Improving Quality in Adjudication - Keynote Address delivered to the Chartered Institute of Civil Engineering Surveyors Annual Commercial Management Conference on 25/06/2025

Introduction:

It is an honour to have been asked to give this year's keynote address on improving quality in adjudication and I thank the organisation team for ensuring that it did not clash with my birthday or Royal Ascot last week!

The title of my paper "Improving Quality in Adjudication" could leave some to presume that quality is an issue. Conversely, adopting an elite mindset, the desire to improve quality may be seen as an eternally unfulfilled goal or endeavour.

The adjudicator's perspective

Adjudication is, without doubt, now a cornerstone of dispute resolution within the UK construction industry. Originally introduced as a swift, interim remedy to preserve cash flow and encourage project continuity, it now faces the challenge of balancing efficiency with procedural fairness and technical integrity. As those of us who practice as adjudicators, we are at the intersection of those legal, technical, and practical challenges, continually tasked with delivering swift and procedurally fair resolutions to construction disputes. The role requires, at all times, neutrality, decisiveness, and the ability to understand and manage complex issues under pressure.

However, while the adjudication process has brought clear benefits to the industry, there always remains room for improvement, particularly in how we prepare and support those who deliver decisions. Primarily focusing on my domestic experience, this paper briefly examines the historical development, current state, and potential improvements to the quality of adjudication.

Why adjudication was introduced

Adjudication was introduced largely to address endemic problems in the construction industry, most notably late payment and prolonged dispute resolution following the 1994 Latham Report, *Constructing the Team*, which advocated for a fast and fair process to reduce adversarial conflict in the construction sector. It was, of course, formalised in the UK under the Housing Grants, Construction and Regeneration Act 1996 ("Construction Act"), providing parties with a statutory right to adjudicate disputes at any time. The process was designed to be fast, cost-effective, and accessible, ensuring that projects could continue without being derailed by unresolved claims. Although initially designed to address payment disputes, adjudication has now evolved to encompass a wide array of disputes and we regularly see the dispute world triumvirate of complex time, money and quality matters being referred to adjudication. Further reforms in 2011, through amendments to the Construction Act, amongst other things, prohibited "Tolent" clauses which unfairly shifted all adjudication costs to one party, and imposed sanctions on payers who failed to comply with their payment notification obligation, with the aim of enhancing procedural fairness.

Adjudication has since been adopted or adapted in jurisdictions including Australia, New Zealand, Singapore, Ireland, and parts of Canada, to name but a few, with Hong Kong set to introduce its own statutory adjudication framework in August 2025.

Current performance and trends

Adjudication, for the most part, works. Indeed, its widespread use over the last 27 years and international adoption speaks to its very success. The most recent report from 2024 by King's College London and the Adjudication Society presents an encouraging picture of adjudication's uptake and effectiveness:

- **Volume of Referrals**: A record 2,264 adjudications were referred between May 2023 and April 2024, marking a 9% increase from the previous year.
- **Judicial Oversight**: Only 219 cases have been reviewed by the Technology and Construction Court (TCC) since October 2011, suggesting that adjudicators' decisions are rarely challenged in court.
- **Compliance**: Over half (52%) of respondents indicated they had not escalated adjudication outcomes to litigation or arbitration in the past year.
- **Claim Characteristics**: 42% of claims fell within the £125,000–£500,000 range.
- **Efficiency**: 48% of adjudications concluded within 29–42 days, aligning with the objective of speed.
- **Low-Value Disputes**: About 20% of adjudications used fast-track or low-value procedures, indicating accessibility for smaller disputes.

These findings reinforce adjudication's status as a mainstream and effective method of dispute resolution. Over now almost 30 years, the process has, as one would expect, matured. Many parties have become more sophisticated, the quality of submissions has improved, and adjudicators are, in many cases, increasingly experienced professionals. Despite this, challenges persist and criticisms about adjudicator performance are not uncommon.

Concerns about adjudicator performance

Concerns noted in the King's College London and Adjudication Society Reports over the last few years include inconsistency in the quality of decision-making, limited reasoning in some awards, poor management of the adjudication process, and perceived bias. Some of these issues may stem from gaps in training, lack of accountability, or simply the pressures of working within tight timeframes.

In 2024, 12 formal complaints were received by two Adjudicator Nominating Bodies (RIBA and RICS). Only one complaint was upheld. The four common grounds for complaint include:

1. Breach of Natural Justice
2. Conflicts of Interest
3. Excessive Fees
4. Incorrect Decisions

The relatively low number of upheld complaints may reflect robust standards, but also raises questions about transparency and accountability mechanisms. Indeed, many parties may not, unless the adjudicator's conduct is egregious (e.g. bias, misconduct, significant procedural unfairness), be confident that their dissatisfaction is "complaint-worthy" and inconsistencies in adjudicator quality may have become normalised, leading to lowered expectations of performance. Many ANBs lack a visible, easy-to-use complaint process or feedback system and so the lack of transparency and uncertainty around how they handle complaints can also discourage parties from initiating the process. As such, many may also assume that complaints will not meaningfully affect the adjudicator's standing or future appointments.

As we've acknowledged, adjudication is, at its core, meant to be fast and final. Once a decision is issued, the process is generally over. Complaining may seem like prolonging a process that was intended to be swift. Parties often prioritise keeping the project or payment process moving and may not wish to expend more time or legal costs pursuing a grievance post-dispute.

Understandably, dissatisfaction is often conflated with losing. Parties unhappy with the result may question the adjudicator's competence or fairness, but may also recognise that this is a natural reaction to an unfavourable outcome — not necessarily a valid ground for complaint. In equal measure, the party that receives a favourable decision has no incentive to raise concerns, even if the process was flawed.

Thoughts on improving the system

Enhancing the quality of adjudication is likely to require both institutional reform and professional development. My thoughts on enhancing the credibility and effectiveness of adjudication would include:

a. Academic Training

Adjudicators should be equipped with a solid academic foundation encompassing core subject areas relevant to their work. This includes construction law, contract law, dispute resolution processes, case management, legal reasoning, and decision writing. Presently, there is no standardised training pathway across adjudicator nominating bodies, leading to inconsistency in baseline knowledge. Introducing a formal academic curriculum, possibly through accredited postgraduate diplomas or CPD-certified courses, would ensure that all adjudicators possess the legal and procedural competencies required to conduct proceedings efficiently and produce high-quality, reasoned decisions.

Furthermore, practical elements such as decision writing and procedural management should be taught through case simulations and written assessments, mirroring the type of scenarios adjudicators will face. The goal is to professionalise adjudication by integrating both theoretical knowledge and real-world application.

b. Industry Knowledge and Practical Experience

Effective adjudication depends not only on legal acumen but also on a practical understanding of the construction industry. Adjudicators who have spent time "in the trenches" — either on construction sites or managing contracts — are better equipped to grasp the common commercial realities underlying disputes.

A minimum of 10 years' relevant experience should be established as a baseline, whether in legal practice specialising in construction or in a technical construction role (e.g., project manager, engineer, quantity surveyor, architect). This ensures that adjudicators have both the professional maturity and contextual awareness necessary to evaluate claims, contractual obligations, and technical evidence effectively.

c. Structured Pupillage and Vocational Development

There is a growing call for the need for more formal vocational training for adjudicators. Unlike judges or arbitrators, many adjudicators begin practice without structured legal or procedural education, leading to variability in decision-making quality. Currently, training is informal and left to the initiative of a few experienced adjudicators. In my view this needs to change.

Like used to be the norm in construction arbitration, to bridge the gap between academic training and independent practice, a formal pupillage scheme should be introduced. In order to qualify as an arbitrator, I had to enrol in a pupillage scheme with the CIArb where I was allocated a pupil-master who would then supervise my vocational training. As part of the process I was required to shadow three arbitrations, at least one of which involved a hearing addressing the substantive issues and draft directions and Awards. I also sat with a High Court judge in the Commercial Court in a 3-week fraud trial by way of "additional relevant experience". Applying that approach to adjudication, aspiring adjudicators could be required to observe live adjudications, independently draft decisions (with appropriate confidentiality safeguards), and receive structured feedback and sign off from experienced mentors. Such vocational training should be made a prerequisite to full accreditation, with a clear curriculum and competency-based assessments. Mandating this step would ensure consistent exposure to best practices and procedural rigour.

d. Tiered Accreditation and Regulatory Oversight

The current landscape of adjudicator qualification lacks uniformity. Some ANBs maintain their own criteria, but there is no central grading or regulatory framework. A tiered accreditation model similar to that employed by the Civil Mediation Council could provide clarity and progressive development. For instance:

Tier 3: Newly accredited adjudicators, permitted to handle low-complexity and/or value or single-issue disputes under supervision or guidance from a mentor.

Tier 2: Intermediate-level adjudicators with several completed cases and positive feedback or sign off, permitted to handle standard complexity disputes.

Tier 1: Senior adjudicators authorised to take on all dispute types, including those involving large-scale projects and complex contractual arrangements.

Progression through the tiers would be based on a combination of case experience, peer reviews, continuing education, and demonstrated competence. Additionally, a unified practising certificate, recognised by all ANBs, would establish industry-wide standards and simplify cross-recognition of qualifications. I accept that the detail and mechanics of a scheme would need some thought, but the concept of grading competence is not an unknown phenomenon.

e. Mentoring and peer review support

Even after accreditation, adjudicators benefit from ongoing structured support and feedback. A compulsory mentoring programme — where experienced adjudicators provide guidance to those in earlier career stages — can serve both as a quality assurance tool and a professional development mechanism.

Moreover, peer review systems, either through anonymised decision audits or panel reviews, could be introduced as part of an adjudicator's continuing professional development (CPD). This would not only help identify areas for improvement but also promote consistency across decisions, enhance the quality of reasoning, and reduce the incidence of poorly structured determinations.

f. Feedback and monitoring mechanisms

Continuous improvement requires effective feedback loops. Currently, there is no systematic mechanism for parties to provide structured feedback on adjudicator performance mechanisms and, those that do exist, are ad hoc and lack standardisation. ANBs should implement post-adjudication feedback forms, allowing parties and their representatives to comment on aspects such as clarity of communication, procedural fairness, timeliness, and quality of reasoning.

While not determinative of competence on their own, aggregated feedback could inform mentoring needs, training updates, or even disciplinary procedures in extreme cases. It also offers ANBs and regulators data-driven insights into systemic issues affecting the adjudication process.

Conclusion

Adjudication has established itself as a reliable and efficient form of dispute resolution and its consistent use over the last three decades is testament to it being "good enough" for countless construction disputes.

However, its continued success requires sustained investment in quality assurance. To maintain its relevance and integrity, we must invest in the development and regulation of those who deliver it with improved training, formal mentorship, regulation, and feedback mechanisms. With thoughtful reform and robust support, the role of the adjudicator can continue to evolve, meeting

the demands of a changing industry while upholding the fairness and efficiency that adjudication was designed to achieve.

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