

# BUILDING AND CONSTRUCTION LAW JOURNAL

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## ARTICLES

### **Fit for Purpose or Due Skill and Care? – *Dr Donald E Charrett***

This paper discusses the three judgments in the English case of *MT Højgaard a/s v E.ON Climate and Renewables UK Robin Rigg East Ltd*. The judgments contained detailed analyses of the conflicting requirements of preparing a design with due skill and care, and meeting a fitness for purpose obligation. The Supreme Court upheld the original judgment in the Technology and Construction Court that the contract required the wind turbine structures to have a service life of 20 years, notwithstanding that they were designed with due skill and care and in accordance with the relevant (but erroneous) international standard. The ultimate outcome depended on construction of the contractual terms in accordance with well-established principles; the fact that the judgment of the Court of Appeal differed from that of the Supreme Court emphasises the complexity of this task in the face of contractual documents of multiple authorship and loose wording. ....

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### **The Test for Complexity under the West Coast Model of Adjudication – *Gordon Smith***

The security of payment legislation comprising the West Coast Model contains a unique provision requiring an adjudicator to dismiss an application for a payment dispute to be adjudicated without making a determination of its merits if the adjudicator is “satisfied that it is not possible to fairly make a determination because of the complexity of the matter or the prescribed time or any extension of it is not sufficient for any other reason”, which the author refers to as the “Complexity Test”. The author discusses the background and application of the test and considers whether the test provides an effective means of excluding from the West Coast Model complex payment disputes. ....

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