Contract Nexus

Case Law

Pay Less Notice Must Match One Payment Cycle

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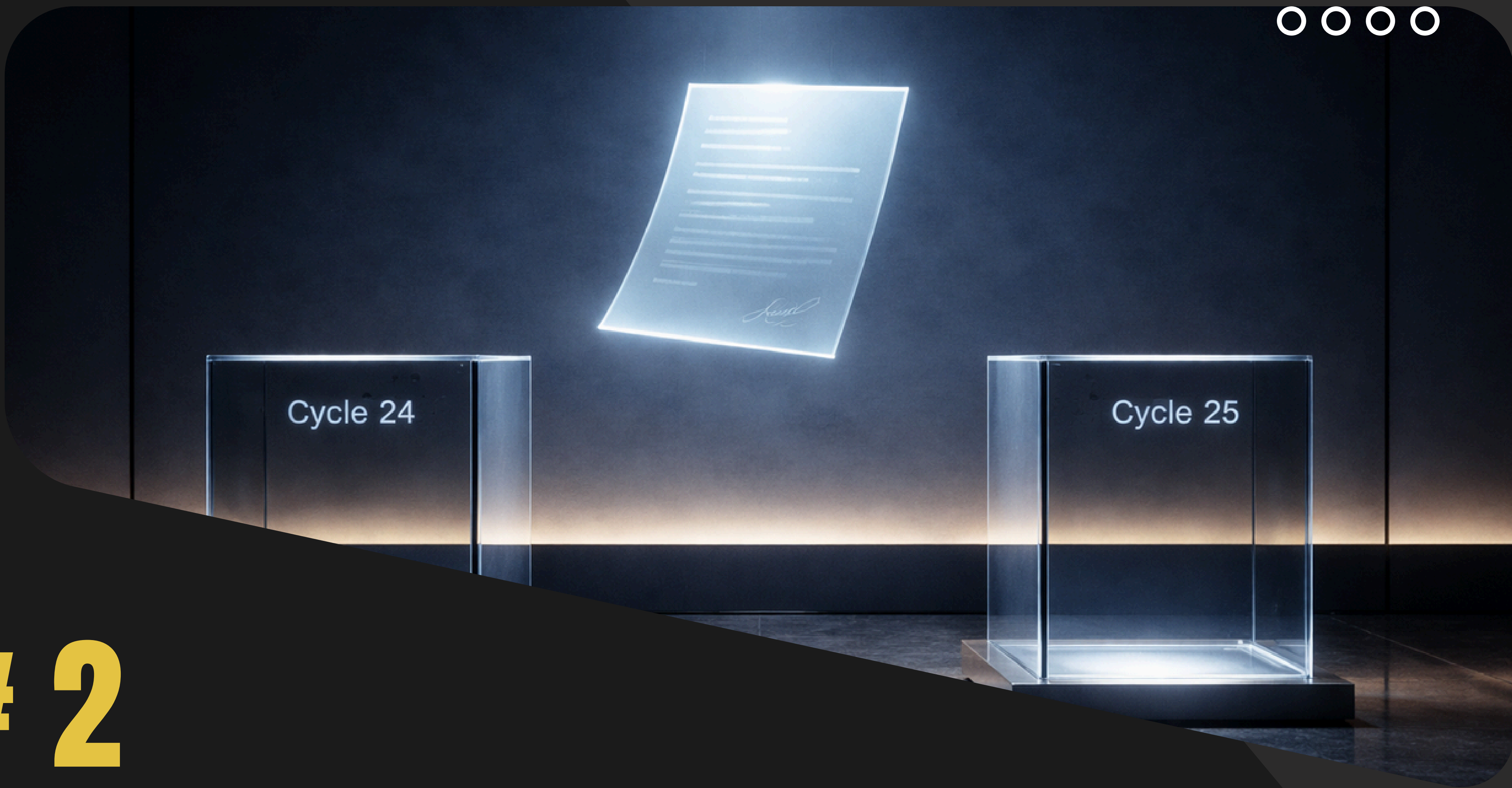
#1

Advance JV v Enisca Ltd [2022] EWHC 1152 (TCC)

Why it matters: One "rolled-up" notice that tries to cover two assessment dates can trigger a £2.7m smash-and-grab liability even when your own assessment shows you've overpaid.



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The Dispute

Under an NEC3 subcontract, Enisca issued Application 24, then Application 25 at the next assessment date. Advance sent documents (including a payment certificate and a pay less notice) framed around the later application/assessment date. Advance tried to argue that the notice package also operated as a Pay Less Notice for the earlier cycle because it was served within that earlier deadline window.

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The Judgment

The TCC's message was blunt: notices must be referable to a particular payment notice/application and a particular payment cycle; you can't "multi-cycle" your way out of missed deadlines. Objectively read, Advance's notice responded to Application 25, not Application 24, so Application 24's applied sum became the notified sum payable under s.111.

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Contract Nexus Insight

On fast-track programmes, teams often run overlapping cycles, late certifications, and shared portals exactly where “multi-cycle drift” happens. Nexus puts in place a cycle-locked notice workflow (one cycle, one reference, one deadline, one approval chain) so notices can’t accidentally float between months.

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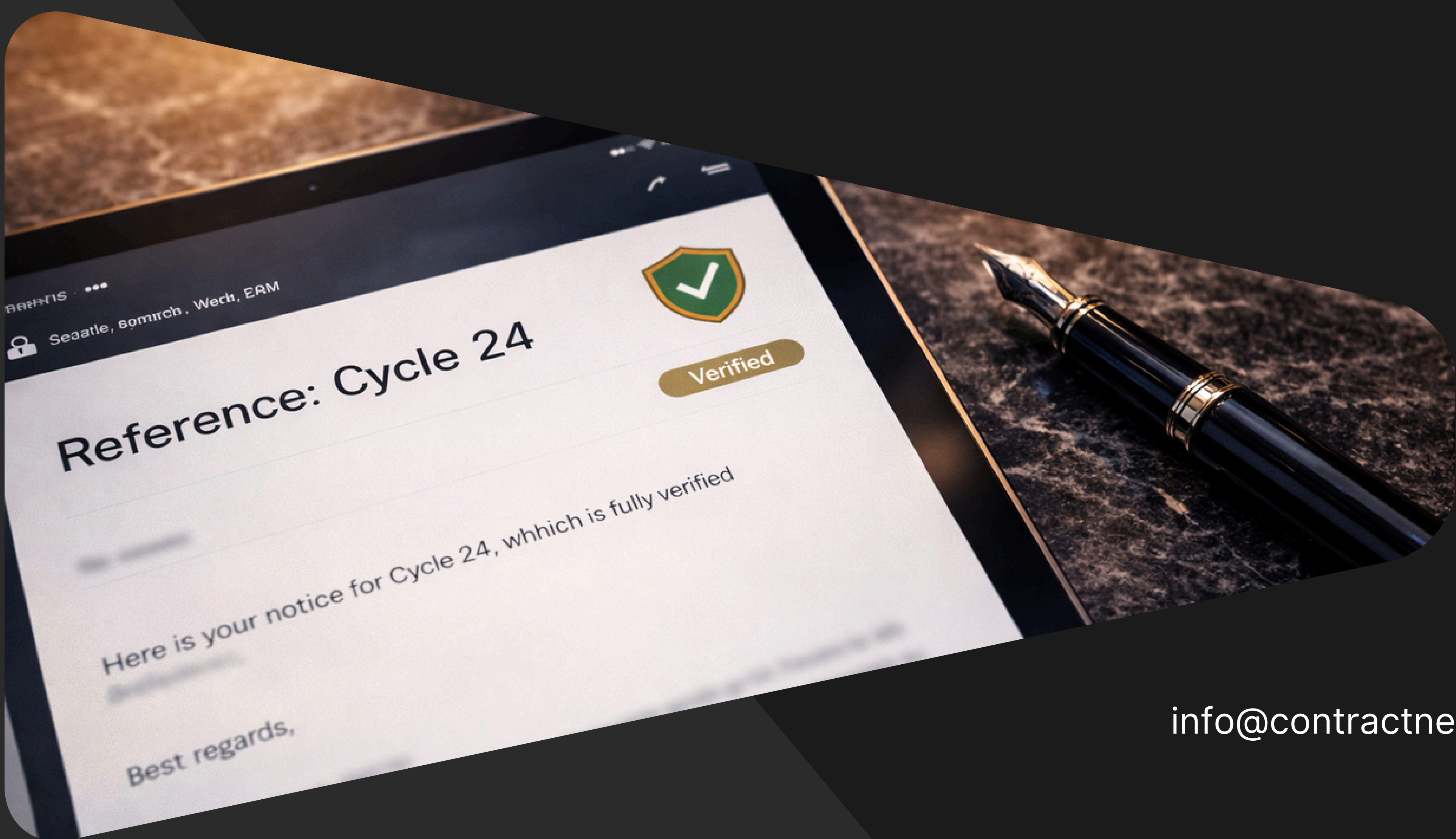
Nexus Best Practice:

- Every Payment/Pay Less Notice must state the application number + assessment date + payment cycle it responds to (no ambiguity, no hedging).
- Don’t rely solely on portal uploads; send a clear covering email that identifies the cycle and the notice type.



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