

In Focus

with **pyments**
a clear resolution

Insights into the construction industry with Pyments Periodical


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Pyments celebrates over 29 years in the construction industry and continues to provide an all-encompassing suite of services, together with a diverse breadth of experience and knowledge to an extensive range of clients.

Pyments – a firm of construction experts specialising in commercial project management, programming, control and delivery of construction projects

A firm of construction experts specialising in commercial project management, programming, control and delivery of construction projects, Pyments multi-disciplinary capabilities and unique suite of services provide support to contractors and developers in the contracting, private and specialist sectors of the Construction Industry, on commercial and contractual matters from project inception through to completion.

Celebrating over 29 years of working with clients in various disciplines of construction, we continue to provide a diverse breadth of experience and knowledge delivered by our professional, high calibre, multi-faceted team with a desire and passion for their profession.

Pyments unique personable approach and dispute preventative culture, together with a company ethos founded on collaboration, commercial and contractual compliance (principles that go to the root of our core values), combine to give an outstanding service to each and every client.

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Project Monitoring

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“It’s been emotional!”

With ‘collaborative working’ actually included as a core clause of the NEC suite of contracts, and progressively being encouraged in other forms of contract, perhaps it is becoming increasingly important to gain a better understanding as to how our emotions impact our decisions..?.. Particularly when, (as is so often the case), mutual trust and cooperation between parties appears to rapidly evaporate when there are notions of difficulties arising, or there is failure of one, or both, of the participants to The Contract.

‘Soft skills’ is a term recognised and consistently used by Employers in the working environment, and refers to an employee’s personal attributes that enable them to interact effectively and harmoniously with other people. For it is your emotions and the emotions that you communicate to the outside world, that have an impact on the people around you...

“The greatest ability in business is to get along with others and influence their actions” (John Hancock)

Whilst Vinnie (or more accurately Big Chris in Lock Stock and Two Smoking Barrels) may not be the first person one thinks of when considering the art of thinking of, understanding, and considering ourselves and others, the importance of the deployment of ‘emotional intelligence’ in our day-to-day dealings and with the people with whom we interact, both in the workplace, and outside it, cannot be underestimated.

What is ‘emotional intelligence’? (Often called Emotional Quotient or EQ). Well, there are a number of ways in which it can be defined, but maybe one way is to describe it as the ‘something’ in each of us that is a bit intangible, but it affects how we manage behaviour, navigate social complexities and make personal decisions to achieve positive results. So, it’s our ability to monitor our own emotions as well as the emotions of others, to distinguish between and identify emotions correctly, and to use emotional information to

“Your intellect may be confused, but your emotions will never lie to you” (Robert Ebert)

guide our own thinking and behaviour, and influence that of others. Bearing that in mind, it may nonetheless surprise you to know that EQ is not directly linked to ‘cognitive intelligence’ (often called Intelligence Quotient or IQ). Research has established that people with average IQs outperform those with the highest IQs 70 percent of the time. Many years of research also now point to EQ as being the critical factor that sets star performers apart from the rest of the pack, this research points to the connection being so strong that 90 percent of top performers have high EQ.

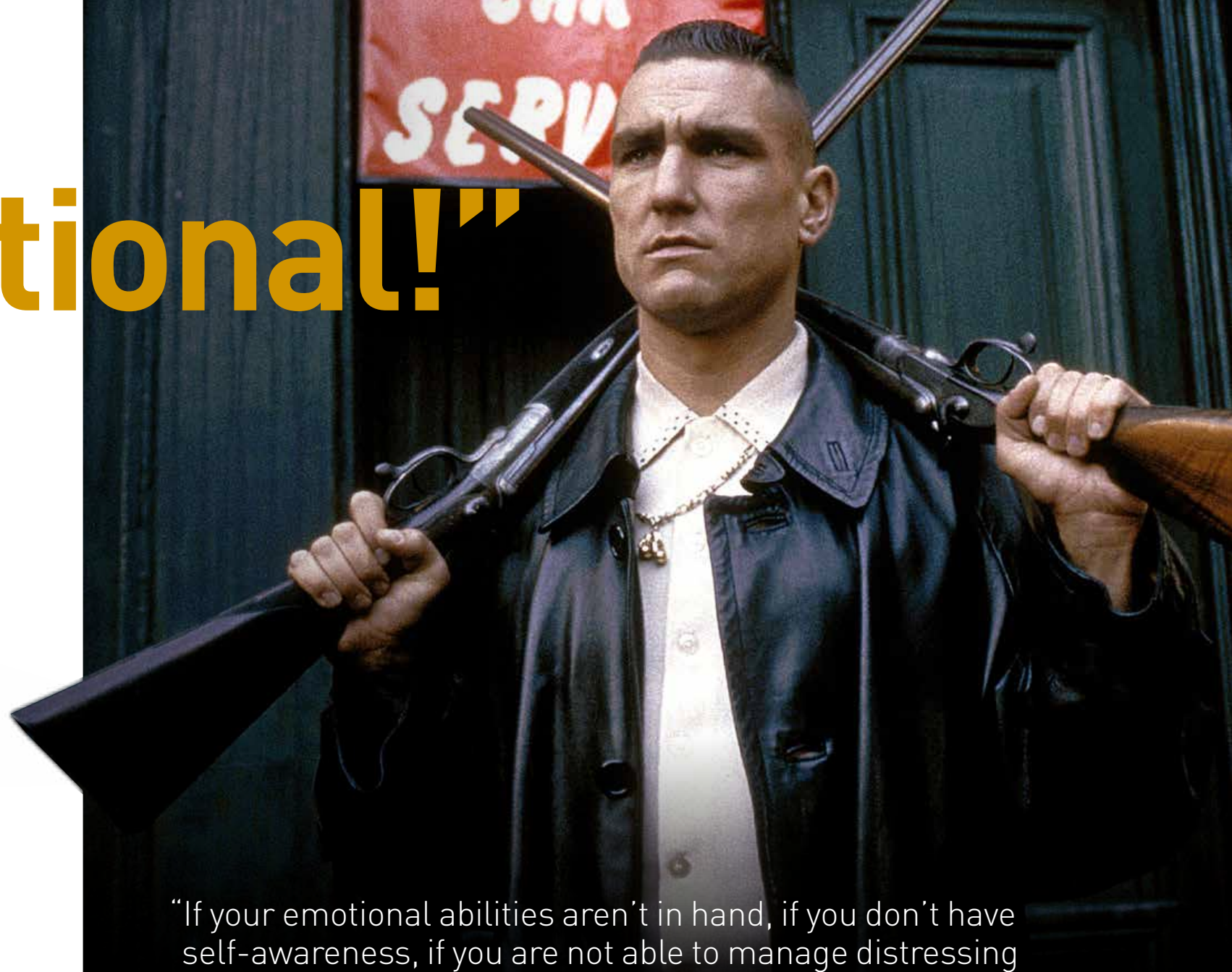
We use EQ when we empathise with our colleagues, communicate with our clients and customers, and on a daily basis living with our nearest and dearest!!

We identify emotions (in ourselves and in others), relate to others, and communicate with varying levels of feeling and emotion in everything we do. Whilst we all experience emotions and recognise emotions in others, the ability to accurately identify them as they occur is dependent upon your level of EQ. That lovely research again seems to indicate that only 36 percent of us can accurately identify emotions. This can be problematic in any number of situations because not recognising what is inside, and in front of you, can result in emotions being misunderstood, which can then lead to irrational choices and counterproductive actions.

An example of the range of identifying emotion might be where many people may describe themselves as simply feeling ‘bad’, but emotionally intelligent people, with a higher level of EQ, can pinpoint whether they feel ‘irritable’, ‘frustrated’, ‘downtrodden’, ‘anxious’ etc.

So as well as having a good emotional vocabulary, what else points to a high EQ? Again, there can be many facets, and of course there are many tests that you can take, but some behaviours that are hallmarks are: Curiosity in the people around you – caring about other people and what they are going through; embracing change – being flexible and possessing an ability to adapt; knowing your strengths and weaknesses – use your strengths to full advantage whilst keeping your weaknesses from holding you back; being a good judge of character – recognising what others are all about and understanding their motivations, even those hidden beneath the surface; being difficult to offend – If you have a good grip on who you are, then it is difficult for others to say or do something that rattles you, and you can self-deprecate without offense; knowing how to say no – delay gratification and avoid impulsive action. Saying no can avoid stressful situations, burnout and even depression; letting go of mistakes – distance yourself from mistakes, but don’t forget them as dwelling on them makes you anxious and reticent but forgetting them makes you liable to make them again; building strong relationships – give and expect nothing in return; not holding grudges – a grudge can lead to negative emotion and stress, so reduce or eliminate those negative emotions; control interactions

with difficult people – keeping your feelings in check when dealing with a difficult/negative person and consider their standpoint but don’t let them bring you down; not seeking perfection – don’t lament failure to accomplish unrealistic goals, move forward excited about what you have achieved and what you will accomplish; appreciating what you have – taking time to contemplate what you are grateful for; disconnecting – take regular time away from the coalface, and rest enough, to give mind and body a break!! (even turning off the phone!!); feeling good about your achievements –



“If your emotional abilities aren’t in hand, if you don’t have self-awareness, if you are not able to manage distressing emotions, if you can’t have empathy and have effective relationships, then no matter how smart you are, you are not going to get very far” (Daniel Goleman)

not turning off your reactions to what others think of you, but don’t compare yourself to others, let your self-worth come from within.

The good thing about all of the hallmarks listed above is that they are not reliant upon your DNA, they are all skills that can be learnt. All of the skills can be goals to work towards through practice and application once you have recognised those that you possess and those that you do not, and those that you do have but need more work. There are a number of publications and courses out there in the marketplace to help with this process if you wish to increase your awareness and abilities in this sphere.

Working on, and enhancing, your EQ will be beneficial in many work-related situations as well as personal scenarios. Recognising EQ, and practising techniques to increase your own level, will enhance your ability to achieve positive and good results. For example, this may take the form of guiding a difficult negotiation

down the path you want by recognising the traits of the person/party you are negotiating with, or you may be able to guide or may help you to support a colleague in achieving their goals if you better understand their drivers, or you may have a better chance of effectively expressing and validating your emotions to others.



Adrian Purvey

Adrian brings a wealth of experience to the arena of dispute resolution and negotiation, providing consultancy services and advice in relation to commercial matters including review and negotiation of contract conditions,

risk and opportunity analysis, negotiation and resolution of extensions of time, loss and expense. He can be contacted at adrian.purvey@pyments.co.uk

Meet the gang

Jitka Bailey Krepperova



When did you join Pyments? I joined Pyments as Assistant Quantity Surveyor in December 2013.

What does your job involve? I mainly work in the Mechanical & Electrical Solution's department, carrying out a traditional quantity surveyor's role on a variety of projects however, I also get involved in Programming/Delay Analysis and Dispute Resolution.

What were you doing before Pyments? Before joining Pyments I worked with Balfour Beatty Engineering Services initially established as Balfour Kilpatrick, specialising in M&E engineering services. Working for a main contractor the scope of my work was predominantly based on a building site at various projects; at the time, the Birmingham Schools Joint Venture Development was rolled out around the Birmingham Area. I worked with BBES for over 5 years and it was during that time I gained my qualification, studying a Construction Degree at Birmingham City University.

Joining Pyments was a bit different/ quite a change? Joining Pyments was different for many reasons, starting with the picturesque quiet location of our Alcester office in comparison to the chaotic city centre of Birmingham! Pyments has a very different feel than that of a large corporate firm, there's still very much a family atmosphere here with everyone a valued member of the team, enhanced by great team dynamics. Last and most importantly the scope of work is so varied, when compared against more traditional roles in quantity surveying.

What do you like about Pyments? I like the variety and nature of the work we come across which is challenging but exciting at the same time, we get involved with large scale projects all over the country. No two cases are ever the same, every case brings new challenges, new questions, new solutions, making coming to work enjoyable.

Away from work what do you get up to?

I love spending time with my family, I have 2 active boys into grass roots football and with overall sport obsessions! I also enjoy spending time with my friends, a bit of Zumba or sport and/or a relaxing evening reading a book or watching a film depending on the mood. It would be rude not to add the obvious fact of a love of going on holiday..!

Favourite food? Spicy goulash with bread dumplings.

Where did you go/what did you get up to on your last holiday?

My last holiday was spent camping by the seaside in Croyde Bay, Devon. In addition to the usual camping fun, we were determined

to have a go at surfing despite the cold May weather and freezing sea temperatures! Yep, it was absolutely Baltic but kids being kids, they didn't mind in the slightest so I had no choice then but to power through... I have to say once I got over the fact that I couldn't feel my arms or legs it was actually great fun!

What might someone be surprised to know about you? I was very close to becoming a maths teacher. Maths genes run in our family with my mum and my grandma both being teachers at Grammar School. I always had the desire to follow their path and even taught maths for a couple years however, it only took one day having a 'chat' with a friend about working in construction and I ended up being intrigued enough to give quantity surveying a go!

What trends do you see emerging over the next five years?

A bit cliché but I think Brexit will be the driving factor for determining the trends of construction in the next 5 years. Other than Brexit, I believe construction will focus even more on sustainability and global warming; The demand for the use of green building materials (i.e. recycled plastic, ferrock, wood, timbercrete), and the reduction of energy consumption during the construction process is increasing; creating building structures with low greenhouse gas emissions and low running/maintenance costs, will continue to increase putting pressure on the construction industry worldwide.

In your opinion what makes a good M&E QS? I believe a good quantity surveyor should be results driven, remaining fair and objective combined with clear communication and people skills.

If you could offer one piece of advice to someone starting an M&E project what would it be? Don't think that 'a formula' for running a project can always apply. Every project is unique, a 'live' entity and you should expect the unexpected at all times. When something unexpected happens, you will then be ready to deal with it with a clear head whilst not losing focus on the 'whole picture'.

Jeux Sans Frontières

During the 1970s millions of us spent Friday evenings gathered around our TV sets to watch the latest instalment of 'It's a Knockout'. This hugely entertaining spectacle saw teams of adults, routinely wearing large foam rubber outfits, being required to negotiate various hazards and obstacles placed in their path or launched at them by the opposing team. The props and weaponry might include hurdles, greasy poles, portable swimming pools, elasticated ropes, custard pies, water cannon and giant foam footballs.

Each team represented a town or city and each week the winning team would qualify to take on Johnny Foreigner in an exotically named event called 'Jeux Sans Frontières'. This was exactly the same thing, only bigger and better and comprised six to eight international teams representing countries from across mainland Europe.

So what relevance has all this to adjudication? Well, it seems to me that there's a clear parallel between the adjudicator struggling to avoid the potential pitfalls of running an adjudication and the fella trying to wade through an ocean of soap suds whilst wearing a foam rubber giant's outfit.

My point is that an adjudicator has to tread extremely carefully and if he drops his guard for one second, he could be in bother. The party that loses an adjudication is seldom happy with the outcome and will often explore various strategies to avoid paying up. Ever since the early days of statutory adjudication the losing parties have sought to resist the enforcement of the adjudicator's decision on various technical grounds.

In short, they attempt to 'knockout' the adjudicator's decision by inviting the courts to agree that a decision is out of time, or that an adjudicator has exceeded his jurisdiction, or that the rules of natural justice have been breached.

An early example was the well-known case of Balfour Beatty Construction Limited v London Borough of Lambeth [2002] EWHC 597 (TCC). In this adjudication the adjudicator considered that Balfour Beatty's evidence in support of its extension of time claim was sadly lacking (and the court later agreed). As a result, the adjudicator carried out his own critical path programme analysis, ascertained the extension of time due and ordered Lambeth to repay a proportion of liquidated damages that had been withheld.

At this juncture the adjudicator could well have been forgiven for expecting to receive a pat on the back for all his hard endeavour in untangling a complicated dispute and doing so within a painfully short timeframe. Unfortunately, Lambeth didn't see it like that and the adjudicator found his actions being scrutinised in court where he faced an allegation that he had breached the rules of natural justice.

The judge found that the adjudicator had exceeded his jurisdiction by making Balfour Beatty's case for it and had breached the rules of natural justice by failing to give the parties a chance to comment on his critical path analysis. Instead of a pat on the back the adjudicator was caught square between the eyes by water cannon and knocked firmly onto his foam rubber backside. What fun!

In recent years the sport of tripping up the adjudicator has continued. Along came ABB Limited v BAM Nuttall Limited [2013] EWHC 1983 (TCC). In an earlier adjudication the adjudicator had found in favour of BAM but in so doing made reference to a clause in the subcontract agreement that neither party to the adjudication had mentioned or relied upon. ABB's response was something along the lines of "we can't have him coming to that decision – he must be stopped." Accordingly, ABB reached for the custard pies, propelled them forcefully in the adjudicator's direction and off they all trotted to the high court.

You might be curious to know whether the adjudicator's decision was right or wrong? Well, nobody seemed particularly bothered. The matter that appeared to get everyone excited was whether the rules of natural justice had been breached.

Now, I understand that these things are important, but let's try to look at it from the adjudicator's perspective. He had been asked to adjudicate on a dispute between Contractor and Subcontractor and had been provided with a copy of the subcontract terms and conditions to help him do so. Having reached his decision, the adjudicator made the schoolboy error of mentioning clause 11.1A (it was one of the clauses in the subcontract). "Ah!!!....." said ABB, "..... we never mentioned clause 11.1A". The judge agreed and found the adjudicator's decision to be invalid and unenforceable – adjudicator forcefully catapulted backwards by giant elasticated rope!

The more recent case of Stellite Construction v Vascroft Contractors [2016] EWHC 792 (TCC) concerned an earlier adjudication where the adjudicator had decided that time had been set at large – Stellite (the Employer) said "this is not what Vascroft (the Contractor) had argued – you've exceeded your jurisdiction". However, on this occasion the judge disagreed, "don't be so daft – it's one of the obvious outcomes" – giant foam rubber football successfully dodged!

The Adjudicator had gone on to decide what might be a reasonable date for completion. You might think that was a sensible and logical next step. But no! Stellite engaged the water cannon this time.



"That's not the question we asked you – you've exceeded your jurisdiction again" – this time the judge agreed.

Yes, we all understand the difference between liquidated and unliquidated damages and with the benefit of hindsight and a period of quiet reflection we can see that the adjudicator was asked about the former and not the latter. Nevertheless, the adjudicator must be thinking to himself "do you want me to decide your damn dispute or not?" Clearly, he didn't notice the second giant football that struck him a nasty blow on the back of the head.

In Beumer v Vinci [2016] EWHC 2283 (TCC) there were two adjudications, the first (referred to as 'BVII') between Vinci (the Main Contractor) and Beumer (Vinci's subcontractor) and the second ('BLII') between Beumer and Daifuku Logan Ltd (Logan) who was Beumer's sub-subcontractor. In both instances these were 'second adjudications' between the respective parties (hence the references 'BVII' and 'BLII').

The same adjudicator decided both BVII and BLII on or around the same dates. However, this fact was not communicated to Vinci and was one of Vinci's complaints in resisting enforcement of the adjudicator's decision. The judge agreed with Vinci and considered the non-disclosure to be a breach of natural justice.

From reading reports of the case, the adjudicator's motive for not disclosing to Vinci his involvement in BLII is not clear. However, there is more than a possibility that his motives were well intentioned and logical (how about the importance of observing the normal protocol of confidentiality in adjudication for instance?).

Suffice to say the judge was keen to point out that there should be no criticism of the adjudicator's overall approach. Indeed, the judge considered that "..... [the adjudicator] considered both parties' submissions with evident care and produced a detailed and thoroughly reasoned decision."

Nevertheless, despite the "evident care" taken by the adjudicator, his decision was not enforced. The phrase used in this case was 'apparent bias' – the adjudicator didn't exhibit actual bias at all; the

mere possibility that there could have been bias was sufficient to send the adjudicator and his foam rubber giant rabbit outfit sprawling. Paice and Springhall v M J Harding Contractors [2015] EWHC 661 (TCC) and [2016] EWHC B22 (TCC) were two more cases relating respectively to the fourth and fifth adjudications between the parties on the same contract. The 2015 case concerned the enforcement of adjudication number 4 which had been decided in favour of Paice.

Harding resisted enforcement on the grounds that the adjudicator failed to mention that Paice had telephoned the adjudicator's office on two occasions prior to adjudication number 3 and had spoken to the adjudicator's office manager.

The judge decided that there was apparent bias and refused Paice's application to enforce the adjudicator's decision (the adjudicator appears to have reached the correct decision – but the 'apparent bias' thing scuppered it) – the soap suds and grease on the 6-inch-wide plank on which he was balancing were too much for the adjudicator on this occasion and

into the water he went – head first.

The 2016 case was a repeat performance in many respects. Adjudication 5 had again been decided in favour of Paice (a different adjudicator this time) and Harding resisted enforcement on a number of grounds (more elasticated ropes, water cannons and giant footballs than you can shake a stick at). These included an allegation of 'apparent bias'.

The issue here was that the adjudicator in adjudication number 5 had not disclosed a character reference he had provided some time earlier for the adjudicator in adjudication number 4. The defendant's solicitor saw the opportunity and pounced. "Never mind whether the decision is right or wrong, we can argue 'apparent bias'."

The judge was having none of it this time. "This reference wouldn't affect the exercise the adjudicator was required to carry out – and in any event you knew about it and didn't raise any objection until very late in the adjudication" – so, in spite of the soap suds and grease on the 6-inch-wide plank on which the second adjudicator was balancing, a praise-worthy vertical orientation was maintained.


I admit that I have perhaps put something of a spin on the above cases, but I have done so in order to illustrate just how difficult an adjudicator's task can be. No doubt I could justifiably be accused of exhibiting 'apparent bias' (if not 'actual bias'), but the message to adjudicators is to beware and to take care!

Meanwhile, I'm off to the water cannon firing range to polish up my skills at knocking over the fella in the giant kangaroo outfit.



Chris Kevis

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