



Summary Adjudication – Designed for disputes of £20,000 and under.

Frequently Asked Questions (FAQs) Posed by applicant and respondent parties

1. What is the difference between Low Value Adjudication and Summary Adjudication?

The Covid-19 crisis is impacting even more severely on the smaller end of the market than we had realised. There are many contractors who are just not being paid, and who cannot afford even the reduced cost of the 'standard' LVD MAP process.

RICS has designed a summary version of the LVD MAP service for claims below £20 000 to meet this need. The aim will be to deliver a summary decision, with outline reasons only, within fourteen days of referral. There will be no inspection or site visit involved and the fee will be capped at £1000 + VAT. If either party wants full reasons, they will be able, at their own expense, to ask the adjudicator to produce them.

2. I have made an application for the Summary Adjudication, but the appointed Adjudicator has resigned because the matter is considered to be too complex. I have paid £300 for the application do I have to pay an additional £425 for the RICS Construction Adjudication nomination.

Because you have made an application to RICS through the summary adjudication and paid £300, DRS will only charge a standard re-nomination fee for the Construction Adjudication which is £212.50. DRS will need to make this charge to cover administration of the new nomination.

We may nominate the same adjudicator who was previously nominated, or an alternative adjudicator.

3. I made an application for a summary adjudicator and I have made a mistake in the notice of adjudication (such as naming the wrong party as respondent). RICS has not yet nominated an adjudicator. What do I do?

If RICS has not made the nomination, we will ask the referring party (applicant) to issue a fresh, amended, notice to the respondent and forward a copy to us. In effect, the referring party should treat the adjudication as starting afresh. We will provide the adjudicator with a copy of the revised notice before confirming the nomination.

4. I have made an application for a summary adjudicator. RICS has nominated an adjudicator, but I have made a mistake on the notice what do I do?

The contents of a notice of adjudication sets the parameters of an adjudicator's jurisdiction, i.e. it sets out the matters the adjudicator is empowered to decide on. If the notice is fundamentally flawed, and the parties do not agree to amend it after the adjudicator has been nominated, the referring party may need to start the process afresh, i.e. issue a new, revised, notice and apply again to RICS for a nomination. It is likely, in most cases, that RICS will nominate the same adjudicator as before.

RICS will normally charge an additional fee for a re-nomination that is made as a result of the referring party's error. The charge will be 50% of the normal application fee, i.e. £150 inclusive of VAT for summary adjudication cases.

5. How do I initiate the adjudication process?

Before an adjudicator is nominated, the party starting the process, known as the referring party, will issue a notice on the other party (the notice of adjudication). The notice of adjudication essentially puts the other party on notice that there is a dispute and that the referring party intends to refer the dispute to adjudication

The contents of the notice of adjudication must:

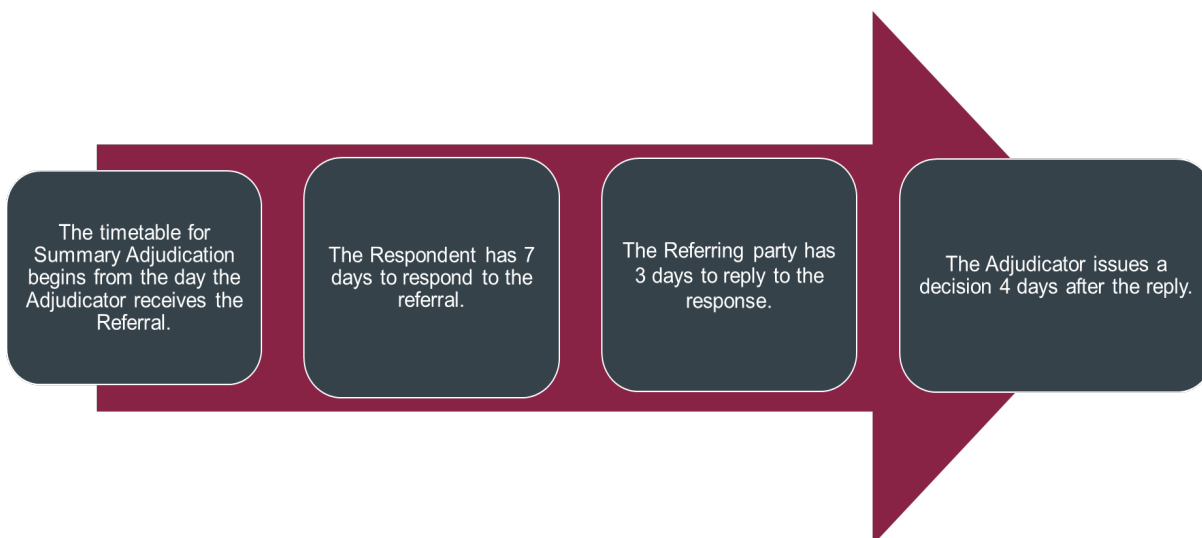
- say who the parties are,
- describe the contract/works
- describe the dispute
- state what decision the referring party wants the adjudicator to make

Important note: the adjudicator cannot decide any matter that is **not** in the notice of adjudication. e.g. the adjudicator cannot decide any counter claim by the respondent (the respondent can, if it wishes, refer a counterclaim to a separate adjudication).

6. What happens when I have been told by RICS that a summary adjudicator has been nominated in my case?

Subject to the adjudicator deciding otherwise, the timetable for the adjudication will normally be as follows:

Within 7 days of issuing the notice of adjudication, the Referring Party will send its referral notice to the adjudicator.



7. What should be included in the Referral Notice?

This is essentially the referring party's submission of its case, setting out what the dispute is about, the outcome the referring party is seeking and the evidence it relies on to support its case. It should include:

- a copy of the Notice of Adjudication,
- the Contract,
- details of the circumstances giving rise to the dispute,
- the reasons why it is entitled to the redress sought,
- the evidence upon which it relies.

The referral notice should include an index which sets out what documents are in the referral and where the Adjudicator can find each document, or section of document

8. How do I refer a dispute after the adjudicator is nominated?

To start an adjudication, you must issue a notice of adjudication on the other party to the dispute (see Question 6 for details of required contents of the notice). Once a notice is issued, the timetable for the adjudication starts and you have 7 days to refer the dispute to the adjudicator. In practice, most notices of adjudication extend to between 1-5 pages. The document should be signed and dated, and it must be communicated to the other party. This can be done electronically.

It is advisable to request RICS to nominate an adjudicator as soon as possible after you have sent the notice of adjudication to the respondent, ideally on the same day, but do not before the notice has been sent. Once RICS receives your request to nominate an adjudicator, we have 5 days to source someone who is willing to act and is suitably qualified and impartial, and to communicate their identity and contact details to you. Once you know who the adjudicator is, you should submit your referral notice to him/her. This needs to be done within 7 days of the date on which you issued the notice of adjudication on the respondent.

9. What is the difference between Construction Adjudication and the Summary Adjudication?

Under UK law (The Construction Act) any dispute arising out of a commercial building contract can be referred to the decision of an independent adjudicator.

The Construction Act sets out a broad procedure for the adjudication and prescribes a 28-day timetable.

In recent years adjudication has evolved into a complex, legal, procedure that has placed increasing demands on time, resources and money, to the extent that many small and medium sized business have felt it was too complicated and costly to use.

Summary Adjudication follows the example set by Construction Industry Council Low Value Dispute Module Adjudication Procedure (CIC LVD MAP) which is a procedural framework that helps those involved in smaller disputes, e.g. where the amount claimed is less than £50,000.

Summary Adjudication has been designed by RICS as an even more accessible service to support the needs of the construction industry during the Covid-19 pandemic. The procedure draws on the power adjudicators have under the Construction Act to decide procedural and evidential matters. Where a dispute is suitable, e.g. the amount of the claim is low and the issues are not complex, the adjudicator will direct that the procedure will follow the schedule set out at Q.6 above, and a decision will be made within 14 days, or thereabouts

10. What will the nominated adjudicator expect me to do?

If you are the referring party, the adjudicator will expect you to explain what payment you believe you are entitled to, why you believe you are entitled to it under the contract, how you have gone about claiming it from the respondent, and how that claim has developed into a dispute. The adjudicator will expect you to back up the facts or events which you are relying on for payment with any appropriate supporting documentary evidence, and to supply extracts from the contract showing the terms which you are relying on for your claim.

If you are the respondent, the adjudicator will want to understand whether you accept or deny all or part of the referring party's claim. Where you have declined to pay the referring party, the adjudicator will expect you to set out points of mitigation. The adjudicator will also expect you to back up your position with evidence.

Note: the burden is on the referring party to prove its case.

The adjudicator will require both parties to adhere to the timetable that is set in his/her directions.

11. How long does it take for the adjudicator to make the decision?

The Adjudicator shall reach their decision within 14 days from the date they receive the referral.

12. What happens if the adjudicator exceeds the 14-day period?

If the adjudicator is prevented from issuing his decision due to the fault one or both parties, then the adjudicator can continue and make a decision within 28 days. They can allocate any extra fees to the party or both parties, who caused the delay. If both parties and the adjudicator decide the dispute warrants more than 14 days, they can agree how much more time is needed and how much additional fees should be paid. If the reason the decision is not made in 14 days lies with the adjudicator, then they are not able to charge any additional fees.

13. Will decision come to me as the applicant?

The adjudicator's decision will be provided to both sides. It will be in writing and will contain only summary (very brief) reasons for the adjudicator's conclusions

14. I am not represented, what should I do?

Both parties are free to instruct lawyers or other professional representatives at any stage of the adjudication. A key aim of summary adjudication is to make the process of adjudication straightforward and accessible to non-technical and non-legal people, thus reducing the need for professional representation.

If a party considers it helpful to have a professional representative, the adjudicator will communicate directly with the parties and copy such communications to the professional representatives. Each Party shall bear its own legal and other costs incurred in connection with the adjudication.

15. Can RICS provide the names of an adjudicator representative?
We can help by suggesting someone who is experienced in adjudication and may be able to provide advice and other professional support
16. Can I represent myself?
Yes, you can. You should consider carefully whether it would be prudent to instruct a professional to support you at any time, e.g. to prepare/review your notice of adjudication or part or all of the evidence you intend to submit to the adjudicator
17. Do the representatives provide reduced rates?
A party will be responsible for instructing their own professional representation and agreeing their terms of reference and fees
18. Is there anyone I can get guidance from?
RICS can put you in touch with a qualified adjudicator who can advise and guide you. This would not be the same person who will be nominated as adjudicator in your case.

Questions around the adjudicators fee

1. What happens if the matter settles before the decision is made?
The adjudicator will be entitled to be paid a reasonable amount for work carried out to the point where the matter has settled. This will usually be covered in the adjudicator's terms of reference, which will be agreed and signed by the parties shortly after the adjudicator is nominated
2. Who pays for the adjudicator's fee?
Summary adjudication will follow the rule of the LVD MAP where the parties can agree to each pay half of the Adjudicator's fees. The fee is fixed at £1000 excluding VAT, and this enables the parties to know the amount they may be liable for. The Parties shall be jointly and severally liable for the Adjudicator's fees and expenses.
3. The Adjudicator may direct a Party to pay all or part of the fees and expenses. Under English Law a general rule is that costs follow the event, accordingly the Adjudicator shall apply that principle when deciding which Party will pay the Adjudicator's fees and expenses, and in what proportion. If the Adjudicator makes no such direction, the Parties shall pay the adjudicator's fees in equal shares. The adjudicator will contact the referring party normally at around day 10 or 11 to request payment of the fee, at the summary rate. Payment will be required by day 14.
4. What if the referring party does not pay the summary process fee of £1000 + VAT as required?
The adjudication then reverts to the standard Construction Act 28 day process, with full reasons being given and the adjudicator's full fees being charged.

Can the respondent step in at this stage and pay the summary fee if the referring party does not do so?
Yes, so long as the fee is paid to the adjudicator by day 14.

5. I have received a decision from an adjudicator on the summary service, is it binding?
The Adjudicator's decision shall be binding. The same dispute can later be referred to legal proceedings, or arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) and this may result in the decision being overturned.

The Adjudicator will provide only very brief reasons with the decision, unless both parties agree that they require full reasons. This will incur additional fees.

The decision must be adhered to in the interim and can be summarily enforced

6. I am not happy with the decision of the adjudicator; can it be put forward again for adjudication with a different adjudicator?
No
7. I am not happy with the decision of the adjudicator; can I appeal the decision?

An adjudication agreement is binding immediately and must be given effect to in the interim. If a party takes action to enforce an adjudicator's decision, the court will not normally look at the substantive dispute afresh. It will only be concerned as to whether the adjudication was carried out correctly and fairly and, if so, it will enforce the decision.

The same substantive dispute can later be re-examined through litigation or arbitration, if there is an arbitration clause in the parties' contract