MC MS Blog

Construction adjudication: time to raise the bar?

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In this week's blog, I'd like to share some of the key themes from the keynote address I had the privilege of delivering at the Chartered Institute of Civil Engineering Surveyors (CICES) Annual Commercial Management Conference last month. The overarching theme of the day was "Improving Quality," and my contribution focused specifically on "Improving Quality in Adjudication and Dispute Resolution." It's not only a topic close to my professional heart, but it also invites a broader reflection: *Do we, as an industry, genuinely believe adjudication needs improving, or has it simply become too convenient to throw mud at the rough-and-ready cousin in the dispute resolution family?*

Adjudication's origins: reform born of necessity

I think that, in order to appreciate where we're heading, it's always good to remind ourselves where we began. In the early 1990s, the construction sector was rife with problems — cash flow delays, adversarial contract management, and dispute resolution mechanisms that moved at a glacial pace. The 1994 Latham Report, *Constructing the Team*, diagnosed these issues and advocated for a dispute process that was both fast and fair. The result was statutory adjudication, (embedded, of course, through the **Housing Grants, Construction and Regeneration Act 1996)** and for the first time, construction contracts came with a built-in right to adjudicate at any time. It worked. Payment flows improved. Projects continued. Contractors and subcontractors got quicker answers. I think it's fair to say that adjudication gave the industry a lifeline.

Over time, adjudication, as we know, has expanded beyond payment issues to cover a wide array of disputes, including quality, delay, and scope, and its' persistent use since its inception in the UK is testament to its success. Adjudication is now part of the legal and commercial DNA of UK construction, but as it matures, so must the standards we set for those who practice it.

So where are we now?

Much was written at the time of publication about the **2024 report from King's College London and the Adjudication Society**, so I won't rehash too much again here, but I think it's important to remind ourselves of the encouraging picture it paints:

- A record 2,264 adjudications were referred between May 2023 and April 2024 — a 9% increase year-on-year.

- Over half of the respondents had not escalated adjudication outcomes to litigation or arbitration.

- 48% of adjudications concluded within the target 29–42 days.

- 20% of disputes used low-value, fast-track procedures, showing the process is accessible even to smaller players.

- Just 219 decisions have been subject to judicial review since 2011 — a testament to the system's reliability.

These statistics suggest a system that works. And, broadly speaking, it does. Adjudication is fast, it's accessible, and it's efficient. However, that doesn't mean there aren't grumbles.

Where it falls short

Behind the headline figures unfortunately lie recurring concerns about the quality of adjudicators and the consistency of their decision-making. Key criticisms raised in recent years include decisions lacking depth or clarity, mismanagement of process timelines, allegations of bias or procedural unfairness and perceived knowledge gaps, particularly in technical or legal reasoning.

In 2024, just 12 formal complaints were lodged with two leading Adjudicator Nominating Bodies (ANBs) - RIBA and RICS - and only one was upheld. That might suggest a high standard of conduct, but it also raises questions. Many parties, especially SMEs, may be unaware of how to raise concerns or reluctant to pursue a complaint in a process meant to be quick and final. What's more, the absence of an industry-wide, transparent feedback mechanism means that substandard performance may simply go unchecked.

Too often, I see that dissatisfaction is conflated with disappointment. A party may lose a dispute and grumble about the adjudicator, but often don't know whether or how to complain. But many may feel complaining is pointless, or too time-consuming to pursue in a system designed to be swift and final. Conversely, a party who wins, even if the process was flawed, has no incentive to complain.

This is not just about fairness. It's about maintaining trust, encouraging improvement, and preventing systemic decay.

Raising the bar

Improving adjudication is not a one-size-fits-all task. It will likely require institutional reform, professional development, and cultural change. To enhance its credibility and effectiveness, I believe there are several core areas which need to be addressed:

a. Academic training

Adjudicators should have a strong academic grounding in core areas such as construction and contract law, dispute resolution, legal reasoning, and decision writing. Currently, there's no consistent training pathway across ANBs, leading to varied levels of competence.

A standardised academic curriculum, via accredited postgraduate diplomas or CPD-certified courses, could establish a common foundation. Training should include practical components like case simulations and written assessments to build decision-writing and procedural management skills. The goal being to professionalise adjudication by blending theory with real-world application.

b. Industry knowledge and practical experience

Legal knowledge must be balanced with a sound understanding of the construction industry. Adjudicators who've worked on-site or in contract administration are simply better equipped to grasp commercial realities. I'd suggest a minimum of ten years' experience — either in legal practice focused on construction or in a relevant technical role such as engineering or quantity surveying — should be a benchmark. This ensures adjudicators have both contextual understanding and

professional maturity.

c. Structured pupillage and vocational development

Many adjudicators begin practice without formal vocational training, which contributes to inconsistent decision quality. I think this needs to change. A structured pupillage system, similar to what I experienced through the CIArb when qualifying as an arbitrator, should be introduced. Under supervision, aspiring adjudicators could observe live cases, draft mock decisions, and receive feedback from experienced mentors. This bridge between academic learning and independent practice should be a prerequisite for accreditation, ensuring exposure to best practices and procedural discipline.

d. Tiered accreditation and oversight

There is currently no consistent framework for grading adjudicator competence. A tiered accreditation model, like that used by the **Civil Mediation Council**, could provide structure:

Tier 3: New adjudicators handling low-complexity disputes under guidance.

Tier 2: Experienced adjudicators managing standard cases.

Tier 1: Senior adjudicators authorised to take on complex, high-value disputes.

Progression through the tiers would depend on experience, training, and peer review. A unified practising certificate recognised by all ANBs could further streamline the process and encourage consistency.

e. Mentoring and peer review

Support shouldn't end at accreditation. A formal mentoring programme could help maintain quality while offering early-career adjudicators access to practical guidance.

Regular peer review—through anonymised audits or decision panels—should also be part of continuing professional development. I think this would help encourage consistency, support learning, and highlight areas for improvement.

f. Feedback and monitoring mechanisms

Currently, there is no standard way for parties to provide feedback on adjudicators. I think it would be helpful if ANBs were to introduce post-adjudication feedback forms, allowing parties to assess aspects such as clarity, procedural fairness, timeliness, and reasoning.

While individual feedback shouldn't be determinative, aggregated responses could certainly help identify trends, inform training, and support disciplinary measures where necessary. This would also give regulators valuable insight into systemic issues affecting adjudication.

Is "good enough" still enough?

To sum it up, adjudication has served us well. It 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.

But its future depends on how seriously we take quality assurance. So, if we want adjudication to retain credibility and deliver consistent value to the industry, we must now ask more of the system and of ourselves. Structured education, practical experience, mentoring, feedback, and regulatory oversight are essential building blocks to achieving that goal. Improving adjudication means investing

in people, not just process, so we can ensure adjudicators meet the high standards the industry deserves — balancing speed with fairness, and expertise with transparency. If we do this, we stand a good chance of taking adjudication from “good enough” to simply “good” …

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