What can a dissatisfied contractor or subcontractor do (as the case may be) about an under valued certificate? Is there an unfair immunity in favour of certifiers?

A dissatisfied contractor or subcontractor action against an under valued certificate is reflected in *Beaufort Developments (NI) Limited v. Gilbert Ash (NI) Limited*, where he can refer to the courts with the same powers as arbitrators in respect of architects' certificates they have, this decision in effect, removed the embargo on taking contractor's claims to court. Now they have real choice as to how their disputes should be determined. If construction arbitrators are to maintain their share of the dispute market they will need to ensure that arbitration offers some clear advantages over litigation.

Lord Hoffmann said that it was not “unthinkable” for architect's certificates to be binding by means of a contract as defined by *Crouch* and he referred to the expert determination cases. He did query, however, whether the parties would want an architect to be their expert. The speeches showed a marked departure by the appellate courts from their traditional view of the certifier as independent, professional and objective. They now believe them still to be professional, but no longer independent. In those circumstances, they would look for very clear words before finding that an architect had power to give a conclusive and binding certificate.

It remains to be seen whether *Beaufort* marks the end of the certificate/jurisdiction arguments. Because the House of Lords did not deal a final say “for ‘architect’ read ‘court’” it is thought that *Crouch* arguments may linger. It is worth noting that the cause of action in the *Beaufort* case was breach of contract and the remedy sought was damages for delay: the contractual delay and money claims had already been referred to arbitration.

If putative parties to construction contracts are in any doubt, however, as to whether their disputes will be resolved by litigation or in arbitration, they now need only incorporate the JCT's most recent amendment, Amendment 18, and opt for the desired forum, namely the facility to opt out of the JCT's standard arbitration agreement.

Immunity of certifiers even though negligent is immune from action, as it has no inconsistency in owing a duty to the employer to act with due care and skill, while being under a duty to hold the balance fairly between his client and the contractor. It applies only when there is a dispute which called for judicial review, but not to formal arbitration proceedings.
Being a professional entity the certifier he should act fairly avoid negligence, it is fair to
immune the certifier subject to follow the conduct of professional liability and duty of care.