

Construction & Engineering Adjudication



Adjudication is a statutory mechanism for resolving disputes in the construction industry. It was introduced by the Housing Grants, Construction and Regeneration Act 1996 (the Construction Act). It is designed to be a quick fix remedy to protect cash-flow during the construction phase. The amended Construction Act applies to all construction contracts entered into, on, or after 1 October 2011.

When is adjudication available?

Adjudication can be used where a dispute or difference has crystallised and only one dispute under a single construction contract can be referred to adjudication at a time – unless the parties agree otherwise. The same dispute or difference cannot be adjudicated more than once and where the construction contract is in writing or evidenced in writing (but is not an excluded contract). For construction contracts entered into, on, or after 1 October 2011, adjudication is available even if the contract terms (or some of them) were agreed verbally.

What types of disputes can be referred to adjudication?

Any dispute or difference may be referred to adjudication, but it is perhaps best suited for resolving claims referring to:

- ▶ Interim payments
- ▶ Delay and disruption of the works
- ▶ Defects
- ▶ Extensions of time for completion of the works (including entitlement to LADS)
- ▶ Valuing the final account

How long does it take?

Once the Referral Notice has been served, the Adjudicator must reach a decision within 28 days (subject to any agreed extensions). The process usually involves the consideration of written submissions, though where appropriate, the Adjudicator may request a site inspection or a meeting with the parties. The parties should always check the terms of contract to determine which Adjudicator's decision may be invalidated.

What is the effect of the Adjudicator's decision?

The Adjudicator's decision is binding until the dispute is finally determined by legal proceedings, arbitration or by agreement. The decision can be enforced in the Technology & Construction Court (TCC) by way of an expedited summary judgement application. Successfully challenging an Adjudicator's decision is difficult, though may be possible if:

- ▶ The Adjudicator was incorrectly appointed
- ▶ The dispute or difference had not crystallised
- ▶ The terms of the contract are not evidenced in writing (for pre-October 2011 contracts)
- ▶ The Adjudicator has exceeded his jurisdiction
- ▶ The Adjudicator showed bias
- ▶ The decision was delivered late

Avoiding Adjudication

Most adjudication proceedings relate to non-payment. The amended Construction Act introduced a new payment regime, and new provisions in relation to the suspension of works due to non-payment. Parties to a construction contract should therefore ensure that their payments terms comply with the Construction Act and that they are complied with.

Key contact



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