MC MS Blog

# What makes a good adjudication submission?

MARCH 03, 2026

It is not every day that you get the opportunity to speak alongside current and former senior members of the judiciary such as Mr Justice Constable and Sir Rupert Jackson, and so when TECBAR invited me to do just that at its recent Advocacy seminar, I replied with an almost instantaneous “yes please!”. Chaired by the distinguished Mrs Justice Joanna Smith, the event brought together a range of perspectives on effective advocacy, and I had the privilege of addressing what makes a good adjudication submission. The session prompted some lively discussion and a number of excellent questions, and so in this week’s blog I thought it would be helpful to draw together some of the key points from my talk.

**Why are adjudication submissions so important?**

Adjudication remains the forum of choice for the resolution of construction disputes. Although advocacy in adjudication may appear familiar in some respects to those accustomed to litigation or arbitration, the practical realities can be quite different. Unlike court proceedings, adjudication submissions are prepared by a broad range of professionals as they are commonly drafted not only by solicitors and barristers, but also by claims consultants, commercial managers, and quantity surveyors, as well as, on occasion, in-house project or legal teams. This diversity reflects the commercial and technical character of disputes.

While some of the drafting skills for other forms of dispute resolution are the same, there are some key differences when it comes to adjudication submissions because your entire case needs to be included. Not only that, the chances of having a meeting are pretty low, and even if you do meet with the parties, it’s probably going to be the adjudicator asking the questions rather than the representative making legal submissions or cross-examining witnesses, and so the adjudication submissions take on an added importance.  There is usually no fall back on oral advocacy and, in short, the written submissions must do all the hard work.

With that in mind, I wanted to share some general tips which I think are applicable to all adjudication submissions, then cover some that are specific to the Referral, followed by the Response, Reply Rejoinder, Surrejoinder and, if you’re really lucky, the Rebutter!

**General tips applicable to all adjudication submissions**

**1. Professionalism matters**

My first general tip is: be professional and respectful. I appreciate that adjudication is an adversarial process, but try to be courteous in the submissions and keep a professional tone. Also try to avoid excessive amounts of aggressive and emotive language, as this will often not assist and can risk undermining the credibility of your arguments. Adjudicators are looking for clarity and assistance, not confrontation.

**2. Keep it simple, but explain everything**

Keep the submission simple and focussed but explain everything that is relevant. Sometimes I find that parties, and their representatives and experts, get so engrossed in the matter that they're using acronyms that aren't explained anywhere, and they're referring to other areas of the site that are entirely meaningless to me, etc. Just remember that the adjudicator is likely to be a stranger to the dispute, and your aim should be to assist him or her as much as possible by guiding them clearly through the issues and explaining everything that is relevant.

**3. More material isn't always better**

Try to remember that more is not necessarily better. I fully appreciate that sometimes having limited time to write a document, as is so often the case when it comes to adjudication due to the time pressures involved, can sometimes cause the document to be longer than we'd like it to be. However, please try and be conscious of the length when drafting adjudication submissions, and don't be afraid to take bits out because a shorter, focused submission frequently has greater impact than one attempting to include every conceivable point. (Admittedly, anyone who has read some of my Decisions might fairly suggest I occasionally struggle to follow this advice myself!).

**4. Avoid bad points**

Also, try to avoid taking bad points. What I'm *not* referring to here is those points that are arguable either way, or alternative arguments which might be necessary. Rather, I'm talking about the really duff points which you think to yourself *"…we'll never get away with it in a million years but we'll stick it in anyway…"*; remember that just because an argument is theoretically plausible, it shouldn't necessarily be run and in my view there is a risk that it makes a case look defensive or rather desperate. If you focus on your strong points, the submission is likely to have a greater impact.

**5. Make the evidence easy to find**

It sounds obvious but, where there is contemporaneous evidence available, make sure it's included in the adjudication bundle and properly cross referenced in your submissions, so it's easy for the adjudicator to find. Also please do to try to resist the urge to put the onus back on the adjudicator, for example by providing a sample of evidence and then stating: "*If you'd like to see more evidence then please just ask*". It is your client's case, and, particularly now everything is dealt with electronically, it shouldn't be a problem to provide all of the relevant evidence on which they rely, subject to GDPR restrictions etc.

**6. Engage properly with expert evidence**

My sixth tip is about the importance of engaging properly with your own expert evidence. I do sometimes read adjudication submissions which are excellent on the law, but they don't always properly engage with the expert evidence. The end result can be that you win the legal arguments, but your client doesn't succeed on quantum, and let's face it, that's ultimately all they really care about! So, I think that it's really important to cast a critical eye over the expert evidence to ensure that nothing's been missed. For example, when it comes to concurrent delay I'm often referred to the definition of concurrent delay from John Marrin KC's excellent SCL papers on the topic (E.g.: Concurrent Delay | Society of Construction Law UK and Concurrent Delay Revisited | Society of Construction Law UK), or the definition of concurrent delay from the **SCL delay and disruption**

**protocol,** but then the submission will say something along the lines of, *"...and please see our expert delay analyst's report which demonstrates concurrent delay therefore the contractor is entitled to time and not money..."*. However, I sometimes sense a degree of blind faith that everyone involved is working to the same definition of concurrent delay, particularly when it comes to things like considering whether the supposed concurrent delay event needs to impact the critical path. So, I think that, if time permits, sit down with your delay expert and make sure you're singing from the same song sheet.

**7. Presentation counts**

My final general tip sounds obvious, but it's to ensure the submission is properly formatted with numbered paragraphs and clear headings. A well-presented document signals clarity of thought and gives such a better impression than where you've got, for example, headings at the bottom of pages and no page numbers etc.

**Tips specific to Referrals**

When preparing for the talk, I revisited Lynne McCafferty KC's Practical Law guidance on drafting Referrals, which remains an excellent checklist, so in a blatant act of plagiarism I thought I'd use that:

*a. "[It] should be carefully and clearly drafted. It should be succinct and free from jargon or technical terminology so far as possible [really important – adjudicator is fresh to the dispute and you don't know the professional background]. In particular, the referral notice should:*

i. *Set out the detail of the factual and legal basis of the referring party's case fully. A chronology of events is likely to be useful [sometimes useful – consider appendix].*

ii. *Refer to the relevant contractual provisions and explain the basis on which the claim is brought.*

iii. *Be persuasive and argumentative.*

iv. *Be supported by evidence.*

v. *Cross-refer to all relevant documents and legal authorities and explain how they support the referring party's case.*

vi. *Pre-empt the responding party's defence and explain why the anticipated defence is incorrect and unmeritorious.*

vii. *Include a detailed statement of the redress sought, including any claim for interest.*

viii. *Comply with any specific requirements in the applicable adjudication procedure."*

I think that Lynne has provided an excellent summary of what's required from a Referral, and if you follow what she's said you probably can't go far wrong, but I do want to briefly expand on a few things from an adjudicator's perspective:

1. When you're drafting a Referral and for that matter the Notice of Adjudication, just be careful to ensure that you avoid the risk of a challenge that you're referring multiple disputes. If your client is claiming a sum of money then this will probably be quite easy, but perhaps less so when declarations are being sought;

2. Although I agree with Lynne that a chronology is useful, if it gets too long then consider moving it to be an appendix, and instead focus on the key dates in the submissions. I sometimes find that where a chronology extends to multiple pages the key dates can get rather lost;

3. Lynne emphasises the importance of including a detailed statement of the redress sought, and I agree with that. However, care should be taken not to overcomplicate it. I quite often see a redress sought stretching to 4 to 5 pages, and 9 times out of 10 I think to myself that there is no need to make it so long or complicated, so keep the relief claimed straightforward. Lengthy and highly complex redress sections rarely add value and can obscure what the Referring Party actually wants decided; and

4. If you want to make an application for something, for example the disclosure documents, or requests for meetings with the adjudicator, they should not be hidden deep within the Referral in a paragraph on page 75 of 100, or if you do so make sure its also mentioned in the covering email serving the Referral. Quite often when a Referral lands, an adjudicator won't immediately read it from front to back and instead they'll concentrate on key sections such as the executive summary and the redress sought. If they take that approach, there is a risk that a specific request can be missed until later in the adjudication.

**Tips specific to Response and later submissions**

Once the Referral has been served, attention turns to the Response. Many of the points already discussed apply equally to its preparation, and equally the tips set out below also carry through to subsequent submissions, including the Reply, Rejoinder, Surrejoinder and any further rounds of written advocacy.

1. Try to identify and summarise the matters agreed (if there are any!). I personally find it really helpful if a Response sets out a summary of what's agreed at the beginning, not just on the legal arguments and on the facts, but also in the expert reports. So, if your delay expert agrees with the other side that a particular programme is the baseline to be adopted, or on the analysis methodology to be used, stating this upfront allows the adjudicator to focus immediately on the real issues in dispute, rather than having to work through extensive material addressing points that are no longer contentious;

2. My next tip is probably more a personal preference, and it concerns the question of whether you should address everything in the Referral on a paragraph-by-paragraph basis. My preference as the adjudicator is not to read numerous paragraphs stating *"admitted"*, *"denied"* against each paragraph – an adjudication submission is not a pleading in litigation, and I find submissions a lot easier to read when they address the merits of each point more generally;

3. My third tip is a very important one in my view and that's never to ignore any of the opposing arguments because you think your case might be weak on a particular point. A half decent adjudicator will normally spot if a point has been ignored and it could be a red flag for them if you've

simply not addressed something. So I think it's much better to acknowledge these points and engage with them directly explaining, why you contend that they are wrong or overstated, or unsupported. Far from weakening your case I think you'll make it more credible by doing so; and

4. My final tip probably applies to later submissions, and in particular submissions such as the Rejoinder or Surrejoinder, and it's where the adjudicator limits the number of pages for the submission. If a page limit is imposed, then try and stick to it, but if a modest overrun is unavoidable, then a brief explanation and apology is usually sufficient.

**Closing reflections**

That is, in very brief terms, my summary of what makes a good adjudication submission, in my view at least. The central theme is straightforward: an effective submission assists the adjudicator to reach a decision in the most efficient manner. Adjudication remains, in most cases, a paper-based process, so the skill of presenting complex disputes clearly and making your case persuasively in writing carries exceptional weight.

Thank you again to TECBAR for inviting me to speak.

JONATHAN COPE