ADJUDICATION: SLIP RULE UPDATE

By Peter Sheridan

Introduction

The "slip rule" is a term from arbitral proceedings and refers to a statutory rule[1] which permits the arbitral tribunal to correct inadvertent or clerical errors in its award. As the rule has been developed in the case law, the arbitral tribunal may make corrections so as to give effect to its original intention, or its "first thoughts", but not so as to give effect to any "second thoughts".[2] There are clear, absolute time limits for the operation of the slip rule in arbitration, the effect of which is to allow up to 56 days for the correction of an award (longer if and to the extent that the parties so agree).

In adjudication, there is no statutory rule. The Housing Grants, Construction and Regeneration Act 1996 (the HGCR Act) differs from the Arbitration Act 1996, in that the HGCR Act does not contain a slip rule.

In adjudication the slip rule can apply in one of two ways. The parties to the construction contract may have agreed a slip rule as an express term. Or it may be an implied term of their agreement that a slip rule is applicable.

The writer previously dealt with this topic in Construction Act Review (CAR) in 2005,[3] when the position in summary was, subject to express terms and where the parties' contract does not provide expressly for a slip rule, that the *Bloor* case[4] is authority for the proposition that an adjudicator may, after giving his decision, alter that decision to correct a clerical mistake or error arising from an accidental slip or omission. The basis for the adjudicator having this discretion was said to be an implied term. The *Bloor* principle has taken root in the Technology and Construction Court (TCC) and there have been some recent cases.

Bloor was, not surprisingly, considered to be correct by the same judge (His Honour Judge Toulmin CMG QC) in *CIB v Birse.*[5] *Bloor* also had some limited support from Dyson J (as he then was) in *Edmund Nuttall v Sevenoaks*.[6] These earlier cases were previously reviewed in CAR.[7] His Honour Judge LLoyd Q.C. noted in one early case, without comment or analysis as no issue in the case apparently arose on this matter, that the

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[1] Arbitration Act 1996, s. 57. For a discussion, see Sheridan, *Construction and Engineering Arbitration* (Sweet & Maxwell) at p.364.

[2] See *R v Cripps ex parte Muldoon* [1984] Q.B. 686.

[3] Construction Act Review: Adjudicators' Decisions: the Slip Rule (2005) 21 Const.L.J. No. 5 369.

[4] *Bloor Construction (United Kingdom) Ltd v Bowmer & Kirkland (London) Ltd* [2000] B.L.R. 764; [2000] 2 T.C.L.R 914; [2000] C.I.L.L. 1626 QBD (TCC).

[5] *CIB Properties Ltd v Birse Construction Ltd* [2005] 1 W.L.R. 2252; [2004] EWHC 2365 (TCC).

[6] *Edmund Nuttall Ltd v Sevenoaks District Council* [2000] Adj. L.R. 04/14.

[7] See fn 3 above.

adjudicator's decision, which was the subject of the case, had to be corrected and this was done.[8] More recently, the *Bloor* principle has been accepted in the TCC by Akenhead J[9] and was accepted for present purposes by counsel and so not argued in a case before Ramsay J.[10] It is also generally common practice for adjudicators' decisions to be corrected on the *Bloor* principle. However, it remains open to any party to argue at first instance that *Bloor* is not correct and the point has not so far been considered in the appellate courts.

Recent developments

The position was recently reviewed by Akenhead J in the *YCMS* case, who stated after a consideration of *Bloor* and *CIB v Birse*:

> "(a) An adjudicator can only revise a decision if it is an implied term of the contract by which adjudication is permitted to take place that permits it. It does not follow that, if it is purely a statutory adjudication under the HGCRA (if there is no contractual adjudication clause), such implication can be said to arise statutorily.
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> (b) If there is such an implied term, it can and will only relate to 'patent errors'. A patent error can certainly include the wrong transposition of names or the failing to give credit for sums found to have been paid or simple arithmetical errors.
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> (c) The slip rule cannot be used to enable an adjudicator who has had second thoughts and intentions to correct an award. Thus for example, if an adjudicator decides that the law is that there is no equitable right of set-off but then changes his mind having read some cases feeling that he has got that wrong, such a change would not be permitted because that would be having second thoughts.
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> (d) The time for revising a decision by way of the slip rule will be what is reasonable in all the circumstances. In the *Bloor* case, the adjudicator revised his decision within several hours and before the time for issuing a decision had been given. It will be an exceptional and rare case in which the revision can be made more than a few days after the decision. The reason for this is that, unlike a court judgment or an arbitration award, a principal purpose of the 1996 Act is to facilitate cash flow. If an adjudicator was able to revise his decision, say, 21 or 28 days later that would necessarily slow down and interfere with the speedy enforcement of adjudicators' decisions. That would in broad terms be contrary to the policy of the Act."[11]

If an adjudication is purely statutory, as opposed to an adjudication pursuant to express contractual terms, Akenhead J states that the *Bloor* implied term may not apply. Akenhead J does not expand on this point. In the case of a

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[8] *David McLean Housing Contractors Ltd v Swansea Housing Association Ltd* [2002] B.L.R. 125; [2002] C.I.L.L. 1811.

[9] *YCMS Ltd v Grabiner* [2009] EWHC 127 (TCC); [2009] B.L.R. 211; 123 Con. L.R. 202; [2009] C.I.L.L. 2692.

[10] *O'Donnell Developments Ltd v Build Ability Ltd* [2009] EWHC 3388 (TCC).

[11] *YCMS*, above, at [50].

purely statutory adjudication, the mandatory provisions of the HGCR Act apply as implied terms. These terms are implied by statute, not on the basis of the parties' intentions. It may have been the judge's thinking that the further *Bloor* implied term, which does depend on the parties' intention, does not come into the picture where the relevant terms are only part of the contract because they are implied by statute. Conversely, where there is an express contractual adjudication clause, Akenhead J accepts that the *Bloor* implied term will normally apply on the basis that it is what the parties meant to apply.

Akenhead J introduces the concept of "patent errors" into the implied term rule. He does not define this term, which presumably just means obvious errors, but he gives examples in the passage quoted above of types of error normally regarded as clear cases of slips.

Akenhead J adopts the usual rule from arbitration concerning first and second thoughts or intentions, as Judge Toulmin had previously in the *Bloor* case.

With regard to the time for revising a decision by way of the slip rule, the revision in *Bloor* came on the same day as the original decision, so the operation of the slip rule did not impinge on the time limit for the adjudicator's decision. Often what happens in practice is that a decision is revised after the time limit for the decision has expired, albeit that the original decision was on time. Akenhead J was prepared to accept that a decision may be revised after the time limit has expired, provided that it is revised within a period of time that is reasonable in the circumstances. In the *O'Donnell* case,[12] Ramsay J commented on this aspect of the *YCMS* judgment:

> "The slip rule has therefore been interpreted to apply even where the time for making the original decision has expired. This is on the basis that the adjudicator retains the power to correct slips even after the expiry of the time for his decision and that, when he corrects the decision, the correction takes effect as a correction to the original decision which was reached within time."[13]

The courts have fought shy of indicating with any precision how many days may expire before a slip rule correction would be too late, because this is something that will depend on the circumstances. The circumstances may include whether the correction will or will not interfere with the facilitation of cash flow.

However, any acceptance that the operation of the slip rule can be later than the date on which the decision was due creates a tension between the mandatory statutory and contractual time limit for the adjudicator's decision and the implied slip rule.

It is at this point appropriate to review the law on implied terms where terms are implied on the basis of the parties' intentions.

Law on implied terms

Since the writer's previous consideration of this issue, the law on implied terms has been overhauled in much the same way as the earlier revision of

[12] *O'Donnell Developments Ltd v Build Ability Ltd* [2009] EWHC 3388 (TCC).
[13] *O'Donnell*, above, at [27].

the rules on the construction of express terms and the factual matrix.[14] In relation to implied terms, the reformulation of the rules has come in the form of a Privy Council decision,[15] in which it is again Lord Hoffmann, as in the *Investors Compensation Scheme* case, who has stated the up-to-date position:

> "…the Board will make some general observations about the process of implication. The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed: see *Investors Compensation Scheme v West Bromwich Building Society*. It is this objective meaning which is conventionally called the intention of the parties, or the intention of Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument.
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> …in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such a provision would spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean…this question can be reformulated in various ways which a court may find helpful in providing an answer – the implied term must 'go without saying', it must be 'necessary to give business efficacy to the contract' and so on – but these are not in the Board's opinion to be treated as different or additional tests. There is only one question: is that what the instrument, read as a whole against the relevant background, would reasonably be understood to mean?
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> …as for the other formulations, the fact that the proposed implied term would be inequitable or unreasonable, or contradict what the parties have expressly said, or is incapable of clear expression, are all good reasons for saying that a reasonable man would not have understood that to be what the instrument said."[16]

While the law has not really changed significantly, the various formulations of the past, such as the obvious, unexpressed intention of the parties and necessary to give business efficacy, and the rules such as the implied term must be capable of clear expression are all encompassed by and replaced with the single test as to what the instrument, read as a whole against the relevant background, would reasonably be understood to mean.

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[14] See *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 W.L.R. 896 (HL); *Chartbrook Ltd v Persimmon Homes Ltd* [2009] 1 A.C. 1101.

[15] *Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10.

[16] *Attorney General of Belize*, above, at 16-27.

Justifying the *Bloor* implied term by reference to the new statement of the law on implied terms is not particularly easy, just as it was not on the old formulations of the rules on implied terms.[17] The writer's view was always that there was no need for such an implied term, despite the line taken in the TCC. The TCC judges have thus far studiously avoided an analysis of the basis on which the term is to be implied, although the concept has always been so flexible that no doubt an analysis of sorts could be formulated.

In the writer's view, the *Bloor* implied term is exactly what is not permitted: an improvement upon the instrument being construed. The improvement that is sought is perhaps really statutory reform. The fact is, however, that in 1996 Parliament enacted the Arbitration Act with a slip rule and the HGCR Act without a slip rule. That may be taken to be conscious and deliberate, since Parliament was clearly aware of the option. It is not difficult to explain why different approaches may have been taken deliberately with the two different Acts. The reasoning may have been that since adjudicators' decisions are not normally final, but are produced to a tight timetable, different considerations apply. An adjudicator's decision is binding even if it contains serious errors of fact or law, but it is not final. Parliament may have considered there was no need in these circumstances for a separate rule on one other category of (often less serious) error. An arbitrator's decision is generally final as well as binding. It is not subject to anything like the stringent timetable of an adjudication, so there is no difficulty with a rule for the correction of slips. Even where the parties have made an express adjudication agreement, they will often have done so in order to set out the terms required in construction contracts by the HGCR Act. This is all part of the relevant background against which the meaning of the parties' agreement is to be construed.

Lord Hoffmann observed in the *Attorney General of Belize* case that normally, when an instrument does not provide for something to happen, then the usual position is that nothing is to happen and losses lie where they fall. It is only where the instrument means, read against the relevant background, that something is to happen that a term is implied. The better view in relation to an adjudicator's decision containing a slip is that nothing is to happen, because the decision, unlike an arbitral tribunal's award, is to be produced rapidly but is not final. One of the ways an adjudicator's decision may be overturned is of course by agreement,[18] so where there is a "patent error", such as the failure to make a correct deduction from a sum found due to a party for sums already paid, this should normally be sorted out by consent. It is not suggested that parties can always be relied on to act reasonably and in good faith; but where there is such a patent error, a party seeking to profit from it would carry a substantial costs risk in subsequent proceedings if it failed to concede the point. Another problem is that the implied slip rule is complicated: it is difficult to formulate it clearly. (See the writer's attempt to summarise the rules at the conclusion of this article.)

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[17] See the discussion at Construction Act Review: Adjudicators' Decisions: the Slip Rule (2005) 21 Const.L.J. No. 5 369.

[18] HGCR At, s.108(3).

A further difficulty with the implied slip rule is that, as is clear in the cases and from the writer's own experience, it is quite common for an adjudicator attempting to correct a slip to make a further slip. One error of arithmetic or transposing of figures may be replaced with another. It may be said that the meaning of the instrument is that the adjudicator continues to have jurisdiction to correct slips, but the vagueness of the rule as to time then runs into problems which do not arise with the clear time limits in arbitration. Since what is a reasonable time depends on all the circumstances, and the circumstances will include the nature of the slip, this process could continue for some time. It may then be said that Akenhead J has indicated the outer limit of the period as something less than 21 days, but is the process then guillotined even if the figures are in a worse mess than at the time of the original decision? It is hard to see how that can be the meaning of the instrument. It is also hard to see how it can be the meaning of the instrument that there may be a protracted correction process taking as long as a standard adjudication.

The remainder of this article is nevertheless based on the premise that there is a *Bloor* implied term, as is very likely to be held to be the position in proceedings currently in the Technology and Construction Court, notwithstanding the writer's reservations about the basis for such an implied term.

O'Donnell and jurisdictional issues

In the *O'Donnell* case, Ramsay J was referred to *Coulson on Construction Adjudication* and the following passage:

> "If the parties are in dispute as to the obviousness (or otherwise) of the alleged 'slip', or the adjudicator does not accept that an error has been made, or does accept it but only some time after the publication of the decision, then it is thought that the approach in *Bouygues* will remain appropriate."

Ramsay J stated:

> "Mr Lofthouse submitted that it was only if the parties, in effect, agreed on the slip that the slip rule could be applied. I do not think that the passage cited expresses that view. What it is stating is that if the parties agree or the adjudicator decides that there has been a slip and does so within time, then the slip can be corrected. If that does not happen then in the in the circumstances set out in the passage cited, the position remains that there is an enforceable decision as set out in *Bouygues*."[19]

There is a difference in meaning, it is submitted, between the wording in the passage cited and Ramsay J's dictum. The passage cited states that the approach in *Bouygues* will apply (*i.e.* the original decision will stand) if the parties are in dispute as to the obviousness of the alleged slip. (What happened in *Bouygues* was that the adjudicator was asked to correct an error but declined to do so as he did not consider his decision contained a clerical

[19] *O'Donnell*, above, at para 31.

mistake or error arising from an accidental slip or omission.[20]) The passage cited is wrong on this point, it is respectfully submitted. The parties may be in dispute as to the obviousness of the alleged slip and yet, if the party contending for the obvious slip is correct and the adjudicator accepts that there is a slip, he may correct it, it is submitted. The reason for this is that if there is an obvious error, the effect of which is to detract from the adjudicator's first thoughts and intentions, the parties intend it should be corrected, regardless of whether one party or both parties so contend.

Ramsay J's different formulation is correct, it is respectfully submitted, provided it means that where the parties agree that there has been a slip, the slip can be corrected, but only if the adjudicator also agrees there has been a slip. The adjudicator may decide there has been a slip, either on his own initiative or on the application of one party (with or without the agreement of the other).

The adjudicator is normally *functus officio* once his decision has been made and communicated to the parties. [21] If a slip is alleged by a party, or the adjudicator on his own initiative considers there is a slip, the adjudicator has a revived jurisdiction, it is submitted, to consider the slip and, if he is satisfied it is a slip, to correct it in a revised decision (provided this is done within a reasonable time). The slip rule accordingly raises jurisdictional issues, some of which were considered in the *O'Donnell* case.

One issue that arose for consideration in the *O'Donnell* case was the situation where an adjudicator has jurisdiction to correct a slip but does so erroneously. It was submitted by counsel for O'Donnell, on the basis of arbitration cases law,[22] that an erroneous exercise of a power does not constitute an act in excess of powers so as to fall outside the jurisdiction of the adjudicator. Ramsay J stated:

> "I accept her submission that an erroneous exercise of a power does not fall outside the jurisdiction of an arbitrator or adjudicator. However, the distinction between disputes as to the jurisdiction of an adjudicator and disputes as to ways in which that jurisdiction should be exercised is not an easy one to draw as the decision in *Lesotho Highlands* shows. This can be illustrated in the case of the slip rule as follows. First if the adjudicator were to exercise a slip rule when there was no express or implied slip rule, that would clearly be a decision which was outside his jurisdiction. Secondly, if the adjudicator is asked by one party to correct a slip and he accepts that an error has been made within the slip rule then if the adjudicator makes an error of fact or law in so doing, I consider that such an error does not take the exercise of

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[20] *Bouygues United Kingdom Ltd v Dahl-Jensen United Kingdom Ltd* [2001] 1 All E.R. (Comm) 1041; [2000] B.L.R. 522; [2001] 3 T.C.L.R. 2; (2000) 73 Con. L.R. 135; [2000] C.I.L.L. 1673 CA. For a full discussion by the writer of the *Bouygues* case, see *Adjudication and Insolvency* (2002) 18 Const.L.J. No.1 39.

[21] See *Outwing Construction Ltd v Randell & Son Ltd* [1999] B.L.R. 156; (1999) 64 Con. L.R. 59; (1999) 15 Const. L.J. 308 (TCC).

[22] *Lesotho Highlands Development Authority v Impreglio SpA* [2006] 1 A.C. 221 (HL).

> the slip rule outside his jurisdiction. Finally, if the adjudicator is asked by one party to correct a slip which the other party agrees is a slip within the slip rule but in operating the slip rule he makes an error of fact or law, then I do not consider that the court can interfere in that decision."[23]

The writer agrees with Ramsay J's dictum as to the three situations described. There are in addition various other situations that may arise. Where the adjudicator is asked by one party to find, or on his own initiative decides, that an error has been made within the slip rule, and he makes a correction, but in fact an error within the slip rule has not been made, then, it is submitted, the adjudicator does not have jurisdiction to make a revision to his decision. As with any other jurisdictional issue, the adjudicator cannot determine his own jurisdiction, unless the parties have conferred that power on him. Where the parties agree that there is a slip, this would be sufficient, it is submitted, to confer jurisdiction on the adjudicator to correct it. The adjudicator would have a discretion at this stage; if the adjudicator did not agree there was a slip, he would then decline to make a revision to his decision.

An additional complication is the scope of the jurisdiction conferred under the slip rule. If there is a slip properly within the slip rule, which the adjudicator accepts is a slip and the adjudicator issues a revised decision, then the writer agrees that an error of fact or law introduced at that stage would not give the court any power to interfere, as the court cannot normally interfere with any error of fact or law in adjudicators' decisions. But if what the adjudicator does in the revised decision is something other than a correction of the slip, then it may be a step outside the adjudicator's jurisdiction. There will also be cases where it is not clear-cut whether an adjudicator has made an error of fact or law in correcting a slip, or gone beyond the exercise of correcting a slip. Ramsay J recognised the problem in the *O'Donnell* case:

> "The dividing line between exercising a wrong jurisdiction which does not exist and exercising a jurisdiction which does exist, wrongly is difficult. Each case obviously has to be considered on its facts to decide whether it is a decision within or outside the adjudicator's jurisdiction.
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> As Dyson J said in *Bouygues* at [36]: '...in deciding whether the adjudicator has decided the wrong question rather than giving a wrong answer to the right question, the court should bear in mind that the speedy nature of the adjudication process means that mistakes will inevitably occur, and, in my view, it should guard against characterising a mistaken answer to a question that lies within the scope of the reference as excess of jurisdiction.'
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> In considering whether the adjudicator was acting within his jurisdiction in operating the slip rule the court should similarly guard against characterising a mistaken application of the slip rule as a decision in excess of, and therefore, outside his jurisdiction."[24]

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[23] *O'Donnell*, above, at [35].
[24] *O'Donnell*, above, at [36-38].

An example of an adjudicator having jurisdiction to correct a slip, but then proceeding to do something that went beyond correcting the slip is provided by the *YCMS* case. The adjudicator had deducted VAT twice in calculating the balance due as an interim payment and arrived at a figure of approximately £26,000. YCMS drew this to his attention and on checking his calculations the adjudicator found them to be incorrect. The adjudicator could, properly within his jurisdiction, have revised his decision to a figure of £41,558.19. However, what he did was a new calculation, which came to just under £60,000. This new calculation introduced a new, serious error, which Akenhead J said was clearly "second thoughts". He did not correct the simple arithmetical error relating to the VAT. There was material prejudice to the other party. Akenhead J does not describe this as a jurisdictional issue but it must be viewed in those terms, otherwise it would simply be an error of fact and/or law made within jurisdiction. The result in the *YCMS* case was that the original incorrect decision at the figure of approximately £26,000 stood, as the revision to the incorrect figure just under £60,000 was ineffective, as it was not a permissible operation of the slip rule. *O'Donnell* is an example of an adjudicator having jurisdiction to correct a slip, and revising his decision within his jurisdiction.

Express terms

It would be sensible for parties who wish to confer on an adjudicator the power to correct slips to include express provision in their construction contract. Another option is for the parties or the adjudicator to seek to include such a power in the separate contract that is normally formed, often on the basis of the adjudicator's standard terms of engagement, when an adjudicator is appointed to decide a particular dispute.

Standard forms of construction contract do not normally include such an express provision, but institutional adjudication rules may do so. The CIC Model Adjudication Procedure, for example, contains the following provision:

> "The Adjudicator may, within 5 days of delivery of the decision to the Parties, correct his decision so as to remove any error arising from an accidental error or omission or to clarify or remove any ambiguity."

An express provision of this type obviously displaces the need for any consideration of an implied slip rule.[25]

Akenhead J recently provided the following comment relating to this provision:

> "(a) The parties agreed by clause 28 of the Adjudication Procedure that the adjudicator had a discretion ('may') to correct this decision either 'to remove any error arising from an accidental error or omission' or 'to clarify or remove any ambiguity'. He does not have a right to correct so as wholly to reconsider and re-draft substantive parts of his decision and in effect to change his mind on material points of principle. The first steps must involve the determination of whether there is either an 'accidental' error or omission or an 'ambiguity'.

[25] See *Rok Building Ltd v Celtic Composting Systems Ltd (No 2)* [2010] EWHC 66 (TCC) at [25].

(b) It must be the adjudicator who is, and was here, best placed to determine whether there really is an 'accidental' error or omission."[26]

This was in the context of a contention, which the judge rejected on the facts, that the adjudicator had failed to observe the rules of natural justice in his operation of the slip rule (and in other respects).

Conclusions

(1) If the parties' contract contains an express slip rule, that rule applies and no question of an implied term arises.[27]

(2) If the adjudication is purely a statutory adjudication, there is probably no implied slip rule.[28]

(3) If the parties have an express adjudication agreement, but no express slip rule, then there is an implied slip rule.[29]

(4) Where there is an implied slip rule, an adjudicator may, after giving his decision, alter that decision to correct a clerical mistake or error arising from an accidental slip or omission.[30] The rule only relates to "patent errors".[31] It does not allow an adjudicator to have "second thoughts"; it allows an adjudicator to give effect to his original intention.[32]

(5) The following further rules apply where there is an implied term.

(6) The correction of a slip may be made by the adjudicator of his own volition.[33]

(7) The correction may be made on the application of either party, if the adjudicator accepts the alleged slip is a slip.[34]

(8) If on the application of either party for the correction of an alleged slip, the adjudicator does not accept the alleged slip is a slip, that is an end to the matter.[35]

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[26] *Rok*, above, at [30].
[27] *Rok*, above.
[28] *YCMS*, above.
[29] *Bloor*, above; *CIB Properties*, above; *Edmund Nuttall Ltd v Sevenoaks District Council*, above; *David McLean Housing Contractors Ltd v Swansea Housing Association Ltd*, above; *YCMS Ltd v Grabiner*, above; *O'Donnell Developments Ltd v Build Ability Ltd*, above.
[30] *Bloor*, above; *CIB Properties*, above; *YCMS Ltd v Grabiner*, above.
[31] *YCMS*, above.
[32] *Bloor*, above; *YCMS Ltd v Grabiner*, above.
[33] *Bloor*, above.
[34] *Bloor*, above; *YCMS Ltd v Grabiner*, above; *O'Donnell Developments Ltd v Build Ability Ltd*, above.
[35] *Shimizu Europe Ltd v Automajor Ltd* [2002] B.L.R. 113; (2002) 18 Const. L.J. 259; [2002] C.I.L.L. 1831; *Bouygues United Kingdom Ltd v Dahl-Jensen United Kingdom Ltd* [2001] 1 All E.R. (Comm) 1041; [2000] B.L.R. 522; [2001] 3 T.C.L.R. 2; (2000) 73 Con. L.R. 135; [2000] C.I.L.L. 1673 CA; see also *Cartwright v Fay* Unreported February 9, 2005.

(9) The correction may not be one which prejudices one of the parties.

(10) An adjudicator's decision may be revised within the original time limit for his decision,[36]or "a few days" later[37] so long as it is within a reasonable time.[38] It is arguable that an eight-day period is permissible,[39] while it is not likely that a period as long as 21 days[40] or 28 days is permissible.[41] What is a reasonable period will depend on the facts and circumstances of the case.[42]

(11) The following are the jurisdictional rules relating to the implied term.

(12) If the parties agree there is a slip, that is sufficient to give the adjudicator jurisdiction to correct the slip, it is submitted.

(13) If the parties agree there is a slip, while the adjudicator has jurisdiction to correct the slip, he is not bound to do so if he does not agree there is a slip. In these admittedly unlikely circumstances, it is submitted that the adjudicator must be able to decline to make a revision to his decision.

(14) If the adjudicator of his own volition decides there is a slip, and issues a revised decision, then it is submitted he has made a decision relating to his own jurisdiction. The normal rule will apply, which is that the adjudicator may take his own non-binding view of the matter, but it is for the court to determine as a matter of jurisdiction whether there was in fact a slip within the slip rule.

(15) The same applies, it is submitted, if, on the application of one party, the adjudicator accepts the alleged slip is a slip and issues a revised decision.

(16) Where an adjudicator has jurisdiction to revise his decision, the court will not interfere with that revision if it is made within jurisdiction.[43] The court will not interfere, accordingly, if the adjudicator's revision contains an error of fact or law.[44]

(17) Where an adjudicator has jurisdiction to revise his decision, the court will interfere with that revision if the adjudicator exceeds the jurisdiction conferred on him to correct the decision.[45]

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[36] *Bloor*, above.
[37] *YCMS Ltd v Grabiner*, above at [50].
[38] *YCMS Ltd v Grabiner*, above.
[39] *Edmund Nuttall Ltd v Sevenoaks District Council*, unreported, 2000, HT 00-119, QBD (TCC).
[40] *YCMS Ltd v Grabiner*, above at [50].
[41] *Bloor*, above; *YCMS Ltd v Grabiner*, above at [50].
[42] *YCMS Ltd v Grabiner*, above.
[43] *O'Donnell Developments Ltd v Build Ability Ltd*, above.
[44] *O'Donnell Developments Ltd v Build Ability Ltd*, above.
[45] *YCMS Ltd v Grabiner*; *O'Donnell Developments Ltd v Build Ability Ltd*, above.