

# Acting as an Adjudicator: 99 point checklist

This checklist refers to the applicable legislation comprising the Construction Contracts Act 2013 and the Code of Practice Governing the Conduct of Adjudications published by the Department of Jobs, Enterprise and Innovation 2016.

## On receipt of an enquiry to adjudicate

1. If the enquiry is from the nominating body, e.g. Construction Contracts Adjudication Service (CCAS), identify anything to be responded to.
2. If the enquiry is from a party, make a record of the contact and of any following discussion.
3. Promptly acknowledge receipt and reply with any requested information.
4. Consider if there are any conflicts of interest, then confirm none or otherwise.
5. Check your availability, allow for the possibility of a time extension, then confirm or otherwise.
6. If not provided, request a copy of 'Notice of intention to refer the dispute to adjudication'.
7. Review the nature, complexity and value of the dispute and consider if it is within your expertise.
8. Compile your fee proposal and issue with your terms of business for agreement by the parties.

## Upon confirmation of the appointment

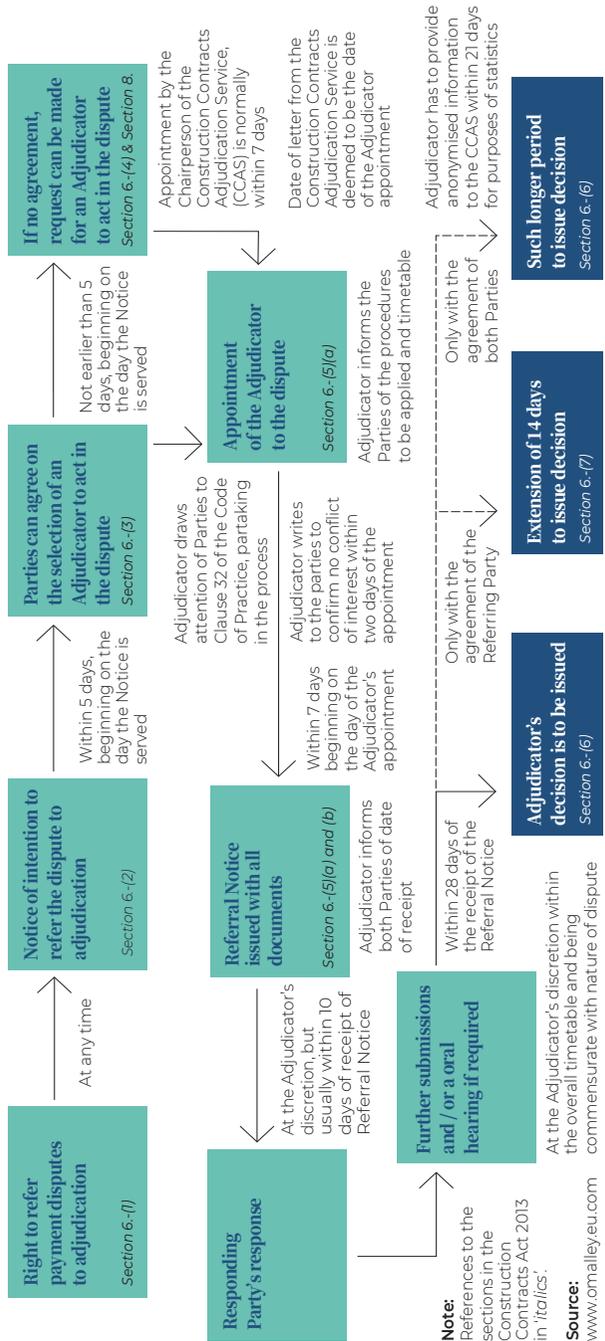
9. Promptly acknowledge receipt of the Notice, date and time, to both parties, being day 1 for reckoning.
10. Check the Notice complies with the legislation.
11. Check Notice has been issued to the Respondent.
12. Check the dispute is not exempt under the Act.
13. Check the names of the parties in detail.
14. Check you have received all the documents then download into a single folder.
15. If appointed by the CCAS confirm there is no conflict of interest within 2 days of appointment.
16. Draw the Parties attention to Clause 32 of the Code of Practice, partaking in the process and conduct.
17. Issue directions as to the procedures to be applied, including, if required, length of written documents.
18. Issue directions to confirm the adjudication timetable.
19. Determine the 28 day default decision issue date.
20. Confirm how submissions are to be provided, e.g. 'Documents issued in electronic form only'.
21. Check the names and details of representatives.
22. Advise how meetings will be conducted, in person, and/or by conference call or video conference.
23. Confirm the method of communication, e.g. 'By e-mail, always copied in to both parties'.
24. Advise that you will expect the Referral in 7 days and state the date.
25. Propose the date for an oral hearing, which can be cancelled later if not required.
26. If your terms are not agreed, confirm you will work to your previously issued terms.

## On receipt of the 'Referral' from the Referrer

27. Check that the Referral has been received within 7 days of issue of the Notice, day of receipt is day 1.
28. Promptly acknowledge receipt of the Referral, date and time to parties, re-confirm date for Response.
29. Check you have received all the documents, download into a single folder.
30. Your jurisdiction is limited by the Notice, check that the Referral falls within that jurisdiction.
31. Check that the dispute is a 'payment dispute'
32. Is there a jurisdictional issue, if so is it threshold or procedural, ask parties for comment before making a non-binding decision.
33. If the procedural jurisdiction is substantive to the decision seek the agreement of the parties to address jurisdiction in the decision.
34. Check the Referral has been issued to Respondent.
35. Check the contract, are there any adjudication provisions and, if so, have they been amended.
36. Check that any contractual adjudication provisions are compliant with the Act.
37. Check the date of the contract to ensure that it does not pre-date 25 July 2016, being prior to Act.
38. If considered necessary, discuss an extension of time to the adjudication timetable with the parties.
39. Re-confirm the dates for Response, Reply, cut-off date for additional information and decision date.
40. Ask for submissions by 5.00pm on the dates set out, or you may receive them at midnight.
41. Start writing up procedural matters on receipt of Referral, it helps with thinking through the process.
42. Ensure the procedure adopted is commensurate with the nature and value of the payment dispute.
43. Apply reasonable endeavours to process the dispute in the shortest time and at lowest cost.
44. Promptly notify Parties of any matter that will slow down or increase the cost of the determination.

## On receipt of 'Response' from the Respondent

45. Has it been served in accordance with the agreed timetable?
46. Promptly acknowledge receipt of the Response, date and time to both parties, re-confirm the date you expect to receive the Reply.
47. Check you have received all the documents, download into a single folder.
48. Check contact details are consistent with the Referral.
49. Liaise with the parties on whether the oral hearing is required, cancel if not necessary.



**Timeline for adjudication under the Construction Contracts Act 2013**

- 50. Check carefully for jurisdictional issues, they can often be hidden.
- 51. Start to formulate the substantial issues to be addressed within the decision.

**On receipt of the 'Reply' from the Referrer**

- 52. Has it been served in accordance with the agreed timetable?
- 53. Promptly acknowledge receipt of the Reply, date and time to both parties.
- 54. Check you have received all the documents, download into a single folder.
- 55. Be aware that you may receive a request from the Respondent to submit a Rejoinder.
- 56. Seek comments from both parties when considering whether to accept a Rejoinder.
- 57. Make the decision on Rejoinder and advise parties.
- 58. You may then receive a request to submit a Surrejoinder from the Referrer.
- 59. If there is a Rejoinder and a Surrejoinder ensure you have enough time to formulate your decision.
- 60. You may wish to suggest that the Referrer considers an extension up to 14 days.
- 61. An extension longer than 14 days will require the consent of both parties.

**On working through the 'Decision'**

- 62. Write up the details of your appointment early.
- 63. A brief background to the dispute always assists.
- 64. Write up the procedural issues as they occur, it's easier than trying to recollect them later.
- 65. Use the procedural narrative to record jurisdictional and other matters, ideally 'by agreement between the parties'.
- 66. Confirm the contract and where the authority to adjudicate originates under the legislation.
- 67. Confirm 'the right to invoke adjudication'.
- 68. Where witness statements have been provided, list them in the submissions section.
- 69. Where case authorities are included, list them in the submissions section.
- 70. Thank the representatives for their assistance during the adjudication process.
- 71. The decision must include reasons unless the Parties agree otherwise in writing.
- 72. Always include a reference note that any monetary sums are exclusive of VAT, where this is the case.
- 73. Always re-check the redress sought by the parties.

- 74. State the substantive issues with clarity and make a definitive determination on each issue.
- 75. Draft the decision to ensure it is cogently reasoned, complete, consistent and certain.
- 76. Determine the facts, apply the law to the facts, allocate liability and then determine quantum.
- 77. If appropriate make a summary of the determination of the substantive issues.
- 78. Write your reasoning section primarily for the unsuccessful party.
- 79. Write your dispositive section primarily for the successful party.
- 80. Tables provide clarity, particularly for quantum.
- 81. Always have clear logical sectioned headings and numbered paragraphs.
- 82. If you include a contents page, check it against the section headings and the pages at the end.
- 83. Always record the time you have expended, it may be requested in evidence of your time and fee.
- 84. Detail how you have determined your fee, with reference to your earlier issued terms.
- 85. Always include a note on the joint and several liability of the parties for your fees.
- 86. Confirm that 'all issues have been considered and any other claims in connection with this adjudication are dismissed'.

**Prior to and after the issue of the 'Decision'**

- 87. Check your calendar well in advance of issue.
- 88. Make time to proofread and always spell check, check and re-check any calculations.
- 89. Re-check that the dispositive section is clear, eliminate any potential for doubt.
- 90. Sign, place and date the decision.
- 91. Seek to anticipate anything that could go wrong in your own timetable for the issue of the decision.
- 92. Issue the decision mid-afternoon, not at midnight.
- 93. Check your account against your issued terms.
- 94. Always include your account with the issue of the decision under a covering letter or e-mail.
- 95. Remind the parties there is a short period after issue to correct clerical or typographical errors.
- 96. After issue you cannot reconsider or re-open any aspect of the decision.
- 97. Plan to address an error, ensure you are available.
- 98. If it is not an obvious error, consider inviting comment and agreement from the parties.
- 99. Provide anonymised information to the CCAS, for use in statistics, within 21 days of the decision.