

Joint CI Arb East Anglia Branch
and ICES Anglia and Central
Region Seminar

Adjudication
Enforcement

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The Rules

- Adjudicator's Decisions are enforceable – that is the starting point in any proceedings to enforce
- Those seeking to resist are on the back foot
- Every excuse has been seen and used and the Courts are not interested
- If you run with a hopeless challenge indemnity costs will be awarded against you

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The Court

- The Courts have devised rapid procedures for dealing with Adjudication enforcement
- See the TCC Guide

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Resisting Enforcement

- The adjudicator had no jurisdiction to make the decision
- There was a serious breach of the rules of *natural justice* (natural justice is the right to a fair hearing, by an impartial tribunal)
- If the paying party wants to challenge the adjudicator's jurisdiction, it should check whether it reserved its right to challenge the adjudicator's jurisdiction, when the notice of adjudication was served, or later, when it became aware of the event giving rise to the reservation of rights. It may have done this with a general reservation or with a specific reservation. The paying party should also have stated that any further involvement was without prejudice to that objection.
- If no reservation of rights was made, the court is unlikely to entertain the jurisdiction argument later. By staying silent, a party may be taken to have waived its right to object.

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Resisting Enforcement

- The contract was not in writing (this will no longer apply under the LDEDCA)
- The contract was not a construction contract (this will still apply under the new legislation)
- The adjudicator's appointment did not comply with the adjudication procedure or the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998/649)
- The dispute had not crystallized (the scope to argue this point is somewhat reduced)
- The dispute referred to the adjudicator was different to the dispute that had crystallized (again very reduced scope to argue this)
- The dispute referred to adjudication was the same or substantially the same as a dispute already decided by an adjudicator
- The adjudicator did not determine the dispute referred to him (this may now include ignoring a valid defence)
- The adjudicator failed to reach the decision within the required time
- The adjudicator imposed a pre-condition on the publication of his decision.

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Unlikely to resist enforcement

- The dispute is too complex for adjudication (includes arguments on too large)
- Enforcement proceedings should be stayed pending the decision in a cross adjudication or to allow the parties to *mediate*
- The matter will be referred to arbitration or litigation (or that the matter is in another process or forum already)

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