



# Adjudication under the Construction Act

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Leeds

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# Adjudication – Starting Point

- ▶ My name is Bob Davis
- ▶ I am a Chartered Surveyor
- ▶ I am a Chartered Arbitrator
- ▶ I am a Mediator
- ▶ I am an Accredited Adjudicator
- ▶ I have conducted in excess of 300 adjudications
- ▶ My subject today covers construction Adjudication



# Adjudication – what you need to know

- ▶ The primary legislation
- ▶ Why it was introduced
- ▶ What disputes can be adjudicated
- ▶ The concept of a construction contract

# Managing an adjudication

- ▶ The beginning of the Process
  - ▶ The Rules
    - ▶ The notice of intention to refer to adjudication
    - ▶ What is it you are referring
    - ▶ What form should a notice take
    - ▶ What are the essentials to be incorporated
    - ▶ Let's use the **Scheme** as our base



# The Notice of Adjudication

- ▶ What is the Scheme
- ▶ The scheme in its entirety can be located at: <http://www.opsi.gov.uk/si/si1998/19980649.htm>
- ▶ Paragraph 1(3) establishes what a compliant notice must incorporate
  - (a) the nature and a brief description of the dispute and of the parties involved,
  - (b) details of where and when the dispute has arisen,
  - (c) the nature of the redress which is sought, and
  - (d) the names and addresses of the parties to the contract (including, where appropriate, the addresses which the parties have specified for the giving of notices).



# Appointing your Adjudicator

- ▶ Paragraphs 2 to 6 of the Scheme provide the different ways to appoint the adjudicator
- ▶ Make sure you get it right as failure to follow the correct procedure can void the whole process
- ▶ Does it matter who the adjudicator is, do you want a say in the appointment, are you happy to leave it to an appointing body
- ▶ The appointing body contacts the potential adjudicator
- ▶ What does the adjudicator do when he is approached

# The Appointment

- ▶ How is the adjudicator appointed
- ▶ The adjudicator's agreement, what is it and why is it important
- ▶ What does the adjudicator do after he is appointed
- ▶ How does he communicate with the parties to the dispute
- ▶ What if the Respondent objects to your appointment

# The Referral

- ▶ When is it to be served
- ▶ Does it matter if it is served out of time
- ▶ What should it contain
- ▶ Should the referring party address its opponents case
- ▶ What does the adjudicator do when he receives it



# The Adjudicators Dilemma

- ▶ The referral is out of time
- ▶ There are obvious matters in the referral which may affect his jurisdiction
- ▶ The referring party has used the wrong appointing body
- ▶ You find that your firm has previously worked for a sister company to that of the referring party, does it matter
- ▶ Whilst reading the referral you note that reference is made to one of your golfing friends, does it matter
- ▶ The referring party appoints legal representatives who have appointed you as an independent expert in another unrelated matter, does it matter.

# The Adjudicator's Powers

## ▶ Powers of the adjudicator

▶ Paragraph 12 of the Scheme records.

▶ The adjudicator shall -

- a) act impartially in carrying out his duties and shall do so in accordance with any relevant terms of the contract and shall reach his decision in accordance with the applicable law in relation to the contract; and
- b) avoid incurring unnecessary expense.

# The Adjudicator's Role

- ▶ He decides the dispute
- ▶ He is impartial whilst carrying out his duties
- ▶ He carries out his duties in accordance with any relevant terms of the contract
- ▶ He reaches a decision in accordance with the applicable law in relation to the contract
- ▶ He avoids unnecessary expense
- ▶ Simple

# Timetable and Procedure

- ▶ In most cases this is decided by the adjudicator
- ▶ There may be express contract terms to be followed
- ▶ How much time is available
- ▶ What typically would be included in an adjudication procedure
- ▶ How do you fit it all in
- ▶ What about natural justice
- ▶ Do you care about natural justice

# Matters affecting the Procedure

- ▶ Jurisdictional challenges, what are they, what types exist
- ▶ How are they dealt with
- ▶ What if the Respondent does not participate in the adjudication
- ▶ Should you hold a meeting
- ▶ Should you allow expert evidence
- ▶ What if new evidence is provided during the process which one party has not seen before
- ▶ What if parties don't comply with your directions
- ▶ What do you do if the referring party does not grant you additional time
- ▶ What happens if your decision is late

# The Decision Making Process

- ▶ All submissions are submitted
- ▶ You have held a meeting
- ▶ You have to reach a decision
- ▶ What are the issues in dispute
- ▶ If in doubt ask the parties
- ▶ Don't decide matters which are not in dispute

# Decision Making

- ▶ The burden of proof
- ▶ Competing evidence and facts
- ▶ Interpretation of the law
- ▶ How do you test disputed facts and evidence
- ▶ Decide whose factual evidence is to be preferred
- ▶ Apply the decided facts to the decided law
- ▶ Decide the issue
- ▶ Repeat this process for all disputed issues and sub-issues

# Decision - Reasons

- ▶ The purpose of reasons
- ▶ Are you entitled to receive reasons
- ▶ Reasons-v-reasoning
- ▶ Do you have to request reasons



# The Decision

- ▶ Style
- ▶ What should be included
- ▶ What about the adjudicators fee
- ▶ What about the parties costs
- ▶ What is the status of the Decision

# What next for the Adjudicator

- ▶ Publish and be damned
- ▶ Correction of slips
- ▶ Request for clarification from a party
- ▶ What if you find you have made an error
- ▶ What if your decision is not enforced

# R J Davis

▶ Contact me with any queries

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