Legal Briefing

Ted Lowery considers a case in which the surety argued that a performance bond demand included not enough and too much information

The Renaissance Club at Archerfield, LLP v BVB Sureties Limited [2026] CSOH 67

In the Outer House, Court of Session

Opinion of Lord Sandison

Judgment delivered 14 July 2026

The facts

During 2024, the Club entered into a contract with Taylor's Property Developments (Yorkshire) Limited to undertake the design and build of a residential development in East Lothian. By way of security for the contractor's obligations, during May 2024, BVB issued an on-demand performance bond in the Club's favour: BVB undertook to pay, without any objection or consultation with the contractor, an amount or amounts not exceeding in aggregate £1,251,638.80, provided that the Club's written demand complied with the requirements of the bond.

These requirements included that any demand was to be served on BVB's offices in the British Virgin Islands and was to be in the form set out in Appendix 1 to the bond, stating: (i) that the contractor had failed to perform the contract in accordance with its terms and conditions; (ii) in what respects the contractor had so failed; and, (iii) the amount due to the Club as a result of such failures and the amount claimed. Appendix 1 comprised a template demand which included the wording, *"The Contractor has failed to perform the Contract in accordance with its terms and conditions in the following respects [INSERT BRIEF DETAILS OF THE BREACH]"*, and closed with a signature block subtitled, *"[Director **OR** Company secretary] of the Beneficiary"*.

On 14 September 2025, the Club issued a written demand, notifying losses of £1,811,492.00 and claiming the maximum sum of £1,251,638.80. The demand reached BVB's offices in the British Virgin Islands on 29 September 2025. BVB declined to pay, contending that the demand did not comply with the requirements of the bond where it: (i) failed to describe each alleged breach by the contractor and the provision of the contract said to have been breached; (ii) referenced other contractual failings and defective work in general terms without specifying whether or not these failures had caused the defective work and/or contributed to the sum claimed; and, (iii) was not signed by a person with capacity to bind the Club with an indication of that capacity, insofar as the signatory, a Mr Savardi, described himself as *"General Partner"*, it being common ground that no such position existed within the hierarchy of an LLP.

In reply, the Club argued that there was no requirement for absolute clarity in the demand, that a reasonable recipient would have been left in no doubt as to the nature of and the basis for the demand and that where an LLP lacked directors and a company secretary, there was otherwise no specific stipulation within the bond concerning the position held by the demand's signatory.

The issue

Was the Club's demand valid?

The decision

Dealing first with the legal principles, the judge observed that in a demand under a performance bond, precise wording was generally not essential, provided that there was no ambiguity and no risk of the recipient being misled, confused or otherwise prejudiced. Applying the *"reasonable recipient"* test, the question to be asked was whether the substance of any demand was sufficiently clear and unambiguous so as to leave a reasonable recipient, exercising his or her common sense, in no doubt as to the nature of the notification in the relevant context of the underlying bond. The demand did not require absolute clarity nor an absolute absence of any possible ambiguity: immaterial and non-misleading errors could be ignored.

The judge went on to dismiss each of BVB's points: (i) it was apparent that the bond contemplated and therefore allowed some degree of latitude as to both the form and content of the envisaged demand. The Appendix 1 template did not prescribe an immutable form of words and the requirement for *"brief details of the breach"* gave the Club some leeway. Therefore the bond did not require that a demand include each and every factual matter said to have given rise to a breach of the contract nor each contractual clause said to have been breached; (ii) whilst the demand did include superfluous information, that information would not have misled BVB as to its legal effect. A reasonable commercial recipient would have concluded that where the notified losses exceeded the maximum sum, it was unnecessary to say anything further about the other contractual failings and defective work referenced more generally in the demand; and, (iii) a reasonable person reading the demand would unhesitatingly conclude that it had been issued by Mr Savardi on behalf of the Club. The fact that, as a technical matter of law, a limited liability partnership had no General Partner role would not lead a reasonable person to suppose that the demand had not after all been sent on behalf of the Club.

Commentary

The judge illustrated the *"reasonable recipient"* test by offering the example of the unreasonable recipient: one who zealously scrutinises a demand searching for specious reasons to avoid liability via arguments about the presence of ambiguities that were more theoretical than real.

In this case, the judge was particularly scathing as to BVB's third point, rejecting the parties' consensus that the bond required a demand to include some indication of the signatory's capacity and opining that a reasonable recipient would have wondered why any question as to the authorship of the demand had ever been asked.

Ted Lowery
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