

Adjudication

Introduction

Adjudication, sometimes referred to as ‘rough justice’ has become the dominant method of dispute resolution in the UK construction industry due to its fast paced timetable (28 days + 14 days extension) and relatively low cost compared to arbitration or court proceedings. The adjudicator’s decision is binding on the parties unless finally determined by legal proceedings, by arbitration or by agreement. A court will usually enforce the adjudicator’s decision unless there is a successful jurisdictional challenge.

Statutory Right

Adjudication is a statutory dispute resolution process introduced by Part II of the Housing Grants, Construction and Regeneration Act 1996 as amended (the “Construction Act”), to improve cashflow and keep disputes out of court.

Any party to a “construction contract” (broadly defined by the Construction Act to cover most building, engineering, and related works, including design, advice, and construction operations in England, Wales, and Scotland) has the right to refer a dispute arising under the contract to adjudication at any time. This right cannot be excluded by contract. If a contract does not include sufficient adjudication provisions, the Construction Act states that the relevant adjudication provisions of ‘The Scheme for Construction Contracts’ as amended (the “Scheme”) shall apply.

Adjudicator Duties

The adjudicator has a duty to act impartially and to take the initiative in ascertaining the facts and the law. The adjudicator shall avoid incurring unnecessary expense, consider all submissions, exercise natural justice, reach the decision on the balance of probabilities and within the adjudication timetable.

Jurisdiction

A dispute between the parties must crystallise before it can be taken to adjudication. The Construction Act states that “*dispute*” includes any difference. The courts take a broad view of the term dispute, rather than a narrow definition.

The responding party (or its representatives) usually attempt to challenge jurisdiction at the start of proceedings (if they do not, they may later lose that right). An adjudicator may consider their own jurisdiction, but final determination can only be decided by the courts. If an adjudicator considers they do not have sufficient threshold jurisdiction (power to act, not appointed correctly, dispute not crystallised) or internal jurisdiction (must act within the scope/boundaries of the decision sought as framed by the Notice of Adjudication or Referral), they may resign.

Timetable (28 Days + 14 Days Extension)

1. Notice of Adjudication - referring party serves a notice to the responding party outlining the dispute.
2. Appointment - adjudicator often named in the contract or selected via nominating body (e.g. ICE, RICS).
3. Referral - referring party issues the detailed Referral (with evidence) to the responding party and the adjudicator within 7 days of the Notice of Adjudication.
4. Response - the responding party usually has 7 days (or as directed) to respond to the referring party’s Referral.
5. Decision - the adjudicator must reach a decision within 28 days of Referral (extendable by 14 days with the referring party’s consent, or longer by agreement). The process is documents-based, with possible meetings or site visits.

Adjudicator Fees

An adjudicator nomination fee usually applies, often paid by the referring party. The adjudicator has the right to determine how their costs, fees and expenses incurred during proceedings are paid by each party, regardless of whether the adjudicator resigns or the referring party stops the adjudication before the decision is reached. Whilst the unsuccessful party generally pays the adjudicator’s fees, this is not always the case. The parties remain jointly and severally liable for payment of the adjudicator’s costs, fees and expenses.