

## EXPERT COMMENT: TOP TEN TIPS FOR ADJUDICATION

Whilst it is the subject of a number of complaints, adjustments and refinements and not the simple DIY process as first envisaged, Adjudication has been successful.

It is rough and ready justice, but it's quick, if not that cheap, and very few disputes progress beyond the provisional but binding decision of the Adjudicator.

Choosing to Adjudicate seems a better and cheaper alternative to litigation; so how do you give yourself the best chance of success?

**1** Ensure the Contract is a qualifying Contract: almost all Contracts associated with a construction project, even those with consultants, and, since the LDEDCA 2009, contracts that are NOT in writing, are qualifying contracts. The HGCRA1996 gives parties to a construction Contract a right to Adjudicate at any time.

**2** Check the rules for Adjudication applicable to the contract. If none are specified, the Scheme for Construction Contracts applies, but some contracts have their own rules relating to the Adjudicator or the nominating body, time, length of the Referral, nature of what is to be submitted and who pays the costs, for instance.

**3** The Adjudication process begins when the party referring the dispute to Adjudication gives written notice of its intention to do so; the Notice of Adjudication. It should briefly set out the following:

- a description of the nature of the dispute and the parties involved;
- details of where and when the dispute arose;
- the nature of the remedy being sought;
- names and addresses of the parties to the contract, including addresses where documents may be served.

Ensure the Notice contains all the above and asks the Adjudicator to consider all the things you want, and that it will produce the outcome you desire. Be careful how this is phrased, as the Adjudicator cannot do anything other than set out in the Notice.



**4** If starting Adjudication, don't simply launch into a claim. If it is the appropriate method, begin by putting all your grievances in a letter to your opponent and ask for the money you want and explain why. Prepare your evidence and the statement of your case (the Referral) including witness statements BEFORE issuing the Notice. The time frame is tight from issuing the Notice to serving the Referral (7 days); don't get caught rushing the claim or missing deadlines due to premature Notice.

**5** Make sure the Notice complies with the requirements of the contract. Ensure it will do what you require and is clear and concise. The Notice gives the Adjudicator his remit; he cannot act outside what is referred to him in the NOTICE. Remember it is what is in the Notice, not in the Referral, that determines what the Adjudicator can do. Ensure it relates to only one dispute. It may encompass several elements but cannot relate to several disputes. If the claim is large, it may be best to bring several adjudications, each dealing with separate aspects of the project or the account claimed.

**6** If you receive a notice of Adjudication, don't ignore it or delay responding. The decision of an Adjudicator is final and binding unless and until overturned by a Court or Arbitrator's decision. Your Response must be collated and served usually within 7 days. Ensure you include any jurisdictional challenges and your defense to the claim, together with any

counterclaim, providing all evidence in support. The Adjudicator will make his Award based on what is in front of him; you cannot complain that "if he had asked for it, I would have given it him". It is rough justice done quickly (28 days) and decisions of the Adjudicator, even if wrong, will be upheld by the Courts.

**7** If making the Referral or responding, ask the Adjudicator for his reasons in writing. If you challenge the veracity of the appointment of an Adjudicator, tell him in writing quickly. If he decides to proceed, you should take part, but say it is without prejudice to your position regarding his appointment and ensure you reserve your right to raise your position on jurisdiction during any enforcement process.

**8** Referring or Responding - make it easy for the Adjudicator; keep it simple; make your claim in orderly manageable sections, identify the evidence and support the value.

**9** If you need more time, don't count on it, but ask for it. If referring, allow extra time for the Adjudicator to decide (the Referring party can give him 14 days; any more, and it needs both parties to agree) and more time for the Responding party, reserving the right to Reply to any Response and in a similar time.

**10** Remember the Adjudication process will cost you time and money; ensure that the Respondent has the money to pay any Award and the Adjudicator's fees.

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## Further information

For more information and to discuss how Taylors can add value to your project, contact:

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### Key Construction Industry Services:

- Procurement
- Contract drafting and approval
- Project planning and tendering
- Dispute resolution, including mediation and expert determination
- Adjudication
- Arbitration and litigation
- Professional terms of engagement
- Bonds
- Warranties
- Guarantees and sureties
- Letters of intent
- Claims avoidance
- Infrastructure projects
- Project funding
- Liability issues

### About Taylors:

Taylors Solicitors is a dynamic and highly experienced commercial law firm with offices in Manchester and Blackburn, Lancashire.

We provide a range of commercial legal services and are committed to providing the highest quality service through a real understanding of our clients' business priorities and requirements and a common sense and commercial approach.

