on a factual or legal basis that had not been argued or put forward in the submissions made to him (see [36]).

Thus, in the context of the rules of natural justice in construction adjudication, the learned Judge classified the Adjudicator's conduct as falling within the key principle in Roe Brickwork at [22] and Carillion at [85].

Let's now have a look at the Accepted Programme point.

The Accepted Programme point

The Contract at clause 11.2(1) defined the "*Accepted Programme*" as *"the programme identified in the Contract Data or … the latest programme accepted by the Project Manager." "The Accepted Programme was at Appendix 3 of the Contract*." (see [14]).

The learned Judge then said at [14];

It was common ground before me that:

i) the Accepted Programme was never updated, in the sense that the Project Manager never accepted a later programme;

ii) the Accepted Programme contained no obligation on the Trust to make permanent water available by any particular date, albeit that various subsequent programmes proffered by PML did contain such an obligation.

For present purposes, Premier's Referral said at [59] and [60] (see [22]);

> *59. PML is not disentitled from being granted an extension of time by the absence of any specific revised "Accepted Programme", as suggested by the correspondence copied at Referral Appendix 16, because the clause 11.2(1) definition of Accepted Programme (Referral Appendix 04, PDF page 15) provides that the Accepted Programme is the Contract Programme if not superseded by any later revision of it. The Contract Programme is copied at Referral Appendix 05.*
>
> *60. However, as a revised programme was in October 2023 created by PML, as copied at Referral Appendix 11, Mr Dunn's report Appendix E, PML submits that it makes considerably more sense (in particular having regard to the NIHE v Healthy Buildings judgment copied at Referral Appendix 06, in which the Court held that actual, accurate data should be used for retrospective compensation event assessment, not reconstruction of what may / may not reasonably have been forecast at an earlier juncture) to base the assessment on the programme as it*

actually was, rather than what it may have been when forecast some 8 months earlier than the occurrence of the compensation event.

The learned Judge set out the relevant parts of the Trust's Response at [24]. The Trust did not plead to Referral paragraphs 59 and/or 60. In short, it pleaded no compensation event arose within the meaning of clause 60.1(1) and there was no breach by the Trust under clauses 60.1(14) and (18) and, in any event, any compensation events under clause 60.1(14) and (18) were not notified and, as a result, were time barred.

The Parties submitted a Reply and a Rejoinder (see [27]).

The Adjudicator then wrote to the Parties and said this (see [26]);

1. I am currently reading in and starting to draft parts of my decision. I need some clarification on the following points.

2. The purpose of these clarifications is to enable me to fully understand the respective cases in order to make my decision.

Compensation event

…

11.2(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the Project Manager. The latest programme accepted by the Project Manager supersedes previous Accepted Programme.

3. Is the revised programme Contract Programme Rev2 dated 14 July 2023 an Accepted Programme?

The Parties replied to the Adjudicator's request for clarification (see [27]).

Premier's submission said;

The only Accepted Programme is that which is in the contract (Referral Appendix 05). PML submitted numerous later programme (sic) to the Project Manager but the clause 31.3 mechanism (for acceptance or not) was not operated, the parties just discussed programme during meetings – see for example the numerous meeting minutes to which M&TW refers at Rejoinder footnote 67.

The Trust's submission said;

This is not an Accepted Programme in accordance with Clause 31 of the Contract or the definition at paragraph 11.2(1) of the Contract. This is because it was not accepted by the Project Manager in accordance with the clause 31 acceptance process.

The Adjudicator then said this in his Decision on Accepted Programme (see [29] & [31]) (bold in text, underlining by the Judge);

Issue 1 – Is there an accepted programme?

73.00 The original programme incorporated in the contract at Appendix 03 was an Accepted Programme … Subsequent revised programmes were issued …

74.00 Clause 31 of the contract states …

75.00 I am told that the parties did not adhere to any of these procedures …

…

101.00 There was an original Accepted Programme. This is found at Appendix 3 to the Contract, (Appendix 5 in the Referral).

102.00 There were a number of subsequent programmes issued by PML.

103.00 The programme that is important to PML's case is the revision issued on 30 October 2023 Contract Programme Rev3 30.10.23.

104.00 It is that programme that PML says sets the date by which the water supply was required on site …

…

115.00 It follows from this that I am satisfied Contract Programme Rev3 30.10.23 became an Accepted Programme. Notwithstanding that the procedures were not followed the default position where the Project Manager has not taken steps to reject or amend the presented programme must be that the programme becomes the Accepted Programme.

116.00 I am further satisfied that the date that the watermain was required was 30 October 2023. This is shown on the revised programme.

I Find That Contract Programme Rev3 30.10.23 became an Accepted Programme. Further that set the date on which the water main was required as 30 October 2023.

It was common ground the Accepted Programme was that incorporated into the Contract at Appendix 03 and, notwithstanding Premier submitting further programmes to the Project Manager for acceptance, the Project Manager did not accept any of those subsequent programmes for the purpose of an Accepted Programme under clause 31.

The learned Judge took the view "*the Adjudicator was founding his Decision upon a programme which neither party alleged to be an Accepted Programme" (see 41 ii)]) and "it is, of course, correct that an adjudicator is not obliged to decide a case only by accepting the submission of one party over the other. But if he is to depart from the submissions of both parties, he must ensure that the issues have been fairly canvassed. This did not happen here. The first that the trust knew of the clause 60.1(3) case, based on the proposition that it had not provided the water main by the date shown in Contract Programme Rev 3 30.10.23, was when they received the Decision*." (see [39 iv)] & [41 iii)]).

Thus, in the context of the rules of natural justice in construction adjudication, the learned Judge classified the Adjudicator's conduct as falling within the key principle in Roe Brickwork at [22] and Carillion at [85].

Conclusion

I've not met an adjudicator yet who doesn't strive to reach a decision that is procedurally fair, correct in fact and law, provides temporary broad justice between the parties within the constraints of the summary process, and is enforceable.

Generally speaking, the relevant adjudication rules to the parties' construction contract provide a discretionary power for the adjudicator to take the initiative in ascertaining the facts and the law necessary to determine the dispute.

The Adjudicator in Premier formed the view, after the Parties substantive cases had been canvassed, that he required "clarification" from the Parties on various points "*to fully understand the respective cases in order to make [his] decision*."

The Adjudicator raised the clause 60.1(3) point with the Parties before the Decision was reached. The Judgment does not say what the Parties said, if anything, in reply to the

Adjudicator's request for clarification on the point. The learned Judge took the view the Adjudicator's request for clarification *"did not ask the parties to consider whether clause 60.1(3) was in play. It referred confusingly, to that sub-clause, but actually asked for assistance on the status of Contract Programme Rev 2 dated 14 July 2023*." A conclusion that may reasonably be drawn here is; in circumstances where an adjudicator elects to use his/her discretionary power to take the initiative to ascertain the facts and/or the law necessary to determine the dispute then he/she must make it absolutely clear to the parties what it is he/she is thinking and what he/she requires them to do. Further, the adjudicator must inform the parties that, in the event one or both fail to provide the submission requested/directed, then unless he/she is persuaded otherwise, he/she intends to proceed on a specified basis (i.e. inform the parties of the sanction to be applied for non-compliance). In that way, it ought not to be found on enforcement the adjudicator has decided a case upon a factual or legal basis that has not been argued, or put forward by either side, without giving the parties an opportunity to comment.

The Adjudicator also raised the Accepted Programme point with the Parties before the Decision was reached. The Adjudicator asked the Parties *"Is the revised Contract Programme Rev2 dated 14 July 2023 an Accepted Programme*?" The Parties replied Contract Programme Rev2 dated 14 July 2023 was not an Accepted Programme. Thus, the Parties had been given an opportunity to answer the Adjudicator's question and did so. Further, it must not be overlooked, Premier had pleaded in its Referral at paragraph 60. "*However, as a revised programme was in October 2023 created by PML, as copied at Referral Appendix 11, Mr Dunn's report Appendix E, PML submits that it makes considerably more sense … to base the assessment on the programme as it actually was, rather than what it may have been when forecast some 8 months earlier than the occurrence of the compensation event*." The Trust did not plead to Referral paragraph 60. Thus, the Trust were aware of, or ought reasonably to be deemed to be aware of, that part of Premier's case and also had a reasonable opportunity of dealing with it because it served a Response and a Rejoinder but chose not to. The Adjudicator, during his deliberations on the Parties pleaded cases and their other submissions, decided that the relevant programme was "*Contract Programme Rev3 30.10.23" (i.e. the programme relied upon by Premier in its Referral at paragraph 60 supported by the opinion of its delay expert Mr Dunn). The learned Judge took the view "the Adjudicator was founding his Decision upon a programme which neither party alleged to be an Accepted Programme*." I suspect what may have happened here is the Adjudicator accepted Premier's proposition that the relevant programme to measure delay was Contract Programme Rev3 30.10.23 but went further in his Decision and said "I am satisfied Contract Programme Rev3 30.10.23 became an Accepted Programme.

Notwithstanding that the procedures were not followed the default position where the Project Manager has not taken steps to reject or amend the presented programme must be that the programme becomes the Accepted Programme". A conclusion that may reasonably be drawn here is; the adjudicator must be absolutely clear in his/her reasoning why he/she has decided an important or decisive point of fact and/or law a particular way from the parties' submissions and must not introduce into his/her reasoning a notion of fact and/or law that has not been put forward by either side without giving the parties the opportunity to comment. Any ambiguity or uncertainty present in a reasoned decision on an important or decisive point may become a ground to successfully resist enforcement.

The key principles on the rules of natural justice in construction adjudication are set out in Cantillon at [57], Roe Brickwork at [22] to [24], and Carillion at [85] to [87]. The learned Judge found, on the facts, in Premier that the Adjudicator had decided the clause 60.1(3) point, and the Accepted Programme point, on a factual or legal basis that had not been put forward in the submissions made to him, thus, the Decision was not enforced. However, Roe Brickwork at [23] says; "*If an adjudicator has it in mind to determine a point wholly or partly on the basis of material that has not been put before him by the parties, he must give them an opportunity to make submissions on it*." And, at [24] says; "*There is no rule that a*

…. Adjudicator must decide a case only by accepting the submission of one party over the other. An adjudicator can reach a decision on a point of importance on the material before him on a basis which neither party has contended, provided the parties were aware of the relevant material and that the issues to which it gave rise had been fairly canvassed before the adjudicator." It might be said, in general terms, the Adjudicator, in this case, did not decide the clause 60.1(3) point and/or the Accepted Programme point on a factual or legal basis without giving the parties an opportunity to comment. The clause 60.1(3) point and the Accepted Programme point were plainly issues to be decided and in the Adjudicator's mind at the Decision making stage. Clause 60.1(3) and Contract Programme Rev3 30.10.23 were also materials in the case bundles. The former being part of the Contract. The latter being part of Premier's case supported by its delay Expert's Report. It is not unreasonable to assume the Parties included those materials in the case bundles because they either relied upon them to support their own case or alternatively to harm the case of their opponent. It is also not unreasonable to say the Trust were aware of, or ought reasonably to be deemed to be aware of, the Adjudicator's request for clarification on the clause 60.1(3) point and Premier's case on the relevance of Contract Programme Rev3

30.10.23 point supporting its claim for an extension of time. Indeed, Cantillon at [57 (e)] suggests that if either party has argued a particular point and the other party does not come

back on the point there is no breach of the rules of natural justice. The Trust were given a reasonable opportunity of dealing with the two points but chose not to. Returning to Carillion at [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 … the manner in which he has gone about his task is obviously unfair*." Two questions for you to ponder in context. First, is it "*obviously unfair*" if an adjudicator requests/directs the parties to make submissions on a particular point of fact and/or law that he/she considers relevant at the decision making stage, but the parties say nothing, and the adjudicator then decides that particular point in his/her decision? Second, is it "obviously unfair" if an adjudicator decides an issue or point on material submitted by the parties in favour of one party when the other party has had a reasonable opportunity to make submissions on it but chose not to? The courts, on enforcement, to assess whether the adjudicator has conducted his/her task fairly on a material and/or decisive point in the decision, will closely scrutinise the procedure adopted by the adjudicator, when taking the initiative to ascertain the facts and/or the law, to be satisfied the parties reasonably knew what it was the adjudicator was thinking and required of them and were also given a fair opportunity to make submissions on it. Further, in my view, an adjudicator can no longer safely reach an enforceable decision on a point of importance on the material before him/her (i.e. included in the case bundles and other submissions) which neither party has contended for (for example, the adjudicator finds in the materials a relevant construction programme which he/she considers relevant and applicable to the dispute referred) unless the issue to which it gives rise (for example, a right to an extension of time) has been fairly canvassed by the parties before the adjudicator, or alternatively the parties are given a reasonable opportunity to comment on it. Premier might just be the dawn of a new horizon in enforcement proceedings for the application of the rules of natural justice in Cantillon, Roe Brickwork and Carillion. The benchmark in Carillion at [85] might now have been lowered for the court to decide, on the facts, the decision ought to be classified as one of those rare circumstances where it is plain the manner in which the adjudicator has gone about his/her task is "*obviously unfair*". Only time will tell. Adjudicators beware.

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