

BEST PRACTICE IN CONSTRUCTION ADJUDICATION by CHSpurin

The Construction Umbrella Bodies Adjudication Task Group has now produced two guides to Adjudication. One for Adjudicators published in 2002 and now most recently, a User's Guide to Adjudication. Both guides are available for downloading and printing from the Construction Industry Council web site www.cic.org.uk

The Adjudicator's guide to best practice provides good clear common sense guidance which if followed will ensure that the most glaring pitfalls of conducting an adjudication are avoided. The User's Guide, whilst not rocket science provides in 25 pages, a useful outline of the process for the industry. It is unlikely to replace the need for specialist advice, but if read by those who most need it in the industry and followed, will ensure that the parties to construction disputes have a clearer idea of what the process is about and how to initiate adjudication proceedings.

Topics covered include:-

- What is adjudication?
- Establishing a right to adjudicate
- Do I need professional help?
- Starting adjudication
- Replying to a notice of adjudication
- What happens next?
- The adjudicator's decision
- The cost and who pays
- What do I do now?
- Where do I go for further information or assistance?
- Text of s108 HGCRA
- List of ANBs.

Whilst old-hat for adjudicators and professional advisors, it is well worth guiding clients and potential parties to adjudication to the guideline, not least of all because less time would then need to be spent covering basics. My only criticism would be that the Guide advises that there may be no need for professional advice unless the dispute involves complicated technical or legal issues. It is submitted that what is or is not a live legal issue may not be apparent to the lay-person. The advice on carefully compiling a reference or response is spot-on, but how can the uninitiated carefully prepare legal claims and defences without a knowledge and understanding of relevant legal issues, particularly when one realises that often one or other or the parties to a construction dispute has never even bothered to read the original contract properly in the first place? We have all had to deal with clients who are convinced that the law is with them when the reality is quite different.

Self help and "pro se" representation in such instances would be a recipe for disaster. This is not to say that a QC should be retained for every little dispute, but, good quality advice is available at a reasonable price and it is submitted, at a price that is well worth paying.

Whilst construction adjudication started out as a rather rough and ready process, it is rapidly becoming a highly legally refined process. The wording of the notice of intention can be crucial to the jurisdiction of the adjudicator. Ask the wrong question and you may not like the answer, or it may be one, which is of little use to you. It may even open the door to unwanted counterclaims. Being economical with the truth in a submission may cause problems, but lay persons frequently only see their own concerns and could easily fail to understand the importance of putting the whole of a matter to the adjudicator. These are but some of the reasons why advice should be sought by anyone who does not have a good working understanding of construction law, contract interpretation and adjudication practice. That said, however, well done to the Construction Umbrella Group for an excellent, jargon free guide which will render wider accessibility to construction adjudication to the smaller construction firms that do not have their own in house legal teams. Lets just hope that they get to know about and actually read the guidelines. That unfortunately, is something which is far from certain.

It is clear that adjudicator's would be well advised to follow the advice of the Umbrella Group on best practice in adjudication. The number of successful challenges against adjudicators for breach of the rules of natural justice, particularly to provide a fair hearing, to consider all sides of the argument, to permit access to all materials and charges against a party and to afford an opportunity to challenge such materials and charges mounts weekly. In *Pring & ST Hill Ltd V C J Hafner T/A Southern Erectors* : [2002] EWHC 1775, TCC 31 July 2002 an adjudicator found against a contractor and in favour of the employer in respect of welding splatter damage to newly installed windows. The contractor sought through adjudication to recover these losses from sub-contractors. The same adjudicator was appointed. Exercising their rights under paragraph 8(2) of the Scheme for Construction Contracts the subcontractors objected to the appointment, fearing prejudice due to the adjudicator's prior knowledge. The adjudicator nonetheless went ahead promising full disclosure, which he could not deliver because of the private nature of the previous adjudication. The adjudicator relied upon his previous award in determining damages. The court refused enforcement.