Reports from the courts

Our latest report of the court decisions of most significance to construction comes from **Andrew Croft**, **Ben Spannuth**, **Daniela Miklova** and **Ben Boulter** of **Beale & Company Solicitors LLP** who report on a case highlighting the importance of carefully drafted payment provisions; and another that acts as a reminder that it should be clear when documentation issued under a contract is final.

Deerns UK Limited v VDC LHR11 Limited

[2026] EWHC 1509 (TCC); Eyre J

On 23 April 2025, VDC LHR11 Limited (VDC) engaged Deerns UK Limited (Deerns) to provide engineering consultancy services in relation to a development in North London (the Contract).

The relevant clauses under the Contract were:

> 2. [...] The application date for payment of each instalment shall be the specified date in Schedule 1 and the Consultant shall submit an invoice on or before the relevant application date. The due date for payment of each instalment shall be the specified date in Schedule 1 [...] The final date for payment shall be 30 days after the relevant due date [...].
> 3. If VDC intends to pay less than the Notified Sum, VDC shall not later than five days before the relevant final date for payment give notice to the Consultant of that intention (a 'Pay Less Notice').

Paragraph 7 of Schedule 1 required Deerns to submit its monthly invoices pursuant to a Schedule of Valuation Dates and where Valuation Dates were not stated, Deerns was required to invoice at the end of each month for Services performed during that month.

On 28 January 2026, Deerns submitted payment application 7 for £943,587.77, in response to which VDC issued a payment notice for £555,855.60 on 9 February 2026 and subsequently a pay less notice on 27 February 2026. On 27 February 2026, Deerns submitted payment application 8 for £873,080.45, in response to which VDC issued a payment notice for £354,616.11 on 11 March 2026 and subsequently a pay less notice on 25 March 2026.

Deerns asserted that the Scheme for Construction Contracts (the Scheme) applied, as the Contract failed to provide for a fixed period between the due date and final payment date as required by s110(1)(b) of the *Housing Grants, Construction and Regeneration Act 1996* (the HGCRA). Deerns submitted that the relevant provisions of the Scheme applied instead, with the effect that the final dates for payment were 21 February 2026 and 6 March 2026, with any pay less notices to be served on or before 16 February 2026 and 18 March 2026 respectively. Deerns argued that pursuant to the Scheme, VDC's pay less notices were out of time and applied to the Court seeking payment of £910,501.71 plus VAT.

VDC argued that, properly interpreted, the Contract provided for a final date for payment compliant with the *HGCRA*, such that the contractual terms applied and the interval between the due date for payment and the final date for payment would remain at 30 days.

Decision

Eyre J held that the Scheme applied with the consequence that the final date for payment is 17 days after the due date, such that VDC's pay less notices were served out of time.

Eyre J was satisfied that the parties intended to allow for varying due dates for payment subject to the date of Deerns' payment application. As the Contract made no provision for movement in the due date for payment, it was possible for the interval between the due date and final date for payment to vary. Consequently, the requirement under s110(1)(b) of the *HGCRA* for a fixed period between the due date and the final date for payment were not met, such that the Scheme applied allowing for an undetermined period between due date and final date for payment.

Comment

This decision highlights the importance of carefully drafted contractual payment provisions. Where the contract allows for the payment date to move, contracting parties should ensure that

the period between the due date and final date for payment are fixed if they do not want the Scheme to apply to their contractual payment arrangements.

Oakland Wantage Care Home Limited v Stepnell Limited

[2026] EWHC 1530; Jonathan Acton Davis KC

On 9 August 2019, Oakland Wantage Care Home Limited (Oakland) engaged Stepnell Limited (Stepnell) to undertake the design and construction of a 65-bed care home (the Works) in Wantage.

The parties contracted under a JCT Design and Build Contract (2016 edition) with bespoke amendments (the Contract). The works achieved practical completion on 26 April 2021, which triggered a 12-month rectification period.

Clause 4.24.6 of the Contract provided:

> Except to the extent prior to the due date for the final payment the Employer gives notice to the Contractor disputing anything in the Final Statement or the Contractor gives notice to the Employer disputing anything in the Employer's Final Statement, and subject to clause 1.8.2 the relevant statement shall upon the due date become conclusive as to the sum due under clause 4.24.2 and have the further effects statement in clause 1.8.

Under clause 1.8, the Final Statement provided "conclusive evidence" that the quality of the works was as described in the Employer's Requirements, all extensions of time as due had been given, and payments of loss and/or expense had been made, unless notice had been given under clause 4.24.2.

On 17 February 2022, Stepnell emailed the Employer's Agent (EA) a draft document dated 15 February 2022 (the February 2022 Statement). On 28 February 2022, Stepnell issued Interim Valuation 36. On 7 March 2022, the EA responded to the February 2022 Statement, disputing Stepnell's entitlement to the sums claimed, together with a payment certification for Interim Valuation 36 (the March 2022 Response).

On 9 February 2024, Stepnell issued a further document which set out an amount owed by Oakland (the February 2024 Statement).

On 25 March 2024, Stepnell referred a dispute to adjudication, seeking payment of the sum claimed in the February 2024 Statement as a sum due in the absence of a Final Payment Notice or Payless Notice.

The adjudicator decided that the relevant statement for the purposes of clause 4.24.6 was the February 2024 Statement and that no Final Payment Notice or Payless Notice had been issued in response; therefore, that sum was due and owed to Stepnell. On 29 May 2024, Oakland paid Stepnell the sums under the February 2024 Statement (the Decision).

On 10 September 2025, Oakland issued Part 8 proceedings seeking declarations that the February 2022 Statement was the relevant statement for the purposes of clause 4.24 and that the March 2022 Response disputed the sum due. Alternatively, if the February 2024 Statement was the "relevant statement" for the purposes of clause 4.24, Oakland submitted that it had given notice and disputed the sums claimed by the March 2022 Response such that the "relevant statement" was not conclusive and it was entitled to commence proceedings for the true value of the final account.

Decision

Mr Davis KC held that the February 2024 Statement was the relevant statement under clause 4.24 and upheld the Decision.

Mr Davis KC was not persuaded that it was clear that "a reasonable recipient would regard the February 2022 Statement as Stepnell's Final Statement. In particular, the document itself is headed 'Draft' and contains forecast information". Therefore, the February 2022 Statement could not be deemed as the Final Statement.

In respect of conclusivity, Mr Davis KC held that the Final Statement is a pre-condition to the Employer disputing the sums claimed, as under clause 4.24.6, Oakland was required to give notice disputing anything 'in' the Final Statement. Therefore, the March 2022 Response could not be regarded as providing notice under clause 4.24.6 as it preceded the February 2024 Statement. Mr Davis KC was therefore unable to grant the relief sought by Oakland.

Comment

This decision is a useful reminder to ensure that it is clear when documentation issued under the contract is intended to be final. Moreover, it highlights the importance of understanding contractual notice provisions and any requirements for notices to specifically address certain matters as required under the contract. **CL**