



Neutral Citation Number: [2018] EWHC 1659 (TCC)

Case No: HT-2017-000318

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS & PROPERTY COURTS**  
**OF ENGLAND AND WALES**  
**TECHNOLOGY AND CONSTRUCTION COURT (QBD)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/06/2018

Before :

**MRS JUSTICE O'FARRELL**

Between :

**TEES ESK & WEAR VALLEYS NHS FOUNDATION TRUST** **Claimant**

- and -

**(1) THREE VALLEYS HEALTHCARE LIMITED**  
**(2) BANK OF SCOTLAND PLC**

**Defendants**

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**Adrian Williamson QC** (instructed by **Ward Hadaway Solicitors**) for the **Claimant**  
**Hannah McCarthy** (instructed by **Addleshaw Goddard LLP**) for the **First Defendant**  
**David Sears QC** (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the  
**Second Defendant**

Hearing dates: 12<sup>th</sup> March 2018  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
MRS JUSTICE O'FARRELL

**Mrs Justice O'Farrell:**

1. These proceedings concern a PFI project at Roseberry Park Hospital in Middlesbrough. The claimant NHS Foundation Trust ("the Trust") seeks declarations as to the validity of notices served by the Trust pursuant to a funders direct agreement, with a view to terminating the project agreement, and related relief.
2. The hospital comprises 12 separate ward blocks constructed around landscaped courtyards. It has 365 inpatient beds, an activity centre, a workshop, day rooms and patient kitchen facilities. There is an administrative block containing offices, consultation rooms and mental health tribunal rooms.
3. Roseberry Park is a low and medium secure mental health facility which incorporates facilities for the Trust's forensic mental health services. Some of the patients treated and accommodated in the facility have mental disorders or neuro-development disorders and are liable to be detained under the Mental Health Act 1983. Such patients can be offenders or have otherwise come into contact with the criminal justice system.
4. The hospital also provides care for patients with non-forensic mental health conditions, including children's learning disability short break / respite care, adult mental health inpatient services, secure accommodation, electroconvulsive therapy and older person's mental health inpatient services.
5. On 12 December 2007 the Trust entered into an agreement with the first defendant special purpose vehicle ("TVHL"), executed and delivered as a deed, for the design and construction of the hospital and provision of operational services ("the Project Agreement").
6. On 12 December 2007 the Trust, TVHL and the second defendant ("BOS") entered into a funders direct agreement, executed and delivered as a deed, in respect of the financing of the project ("the FDA"). The FDA was attached as Schedule 6 to the Project Agreement.
7. Disputes arose between the Trust and TVHL as to the services provided by TVHL, as Project Co, pursuant to the Project Agreement. In 2016 the Trust obtained adjudication awards in its favour, giving the Trust grounds for terminating the Project Agreement.
8. The FDA contains provisions that require the Trust to give notice to BOS as a condition precedent to any entitlement to exercise its termination rights under the Project Agreement.
9. On 1 June 2017 the Trust served on BOS notice under the FDA that there were grounds for terminating the Project Agreement ("the Termination Notice"). The validity of the Termination Notice is not in dispute.
10. On 29 June 2017 the Trust served on BOS details of amounts allegedly owed by TVHL to the Trust under the Project Agreement and other accrued liabilities or obligations on the part of TVHL ("the Paragraph 3.2.2 Notice").
11. The Trust's case is that the notices served under the FDA were valid and entitle it to terminate the Project Agreement. That is disputed by BOS on the grounds that (a) the

Paragraph 3.2.2 Notice does not comply with the terms of the FDA and/or it is not sufficiently clear and unambiguous to constitute a valid notice; and (b) there is no evidence of the Trust making proper inquiry as stipulated by the FDA.

12. TVHL's position is that it should not have been joined to these proceedings because it is a party to the FDA solely to acknowledge and consent to the arrangements set out in the FDA. Its obligations are limited to an agreement not knowingly to do or omit anything that might prevent any party from enforcing its rights under the FDA. Ms McCarthy has attended the hearing on behalf of TVHL and supports the submissions made by BOS but does not advance any separate case on the issues in dispute.

*The Project Agreement*

13. Under the Project Agreement, TVHL agreed to finance, carry out the design, construction and commissioning of the new hospital, and provide maintenance and operational services until 22 March 2040.
14. Schedule 14 of the Project Agreement stipulates the level of services required. The performance monitoring system in Schedule 14 provides for service failure points to be awarded in respect of any performance or availability failures on the part of the service provider.
15. Clause 44.1 of the Project Agreement states:

“For the purposes of this Agreement, Project Co Events of Default means any of the following events or circumstances:

...

Service Failure Points

- (i) Project Co being awarded a total of 8593 or more Service Failure Points in any 6 month rolling period...”

16. Clause 44.3 of the Project Agreement states:

“On the occurrence of a Project Co Event of Default, or within a reasonable time after the Trust becomes aware of the same, and while the same is subsisting, the Trust may:

...

- (c) In the case of any Project Co Event of Default referred to in clause 44.1(i) (Service Failure Points), if Project Co is awarded 4297 or more further (Service Failure Points) in the following 3 month period, terminate this Agreement in its entirety by notice in writing having immediate effect.”

*The FDA*

17. Paragraph 3 of the FDA provides that the Trust's entitlement to terminate the Project Agreement is subject to service of the required notices on BOS (as Agent for the Senior Funders).
18. Paragraph 3.1 of the FDA states:

“Subject only to paragraph 3.2, the Trust may serve notice terminating the Project Agreement at any time if it is entitled to do so under the terms of the Project Agreement.”
19. Paragraph 3.2 of the FDA states:

“the Trust shall not terminate or serve notice terminating the Project Agreement in respect of a Project Co Event of Default without giving to [BOS]:

  - 3.2.1 at least the Required Period of prior written notice (a “Termination Notice”) stating:
    - (a) that a Project Co Event of Default has occurred and the proposed Termination Date; and
    - (b) the grounds for termination in reasonable detail, and
  - 3.2.2 not later than the date falling 20 Business Days after the date of a Termination Notice a notice containing details of any amount owed by Project Co to the Trust, and any other liabilities or obligations of Project Co of which the Trust is aware (having made proper enquiry) which are:
    - (a) accrued and outstanding at the time of the Termination Notice; and/or
    - (b) which will fall due on or prior to the end of the Required Period, under the Project Agreement.”
20. The “Required Period” is defined in the FDA as:

“... the period starting on the date of a Termination Notice and  
...  
(b) following the Payment Commencement Date, ending 60 Business Days later.”
21. Paragraph 6.1 of the FDA entitles BOS to give the Trust a Step-In Notice, enabling the representatives of the funders under the FDA to assume jointly with TVHL the rights of Project Co under the Project Agreement:

- “6.1 Subject to paragraph 6.2 ... the Agent may give the Trust a Step-In Notice at any time:
- 6.1.1 during which a Project Co Event of Default ... is subsisting (whether or not a Termination Notice has been served); or
  - 6.1.2 during the Required Period.
- 6.2 The Agent shall give the Trust not less than 5 Business Days prior notice of:
- 6.2.1 its intention to issue a Step-In Notice; and
  - 6.2.2 the identity of the proposed Appointed Representative.
- 6.3 On the issue of the Step-In Notice, the Appointed Representative shall assume jointly with Project Co the rights of Project Co under the Trust Project Documents and thereafter, until the end of the Step-In Period the Trust shall deal with the Appointed Representative and not Project Co.”

22. Paragraph 7.1 of the FDA states:

“Notwithstanding paragraph 3, the Trust may terminate the Project Agreement if:

- 7.1.1 any amount referred to in paragraph 3.2.2(a) above has not been paid to the Trust on or before the Step-In Date [date on which the Step-In Notice is served]; or
- 7.1.2 any amount referred to in paragraph 3.2.2(b) has not been paid on or before the last day of the Required Period;
- 7.1.3 amounts, of which the Trust was not aware (having made proper enquiry) at the time of the Termination Notice, subsequently become payable and are not discharged on or before the date falling 20 Business Days after the date on which the liability of Project Co for these amounts is notified to the Agent or if later the Step-In Date ...”

#### *Service Failure Points*

23. A dispute arose between the Trust and TVHL as to TVHL's failure to have in place Authorising Engineers and Authorised Persons to ensure compliance with its health and safety obligations. That dispute was referred to adjudication. On 17 May 2016 Stephen Furst QC, the adjudicator, issued his decision, awarding the Trust 56,144 Service

Failure Points and Deductions in the sum of £143,236.48 (“the First Adjudication Award”).

24. A further dispute arose between the Trust and TVHL as to TVHL’s classification of tasks by the helpdesk. That dispute was referred to adjudication. On 20 May 2016 Vincent Moran QC, the adjudicator, issued his decision on liability in favour of the Trust. On 9 August 2016 the parties entered into a settlement agreement in respect of the consequential adjudication award, entitling the Trust to 1,657,946 Service Failure Points and Deductions in the sum of £1,873,651.85 (“the Second Adjudication Award”).
25. The effect of the adjudication awards was that there was a Project Co Event of Default within the meaning of clause 44.1(i) of the Project Agreement and further Service Failure Points within the following 3 month period, entitling the Trust to terminate under clause 44.3(c) of the Project Agreement.
26. On 17 October 2016 and 17 November 2016, respectively, the parties entered into agreements under which it was acknowledged that there was a Project Co Event of Default, based on TVHL’s self-certification of more than 8,593 Service Failure Points for the period January to June 2016, and a further breach, based on TVHL’s self-certification of more than 4,297 Service Failure Points for the period July to September 2016.
27. The effect of the self-certification by TVHL was that there was a Project Co Event of Default within the meaning of clause 44.1(i) of the Project Agreement and further Service Failure Points within the following 3 month period, entitling the Trust to terminate under clause 44.3(c) of the Project Agreement.

#### *Standstill Agreements*

28. On 15 June 2016 the parties entered into a standstill agreement, preserving the parties’ contractual rights following the First Adjudication Award, including the Trust’s right to implement the termination provisions in the Project Agreement.
29. On 9 August 2016 the parties entered into an agreement, extending the ambit and duration of the earlier standstill agreement to include rights arising out of the Second Adjudication Award.
30. On 17 October 2016 and 17 November 2016, respectively, the parties entered into further standstill agreements, extending the ambit and duration of the earlier standstill agreement to include rights arising out of TVHL’s self-certification of Service Failure Points.
31. Further agreements were entered into by the parties, extending the duration of the standstill agreement, and there were commercial negotiations to try and settle the disputes but no resolution was achieved.

#### *The Termination Notice*

32. On 1 June 2017 the Trust sent to BOS the Termination Notice, stating:

“We write in accordance with the requirements of clause 3.2.1 of the Funders Direct Agreement to notify you in writing:

- (a) that Project Co Events of Default have occurred under clause 44.1(i) of the Project Agreement;
- (b) that the requirements set out in clause 44.3 (c) of the Project Agreement have also been satisfied, meaning that the Trust is entitled, in accordance with clause 44.3 (c) of the Project Agreement, to terminate the Project Agreement in its entirety with immediate effect;
- (c) that the Trust proposes to terminate the Project Agreement on 25 August 2017.

As required by clause 3.2.1 (b) of the Funders Direct Agreement, the grounds given giving rise to the Trust’s right(s) to terminate are set out below.”

33. The grounds relied upon in the Termination Notice were the matters the subject of the First Adjudication Award, the Second Adjudication Award and the self-declared Service Failure Points in TVHL’s monthly performance monitoring reports for the period January 2016 to October 2016.

34. The Trust concluded the Termination Notice as follows:

“Subject to the provisions of clause 3 of the Funders Direct Agreement (which is attached at schedule 6 of the Project Agreement), the Trust is now entitled under clause 44.3(c) of the Project Agreement to serve a notice on Project Co terminating the Project Agreement with immediate effect.

The Trust is also entitled and obliged (pursuant to the said clause 3 of the Funders Direct Agreement) to serve notice on the Agent of its intention to do so which, as we have explained above, is the purpose of this correspondence.”

*The Paragraph 3.2.2 Notice*

35. On 29 June 2016 the Trust sent the following letter to BOS, purporting to give notice under paragraph 3.2.2 of the FDA:

“We write in accordance with the requirements of clause 3.2.2 of the Funders Direct Agreement to notify you in writing of details of any amount owed by Project Co to the Trust, and any other liabilities or obligations of Project Co of which the Trust is aware (having made proper enquiry) which are:

- (a) accrued and outstanding at the time of the Termination Notice; and/or

- (b) which will fall due or prior [to] the end of the Required Period, under the Project Agreement.

In fulfilment of the above obligations, I attach a table identifying all known heads of claim together with a supporting narrative...”

36. The table attached to the Paragraph 3.2.2 Notice was divided into three parts:
- i) Items A1 to A3 were described as: ‘Details of amounts due’. The table contained a very brief description of the issue, heads of claim and the sums claimed in respect of each item. The claims in respect of items A1 and A3 were quantified. Against item A2, the sum claimed for unavailability deductions was quantified but the other deductions were stated to be ‘TBC’ (to be confirmed).
  - ii) Items B1 to B55 were described as: ‘any other liabilities and obligations which are accrued and outstanding at the date of the Termination Notice (1 June 2017)’. The table contained a very brief description of the issue, heads of claim and sums claimed in respect of each item. Items B41 to B55 were claims for reimbursement of Trust costs and were quantified. Items B1 to B40 were claims for deductions and defect rectification costs and were stated to be ‘TBC’.
  - iii) Items C1 to C16 were described as: ‘any other liabilities and obligations which will fall due on or prior to the end of the Required Period (25 August 2017)’. The table contained a very brief description of the issue, heads of claim and sums claimed in respect of each item. The claims were for reimbursement of Trust costs and all, save for two, of the claims were quantified.
37. By letter dated 5 July 2017 BOS reserved its right to challenge the Termination Notice and disputed the validity of the Paragraph 3.2.2 Notice.

*Proceedings*

38. The extended standstill agreement expired on 27 October 2017.
39. On 3 November 2017 the Trust issued Part 8 proceedings, seeking the following declarations:
- a) the 1 June 2017 Termination Notice is valid for the purposes of paragraph 3.2.1 of the FDA;
  - b) the Paragraph 3.2.2 Notice is valid for the purposes of paragraph 3.2.2 of the FDA;
  - c) a reasonable time for the purposes of clause 44.3 of the Project Agreement will not elapse until the expiry of 2 weeks after it is finally and conclusively established (assuming it is established), without right of further appeal, that the Termination Notice and the Paragraph 3.2.2 Notice are valid, or such other period as the court shall consider correct.



*Parties' submissions*

40. There is no dispute as to the Trust's entitlement to the declaratory relief claimed in paragraphs a) and c) above.
41. Mr Sears QC, on behalf of BOS, submits that the Paragraph 3.2.2 Notice was invalid on the following grounds:
  - i) On a true construction, paragraph 3.2.2 of the FDA requires a clear statement of any amount, liability or obligations which had accrued and was outstanding at the time of the Termination Notice or which would fall due on or before the end of the Required Period. The notice dated 29 June 2017 does not meet that requirement including, as it does, a very large number of 'heads of claim' which were 'TBC' (i.e. to be confirmed) and is therefore invalid.
  - ii) Alternatively, the inclusion of those same heads of claim means that the notice is not sufficiently clear and unambiguous to constitute a valid notice.
  - iii) There is no evidence of the Trust making 'proper enquiry' as to 'any other liabilities or obligations of Project Co' as required by paragraph 3.2.2 with the result that the notice is invalid on that ground also.
42. Mr Williamson QC, on behalf of the Trust, submits that the Paragraph 3.2.2 Notice was valid. The table attached to the Paragraph 3.2.2 Notice correctly distinguished between (a) the amounts owed by Project Co to the Trust, (b) any other liabilities or obligations of Project Co of which the Trust was aware which were accrued and outstanding at the date of the Termination Notice and (c) any other liabilities or obligations of Project Co of which the Trust was aware which would fall due prior to the end of the Required Period. He submits that the other liabilities or obligations in Parts B and C of the table encompassed categories of claim that were much wider than amounts owed in Part A and did not need to be quantified. Additional information in the table did not invalidate the details supplied pursuant to, and in accordance with, paragraph 3.2.2 of the FDA.
43. Mr Williamson submits that the FDA does not entitle BOS to call for evidence of 'proper enquiry'. The Trust simply has to have made 'proper enquiry'. In any event, it is submitted that the Trust carried out 'proper enquiry' as set out in the witness statements of Colin Martin, the Chief Executive of the Trust.

*Applicable legal principles*

44. The dispute requires the court to construe the relevant provisions of the Project Agreement and the FDA. The applicable legal principles are not controversial:
  - i) The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. Contractual meaning is to be assessed in the light of the natural and ordinary meaning of the provision in question, any other relevant provisions, the overall purpose of the provision, the factual matrix and commercial common sense but disregarding subjective evidence of any party's intentions. Interpretation is a unitary exercise, involving an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated:

*Wood v Capita Insurance Services Limited* [2017] UKSC 24 per Lord Hodge at paragraphs [10] to [13].

- ii) When interpreting a clause in a contract which lays down a procedure for termination of the contract, the court will have regard to the commercial purpose which is served by the termination clause and interpret it in the light of that purpose: *Arnold v Britton* [2015] AC 1619.
- iii) Any notice required by the contract to be served must be sufficiently clear and unambiguous in its terms to constitute a valid notice: *Allam & Co Ltd v Europa Poster Services Ltd* [1968] 1 WLR 638; *Addis v Burrows* [1948] 1 KB 444.
- iv) If the terms of the contract prescribe a particular form or timing of service of a notice, or specify the provision of particular information within the notice, the validity of the notice depends upon compliance with those express conditions: *Afovos Shipping Co SA v Pagnan & Fili* [1983] 1 WLR 195; *Ellis Tylin v Co-Operative Retail Services Ltd* [1999] BLR 205.

#### *Interpretation of Paragraph 3.2.2*

- 45. The purpose for which the Trust is required to serve on BOS, as agent for the funders, prior written notice of its intention to terminate the Project Agreement, and written details of amounts owed and other liabilities and obligations on the part of Project Co, is to enable the funders to decide whether or not to exercise their step-in rights under the FDA. In weighing the arguments in favour of and against exercising such rights, the funders need to ascertain the extent of Project Co's rights, liabilities and obligations under the Project Agreement. Even if they wish to exercise their step-in rights, the Trust is entitled to terminate the Project Agreement if the funders fail to pay amounts due by the Step-In Date or the last day of the Required Period. The time period within which the funders must make any decision to assume responsibility for TVHL's rights and obligations under the Project Agreement, and pay any outstanding debts, is limited. Therefore, the funders need to have precise details of the sums for which they must assume responsibility and pay as a precondition to exercising their step-in rights.
- 46. Paragraph 3.2.2 provides that: "*The Trust shall not terminate ... the Project Agreement ... without giving ... a notice ...*" These express words make a notice under paragraph 3.2.2 a condition precedent to the Trust's entitlement to terminate the Project Agreement.
- 47. The operative words in paragraph 3.2.2 setting out the required information are: "*details of any amount owed by Project Co to the Trust, and any other liabilities or obligations of Project Co ...*" On a plain and obvious reading of the words used, there are two categories of claim that must be notified by the Trust: firstly, 'amounts owed', that is, sums that have been quantified; and, secondly, 'other liabilities and obligations', that is, responsibilities that Project Co is bound to satisfy. 'Other liabilities and obligations' could be financial in nature, such as liability to pay damages. However, they could be non-pecuniary, such as obligations to provide services or carry out corrective actions.
- 48. Each category of claim is subject to a proviso: "*of which the Trust is aware (having made proper enquiry)*". The obligation to notify such claims arises only in respect of

claims of which the Trust is aware but there is a positive obligation on the Trust to make proper enquiry to identify such claims.

49. The comma after: "*amount owed by Project Co to the Trust*" could be read as limiting the words "*of which the Trust is aware ...*" and the following sub-paragraphs (a) and (b) to '*other liabilities or obligations*' and not extending those provisions to '*amount owed*'. However, when read against the provisions of paragraph 7.1, I conclude that would not be the correct construction. Paragraph 7.1.3 makes express provision for amounts in respect of which the Trust was not aware at the time of the Termination Notice. Such amounts are distinguished from the amounts in paragraphs 7.1.1 and 7.1.2, which are amounts due of which the Trust is aware at the time of the Termination Notice. This indicates that the Trust's obligation to provide details of amounts owed in paragraph 3.2.2 is limited to amounts owed of which the Trust was aware at the date of the notice.
50. Paragraph 3.2.2 of the FDA requires the Trust to sub-divide each category of claim into additional, temporal sub-categories as part of the details set out in the notice to the funders: "*which are: (a) accrued and outstanding at the time of the Termination Notice; and/or (b) which will fall due on or prior to the end of the Required Period, under the Project Agreement.*"
51. Therefore, as a condition precedent to termination under the Project Agreement, the Trust must provide details in its paragraph 3.2.2 notice of:
  - i) amounts owed, of which the Trust is aware, which are accrued and outstanding at the time of the Termination Notice (para.3.2.2(a));
  - ii) amounts owed, of which the Trust is aware, which will fall due on or prior to the end of the Required Period (para.3.2.2(b));
  - iii) other liabilities and obligations, of which the Trust is aware, which are accrued and outstanding at the time of the Termination Notice (para.3.2.2(a)); and
  - iv) other liabilities and obligations, of which the Trust is aware, which will fall due on or prior to the end of the Required Period (para.3.2.2(b)).
52. The Trust's entitlement to terminate the Project Agreement following the service of a Termination Notice and a Paragraph 3.2.2 Notice arises where the funders fail to pay the amounts due by the dates fixed by paragraph 7.1 of the FDA. Those dates are:
  - i) in respect of any amount due which is accrued and outstanding at the time of the Termination Notice (para.3.2.2(a)), on or before the Step-In Date;
  - ii) in respect of any amount due which will fall due on or prior to the end of the Required Period (para.3.2.2(b)), on or before the last day of the Required Period; and
  - iii) in respect of any amount of which the Trust was not aware at the date of the Termination Notice, the date that is 20 Business Days after the amounts have been notified or the Step-In Date, whichever is later.

53. The reference to “amount” to in paragraph 7.1(i), (ii) and (iii) of the FDA must be a reference to “amount owed” in paragraph 3.2.2. Paragraph 7.1 is concerned with the fixed sums that are due and payable: at the time of the Termination Notice (paragraph 7.1(i)), or by the end of the Required Period (paragraph 7.1(ii)), or 20 days after notification or by the Step-In Date (paragraph 7.1(iii)).
54. The reference to ‘amount’ in paragraph 7.1 does not include ‘other liabilities or obligations’. Although such liabilities and obligations may give rise to payments to be made by Project Co to the Trust, they will not necessarily do so. They form a wider category of responsibility, they are identified separately in paragraph 3.2.2 and there is no express reference to them in paragraph 7.1.
55. The above interpretation is in accordance with the plain, ordinary meaning of the words used and makes commercial sense. The Trust is entitled to terminate the Project Agreement and prevent the funders from exercising their step-in rights if there are outstanding debts that the funders do not pay. The funders are not expected to pay sums which have not been ascertained and notified.
56. Paragraph 3.2.2 does not impose an obligation on the Trust to notify BOS of sums owed of which it is not aware (having made reasonable enquiry). The Trust is not required to provide quantum details of claims that do not give rise to an obligation to make payment or where the quantum has not yet been ascertained.
57. The obligation on the Trust to notify details of claims under paragraph 3.2.2 is limited to claims of which it is aware “*having made proper enquiry*”. This requires the Trust to make proper enquiry but does not require the Trust to provide evidence of such enquiry to BOS. There is no express provision imposing such an obligation and no room for the implication of such term.

#### *Validity of the Paragraph 3.3.2 Notice*

58. The Paragraph 3.3.2 Notice contains sufficient details to comply with the requirements of the FDA. The amounts owed are set out in part A of the table. The other liabilities and obligations are set out in part B (where outstanding at the date of the Termination Notice) and part C (where falling due by the end of the Required Period). The descriptions are very brief but they are sufficiently clear and unambiguous to enable the funders to understand the nature and basis of the claims.
59. I reject BOS’s case that the Paragraph 3.2.2 Notice must quantify all claims, including liabilities and obligations. The FDA draws a distinction between amounts owed, which must be quantified, and other liabilities and obligations, which do not have to be quantified. To the extent that an amount owed is not quantified in the Paragraph 3.2.2 Notice, there can be no obligation on the part of Project Co or the funders to make payment. Therefore, it could not amount to a ground for termination under Paragraph 7.1. The amounts that the funders are liable to pay to the Trust for the purpose of Paragraph 7.1 of the FDA are limited to the quantified, fixed sums identified as “*amounts due*” in part A of the Paragraph 3.2.2 Notice (together with any amounts notified by the Trust under paragraph 7.1.3).
60. I also reject BOS’s case that the Trust must provide evidence that it has made proper enquiry for the Paragraph 3.2.2 Notice to be valid. Mr Martin has provided details of

the enquiries made for the purpose of preparing the notices in his witness statements, which have not been challenged so as to identify additional matters that should have been notified. In any event, the impact of any inadequacies in the enquiries would be to deprive the Trust of an entitlement to terminate based on non-payment; it would not invalidate the Paragraph 3.2.2 Notice.

*Conclusion*

61. For the reasons set out above, the court will grant the declarations as sought by the Trust.