

Acting as an Ajudicator: 99 point checklist

This checklist refers to the applicable legislation and the Code of Practice Governing the Conduct of Adjudications published by the Department

www.peteromalley.ie

Oı	n receipt of an enquiry to adjudicate		On receipt of the 'Referral' from the Referrer	
1.	If the enquiry is from the nominating body, e.g.		27. Check that the Referral has been received within 7	
	Construction Contracts Adjudication Service		days of issue of the Notice, day of receipt is day 1.	
	(CCAS), identify anything to be responded to.		28. Promptly acknowledge receipt of the Referral, date	
2.	If the enquiry is from a party, make a record of the		and time to parties, re-confirm date for Response.	
	contact and of any following discussion.		29. Check you have received all the documents,	
3.	Promptly acknowledge receipt and reply with any		download into a single folder.	
	requested information.		30. Your jurisdiction is limited by the Notice, check that	
4	Consider if there are any conflicts of interest, then		the Referral falls within that jurisdiction.	
	confirm none or otherwise.	_	31. Check that the dispute is a 'payment dispute'	
5	Check your availability, allow for the possibility of a			
٥.	time extension, then confirm or otherwise.		or procedural, ask parties for comment before	_
6	If not provided, request a copy of 'Notice of		making a non-binding decision.	
Ο.				
7	intention to refer the dispute to adjudication'.		·· -·	_
/.	Review the nature, complexity and value of the		decision seek the agreement of the parties	
_	dispute and consider if it is within your expertise.	_	to address jurisdiction in the decision.	_
8.	Compile your fee proposal and issue with your		34. Check the Referral has been issued to Respondent.	_
	terms of business for agreement by the parties.		, , , , , , , , , , , , , , , , , , , ,	
			provisions and, if so, have they been amended.	_
Upon confirmation of the appointment			36. Check that any contractual adjudication provisions	_
9	Promptly acknowledge receipt of the Notice, date		are compliant with the Act.	
٥.	and time, to both parties, being day I for reckoning.			
10	Check the Notice complies with the legislation.		does not pre-date 25 July 2016, being prior to Act.	
	•		<u> </u>	
	Check Notice has been issued to the Respondent.		time to the adjudication timetable with the parties.	
	Check the dispute is not exempt under the Act.		39. Re-confirm the dates for Response, Reply, cut-off	
	Check the names of the parties in detail.		date for additional information and decision date.	
14.	. Check you have received all the documents then		40. Ask for submissions by 5.00pm on the dates set	
7.5	download into a single folder.		out, or you may receive them at midnight.	
15.	If appointed by the CCAS confirm there is no		41. Start writing up procedural matters on receipt of	
	conflict of interest within 2 days of appointment.		Referral, it helps with thinking through the process.	
16.	Draw the Parties attention to Clause 32 of the Code	Ш	42. Ensure the procedure adopted is commensurate	
	of Practice, partaking in the process and conduct.		with the nature and value of the payment dispute.	
17.	Issue directions as to the procedures to be applied,		43. Apply reasonable endeavours to process the	
	including, if required, length of written documents.		dispute in the shortest time and at lowest cost.	
18.	Issue directions to confirm the adjudication		44. Promptly notify Parties of any matter that will slow	
	timetable.		down or increase the cost of the determination.	
	Determine the 28 day default decision issue date.			
20	. Confirm how submissions are to be provided, e.g.		On receipt of 'Response' from the Respondent	
	'Documents issued in electronic form only'.		officecipt of Response from the Respondent	
	Check the names and details of representatives.		45. Has it been served in accordance with the agreed	
22	. Advise how meetings will be conducted, in person,		timetable?	
	and/or by conference call or video conference.			
23	. Confirm the method of communication, e.g. 'By		date and time to both parties, re-confirm the	
	e-mail, always copied in to both parties'.	_	date you expect to receive the Reply.	
24	. Advise that you will expect the Referral in 7 days		47. Check you have received all the documents,	\neg
	and state the date.		download into a single folder.	_
25	. Propose the date for an oral hearing, which can be		48. Check contact details are consistent with the	_
	cancelled later if not required.	_	Deferral	

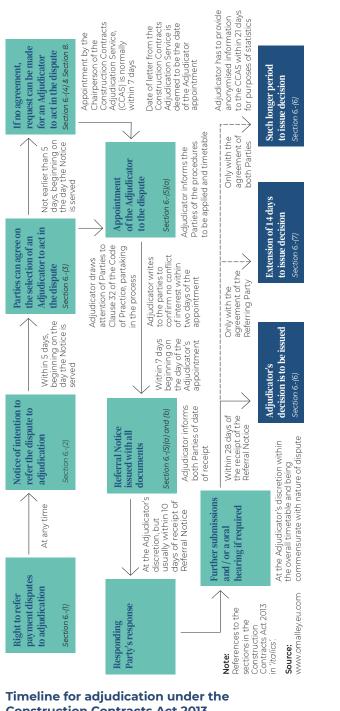
Referral.

49. Liaise with the parties on whether the oral hearing

is required, cancel if not necessary.

to your previously issued terms.

26. If your terms are not agreed, confirm you will work



Construction Contracts Act 2013

50. Check carefully for jurisdictional issues, they can often be hidden.		74. State the substantive issues with clarity and make a definitive determination on each issue.	
51. Start to formulate the substantial issues to be addressed within the decision.		75. Draft the decision to ensure it is cogently reasoned, complete, consistent and certain.	
addressed within the decision.		76. Determine the facts, apply the law to the facts,	
On receipt of the 'Reply' from the Referrer		allocate liability and then determine quantum.	
	_	77. If appropriate make a summary of the	
52. Has it been served in accordance with the agreed		determination of the substantive issues.	
timetable?		78. Write your reasoning section primarily for the	
53. Promptly acknowledge receipt of the Reply, date		unsuccessful party.	
and time to both parties.	_	79. Write your dispositive section primarily for the	
54. Check you have received all the documents,		successful party.	
download into a single folder.		80. Tables provide clarity, particularly for quantum.	
55. Be aware that you may receive a request from the		81. Always have clear logical sectioned headings and	
Respondent to submit a Rejoinder.		numbered paragraphs.	
56. Seek comments from both parties when		82. If you include a contents page, check it against the	
considering whether to accept a Rejoinder.		section headings and the pages at the end.	
57. Make the decision on Rejoinder and advise parties.		83. Always record the time you have expended, it may	
58. You may then receive a request to submit a		be requested in evidence of your time and fee.	
Surrejoinder from the Referrer.		84. Detail how you have determined your fee, with	
59. If there is a Rejoinder and a Surrejoinder ensure		reference to your earlier issued terms.	
you have enough time to formulate your decision.		85. Always include a note on the joint and several	
60. You may wish to suggest that the Referrer		liability of the parties for your fees.	
considers an extension up to 14 days.		86. Confirm that 'all issues have been considered	
61. An extension longer than 14 days will require the		and any other claims in connection with this	
consent of both parties.		adjudication are dismissed'.	
On working through the 'Decision'			
		Prior to and after the issue of the 'Decision'	
62. Write up the details of your appointment early.		87. Check your calendar well in advance of issue.	
63. A brief background to the dispute always assists.		88. Make time to proofread and always spell check,	
64. Write up the procedural issues as they occur, it's		check and re-check any calculations.	
easier than trying to recollect them later.	_	89. Re-check that the dispositive section is clear,	
65. Use the procedural narrative to record jurisdictional		eliminate any potential for doubt.	
and other matters, ideally 'by agreement between		90. Sign, place and date the decision.	
the parties'.		91. Seek to anticipate anything that could go wrong in	
66. Confirm the contract and where the authority to		your own timetable for the issue of the decision.	
adjudicate originates under the legislation.		92. Issue the decision mid-afternoon, not at midnight.	
67. Confirm 'the right to invoke adjudication'.		93. Check your account against your issued terms.	
68. Where witness statements have been provided, list		94. Always include your account with the issue of the	
them in the submissions section.	_	decision under a covering letter or e-mail.	
69. Where case authorities are included, list them in		95. Remind the parties there is a short period after	
the submissions section.		issue to correct clerical or typographical errors.	
70. Thank the representatives for their assistance		96. After issue you cannot reconsider or re-open any	
during the adjudication process.		aspect of the decision.	
71. The decision must include reasons unless the		97. Plan to address an error, ensure you are available.	
Parties agree otherwise in writing.		98. If it is not an obvious error, consider inviting	
72. Always include a reference note that any monetary		comment and agreement from the parties.	
sums are exclusive of VAT, where this is the case.		99. Provide anonymised information to the CCAS, for	
73. Always re-check the redress sought by the parties.		use in statistics, within 21 days of the decision.	