BlueSky ADR
Construction Contract Consultants
T: 0845 371 2575 • F: 0800 302 9343
E: admin@blueskyadr.com • www.blueskyadr.com

In This Issue

NEWSLETTER

Blue Sky ADR Ltd Newsletter **December 2022**

Welcome to our December 2022 Newsletter.

There have been so many matters going on in the world in 2022 and it is clearly a time of great change, but in the Construction Industry the ever present backdrop of disputes continues to exist.

We therefore felt that it would be a good opportunity to provide a brief round-up of some of the more significant and interesting construction related cases that have gone through the courts since our last Newsletter in September of this year.

We hope that your enjoy it .

Do you have a dispute? Can we help?

If you have a construction dispute why not contact us to see if we can help? We are a modern and innovative construction contract and commercial, and dispute resolution consultancy, specialising in providing contractual and commercial support services (both non-contentious and contentious) to those operating in the Construction industry. We have extensive experience and a proven track record in the resolution of construction disputes. We give sound advice. We attempt dispute avoidance techniques initially (where appropriate to do so), and only where this fails, we give a committed service and provide hard work to attempt to obtain the best result that we can for our clients through a formal dispute resolution process. When it comes to Adjudication Blue Sky ADR regularly and very successfully represents parties, both in pursuing and in defending Adjudication actions; it has done so for many years and our staff have extensive experience and knowledge in this complex and specialist area.

We are always here to help you when you need our assistance, and even through all of the recent unprecedented and extremely trying times, it has still been business as usual for Blue Sky ADR Ltd. Our services and support to you and your team can, in the majority of instances, still be provided remotely by us, and we remain contactable by phone, email or post (key contact details are provided below). Files and papers can still be sent to us electronically. In the event that a meeting is required this can still be done by telephone or a video conference can be set up.

Key Contact:

Peter Barnes - Director
Mobile 07515 104307
Tel. 0845 371 2575

Key Contact:

Matthew Davies - Director
Mobile 07552 167123
Tel. 0845 371 2575

If you allow us to provide our support to you we will do our absolute best for you. We hope to hear from you soon.

Best Regards
Peter Barnes and Matthew Davies

HELPLINE – 0845 371 2575

Do you have a construction contract or commercial query, problem or dispute? Struggling to get paid? Can we help? Contact us for a free, up to 1 hour, initial consultation. Alternatively, if you would prefer to send us an email, with a brief summary of your situation, we'll get back to you as soon as possible. Our key contact emails are set out above under key contracts.

DECEMBER 2022 – A REVIEW OF VARIOUS SIGNIFICANT AND INTERESTING CONSTRUCTION RELATED CASES SINCE SEPTEMBER 2022 — BY PETER BARNES

1 Braceurself Limited v NHS England [2022] EWHC 2248 (TCC) (16 September 2022).

In the case of Braceurself Limited v NHS England, the Court considered whether a breach of the Public Contracts Regulations 2015 ("**PCR**") by the contracting authority (NHS England ("**NHSE**")) was 'sufficiently serious' to warrant an award of damages in favour of the bidder (Braceurself Limited ("**Braceurself**")).

The Court referred to an earlier decision made by the Supreme Court in 2016 [***EnergySolutions EU Ltd v Nuclear Decommissioning Authority*** [2017] UKSC 34] which said that damages can only be awarded if a breach of the PCRs is 'sufficiently serious', and generally, since that Supreme Court case, the presumption has been that a breach that affects the outcome of the procurement would be sufficiently serious.

Despite that, in the Braceurself case, where NHSE had made a manifest error when evaluating Braceurself's bid, which resulted in a competitor of Braceurself (Eva Petersfield & Alton Ltd ("**PAL**")) being awarded the contract, even though if the manifest error had not been made by NHSE, Braceurself's bid score would have been slightly higher than that of PAL, the Court decided the breach was not considered to be 'sufficiently serious' and, as such, Braceurself was not entitled to a damages award.

In deciding upon this matter, the Court applied the established test in an earlier EU ***Francovich v Italy*** case in order to assess whether the errors on NHSE's part were 'sufficiently serious'. This meant that the Court considered factors such as the importance of the principle that was breached, the clarity and precision of the rule that was breached, the degree of excusability for the error, the state of mind of the infringer and the persons affected by the breach.

Importantly, in the present case, the Court reasoned as follows:

- The breach in the Braceurself case was clear and arose out of simple facts.
- The breach had a powerful outcome because the tender process was so close.
- It was understandable how the error (which was a minor misunderstanding) was made by NHSE (and was therefore at the excusable end of the spectrum).
- The breach was inadvertent and not deliberate.

Overall, whilst the Court had found that NHSE had made a manifest error in the procurement process which had impacted upon the outcome of the evaluation scores, the Court did not consider that the breach was sufficiently serious so as to award damages to Braceurself. The Court also reasoned that a breach causing a minor change in a bid score can be distinguished from a breach (or series of breaches) where the score is increased by something significantly higher.

Through this judgment, the Court made it clear that establishing liability, and even where a bidder loses out because of a manifest error by the contracting authority, does not automatically mean that the breach is serious enough to justify an award of damages, and this means that unsuccessful bidders may find themselves in a position where they have no right to any remedy even though a clear mistake has been made in a procurement process.

The above position may not be an entirely satisfactory state of affairs, but it is a position that must be borne in mind by any companies contemplating making a challenge under the Public Contracts Regulations 2015.

2. Solutions 4 North Tyneside Ltd v Galliford Try Building 2014 Ltd [2022] EWHC 2372 (TCC) (21 September 2022).

In March 2014 Solutions 4 North Tyneside Ltd ("**Solutions**") entered into a PFI project agreement with North Tyneside Council ("**NTC**") for the construction of ten new sheltered housing blocks, refurbishment works to sixteen existing properties and the provision of facilities management services at all of the sites during the services period which was to run for 27 years following works completion.

Solutions sub-contracted the construction works to Galliford Try Building 2014 Ltd ("**Galliford**") and the facilities management services to Morgan Sindall Property Services Ltd ("**Morgan Sindall**").

The project agreement between NTC and Solutions included an output specification setting out the council's design and construction requirements. Amongst other criteria, section 2.9 in that output specification required the construction works to achieve the design lives set out in section 2.10 of the output specification, which, for individual elements of the works, stipulated a design life of 60 years and also a residual life of 30 years at the date the properties were to be handed back to the council (the "**handback**") at the end of the services period. The project agreement between NTC and Solutions also provided that, as at the date of handback, the works should meet the 'Handback Standard', a defined contractual term requiring the properties to comply with the output specification criteria when handed back to NTC.

The construction sub-contract with Galliford provided that the output specification in the project agreement between NTC and Solutions was deemed incorporated as if it had been fully transposed. However, and despite this, the construction sub-contract did not use or define the 'Handback Standard' nor include any express obligations regarding the condition of the works at the end of the services period.

The facilities management sub-contract with Morgan Sindall required maintenance and lifecycle replacement to be carried out over the services period so as to satisfy the requirements of the project agreement and the 'Handback Standard' at the end of the services period.

Certificates of Availability (i.e. completion certificates) for the new build and refurbishment works were issued during 2017 but within 12 months, Solutions claimed that there were defects in the roofs of the refurbished properties. Solutions did not bring a specific claim for breach and damages against Galliford but commenced court proceedings in 2021 seeking various declarations as to the proper interpretation of the construction sub-contract, including that, for the refurbishment works, the sub-contract required Galliford to achieve the design life and residual life expectancies as at the date of handback detailed in section 2.10 of the output specification.

So the issue was, did the construction sub-contract impose on Galliford any obligations concerning the condition of the refurbishment works at the date of handback?

Having looked at the contract documents overall, including the facilities maintenance sub-contract, the judge concluded that Galliford's obligations were concerned with completing the refurbishment works to the standard required for the Certificates of Availability, in contrast to the obligations of Solutions and Morgan Sindall which encompassed the condition of the properties at the end of the services period. This was consistent with the project agreement between NTC and Solutions and the facilities management sub-contract referencing the Handback Standard, but the construction sub-contract not referencing the Handback Standard.

The judge was satisfied that Galliford's obligations arising from sections 2.9 and 2.10 of the output specification concerned the new build works and not the refurbishment works in which respect, Galliford's obligations were limited to works that were necessary to achieve completion: Galliford was not required to replace elements that were otherwise in sound condition and bringing existing buildings up to a sound standard was different to putting them into a condition such that they would not need further significant refurbishment as they aged over the services period.

The judge therefore agreed with Galliford that the construction sub-contract did not include a requirement that the refurbishment works would, at the date of hand back, have the residual lives specified in section 2.10 of the output specification.

This case highlights, yet again, the importance of ensuring that any applicable main contract terms are properly Incorporated into a sub-contract, rather than relying on a generic and ill-defined 'step-down' clause.

3. Manor Co-Living Ltd v RY Construction Ltd [2022] EWHC 2715 (TCC) (27 October 2022).

The Employer, Manor Co Living Ltd ("**Manor**") entered into a JCT Standard Building Contract 2016 edition without quantities incorporating bespoke amendments with the Contractor, RY Construction Ltd ("**RY**") to carry out construction works at Clare Hall Manor, South Mimms.

Manor intended to terminate RY's employment under the Contract by serving a default notice under clause 8.4.1. A second termination notice was then served under clause 8.4.2 by the Contract Administrator, by email on 11 November 2021. That second notice was not sent in hard copy form by post until six days later, and was not received by RY until 19 November 2021.

Under the terms of the contract, the Contract Administrator is able to serve the first notice under clause 8.4.1, but the Employer (Manor) is to serve the second notice under clause 8.4.2.

Manor subsequently locked the site and RY was unable to enter site after the second notice was served.

RY challenged the legitimacy of the second notice on the grounds that, as noted above; the Employer was to serve the second (clause 8.4.2) notice, not the Contract Administrator.

RY argued that because Manor had not served the notice in accordance with the Contract, and because RY had been locked out of the site which prevented them from carrying out the works, this amounted to a repudiatory breach of the Contract by Manor.

Manor's counter-argument was that they were always entitled to terminate the Contract and they would have terminated it in any event. Therefore, RY had suffered no loss because of the termination at common law.

The dispute was then referred to adjudication, where the Adjudicator rejected Manor's argument that RY was in repudiatory breach in common law.

Manor issued Part 8 proceedings against RY seeking declarations that the Adjudicator's decision declined to consider, and excluded from his consideration, that Manor had a lawful right to terminate the Contract and that the adjudicator deprived Manor from a potential defence, therefore breaching the rule of natural justice.

In the Court, Mr Adam Constable KC, upheld the Adjudicator's decision and said that the Adjudicator had considered Manor's common law termination defence and confirmed that the Adjudicator had not breached the rules of natural justice.

This case highlights the extreme importance of checking what the contract says and serving notices in accordance with the relevant clauses. Getting it wrong could have disastrous effects of failing to meet the contractual requirements and creates uncertainty and financial consequences for the defaulting party. If Manor had only followed the contractual process, and served the second notice direct (and on time); as opposed to late via their Contract Administrator; the Contract would have been terminated correctly; thereby avoiding not only the costs of the adjudication; but also RYs claim for damages incurred through Manor's repudiatory breach of contract.

4. Siemens Mobility Ltd v High Speed Two (HS2) Ltd [2022] EWHC 2451 (TCC) (14 October 2022)

The above case was the latest interim judgment in the long running litigation between Siemens Mobility Ltd ("**Siemens**"), the rail solutions provider, and High Speed 2 (HS2) Ltd ("**HS2**"), the public body responsible for delivering and running HS2, in which Siemens sought damages for alleged breaches of the procurement rules (in this case the Utilities Contracts Regulations 2016 ("**UCR 2016**")).

This judgment provides a useful analysis of the often fraught issues around the 30 day limitation period for procurement claims to be made, and the point at which a Claimant can be said to have acquired enough knowledge to start that limitation clock running. Under the UCR 2016, the clock is stated to run from "the date when the [Claimant] first knew or ought to have known that grounds for starting the proceedings had arisen". The claim in this case was brought in August 2022, in the context of litigation that had first started in late 2021. The judgment focussed therefore on what Siemens ought to have known and by what point. In each case, HS2 argued that these new claims were based on information Siemens "ought to have known" many months ago, and so were time-barred.

One of the reasons that the 30 day limitation cut off based on knowledge is a particularly fraught issue, is that a procuring authority will generally only provide a challenging bidder with documents relating to the specific subject matter of the challenge, as it is currently argued. That material might contain information which the Claimant thinks hints at the possibility of a further breach it is not at that time challenging.

In the ***Sita v Greater Manchester*** Court of Appeal case, the Court had approved the formulation of the degree of knowledge required to start the clock ticking as being: "knowledge of the facts which apparently clearly indicate, though they need not absolutely prove, an infringement". This formulation was then further explained in a subsequent Bromcom v United Learning case as being that:

"… what is needed is knowledge of material which does more than give rise to suspicion of a breach of the Regulations but that there can be the requisite knowledge even if the potential claimant is far from certain of success. Answering the question whether the facts of which a potential claimant was aware were such as to "apparently clearly indicate" a breach of duty by the contracting authority will require consideration of the nature of the procurement exercise; of the nature of the particular breach alleged; and of the nature and extent of the particular factual material". This being a specific test for when a Claimant "ought to have known that grounds for starting the proceedings had arisen"

This test of 'threshold knowledge' becomes particularly challenging in its application to what a Claimant "ought to have known". By definition the Claimant did not actually know this information, so the focus shifts to what the Claimant should have known and whether – if it had actually been known – this would have given rise to sufficient "suspicion of a breach" to start to clock ticking.

In the present Siemens' case judgment, the Court specifically approved a version of the test articulated in the case of ***Matrix-SCM v Newham*** as follows;

"*A claimant will have constructive knowledge if, upon reasonable enquiries [being "enquiries which reasonably should have been made and the inferences which reasonably should have been drawn by a reasonably well informed and normally diligent tenderer" (aka the RWIND tenderer)], it should have discovered the alleged infringement. However, … the Court should be cautious not to impose too onerous a standard on tenderers who do not have actual knowledge of an infringement, and equally, should not require a claimant tenderer to take steps that would be regarded as unreasonable to discover the infringement*".

……. continued next page

…… continued

The key risk for a challenger is therefore finding itself time-barred from bringing a claim (or new cause of action by amendment to an existing claim), despite having no actual knowledge of a particular breach. This will arise if the defendant procuring authority can establish that there are specific enquiries a tenderer should have made once it had some information (for example from early disclosure provided by the authority at the start of the challenge to the procurement) but about which the challenger did not enquire. On the basis of the above test, the defendant can say the response to these enquiries would have given rise to actual knowledge; therefore these are things the challenger "ought to have known". That was exactly the argument run by the defendant in the present Siemens' case.

It obviously remains a difficult area of assessment, to know the point at which a Claimant "*first knew or ought to have known that grounds for starting the proceedings had arisen*". It is sometimes hard enough to assess what the Claimant actually knew, and what causes of action might therefore arise from that knowledge, particularly in the fast process part of an initial claim when there can be material amounts of initial disclosure to assimilate.

It is clearly harder still to establish what a Claimant "ought to have known" by reference to enquiries a Claimant 'should' have undertaken, or the enquiries which "*it was necessary for a RWIND tenderer acting reasonably to make*" by a particular time.

This Siemens' case highlights yet again the difficulties and obstacles that are placed in the path of a tenderer seeking a claim for damages for alleged breaches of the relevant public procurement rules.

5. Thomas Barnes & Sons Plc v Blackburn with Darwen Borough Council [2022] EWHC 2598 (TCC) (17 October 2022).

This case related to a dispute on a contract for the construction of a bus station in Blackburn (the "**Contract**"). Blackburn with Darwen Borough Council (the "**Council**") terminated the Contract by way of termination notice ("**Termination Notice**") (sent by email and post) for alleged delays on the part of Thomas Barnes & Sons PLC ("**Thomas Barnes**") as contractor. After Thomas Barnes subsequently entered into liquidation, Thomas Barnes' administrators brought a claim for wrongful termination including loss and expense, alleging that the (purportedly wrongful) termination caused the insolvency of the contractor.

The Termination Notice was first sent by the Council by e-mail, on a Thursday, which is the day that Thomas Barnes was removed from the site. However, the Court found that e-mail was not a permitted method for service of notices under clause 1.7.4 of the JCT Contract in question. As such, the initial Termination Notice by e-mail was invalid and this amounted to a failure to terminate the Contract in accordance with the contractual provisions.

However, the Termination Notice was also sent by post, and the Court found that this was valid service in accordance with the contractual provisions, with deemed service taking effect two business days later on the following Monday.

As a result, the question for the Court to consider was as to whether Thomas Barnes' removal from site two working days earlier (on the Thursday) than it could validly have been removed anyway upon deemed receipt by post of the Termination Notice (on the following Monday), was conduct by the Council which was, in all the circumstances, repudiatory?

The starting point usually is that if a party wrongfully terminates a contract, that party is itself in repudiatory breach of contract (See for example, the ***Manor Co-Living Ltd v RY Construction Ltd*** [2022] EWHC 2715 (TCC) case referred to earlier within this Newsletter). At paragraph 228 of the judgment in respect of the present case, the Court refers to the standard termination position being that, "*A wrongful termination by the employer or its agents normally amounts to repudiation on the part of the employer*".

……. continued next page

…… continued

Despite that position, in the present Thomas Barnes' case the Court held that the two working day early removal from site did not prejudice Thomas Barnes and did not amount to repudiatory conduct that would otherwise entitle Thomas Barnes to terminate at common law.

In reaching its judgment, the Court said that it was relevant that: the Council was entitled to terminate pursuant to clause 8.4 of the Contract; there was no adverse impact to the contractor (because it could have been removed from site two working days later in any event); the contractor had already ceased all meaningful activity on site; and the contractor knew that termination was justified and that the Council was exercising its right to terminate.

As part of its findings, the Court held that the Council was permitted to:

- contractually terminate the Contract (from the Monday, the date of deemed service of the Termination Notice); and also,
- accept Thomas Barnes' repudiatory breach (for delay) so as to terminate under common law (by way of the Termination Notice).

What appeared to influence this decision were the facts that clause 8.3.1 of the Contract (on a JCT standard form) stated that the termination provisions of the Contract are "without prejudice to any other rights and remedies of the employer" i.e. so the contractual termination ground did not prejudice common law rights to terminate; and the Termination Notice contained the two positions in the alternative i.e. stating that if the contractual termination was not effective, the notice should be treated as acceptance of Thomas Barnes' repudiatory breach of contract.

It may also have influenced the Court that, in the circumstances, the consequences of termination contractually mirrored those at common law. The result being that, in either event, the Council's costs in completing the works through a replacement contractor more than extinguished any claim (in loss and expense) from Thomas Barnes.

Therefore, it is clear from this case that an invalid termination notice will not always lead to repudiatory breach. In particular, a distinction may be drawn as to circumstances in which a party has a right to terminate (but fails to issue its notice in a legally effective manner) and circumstances in which a party has no right to terminate (which seems more likely to lead to a repudiatory breach scenario).

In any event, and despite the slight uncertainty created by the above judgment, this case is a reminder of the importance of serving notices, in particular termination notices, strictly in accordance with the Contract. The Court made clear here that contractual termination was not valid unless and until notice was deemed to have been served under the Contract. However, it is also important to note that the Court found in the present case that it was open to the Council to serve a notice of termination under the contractual termination provisions and, in the alternative, and at the same time, a notice of acceptance of Thomas Barnes' repudiatory breach.

Another matter that the above case touched upon was the issue of 'concurrent' delays.

The primary delay event supporting Thomas Barnes' extension of time claim was the deflection of certain steel supports which required investigation and remedial work. This issue prevented concrete topping from being poured, which in turn prevented the construction of a "hub" which was to provide office space. The construction of the hub was required before internal finishes could be commenced, which was the last activity on the programme.

The deflection of the steel supports was not Thomas Barnes' responsibility and the Council accepted that an extension of time was to be given in respect of the delay caused by this issue. However, whilst the deflection issue was ongoing, Thomas Barnes had suffered delays to the roof works. Completion of the roof works to provide a watertight structure was required before the hub internal finishes could commence. However, the roof delays were resolved prior to the construction of the hub and did not add any independent delay to that caused by the deflection issue.

……. continued next page

…… continued

In the circumstances as outlined above, the Court found that the roof delays were concurrent with the deflection delays, despite the former being subsumed by the later, as follows:

"*In my judgment this is a case where these causes were concurrent over the period of delay caused by the roof coverings. That is because completion of the remedial works to the hub structural steelwork was essential to allow the concrete topping to be poured and the hub SFS to be installed, without which the hub finishes could not be meaningfully started, but completion of the roof coverings was also essential for the hub finishes to be meaningfully started as well. It is not enough for the claimant to say that the works to the roof coverings were irrelevant from a delay perspective because the specification and execution of the remedial works to the hub structural steelwork were continuing both before and after that period of delay. Conversely, it is not enough for the defendant to say that the remedial works to the hub structural steelwork were irrelevant from a delay perspective because the roof coverings were on the critical path. The plain fact is that both of the works items were on the critical path as regards the hub finishes and both were causing delay over the same period."*

The Council had sought to avoid this finding by relying on a prospective delay analysis to argue that during much of the roof delays, the concrete topping and hub works were still in float. It therefore argued that the critical path first ran through the roof delays and then switched to the hub works once the float had been used up. The Court rejected this approach saying:

"*Whilst I am prepared to accept this evidence from a theoretical delay analysis viewpoint, comparing the as-planned programme with the position at various points in time, it does not seem to me to be a sufficient answer to the point on causation, which is that on the evidence the fact is that the delay to the remedial works to the hub structural steelwork and the delay to the roof coverings were both causes of delay over the period identified by Mr Gunton where the roof coverings were delayed. Even if there had been no delay to the roof coverings the hub finishes, which it is agreed were on the critical path, could not have started earlier because of the delay to the remedial works to the hub structural steelwork*."

In discussing the legal approach to concurrent delay claims the court noted a concession by counsel that the law in this area "is settled" and relied on a passage in the current edition of Keating on Construction Contracts that a contractor would be entitled to an extension of time if the event claimed for was "*an effective cause of delay even if there was another concurrent cause of the same delay in respect of which the contractor was contractually responsible*".

Although not directly addressed in the judgment, the Court's reasoning as to concurrent delay appears contrary to the "first-in-time" approach favoured by some recent Commercial Court decisions and the 2nd Edition of the SCL Protocol. It is particularly of note that the Court refused to accept either of the critical path arguments presented by the competing delay experts and instead favoured a more pragmatic, common sense approach.

The Court's adoption of the "effective cause" test recorded in Keating reflects similar comments by Mr Justice Akenhead in the ***Walter Lilly & Company Ltd v McKay*** case. However, the use of this phrase does little to clarify the precise circumstances in which delays in a complex construction project will be held to be concurrent for the purpose of extensions of time claim. The uncertainty in this area of the law was recently acknowledged by the Court of Appeal in the Cyden Homes case where "*differences of view expressed in both the first instance cases and the text books*" were noted, but left unresolved. The findings in the present case, coming against the flow of recent Commercial Court decisions, are likely to add to this uncertainty and it is hoped that the Court of Appeal will soon have the opportunity to rule definitively on the topic.

6. Northumbrian Water Ltd v Doosan Enpure & Anor [2022] EWHC 2881 (TCC) (14 November 2022).

In the above case, a Tilbury Douglas / Doosan Enpure joint venture (the "**Tilbury Douglas JV**") lost an attempt to throw out a claim from Northumbrian Water Ltd ("**Northumbrian Water**") over more than £22 Million that Northumbrian Water says that it is owed over a troubled water treatment centre job.

An adjudicator ruled in May 2022 that the Tilbury Douglas JV should pay £22.5 Million to the Northumbrian Water plus interest.

The case centred on construction of the £46m Horsley Treatment Works in the Tyne Valley in 2016 by the then Interserve and engineering company Doosan Enpure. Citing cost-overruns, delays to the works and quality issues, the client terminated the contract in May 2021. At adjudication it had sought £51 Million from the Tilbury Douglas JV, whilst the Tilbury Douglas JV claimed it was entitled to an extra £32.8 Million from Northumbrian Water. The adjudication ruling went in Northumbrian Water's favour, although the Tilbury Douglas JV was ordered to pay a smaller amount than Northumbrian Water had sought.

Tilbury Douglas JV questioned the decision, arguing the dispute should go to arbitration instead, stating that their contract allowed for this as an option to either decide the costs or the overall dispute.

Northumbrian Water then took Tilbury Douglas JV to court in order to enforce the Adjudicator's decision and to obtain its cash, and a judge at the Technology and Construction Court (the "TCC") found no reason to throw out the adjudication ruling. In the TCC, Mrs Justice O'Farrell said that "the adjudication was valid" and that both parties accepted "parts of the adjudication and have not challenged its overall validity". She added that there was no justification for throwing out the legal claim in order to go to arbitration and said Northumbrian Water is entitled to the money it had been awarded. She also said that Northumbrian Water was entitled to legal costs, which will be decided upon at a later date.

This was an interesting case which demonstrated again that, under the circumstances of this particular case, the Courts (and in particularly the TCC) are very supportive of the adjudication process and will generally enforce valid adjudication decisions.

Newsletter rider

Best Regards
Peter Barnes and Matthew Davies
Blue Sky ADR Ltd.

Key Contact:

Peter Barnes - Director
Mobile 07515 104307 or 0845 3712575
Tel. 0845 371 2575
E-mail. pbarnes@blueskyadr.com

Key Contact:

Matthew Davies - Director
Mobile 07552 167123 or 0845 3712575
Tel. 0845 371 2575
E-mail. mdavies@blueskyadr.com