Construction Annual Overview
Top cases from 2025

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2025 was a significant year for developments in construction law, with several important decisions from the Courts. The implications of changes to the building safety regime and payment disputes were recurring themes and demonstrate the continual evolution of these areas. Our synopsis of the top cases follows

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Case 1: URS Corporation Ltd v BDW Trading Ltd [2025] UKSC 21

Issue: Recoverability of losses voluntarily incurred and the retrospective extension of limitation periods under the *Building Safety Act* 2022 (BSA)?

Background:
A relatively rare example of a construction case reaching the Supreme Court. Here, BDW, a major housebuilder, uncovered and then rectified design defects in high-rise residential developments despite (i) it no longer having any interest in the properties and (ii) any claims against it under the Defective Premises Act 1972 (DPA) being time-barred.

BDW sued URS, the structural engineer responsible for the design errors, alleging negligence and claiming the rectification costs. URS argued that these losses were not recoverable because they had been voluntarily incurred and absent any underlying legal obligation.

Judgement and Implications:
The Supreme Court decided that the rectification costs were recoverable from URS because BDW were not, in reality, acting voluntarily by carrying out the remedial works, but rather that BDW had no realistic alternative in circumstances where (i) if nothing was done, the homeowners were at risk of injury; (ii) BDW also had a liability to the homeowners to procure repairs and (iii) the risk to BDW's reputation because it knew of the danger to residents and did nothing.

The Supreme Court also considered the implication of the change in law introduced by the BSA specifically, extending the limitation period for claims under the Defective Premises Act (DPA) to 30 years. The Court's interpretation of the BSA.

This judgment reinforces that the Courts will apply the policy aims of the BSA, specifically, to ensure the safety of residents remains of paramount importance and to encourage developers to be pro-active in rectifying defects in the knowledge that it can pass on its losses to others responsible. One can foresee a *"rectify now, argue later"* approach being developed.

Case 2: Triathlon Homes LLP v Stratford Village Development Partnership [2025] EWCA Civ 846

Issue: In what circumstances will Remediation Contribution Orders (RCOs) be made under the BSA?

Background:
RCOs were one of the key tools introduced by the BSA to help address the problems of historical building safety defects. Their stated purpose is to compel a company or partnership to pay the costs to be incurred in remedying safety defects. Here, defects were discovered in residential blocks in what was formerly the 2012 Olympics athletes' village.

Triathlon Homes, a social housing provider, successfully applied for RCOs against the original developer, SVDP, and its parent company, Get Living. SVDP and Get Living then challenged the RCOs on the basis that it was not just and equitable. This ended up before the Court of Appeal.

Judgement and Implications:
The Court of Appeal rejected the challenge and upheld the RCOs. Critical factors supporting that the RCOs were just and equitable included that (i) the policy of the BSA was to place primary responsibility for the costs on the developer (SVDP) and (ii) it was further just and equitable to make a BCO against Get Living because SVDP was financially dependent on its parent, Get Living and the association provisions of the BSA were intended for precisely such circumstances. The Court also decided that an RCO can be made in respect of costs incurred before the BSA came into force.

This judgment makes plain that the Courts will give effect to the intention of and policy underlying the BSA and continues the *"rectify now, pay later"* theme. It is likely that there will be a proliferation of BCOs as developers look to pass on liability to associated entities.

Case 3 :VMA Services Ltd v Project One London Ltd [2025] EWHC 1815 (TCC)
Case 4: Placefirst Construction Ltd v CAR Construction (North East) Ltd [2025] EWHC 100 (TCC)
Issue: Frustration and/or determination of payment disputes

Background: Since the 2018 Court of Appeal decision in *S&T v Grove Developments*, parties to construction contracts have been grappling with the consequences of the prohibition of a party on the wrong side of a "smash and grab" adjudication decision from bringing a true value claim. This challenge has generated numerous Technology and Construction Court (TCC) cases and 2025 was no exception. The key cases were:

Case 3:
In *VMA v Project One*, Project One failed to issue any payment or payless notice in response to VMA's application for payment and did not pay the notified sum. Before VMA could commence their smash and grab adjudication, Project One commenced a true value adjudication. The Adjudicator refused Project One's claim and instead found Project One liable for the smash and grab sum. Project One resisted the subsequent enforcement of the decision on the basis that the adjudicator did not have jurisdiction to award any sums to VMA.

The TCC rejected this challenge, finding that VMA could legitimately defend the adjudication on the basis that it was entitled to the smash and grab sum and therefore Project One were precluded from bringing a true value claim. The Court also confirmed that the prohibition on a true value adjudication does not require there to first be an adjudicator's decision.

This case illustrated that seemingly the only way to legitimise a true value claim was to first obtain a determination (from an adjudicator or the Court) that there was no entitlement to the notified sum, so, by demonstrating that the application for payment was invalid and/or the payment/payless notice was valid.

Case 4:
Placefirst v CAR Construction is an illustration of a party on the wrong side of interim payment dispute succeeding in doing exactly that. Here, CAR succeeded on a smash and grab adjudication.

Placefirst didn't pay the sum awarded and instead commenced "CPR Part 8" proceedings seeking final determination on whether its payment and/or payless notices were valid. These proceedings were then consolidated with the "CPR Part 7" claim brought by CAR to enforce the smash and grab decision.

The Court noted that Part 8 claims were only suitable for short points of law where little, if any, factual evidence is required. CAR claimed Placefirst's payless notice was invalid because it was issued before the date it was to have been served under the contract.

The Court found that "early" payless notice were permitted under the Construction Act, noting that there is in substance, no difference between a payment notice and payless notice and moreover that there was no reason why a payless notice could not be given before the time for a payment notice had elapsed. The Court also accepted that Placefirst's notices were valid in substance.

Here, Part 8 was successfully used to overturn an adjudicator's decision and at the same time, lift the restriction on a true value claim because no notified sum was due to CAR.

Case 5: Jaevee Homes Ltd v Fincham [2025] EWHC 942 (TCC)

Issue: Formation of a contract

Background:
Fincham, the contractor, succeeded in an adjudication it commenced because Jaevee had failed to issue payless notices in response to several invoices. Jaevee did not comply with the decision and Fincham commenced enforcement proceedings. Jaevee then brought Part 8 proceedings seeking a determination that the invoices were invalid applications for payment.

The main issue for the Court was to identify the contractual payment mechanics. This, in turn, required the Court to decide when the contract was concluded and its terms (and apply the provisions of the Scheme). This was complicated because of the numerous exchanges between the parties by email and WhatsApp.

Judgement and Implications:
The Court considered these exchanges and determined that the essential elements of a construction contract (scope, commencement, price and timing of payment) had been agreed by WhatsApp messages, prior to Jaevee issuing its standard terms, which did not therefore form part of the same. As such, Fincham's invoices were accepted as legitimate.

Here, the employer's attempt to overcome an adjudicator's decision through Part 8 failed because the underlying merits of the claim favoured the contractor. What has greater practical implications, however, is that the analysis of the formation of the contract indicates that standard terms and conditions must be provided at an early stage of negotiations to ensure that its provisions are incorporated into the eventual contract and that care should be positions taken in informal communications like WhatsApp.

The Fladgate team is extremely client focused. They give very clear practical advice and have a wealth of experience in dealing with all types of construction dispute including heavy PFI disputes.

- Legal 500, 2025

Case 6: John Sisk and Son Ltd v Capital & Centric (Rose) Ltd [2025] EWHC 594 (TCC)

Issue: Contractual allocation of risk

Background:
Allocation of risk is a central tenet of construction contracts. Responsibility for site conditions is one risk that often is the subject of heated negotiations. Employers contend contractors must take this risk because it is consistent with their design and build obligations, to which contractors will say that the Employer should take this risk because they should know their site.

In this case, the contract documents were inconsistent on whether site conditions were a contractor (Sisk) or employer-risk (CCR) item. Sisk issued proceedings, asking the Court to determine this issue.

Judgement and Implications:
Although the amendments to the contract conditions expressly provided that site conditions were a Sisk-risk item, when read as a whole, this risk had been qualified by reference to an appended clarifications schedule. Consequently, the existing structures risk fell solely on CCR. CCR's claim that evidence of the pre-contract negotiations be considered was rejected.

This judgment underscores the importance of clear and consistent drafting to reflect the agreed risk allocation. Moreover, where risks are adjusted during negotiations, it is essential to clearly record the end result, rather than relying on pre-contractual communications.

Case 7: RNJM Ltd v Purpose Social Homes Ltd [2025] EWHC 2224 (TCC)

Issue: Importance of representations to an adjudicator-nominating body

Background:
Adjudication is the prevalent forum for the resolution of domestic construction disputes and this necessitates regular dealings with adjudicator nominating bodies. Here, RNJM's application for summary judgment of an adjudicator's decision was resisted by Purpose on the basis that reckless and/or false statements were made to the nominating body and therefore rendered the adjudicator's appointment invalid.

More particularly, RNJM stated simply on the nomination form that there was a conflict of interest with an adjudicator who had decided 3 earlier adjudications and with whom RNJM was in dispute as regards unpaid fees. RMJM failed to, as required by the nomination form, provide reasons for this statement.

Judgement and Implications:
The TCC did not accept that the justification for any perceived conflict of interest was adequate and failed to address the nominating body's own description of a conflict of interest. Absent any detail as to why RNJM did not accept the adjudicator's fees, it was inevitable that the assertion of conflict was likely to be false and/or reckless and the adjudicator's decision was accordingly not enforced.

This decision highlights that asserting a conflict of interest brings with it a very high bar and should only be made if there is cogent supporting evidence.

Case 8: London Eco Homes Ltd v Riase Now Ealin Ltd [2025] EWHC 1505 (TCC)

Issue: Adjudicating under a settlement agreement

Background:
The parties contracted in connection with a construction project. Various disputes arose and were compromised and recorded in a settlement agreement. Pursuant to the settlement agreement, Rise Now were required to pay a settlement sum in instalments. Rise Now failed to meet this obligation. London Eco Homes referred that dispute to adjudication and were successful. Rise Now did not comply with the decision and London Eco brought enforcement proceedings. Rise Now resisted enforcement on the basis that the dispute was under the settlement agreement, rather than the underlying construction contract, and therefore the adjudicator did not have jurisdiction.

Judgement and Implications:
The TCC rejected Rise Now's challenge. The Court considered the requirements of a construction contract under Section 104 of the Construction Act and specifically where a contract is only partially a construction contract. Here, the Court found that the settlement agreement made provision for matters which were clearly "construction operations" within the meaning of the Act but also other matters which were not. In such event, the payment dispute was not sufficiently connected with the construction operations parts of the settlement agreement such that there was any implied right to adjudicate. However, the Court then went on to decide that the settlement agreement was a variation of the construction contract and as such, the adjudication provisions carried through. The logic to this was that the settlement agreement effectively dictated how the final sum due under the contract would be paid.

This decision illustrates that in drafting settlements for construction disputes, consideration must be given as to whether adjudication is the appropriate forum for disputes and if not, to include a bespoke dispute resolution provision.

Case 9: GSY Hospitality Ltd v Gladstone Court Developments Ltd [2025] EWHC 3231 (TCC)

Issue: Challenging an expert determination

Background:
It is not uncommon for commercial contracts to include a provision permitting disputes to be resolved on a final and binding basis via expert determination as an alternative to litigation or arbitration. It is, however, uncommon, that expert determinations are effectively appealed to the Courts. Here, a dispute arose from a hotel development regarding the assessment of certain entitlements due to the developer and which was referred to expert determination. The contract provided standard wording for expert determination to the effect that the decision would be final and binding "*except in the case of manifest error or in relation to questions of law*".

GSY brought a claim alleging that the expert's determination was based on errors of law and/or manifest error because the expert had wrongly accepted that the contract had been varied where the contract precluded "*no oral variations*".

Judgement and Implications:
The TCC found that the expert's failure to consider the no oral variation provisions and associated case law was an error of law. As such, it followed that the expert had failed to ask himself the correct questions and departed from his instructions in a material respect. Accordingly, the determination was set aside.

This judgment is a timely reminder that an expert determination may not be final and binding as it was intended, because the Courts are able to intervene in limited circumstances.

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