



Adjudication

Your Top 10 Most Commonly Asked Questions



PJE International Ltd
Construction Law Specialists



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When it comes to construction disputes, the most common solution used is adjudication.

But what is it exactly? How does it work? Perhaps most importantly, will it work in your favour?

In the 35 years I have been helping subcontractors with adjudications, I have repeatedly come across the same questions.

So I thought it would be useful to put together this brief guide.

That way, you too can get a clearer understanding of what is involved.

If after reading it you decide an adjudication is the right way forward for you, feel free to call my legal team on 0116 288 2003 to discuss your particular case.

I hope you find my guide useful.



PJE English

Peter English
FRICS FCIArb FCIOB
Managing Director
PJE International Ltd

Question 1:

How can I benefit from adjudication?

If you find yourself in a dispute with a main contractor, the last thing you want is it dragging on for months if not years!

That is why adjudication was introduced to provide a quick and cost-effective way to resolve disputes in construction.

Put simply, an adjudication allows you to put your case before a judge called an adjudicator.

The whole process takes only 28 days, unless you and the other side agree to an extension.

The adjudicator's decision is then binding and enforceable unless overturned by an arbitrator or the courts.

But the adjudicator's decision is usually enforced by the courts, so it is more than likely his decision will stand.

"PJE International have helped me to recover more than £70,000 in bad debts that was owed by Main Contractors"

Jeff Madine, Southern Glass Services Limited, Southampton

"PJE International got us £94,000 in withheld amounts by just writing two letters – great!"

John Cox, Commercial Manager, Aeropark Limited, Southampton

Question No. 2

When can I start an adjudication?

You can start an adjudication at any time you want to under the Housing Grants, Construction and Regeneration Act 1996.

However, before starting an adjudication, you may find it beneficial to discuss the cause of the dispute with the other side.

Question No. 3

Can I start an adjudication if my contract doesn't say I can?

Yes, you can.

Just because the main contractor has given you a contract that does not say you can go to adjudication in the case of any disputes, does not mean they can block your way to using adjudication.

In fact, to comply with the Construction Act, their contract must contain certain provisions about adjudication.

If the contract only contains some or none of these provisions, you can use the adjudication procedure set out in the Scheme for Construction Contracts (England & Wales) Regulations.

So one way or the other, you will be able to adjudicate your dispute.

Question No. 4

How much does an adjudication cost?

This is one of the most common questions we get asked and although adjudication is one of the most cost-effective ways to resolve disputes, there is no standard cost we can give for all adjudications.

That is because the overall cost of an adjudication depends on a number of factors such as the



complexity of the dispute and the amount of work involved in ensuring your case is presented in as strong a light as possible.

There are three areas of cost that you will need to address:

1. The cost of legal advice and any other professional advice sought to support your claim
2. The adjudicator's fees and expenses
3. The nomination fee for the Adjudicator Nomination Body, unless you are a member of a Trade Association that offers free nominations (such as the NSCC)

Question No. 5

Who pays for the adjudication?

Again this is one of the most common concerns for our clients, especially if they are already adjudicating over non-payment and are worried about finding the cash for additional legal costs.

In terms of legal fees, contracts usually state that both sides have to pay their own costs and legal expenses in preparing their case for adjudication.

This means that even if you win the case you will not be able to recover these costs.

Legal services we can help you with include:

- Advice on dispute avoidance
- Review of contract terms and conditions
- Review of documents and procedures
- Adjudication and dispute resolution
- Advice on ways to get paid
- A monthly helpdesk retainer scheme



But don't be fooled by a clause in your contract that says if you start an adjudication you will have to pay both sides' costs.

That is because these clauses are now illegal and cannot be enforced against you.

When it comes to the adjudicator's fees and expenses, he usually decides that the unsuccessful party has to pay.

However, this is not always the case and if the losing party goes insolvent and refuses to pay, the adjudicator has a right to claim what he is owed from the side that won the case.

Question No. 6

What should I do if I receive a Notice of Adjudication?

If you receive a notice of adjudication, you should contact our legal advisers at PJE International immediately.

That is because you will have to respond to the other side's claims in a proscribed and timely manner.

So whatever you do, do not ignore the Notice of Adjudication.

Question No. 7

How do I start an adjudication?

If you want to start an adjudication against another party, you will need to give them written notice of your intention to refer the dispute to adjudication.

This 'Notice of Adjudication' is a formal document that sets out the issues that you want the adjudicator to consider, so it is essential it includes key information, such as a description of the dispute and the remedy you are seeking.

Your PJE International legal adviser can ensure that all the relevant details are included to maximise the chance of your claim being successful.

Question No. 8

What happens after the Notice of Adjudication has been issued?

Once the Notice of Adjudication has been issued by either party the whole process is quite rapid. The person issuing the Notice of Adjudication will have only 3 to 4 days to appoint an adjudicator and a maximum of 7 days to submit the Referral notice to the other party and the adjudicator.

The Referral must again give a clear account of your case and contain key details to maximise your chance of success. The adjudicator has 28 days from receiving your Referral to decide the case.

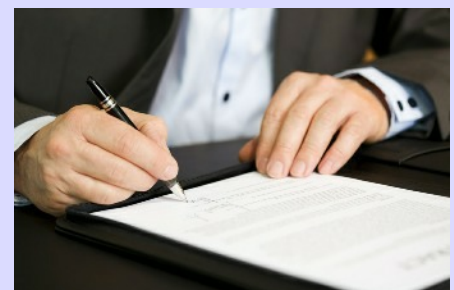
The responding party will have to send the referring party and the adjudicator a Response to the Referral within the period of time decided by the adjudicator (usually 7 to 14 days) in order for the adjudicator to consider both sides of the dispute.

"This was our first adjudication and we had to defend costs of approximately £40k and any adjudicator fees. We won the case and we can't recommend PJE International highly enough."

**Jo Singer, Company Secretary,
Hillside Contracts Limited, Leicester**

We also provide in-house training in:

- Commercial awareness
- Designing for profit
- Estimating for profit
- Basic site management
- Basic construction law
- Getting the money in
- Changes to the Construction Act



Question No. 9

What do I do if the other party doesn't accept the adjudicator's decision?

So the adjudicator decides in your favour and everything looks like it will be finally sorted out.

But then the other party doesn't comply with the decision and refuses to pay you. What can you do about it?

Well, the good news is that you can enforce the decision by going to court and applying for what is called 'summary judgment'.

Only in very rare cases do the courts not decide to support the adjudicator's original decision.

What is more, when successful, you can usually claim around 70% of your legal costs of enforcement from the other party. So in most cases, it is well worth pursuing the matter further.

Question No. 10

What if the adjudicator gets it wrong?

It may seem strange but it makes no difference if an adjudicator follows the wrong procedure, misinterprets the law or even misunderstands the facts of the case - his decision is still binding.

The idea being that if you disagree with his decision, you can still take the matter further in the courts or through some other form of dispute resolution.

It is all down to the fact that adjudication was designed as a quick fix judgment solution to avoid unnecessarily costly and lengthy disputes.

An adjudicator's decision will only be unenforceable in two situations:

- 1) where it can be shown that he carried out the adjudication unfairly or
- 2) where he had no jurisdiction to decide the matter



Where do I go from here?

Hopefully, you have found this guide useful for deciding whether adjudication is for you and how the whole process works.

However, if you are facing a dispute and would like some advice on your own specific situation please don't hesitate to contact us on 0116 2882003.

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