

Adjudication information sheet



Insurance for your reputation



Adjudication information sheet

The Housing Grants, Construction and Regeneration Act 1996 introduced adjudication as a form of dispute resolution for disputes arising out of construction contracts. The Act was recently amended by the Local Democracy Economic Development and Construction Act 2009.

Adjudication is now a well established form of dispute resolution procedure and the “rules of engagement” have been refined through numerous High Court decisions.

Above all else, adjudication is a rapid form of dispute resolution using the services of an independent, impartial third party adjudicator to decide the issues between the parties. The 1996 Act requires an Adjudicator’s decision to be reached within 28 days, subject to any agreed extension of time.

The Construction Act, which was incorporated via the Local Democracy Economic Development and Construction Act 2009 (by Part 8) changed the position so that the Act applies to all construction contracts, whether written, part- written or oral.

This means a party to a construction contract can now refer a dispute to Adjudication.

A construction contract can make provision for adjudication and if it does not, a statutory adjudication scheme (as amended) will apply.

The decision of an Adjudicator does not finally determine a dispute. The disputing parties are free to refer their dispute to litigation through Court proceedings or arbitration. They can also agree to resolve their differences by reaching agreed terms

of settlement.

In practice, many parties have chosen not to re-litigate their dispute following an adjudicator’s decision.

Your responsibilities

Regardless of whether the parties do decide to re-litigate their dispute, the Adjudicator’s decision should be complied with and the High Court will almost always enforce an Adjudicator’s decision.

Always be vigilant when reviewing the terms of your appointment and check the terms of an adjudication clause.

Professional Indemnity Insurers do not generally permit policyholders to allow an Adjudicator’s decision to be final and binding without further reference to litigation, arbitration or some other form of resolution.

The adjudication procedure is sometimes used in complex professional negligence actions but it is not necessarily designed for such cases. The speed of the process can sometimes lead to imperfections or unsatisfactory decisions.

Professional Indemnity Insurers wish to preserve the option to re-litigate the dispute. Consequently, it is a condition of your Professional Indemnity Insurance policy that you do not agree (whether in an appointment agreement, or during the course of, or after adjudication proceedings) to accept the decision of an Adjudicator as finally determining a dispute with no further reference to legal proceedings, arbitration or alternative dispute resolution.

Failure to comply with this condition will entitle your Insurers to refuse to provide cover under the policy.

In this context, you should ensure your appointment agreement does not place any conditions upon the timing of the commencement of legal or arbitration proceedings.

You should be aware of the changes to the Adjudication procedure related to payments, for example, so called ‘Tolent’ clauses are now prohibited unless there is a written agreement after referral of a dispute to adjudication in relation to fees. The parties may also agree in their construction contract that the adjudicator has the power to allocate costs.

There are several other matters to consider when reviewing adjudication provisions in appointment agreements. These are listed below.

Although it is not a condition of your Professional Indemnity Insurance policy to ensure the adjudication clause in your appointment agreement covers these matters, they are, nonetheless, prudent measures to take.

The adjudication clause should make it clear that whoever is to be nominated as the Adjudicator will be an individual who is independent of the contracting parties.

Notification of adjudication

The adjudication clause and/or the adjudication procedure will not allow the Adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial considerations.

The adjudication clause and/or the adjudication procedure should require the Adjudicator to provide reasons for his decision.

Adjudication is an extremely rapid form of dispute resolution. You cannot afford to delay or ignore a notice of adjudication against you.

As a result of the limited time in which you and your Insurers have to react to an adjudication, the timescale for notifying your Insurers of adjudication proceedings is tight and strict.



“The 1996 Act
requires an
adjudicator’s decision
to be reached within
the parties.”

Failure to comply with the notification requirements in your Professional Indemnity Insurance policy could leave you without support and policy cover from your Insurers. The following policy requirements apply:

You must give immediate notice to CIAT Insurance Services of any notice of intention to refer a dispute to adjudication or of circumstances where you become aware that a dispute is likely to be referred to adjudication and where you are likely to be named as a responding party to those adjudication proceedings. The requirement of immediate notice is strict. The maximum time permitted is two working days.

You must provide CIAT Insurance Services with full written details of the dispute being referred to adjudication together with copies of all related correspondence and documents. These details are to be provided to CIAT Insurance Services within two working days of receipt or awareness of the same.

The policy conditions require you to provide full, expeditious co-operation to CIAT Insurance Services and to any solicitor appointed by CIAT Insurance Services. You are required to comply with all their reasonable requests and in particular, those relating to response times (whether set by them or the Adjudicator) and any subsequent challenge to the Adjudicator’s decision.

The very tight time constraints involved in responding to adjudication proceedings means that you should be prepared to set aside large amounts of time to assemble relevant documentation, make relevant personnel available to meet with CIAT Insurance Services and/or solicitors appointed by them, and review witness statements and draft submissions for the

purposes of the adjudication procedure, often at short notice and usually working to tight deadlines.

Your PI insurance policy requires notification to:

CIAT Insurance Services
Barlow House
Minshull Street
Manchester
M1 3DZ

T: 0161 236 2532
F: 0161 236 2583

**Contact the CIAT
Insurance Services team
to discuss your PI
arrangements:**

T: 0161 236 2532
W: www.ciat-insurance.co.uk



Manchester - Barlow House, Minshull Street, Manchester, M1 3DZ
T: 0161 236 2532 F: 0161 236 2583 Email: info@ciat-insurance.co.uk Web: www.ciat-insurance.co.uk
CIAT Insurance Services is a division of McParland Finn Ltd. McParland Finn Ltd is authorised and regulated by the Financial Conduct Authority.

Registered in England No. 2817700. Registered Office: Barlow House, Minshull Street, Manchester, M1 3DZ