

Tales from the Homeowner front

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I was recently at an adjudication related function and got chatting to an earnest aspiring adjudicator. My newfound friend, let's call him Andrew to protect the innocent, is working his way through the [RICS Adjudication Diploma](#) - a worthy and well-structured course that I also undertook some years ago. Of course, adjudication is, by its nature, academic, though it's not only intellectually demanding, but also a very practical, hands-on forum. It also requires substantial experience in the construction industry, usually with a technical background, though construction lawyers also play a key role.

Andrew was interested in my experience of adjudication and how it related to the RICS' selection process and my ultimate admission to the Construction Adjudicators panel in 2020.

As many of my avid readers will know, the Scheme for Construction Contracts (the "Scheme") provides a default framework for adjudication in construction disputes in the UK. It was introduced under the [Housing Grants, Construction and Regeneration Act 1996](#) (also known as the UK Construction Act) and applies to construction contracts in the event that the parties have not specified their own adjudication process. Andrew was familiar with the UK Construction Act and Scheme adjudication process and rules, but he was not familiar with the JCT Homeowner adjudication process. As the name suggests, the JCT Homeowner (HO) adjudication process gives parties a contractual right to adjudicate disputes designed for homeowners undertaking simple works on their property. At the time I applied to admission to the RICS construction adjudicator panel in 2019, I had undertaken around 60 of these 'Homeowner' adjudications over several years.

Fortified by a glass of a rather pleasant Pinot Noir, I waxed somewhat lyrical on my general experience as a HO adjudicator. I told Andrew that, although I couldn't be sure, it would surprise me if my experience 'in the trenches' was not a boost to my credibility as a panel applicant and certainly helped me get up and running when I started getting construction panel appointments.

It goes without saying that as part of the recruitment process the [RICS Dispute Resolution Service](#) (DRS) is looking for well qualified and experienced candidates to decide if they have what it takes to carry out the tough role of a panel adjudicator. Which is fair, but there is always the dilemma of how do you get the experience to prove yourself?

So, I thought it might be of interest to relate my personal perspective of the JCT Homeowner adjudication 'experience' and highlight the contrast with the UK Construction Act and Scheme forum.

The RICS DRS has run the JCT Homeowner Adjudication service for many years. As the RICS describe it: *"Homeowner Adjudication is a specialised dispute resolution service offered by RICS for residential property disputes. This service is tailored for cases where construction work has been carried out*

under the JCT Building Contract for a Homeowner/Occupier. The process is designed to resolve disputes efficiently, typically within 21 days, through the appointment of an expert adjudicator by RICS.

You can read the full details on the [RICS website](#), as well as download an [application form](#), the [JCT Homeowner Rules](#) and some [occupier explanatory notes](#).

In summary, HO Adjudication differs from the UK Construction Act/Scheme in the following respects:

- * The right to adjudicate is contractual, so not caught by the residential occupier exception to the right to adjudicate under s.106 of the UK Construction Act;
- * 21 days to reach a Decision from appointment;
- * Both parties to be invited to “give their personal views”;
- * Adjudicator hourly fee capped at £150 (excluding VAT) for no more than 15 hours, so a maximum of £2,250+VAT;
- * No joint and several liability - adjudicator has to bring court claim against liable party;
- * Adjudicator can award interest at 5% per annum above base; and
- * Adjudicator not required to give reasons.

The HO adjudication in practice

As can be seen, there are some significant differences between the rules of the HO process and the rules set down by the Scheme. But how are they different in practice?

Lack of party representation

One of the main differences is in the lack of party representation in 99% of HO adjudications. This introduced unique challenges in trying to square the circle of maintaining natural justice by not overly assisting one of the parties to make out their case. So very much the onus of taking the initiative out of necessity. I would add that the rules of natural justice most certainly apply to HO adjudications and a party's right to make its case with adequate time to do so. I was the adjudicator where the Contractor sought an injunction to stop the adjudication for three months because of Covid19 and a claimed right to attend a site inspection that I was prepared to undertake alone. The application was dismissed by Justice Jefford in [Millchris Developments Ltd v Waters \[2020\] EWHC 1320 \(TCC\) \(02 April 2020\)](#) and I was able to reach my Decision.

Lack of Experts

It was rare for either party to engage an expert on an HO adjudication, but approximately 50% of the time, the residential party had the architect in attendance at the site inspection. This generally was helpful in getting to the heart of the technical matters when the parties themselves often had a limited technical understanding of the works relating to design and acceptable quality.

Disputes - type and scale

The vast majority of the HO disputes I decided were to do with quality of workmanship in house refurbishments, loft extensions and rear extensions. Values were between £2,500 and £90,000. Very often there was a repudiatory breach issue to be determined because neither party understood their rights to suspend or terminate under the HO contract. In many cases the builders would refuse to come back to site and complete the works because they hadn't been paid what they expected, or

alternatively the Homeowner had fully lost patience and booted the builder off site without any notice, with neither party properly following the express contract termination provisions.

Site Inspections - getting to the facts

As I have noted, the quality of submissions was generally poor because the parties were unrepresented and often non-native speaker parties. This is a complete contrast from what you would expect from professional experienced party representatives in a Scheme adjudication. Typically, submissions were poorly drafted, lacking a coherent narrative of what was in dispute, what remedy was being sought, any probative evidence and, even if evidence was included, where to find it. The assumption being *'it's in there somewhere and the adjudicator will find it'*. My task was to make sense of both parties' positions often straying close to, but not over the line of, making out one party's case. From experience, if one was to take a strict hands-off approach, the process of an HO would have been a waste of time, and the parties would have been very unsatisfied with the process.

I found that getting to the heart of the matter was best done by a site inspection where I could view the works but also where I could test the statements and credibility of the parties 'face to face'. After the meeting I would then summarise my understanding of the issues and areas of agreement/disagreement and quickly seek their affirmation. Sometimes the issues in the summary evolved from what was initially provided to me at appointment.

Emotions and 'mediation'

Often a site meeting would start in the kitchen and the atmosphere generated by the parties would be at a figurative temperature of sub-zero. HO adjudications have an emotional intensity because it's about people's homes. I recall occasions when the husband had to be kept out of the room to avoid matters 'kicking off' and a wife crying by the kettle because she was at the end of her tether. Often the site inspections required more skills as a therapist than a hard-nosed construction expert!

Not infrequently, what had started as an apparently clear-cut case of the builder abandoning the site over payment disputes and the homeowner vowing never to allow the horrible builder darken their door again, would morph into a sort of mediation facilitated by me that would result in the builder committing to return to site and the Homeowner agreeing to make a further payment or to allow them back having previously argued for termination. In my view, these types of kitchen sink reconciliations would not have occurred if I had not been on site and thereby the medium of them being able to talk things through. Certainly, this is not an area I would stray into in a Scheme adjudication, but it did on occasion seem appropriate for HO type disputes.

Decision drafting

I have carried out over 60 HO adjudications, with the majority of which resulting in a Decision. Whilst the HO Rules do not mandate a written decision, I invariably chose to write one. I have found from experience in both HO and Scheme adjudications that transparency in a Decision is paramount. The mantra: *'You are not writing a Decision for the winner, but for the loser'* has stuck with me. It could be argued that in writing a Decision I added more time and fees to the process, which is fair, but no party ever raised this as an issue whilst I expect that a simple one liner saying that party A had won without explanation would have triggered an avalanche of complaints.

As the parties were not represented and often 'first timers' to an adjudication, my Decision would be written with far more 'plain English' and with simple explanations of legal concepts and grounds for liability than a Scheme Decision. Absolutely no Latin allowed!

Go for it!

Whilst being a member of the RICS HO panel is not a prerequisite for the main construction panel, I

have no doubt that it is a very useful gladiator school on managing a challenging process and it enabled me to hit the ground running with my first main panel appointment back in 2020.

I hope I have outlined the different challenges in a HO adjudication compared to the Scheme and it should not be a surprise that the fee cap made it difficult to go from A to Z without making a loss. So, in my view it's more of a calling, but I know that this is a price that other HO adjudicators have been willing to pay.

I don't think my experience outlined in this blog is unique amongst HO adjudicators, but at least you can see what we have to deal with to get to the resolution that the parties are invariably searching for in a way that is simply not the same, or even appropriate, in a Scheme adjudication.

In my view, the HO scheme is a great way to get real world adjudicator experience as well as developing your 'herding of cats' skills in readiness for that ultimate panel interview. So why not be like Andrew and get in touch with the RICS DRS and put your name forward. Just make sure you bring plenty of Kleenex to the site inspection



FRANK RAYNER