



Guide to adjudication

About this guide

This guide is one of a series of guides to the main types of dispute resolution processes. It seeks to answer some of the questions most frequently asked by clients involved in adjudications, and to provide an overview of the process.

What is adjudication?

Adjudication is a form of dispute resolution which, by statute, applies to all contracts for construction operations in the UK. This means that even if the contract between the parties contains no express provisions concerning adjudication the Court will imply provisions which will enable a party to refer a dispute for adjudication.

The aim of the statutory right to adjudication was to introduce a speedy mechanism for settling disputes in construction contracts on a provisional interim basis so as not to interrupt or delay ongoing construction work unduly. The legislation requires the decisions of adjudicators to be enforced by the Courts pending final determination by arbitration or litigation.

Who does it apply to?

“Construction” is widely defined and can include work undertaken by architects and surveyors as well as builders and other parties involved in construction projects. Adjudication can apply to residential works as it can to major commercial construction projects, if it is expressly provided for in the contract.

How does it work?

The party referring the dispute will apply to one of several nominating bodies and ask them to appoint an adjudicator to determine the dispute. Once the adjudicator has been properly appointed and the procedure has started the adjudicator has to make a decision on the matters referred to him within 28 days (or within 42 days if the referring party agrees). In most cases the adjudicator will be asked to determine a financial dispute.

In practice a referring party will spend a significant amount of time preparing their evidence in advance in the knowledge that once the process has started the responding party will have a very short time (usually no more than a couple of weeks) in which to submit their evidence to the adjudicator. For the responding party this will often involve preparing witness statements, experts' reports and supporting documentary evidence at very short notice.

What happens once the adjudicator has made its decision?

The adjudicator will usually give written reasons for his decision. In theory, if either side is unhappy with the adjudicator's decision they can arbitrate or litigate the dispute through the Courts in the usual way but in practice this rarely happens and the loser usually has to write a cheque for whatever amount the adjudicator decides.

What if the losing side refuses to pay?

In theory the adjudicator's decision is only binding on the parties until the dispute is finally decided by arbitration (if provided for in the contract or agreed to), litigation or agreement. However, because it is binding in the interim the decision can be enforced by issuing proceedings at Court and obtaining a Judgment which can then be enforced in various ways. (Please see our Guide to Enforcement for further information). Generally, the only defence to such proceedings is that the adjudicator's decision was outside his jurisdiction.

So what are the main pros and cons?

Adjudication can be a quick way to obtain a decision on a construction related dispute and thereafter to obtain payment. The downside is that given the tight time constraints it can be rough justice and, unlike the Court, the adjudicator will not always have the power to order the losing party to pay the winner's legal costs.

About us

Members of our Dispute Resolution Group are experienced in adjudication and represent both referring and responding parties.

If you have any questions about this guide or any other matters please do not hesitate to contact one of the following members of our Dispute Resolution Group at disputeresolution@bwbllp.com or using the following contact details:

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