

Report on 2021 CIArb Annual Conference on the Construction Contracts Act 2013

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For what has now become our flagship event, the 'CCA 2013 Conference', organised by Maebh Gogarty and Danyal Ibrahim of our Young Members Group (YMG), was held on 14 July 2021, with over 100 delegates in attendance. The Conference was opened with an introduction from our Chair, Billy Morrissey, who talked about adjudication as an increasingly popular method of resolving disputes, where there are opportunities for those who are prepared to work hard. In summary, Billy advised that it is best to avoid adjudication if you can. However, if you do proceed to adjudication always try and agree an adjudicator and be prepared for a fast and adversarial process.

The introduction was followed by the keynote presentation from the new Chair of the Construction Contracts Adjudication Service (CCAS), Bernard Gogarty, who took up office on 1 July 2021. Bernard advised that there is a great debt owed to the outgoing Chair of the CCAS, Dr Nael Bunni, acknowledging his work as a leading ADR practitioner worldwide. Apart from elaborating on his role as the new Chair, Bernard took the opportunity to announce his intention to hold a forum later this year to discuss adjudication, together with possible amendments, additions to the Act and the supporting Code of Practice.

The first subject presentation was made by Dermot Durack, the Secretary of the Branch, with a discussion from the Referrer's perspective in the importance of assisting the adjudicator by preparing an easily comprehensible submission. Helping the adjudicator 'solve the puzzle' through clarity of documentation with a clear path of navigation and a sanity check before submission, were emphasised by Dermot as essential steps.

Mary Liz Mahony then followed with an interesting presentation

from the Respondents point of view. Mary Liz advised that there was no longer any excuse for being surprised or failing to anticipate adjudication, as it is now established as part of the construction process. The Response should be carefully considered and before introducing any counter claim, it should be asked if it would be more effective to have this advanced through a separate adjudication. Mary Liz explained that any Response should be fully comprehensive, you cannot rely on having 'another bite of the cherry', take control and do not ignore any warning signs. Mary Liz closed by saying that the Response should be written with the overall objective of demonstrating why the Referral must fail.

Martin Waldron, the immediate past Chair of the Branch, provided a brief review of the most recent jurisprudence made through the handful of recent decisions that have been handed down, advising that whilst this provides some guidance, it equally also raises some questions.

After a short break, Fiona Egan made a presentation on the court rules, in particular the recent Practice Direction HC 105 which came into force on 26 April 2021, confirming the support of the High court for the interim, binding nature of adjudication decisions. Fiona advised that the announcement of Justice Simons, as the presiding judge for adjudication matters, will hopefully result in a consistency of adjudication enforcement decisions. In summarising, Fiona felt that these measures should make the enforcement of an adjudicator's decision more expedient, being in support of the objective of the Act, to provide early decisions and maintain cashflow.

David McCarthy then provided a presentation on the three most important steps for the Referrer, namely the Notice to Adjudicate, the Referral Notice and representations on challenges/observations. David

explained that the Notice to Adjudicate will set out the jurisdiction of the adjudicator whilst also defining the dispute that the adjudicator must decide. In respect of the Referral Notice, David suggested that it should be clear, concise, logical, substantiated, and supported with witness statements as required. Finally, David advised that adjudication moves at a frenetic pace where you must be ready to make any jurisdictional challenges quickly, or otherwise risk losing the opportunity.

The final presentation of the day was from Jarlath Kearney, the Chair of the Northern Ireland Chapter of the Irish Branch. Jarlath provided some interesting insights based on the 22 years of experience since the enactment of the adjudication legislation in Northern Ireland, advising that even now there are many people who are unaware of the rights and protections provided by the Act. Jarlath spoke about the variety of nominating bodies in Northern Ireland and the resultant inconsistency of standards. Jarlath advised that these difficulties should not occur under the CCA 2013, which has the benefit of the CCAS in support.

The final session was a round table discussion, moderated by Peter O'Malley, involving a panel of four leading adjudication practitioners, Gerry Monaghan, Denise Kennedy, Keith Kelliher and Martin Cooney. The panel questions served to provoke some passionate responses particularly in relation to adjudication tactics, commercial considerations, scale of dispute and debate on seeking to have greater consistency and transparency for adjudicator fees.

The conference was closed with some final remarks from Billy Morrissey including thanks to the organisers, Maebh Gogarty, Danyal Ibrahim and Jennifer Crowther for their excellent work in delivering this years' conference.