

# ADJUDICATION IN PRINCIPLE AND IN PRACTICE

## Adjudication Process and Timetable

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## Glossary

- The Referring Party  
– the 'Claimant'.
- The Responding Party  
– the 'Respondent'
- The Adjudicator  
– the 'Tribunal'

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## Adjudication Process and Timetable

This Seminar will deal with the  
Adjudication Timetable from the issue  
of the Notice of Adjudication to the  
issue of the Adjudicator's Decision.

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### Adjudication Process and Timetable

It will not deal with anything before the Notice of Adjudication – e.g. The crystallisation of the dispute etc. and

It will not deal with anything after the Adjudicator's Decision is issued – e.g. enforcement proceedings.

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### Starting an Adjudication

The Referring Party must

- Issue a Notice of Adjudication
- Get an Adjudicator appointed
- Issue a Referral Notice

Must be in the order above.

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### The Notice of Adjudication

The Adjudication process is started by the service of a Notice of Adjudication

The Notice of Adjudication is served on the Responding Party

The Notice of Adjudication is not (at this time) served on the Adjudicator.

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## The Notice of Adjudication

The Notice of Adjudication must contain the following details

- The Parties names and addresses
- The nature and brief description of the dispute
- The nature of the redress being sought.

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## The Notice of Adjudication

The Notice of Adjudication is a very important document – it defines the dispute that the Adjudicator has to decide upon and has jurisdiction to decide upon.

So, take great care and get it right.

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## The Notice of Adjudication

**TIP**

From experience, it is safest to produce the Notice of Adjudication after the Referral Notice has been produced.

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### Appointment of Adjudicator

The Adjudicator may be named in the contract (quite rare)  
More often than not there is an Adjudicator Nominating Body ("ANB") listed  
If there is no ANB listed, then you can go to an ANB of your choice

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### Appointment of Adjudicator

The application to an ANB is normally made on a standard application form, and should include;

- An extract of the contract showing the Adjudication provisions
- The Notice of Adjudication
- The application fee

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### Appointment of Adjudicator

**TIP**  
Always seek the appointment of an Adjudicator **after** the Notice of Adjudication has been served – **not before**

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### Appointment of Adjudicator

Through an ANB, the appointment of an Adjudicator will normally take about 3 to 5 days

Upon appointment, the Adjudicator will issue his terms and conditions (and details of his fees) to both parties

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### Referral Notice

When an Adjudicator has been appointed, the Referral Notice must be served upon him and upon the Responding Party.

The Referral Notice must be served within 7 days of the date that the Notice of Adjudication was served, otherwise it will be served 'out of time'

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### Referral Notice

**TIP**

Always serve the Referral Notice immediately that the Adjudicator is appointed. This keeps the pressure on the Responding Party – and this can be achieved if the Notice of Adjudication is produced after the Referral Notice has been produced

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### Referral Notice

The Referral Notice should contain all of the information that the Referring Party wishes to rely upon. It should

- Be consistent with the Notice of Adjudication
- Detail the facts relied upon and provide evidence to support those facts

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### Referral Notice

When producing the Referral Notice, remember the basic legal principle that "he who asserts must prove".

This means that the Referring Party (normally) has the burden of proof. The Referring Party must **prove** its case (on the balance of probabilities); it is not for the Responding Party to **disprove** the case.

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### Referral Notice

When producing the Referral Notice, do not forget to deal with;

- A request for reasons (Adjudicators' Decisions are only temporarily binding – but often the dispute goes no further)
- Interest (if applicable)
- The Adjudicator's fees and expenses

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## Referral Notice

**TIP**

Keep the Referral Notice simple to follow, and mark up any Appendices so that the Adjudicator can easily find the evidence relied upon.

An 'Executive Summary' at the beginning of the Referral Notice is very useful to the Adjudicator.

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## Referral Notice

The Adjudication timescale starts on the date that the Referral Notice is issued on the Adjudicator and on the Responding Party.

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## Timescale of Adjudication

From the date that the Referral Notice is issued on the Adjudicator and on the Responding Party, the normal time period for an Adjudicator to reach his Decision is 28 days.

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### Timescale of Adjudication

The normal 28 day period can be extended by;

- Up to a further 14 days with the agreement of the Referring Party only, or
- By any further period (beyond the 14 days) with the agreement of both parties.

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### Timetable of Adjudication

Upon receipt of the Referral Notice, the Adjudicator will set out the timetable for the Adjudication.

Normally, the Adjudicator has a great deal of discretion in respect of the submissions to be made.

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### Timetable of Adjudication

There are no hard and fast rules but normally the Adjudicator allows;

- A Response by the Responding Party, and
- A Reply by the Referring Party.

But on occasions there are also further exchanges after the Reply.

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### Adjudication Meeting

Adjudications are predominantly dealt with on documents only.  
Meetings are held but this is normally in a significant minority of cases.  
If there is a need to inspect the site etc., then a meeting will nearly always be held.

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### Adjudicator's Decision

The Adjudicator's Decision must be reached and issued no later than 28 days after the date that the Referral Notice is served (or within any extended period agreed by the Referring Party or by the parties).

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### Adjudicator's Decision

If the Adjudicator's Decision is issued 'late' then it will be an invalid Decision.

The Adjudicator cannot withhold his Decision waiting for his fees to be paid first (i.e. he cannot impose a lien upon his Decision) .

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### Adjudicator's Decision

If the Adjudicator makes a slip or error, he has the jurisdiction to amend his Decision.

**TIP**

Always check an Adjudicator's Decision for a slip or error – even if you have largely been successful.

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### Adjudicator's Fees

In his Decision, the Adjudicator can decide how his fees should be apportioned between the parties. Most adjudicators follow the principle that 'costs follow the event'.

Irrespective of how the Adjudicator allocates his fees, both parties normally remain jointly and severally liable for the Adjudicator's fees.

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### The Parties' Costs

In Adjudication, nearly always, each party is responsible for its own legal costs in respect of the Adjudication proceedings irrespective of whether they 'win', 'lose' or 'draw' the Adjudication.

The more onerous 'Tolent' type clauses will probably not now be enforced (following the Yuanda case).

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