

Adjudication

What are the advantages of adjudication?

- As a 28-day procedure, it offers a speedy means of resolving disputes, and the TCC's procedure for the enforcement of adjudicators' decisions is equally rapid.
- Adjudication aims to limit disruption and cash flow problems, as disputes may be referred "at any time", thereby allowing a party to speed up the resolution of an issue that may otherwise have jeopardised or disrupted performance of the contract. The tight timetables often ensure that work can continue while the dispute is resolved.
- Adjudication is usually cheaper than litigation or arbitration, as preparation costs are inevitably curtailed by the tight timetable (and each party generally bears its own costs).
- It promotes fairness, as the relative cost-effectiveness of adjudication balances out the financial inequalities between the various parties to construction operations. It provides a speedy and alternative remedy for sub-contractors who, faced with non-payment or unjustified deductions, would otherwise face insolvency, or have to pursue payment through the courts.
- Adjudication proceedings are private, unless the adjudicator's decision is subsequently the subject of enforcement proceedings. There is some debate as to whether they are also confidential.
- A party can choose who adjudicates its dispute, a luxury not available to court users. It may choose a non-lawyer adjudicator with particular expertise in the subject-matter of the dispute (for example, an architect or a quantity surveyor).
- Unless the terms of the contract specify a particular adjudication procedure, the parties are generally free to choose which adjudication procedure will apply. Adjudication procedure rules allow the parties more flexibility than the Civil Procedure Rules (CPR).

What are the disadvantages of adjudication?

- The tight timescales of the adjudication procedure may mean that an adjudicator is rushed into making a "rough and ready" decision on a matter of considerable legal or factual complexity. This may lead to injustice, and court proceedings may be necessary to right that injustice, leading to duplication of legal costs.
- Adjudication costs are not usually recoverable in the adjudication or in subsequent litigation.
- Unlike court proceedings, which usually require the parties to comply with certain pre-action steps, in arbitration a referring party may take a responding party by surprise (although this could also be used as a tactical advantage).
- A responding party who pays money to a referring party in accordance with an adjudicator's decision that is subsequently reversed by arbitration or litigation may be unable to recover the money paid if, in the meantime, the referring party has become insolvent or gone into administration.
- The adjudicator has no free-standing power to award interest and can only do so in limited circumstances.
- The short timescales involved can leave the parties with insufficient time to investigate the claims or to produce full submissions. They also risk giving the adjudicator insufficient time to consider the material fully before reaching his decision.
- resent "standing costs" without a clearly defined return, particularly if the dispute board consider few or no disputes. The parties are jointly liable for the direct costs of the board members, plus any additional time spent resolving disputes.
- The same board members hear all disputes between the parties, meaning that issues of confidentiality may arise.
- The determination may be nothing more than a compromise between the parties' positions.

- The board’s enquiry is limited and takes place without the opportunity for a proper, judicial examination of evidence. Determinations therefore run the risk of being factually or contractually incorrect or amounting to the board imposing their own ideas on the parties.
- The process is a “claims review” rather than strict dispute resolution, since the board generally gets involved late in the process, after one party has prepared a detailed claim.
- The referral of a dispute to the courts or arbitration can generally only take place when the dispute has been through the

dispute review board process, which may not be cost-effective. This can be a particular issue where a dissatisfied party is escalating a dispute to the court or arbitration, and related disputes arise, which cannot be considered by the court or arbitrator until they have also been through the dispute review board process.

- The process is perceived as contractor-friendly.
- A dispute review board’s determination cannot be enforced like an arbitration award, instead any failure to comply is usually dealt with through arbitration or litigation

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