



# MMD

## MONDAY MORNING DISPATCH

BY Chadwick Lawrence

**WEEK 1**

**20 JANUARY 2025**

Welcome to the first edition of the MMD for 2025! Brand new podcast coming soon. Daniel's video explores what employers can and can't do to protect their business interests. In the news this week we take a look at a recent legal case on adjudication fees and interest under the Late Payment of Commercial Debts Act 1998. We have released our Seminar & Events Programme for the year, don't miss our Employment Law & Salary Guide Update with Hays this Thursday 23 January!



**THE LEGAL ALTERNATIVE**



**THE MEDIA HUB**



**WHAT'S GOING ON**



**UPCOMING EVENTS**

## THE LEGAL ALTERNATIVE PODCAST

### New Year, New Podcast

Our podcast will be back soon! We have rebranded our podcast with a brand new logo. Take a look at our Spotify to listen to our old episodes.

[!\[\]\(1f56542a42e2413e44a2b2023033aa2e\_img.jpg\) Listen here](#)



**The Legal  
Alternative**

Chadwick Lawrence Solicitors



➤ [Watch here](#)

## THE MEDIA HUB

### Go on now go, walk out the door (just not to one of our customers)

In this video, we discuss whether or not an employer can include a clause in a contract of employment which prevents an employee from going to work for one of its customers or clients. We focus particularly on the need to demonstrate that the business is protecting legitimate proprietary interests by including such clauses.

## WHAT'S GOING ON

### Adjudication: Exploring the decision made in **A&V Building Solution Ltd v J&B Hopkins Ltd [2024] EWHC 2295 (TCC)**

This article explores the decision in **A&V Building Solution Ltd v J&B Hopkins Ltd [2024] EWHC 2295 (TCC)**, which clarified the position on recovering Adjudicator's Fees following an incorrect decision and the Late Payment of Commercial Debts Act 1998.



### Background to the Case

#### The Parties Involved:

- Bouygues UK Ltd (**BYUK**).
- J&B Hopkins Ltd (**J&BH**).
- A&V Building Solution Ltd (**A&V**).
- The Technology and Construction Court (**TCC**).
- Adjudicators: **Mr Blizzard and Mr Smith**.
- Judge: Rodger Ter Haar KC (**Deputy High Court Judge**).

### **The Factual Background:**

BYUK was the main contractor who engaged J&BH as the subcontractor, who engaged A&V as a sub-subcontractor for a university project in September 2019. Disputes arose over the completion and payment of works, leading to A&V leaving the project unfinished. A&V claimed that J&BH breached the subcontract, and the relationship broke down, with J&BH instructing other parties to complete the work.

The parties engaged in two Adjudications. In the first, A&V successfully sought payment for completed work, but J&BH failed to pay. In the second, A&V claimed damages for breach of contract, but the Adjudicator, Mr Smith, ruled that A&V had been overpaid and ordered them to reimburse J&BH and pay his fees.

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The matter progressed to the TCC, where the final Judgment largely disagreed with Mr Smith's decision ([Full Judgement here](#)).

The merits of the case were resolved throughout the sequence of Judgements in the TCC, but two legal issues remained unsettled:

1. The nature of an Adjudicator's decision on their fees.
2. What constitutes a "substantial remedy" for interest under the Late Payment of Commercial Debts (Interest) Act 1998.

### **Adjudication; The nature of an Adjudicator's decision on their fees**

A&V argued that, because the TCC disagreed with Mr Smith's decision, J&BH should bear the costs of the Adjudicator's fees. J&BH countered by citing cases, notably **Castle Inns (Stirling) Ltd v Clark Contracts Ltd [2005] Scot CS CSOH 178**, asserting that Adjudicator's fee decisions are final and cannot be overturned by the Court.

### **Is the Adjudicators decision as to liability to pay fees final or can it be reversed or reconsidered by the Court?**

Current cases support that Adjudicators' decisions on fees are final. Judge Ter Haar KC affirmed that, based on current authority, the Court could not overturn such decisions, although there may be room for exploration in future cases. However, this was not the case for reconsideration.

### **Contractual Terms vs. Late Payment of Commercial Debts (Interest) Act 1998**

The Late Payment of Commercial Debts (Interest) Act 1998 provides an implied term in business-to-business contracts, entitling creditors to 8% interest above the Bank of England's base rate, along with fixed sums and reasonable costs for debt recovery.

A&V claimed interest under the Act for measured works, loss of profits damages and interest on the first Adjudicators Fees. J&BH argued that the contractual clause at 2% above the Bank of England's base rate should apply to certain sums.

### **What did Judge Rodger Ter Haar KC conclude?**

**Measured Works:** Despite the contractual provision for interest at 2% above the base rate, the Court ruled that the claim fell within the scope of the Act as it did not override the statutory interest rate. Therefore, interest was set at 8% above the Bank of England's base rate on the basis that the contract did not create a substantial remedy.

**Loss of Profits Damages:** The Court concluded that the claim for interest on loss of profits damages did not fall under the Act. J&BH had previously agreed to 4% interest above the base rate, which the judge applied here, deeming the 2% contract rate unfair.

**Interest on First Adjudicator's Fees:** The court determined that interest on the first adjudicator's fees also did not fall within the Act and awarded 4% interest.

### **Case Summary**

The TCC's ruling confirms that Adjudicator's decisions regarding fees are final and binding, in line with established case law. Despite the Judge concluding to follow precedent that has been set using current case law, it should not be ignored that consideration was made that the decisions made previously could be reconsidered in the future, albeit this was not the case to do so. This pre-empts that although the position has been clarified by current case law, it has not been ruled out to explore the binding nature of Adjudicators fees in future cases.

Notably, the Judge did not follow the standard contractual interest rate due to a lack of equal bargaining power in the contract. Although decisions regarding interest are made on a case-by-case basis, it should be noted that the Court will reflect upon the wider picture when making Judgement especially when the contract fails to demonstrate how interest contained within the same, amounts to substantial remedy.

If you would like to read the full case of **A&V Building Solution Ltd v J&B Hopkins Ltd [2024] EWHC 2295 (TCC)**, click [here](#).

If **you need assistance or advice** regarding **a Construction Dispute**, please contact our team:-

**[newenquiries-construction@chadlaw.co.uk](mailto:newenquiries-construction@chadlaw.co.uk)**  
**0113 225 8811**

Article written by Jaidan Avison

## UPCOMING EVENTS

### Seminar & Events

We're excited to share our 2025 seminar and events line-up!

This year, our free events are tailored to offer something for everyone - whether you're looking for employment law updates or general networking opportunities.

➡ [Register here](#)



**23 Jan, 8:30 AM - 10:00 AM |**  
**Chadwick Lawrence**  
**Wakefield Office**  
*Employment Law & Salary*  
*Guide Update with Hays*



**26 Feb, 8:30 AM - 10:00 AM |**  
**Hays Leeds Office**  
*Media Law & Defamation*



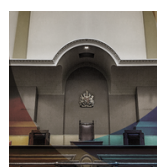
**13 Mar, 8:30 AM - 10:00 AM |**  
**Sedulo Leeds Office**  
*Planning Your Business*  
*Future with Sedulo*



**27 Mar, 8:30 AM - 10:00 AM |**  
**Location TBA**  
*Conducting a Disciplinary*  
*on Harassment*



**30 Apr, 8:30 AM - 10:00 AM |**  
**Location TBA**  
*Equality & Diversity*



**8 May, 8:30 AM - 12:00 PM |**  
**Headingley Stadium Leeds**  
*Health & Safety Mock Trial*  
*with Lighthouse*

### Mental Health Awareness Sessions

In partnership with Tailored Learning Solutions, we're hosting Mental Health First Aid courses at our Wakefield office. These courses are designed to equip businesses with the tools needed to support mental health in the workplace.

The available dates for 2025 are:

- 23-24 April 2025
- 25-26 June 2025
- 24-25 September 2025

For more details or to book your place, visit the Tailored Learning Solutions website  
[https://www.tailoredlearningsolutions.co.uk/book-online?](https://www.tailoredlearningsolutions.co.uk/book-online?category=all-services)  
[category=all-services](https://www.tailoredlearningsolutions.co.uk/book-online?category=all-services) or contact Carol Gledhill at [carolgledhill@chadlaw.co.uk](mailto:carolgledhill@chadlaw.co.uk).



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