
LOW VALUE DISPUTES UNDER THE CIC LVD MAP GUIDANCE ON THE RECENTLY LAUNCHED ADJUDICATION PROCEDURE.

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As an update to our September 2019 article concerning low value dispute resolution schemes, the Construction Industry Council (CIC) launched its Low Value Disputes Model Adjudication Procedure (CIC LVD MAP) on 1 May 2020 by Webinar. This included presentations by Nick Raynsford Chairman of CICAIR, Niall Lawless Chair of the CIC ADR Management Board and Fergus Harradance, Deputy Director for Construction, Department for Business, Energy and Industrial Strategy (BEIS).

Developed by the CIC in conjunction with a number of leading industry bodies, this new procedure has been designed to encourage the use of adjudication on disputes relating to a value up to a limit of £50k. There are ten Adjudicator Nominating Bodies who can be approached for the appointment of Adjudicators, including the RICS.

In 1994 the Latham report on the state of the UK construction industry was immensely critical, describing the industry as being so rife with disputes that any solution would be welcome. Housing Grants, Construction and Regeneration Act 1996 (“the Construction Act”) was enacted in 1998 in response to the report and subsequently amended by the Local Democracy Economic Development and Construction Act 2009, which was introduced in 2011.



One of the key recommendations by Latham was for a quick and simple procedure to resolve disputes. This was enshrined in S108 of the Construction Act. The intention was to enable “bite sized” disputes to be settled early and quickly by Adjudicators, most of whom were industry professionals, without delaying the progress of works and without the immense involvement of lawyers and the courts.

Adjudication has been hugely successful in terms of the number of disputes that are resolved using the process, with a vast reduction in arbitration and litigation.

With the evolution of adjudication there has been an increase in the complexity and costs involved in the process with some seeing it as being ‘mini litigation’. Parties costs are not, in general, recoverable and the legal complexities concerning jurisdiction and other challenges mean that most parties require some level of legal advice.

In recent years, the legislative frameworks have become convoluted and harder for firms to understand, and thus use the adjudication process, which disincentives many parties from using adjudication. It has been described by

some as 'onerous and time consuming'. It has been suggested within the industry that adjudication no longer provides a cost-effective process, typically where the value of claim is less than £30k therefore, for many low value disputes, it was simply not worth pursuing it through adjudication.

The CIC LVD MAP sought to address this by developing an industry wide procedure for adjudicating disputes of less than £50k, that do not involve multiple or complex issues, is Construction Act compliant, and is supported by BEIS. That procedure is the CIC LVD MAP, which provides parties with a straightforward structure and programme to manage lower value disputes.

The CIC LVD MAP Rules provide for a streamlined and cost-effective process, under which:

- An Adjudicator, who is an expert in the subject matter in dispute, will be nominated and will use his expertise to decide the matter within 28 days;
- The Adjudicator is expected to limit the length, or time for submission of any statement, response or argument;
- The parties are required to limit their documents to no more than one A4 lever arch file (or electronic equivalent) per submission; The parties are able to represent themselves;
- Decisions are temporarily binding unless and until the dispute is decided at litigation or arbitration;

- Adjudicators fees are fixed, and range from £2k for disputes up to £10k to £6k for disputes between £25k and £50k;
- All participating Adjudicator Nominating Bodies have an agreed uniform fee for nominating an adjudicator of £250.

The CIC LVDP MAP can either be incorporated into the Contract directly by reference or, alternatively, the Parties may agree to use the procedure on an ad-hoc basis when a dispute arises.

Currently, the CIC LVD MAP is not incorporated into standard forms of contract such as those published by JCT or NEC. If you do wish to have the option of using this procedure then, subject to legal advice, it is likely that an amendment along the following lines will need to be added into the contract, together with a definition for 'Low Value Dispute':

The Parties agree that any Low Value Dispute arising from a Contract for the carrying out of construction operations may at any time be referred to adjudication in accordance with the CIC LVD MAP.

There is currently an increasing level of interest in this procedure as parties recognise the benefits it can provide in dealing with low value and less complex disputes.

Stuart Andrew is a member of the RICS Panel of CIC LVD MAP Adjudicators and can provide further information on request.

MORE INFORMATION

If you would like to find out more details about any of the subjects covered in this Ebriefing please contact DGA Group through the contact details below or at DGAGroup@dga-group.com

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