

## Insights

# NEC, ADJUDICATION AND NATURAL JUSTICE

Jun 17, 2026

## Summary

A recent decision on whether an adjudication decision should be enforced provides a good example of the practical issues that can come up when operating the NEC form of contract. This is what the court had to address in *Premier Modular Ltd v Maidstone And Tunbridge Wells NHS Trust* [2026] EWHC 1404 (TCC) where the adjudication concerned an entitlement to an extension of time, based on what was the correct compensation event, was it notified on time and what was the Accepted Programme to be used for assessing delay?

## What happened on the project

The case concerned a contract for the design and construction of a new barn theatre, a stand-alone building in the Maidstone Hospital, based on the NEC4 Option A (Priced contract with activity schedule) with a contract value of £19,793,700.41.

The starting date was 23 February 2023 and the original completion date was 31 January 2024. The key issue in dispute arose in late 2023, when the Contractor asserted that it required a permanent mains water supply to be made available not later than 30 October 2023 for the testing and commissioning of elements of its work and that the Client failed to make it available until 20 February 2024. The Client accepted that it was responsible for the mains water supply, but argued that there was no requirement for it to be made available by any particular date.

The contract included the Accepted Programme at Appendix 3, but it was common ground that the Accepted Programme was never updated, in the sense that the Project Manager never accepted a later programme. It was also common ground that the Accepted Programme contained no obligation on the Client to make permanent water supply available by any particular date (but subsequent programmes provided by the Contractor did contain such an obligation).

The Contractor's position was that numerous programmes were submitted for acceptance but the mechanism in clause 31.3 was not operated. Instead, the parties just discussed the programme in meetings, as evidenced by meeting minutes.

In October 2025, the Contractor wrote to say that a compensation event arose under clause 60.1 of the contract when, in late 2023, the permanent water supply was not made available, and/or that a change to scope was instructed in connection with the permanent water supply, which caused delay and additional cost.

A month later, the Client responded stating that no compensation events were notified as required under clause 61.3, nor were any early warning notices issued that could constitute a formal notification of a compensation event. It also did not accept the matters raised constituted compensation events or justified an extension of time.

## **The parties' arguments and the Adjudicator's decision**

The Contractor commenced an adjudication on 1 December 2025. The dispute was described by reference to the 8 October 2025 letter, stating a compensation event arose under clause 60.1. In the Referral, it was made clear that the Accepted Programme was the one included in the contract and asserted that a compensation event arose under clauses 60.1(1), (14) and (18).

The Client's position was that the Contractor had to show that, first, a compensation event arose under clause 60.1 and, second, that it was notified. It further stated that only if the compensation event was notified was it necessary to look at the time and cost impact. The Client then denied there was an instruction within clause 60.1(1) and argued that no compensation event arose under clause 60.1(14) and/or 60.1(18).

On 22 January 2026, the adjudicator asked for clarification so that he could understand the respective cases and raised two points:

- Referring to clause 60.1(3), which provides that a compensation event arises where the Client does not provide something which it is to provide by the date shown in the Accepted Programme, and clause 11.2 (1), which defines the Accepted Programme, the adjudicator asked whether the revised programme, Contract Programme Rev2 dated 14 July 2023, was an Accepted Programme?
- Where in the Contract was there a requirement for an Early Warning Notice for this particular event to become a compensation event?

Both parties responded, largely stating that the revised programme was not the Accepted Programme and that there was no requirement for an early warning notice for the event to be a compensation event.

The adjudicator published his decision on 26 February 2026. He decided as follows:

- Contract Programme Rev3 30.10.23 became an Accepted Programme, notwithstanding that the procedures were not followed, as the Project Manager has not taken steps to reject or

amend the presented programme. This showed the date on which the water main was required as 30 October 2023.

- The Compensation Event arose on the basis of clause 60.1 (3), as the Client failed to provide the water main by the required date.

The adjudicator also decided there was no time bar.

## The Court's decision

The judge went through the leading authorities relating to natural justice challenges, acknowledging that the courts have made clear that they have every sympathy for the difficult task which adjudicators have to perform, seeking to deal with complex disputes under great pressures of time. At the same time, if an adjudicator intends 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.

On the facts in this case, the judge concluded that the adjudicator decided the central issue in dispute on a basis that was not argued by either party, was directly contrary to the parties' common position on the Accepted Programme, and was not put by the adjudicator to the parties.

It was argued on behalf of the Contractor that the dispute identified in the Notice was wide enough to allow the adjudicator to reach his findings, especially in view of the clarifications he required and the need for him to decide the programme to be used to assess the extension of time entitlement. The judge considered that such points went to jurisdiction but that the adjudicator was still required to ensure that the issues were fairly canvassed. The judge did not consider it necessary to address in any detail the decision that there was no time bar.

The decision was therefore not enforced, on the basis that the Client had a real prospect of succeeding on its contention that the decision was arrived at in breach of the rules of natural justice.

## Key takeaways

Looking at the conduct of and enforcement of adjudications, the decision is a useful example of the well-established principle that an adjudicator is allowed to make a decision on a basis not argued by either party, but they must raise such matters with the parties and allow them an opportunity to set out their position.

From the perspective of managing an NEC contract, there are a number of practical lessons from this decision. To start with, if the Client has to provide something by a certain date in order to allow the Contractor to progress its works, this should be identified in the Accepted Programme.

In this case, this was only identified in later revisions, which it appears may have been discussed but never formally accepted by the Project Manager. This is a reminder that programme acceptance by the Project Manager plays an important role in identifying the common ground with regard to programme, as well as the reasons for any disagreement. If the relevant date did appear in an Accepted Programme, this may well have given rise to a compensation event under clause 60.1(3).

The failure to identify which revision may have amounted to an Accepted Programme created the uncertainty in this case as to how any extension of time should be assessed and what was the impact of the Project Manager not responding to submitted programmes (noting the deeming provision of clause 31.3). This is not unusual, and there is useful guidance in the [NEC 4 ECC Practice Note 1.1](#) on assessing delays due to compensation events on the approach to be taken when the latest Accepted Programme is out of date.

Finally, while it appears both parties acknowledged that an early warning notice was not required for a compensation event to arise, this was relevant to the obligation to notify compensation events under clause 61.3 and it appears the issue in this case was whether an early warning notice could also constitute a notice of a compensation event (noting the provisions of clause 13.7).

Overall, while the court did not need to address these issues when determining whether to enforce the adjudicator's decision, the uncertainty and possible confusion in this case would have been reduced or avoided if both parties had operated the NEC contract as required by its terms.

## **Related Capabilities**

- Construction Disputes

## Meet The Team



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