

RAMSKILL MARTIN

Adjudication

1. Introduction

From the 1 May 1998 most contractors, sub-contractors and others involved in the construction industry have been able to have disputes resolved by means of adjudication under the Housing Grants Construction and Regeneration Act 1996, Commonly referred to as the Construction Act. It has been said that this Act is the most significant piece of legislation to hit the industry for decades. Adjudication is generally considered to be a success for the construction industry and certainly, since its introduction, there have been thousands of disputes which have been resolved in this way.

Adjudication is intended to be much quicker and more cost effective than litigation or arbitration. A decision can be reached within 28 days from receipt of the first documents by the adjudicator, although this timescale is often extended to 42 days and sometimes to a longer period in complex disputes.

Adjudication as a process has developed significantly since May 1998 and although it can still be a very cost effective and much quicker method of resolving disputes than other procedures, all involved now need to be aware of the procedures which have developed following around 200 decisions of the courts on adjudication.

ramskill martin has experience in over 250 adjudications involving sums from £5k-£3m. Some of these disputes have been relatively straight forward payment disputes, but many have been complex disputes including interpretation of contract terms and conditions, delay and disruption and valuation of variations and final accounts. ramskill martin has in house practising adjudicators who have made many decisions and well understand the procedure and standards that need to be met to be successful in this process.

2. Procedures in Adjudication

To be successful in adjudication it is essential that your case is prepared in detail setting out the position in facts, evidence and rights and obligations. It is also essential that all this is sent to the other side before an adjudication commences. If this procedure is not adopted there is a high risk that any decision would not be enforced, should this be necessary, or an adjudicator will not allow documents or arguments to be included in an adjudication which the other side has not previously seen and has not been given the opportunity to consider. See our Service Profile on Commercial and Contractual Claim Preparation for details of some of the procedures to adopt which are necessary for starting off on an adjudication. ramskill martin can help in all aspects of the adjudication process including the following:

- Crystallisation of the dispute
- Establishing that there is a right to adjudication, dealing with jurisdictional issues
- Preparing analyses and assembling evidence
- Preparation of Referral or Response and other submissions
- Dealing with correspondence, arguments and meetings during the adjudication process
- Advising on procedures following the issue of the Decision to ensure payment

3. Adjudication - A Different Approach

While ramskill martin is able to deal with adjudication at any level, it is aware that adjudication can be a time consuming and costly process for both Parties. With this in mind, we consider adjudication to be a tool that is not the only way of resolving disputes in the construction industry. It does, however, give teeth to arguments where, because of the time and cost of other procedures, many contractors or sub-contractors were effectively deprived of any remedy. Many involved in the construction industry are aware of this and often if a claim or position statement is prepared to a standard required in adjudication, then this will encourage a Responding Party to settle claims or accounts without the need for the formal process.

The standard required to be successful is not easy to achieve, but providing preparation meets the standards required, ramskill martin find that most disputes are settled without resorting to the formal adjudication process.