



Myerson Construction

Our guide to
Construction Adjudication

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Welcome

At Myerson we understand the complex nature of construction contracts and the need to comply with strict legislation. So, it's a deep source of satisfaction when those within the construction industry choose Myerson as their trusted advisers. From developers to consultants, sub-contractors to purchasers, our construction team works **for you and with you** to achieve your business goals.

Why Myerson?

At Myerson, we have the experience and expertise to provide dynamic contentious and non-contentious advice to those working across the construction industry.

We put our clients and their business at the heart of everything we do, establishing long term relationships acting as trusted advisers.

We are proud to be ranked as **'Top Tier'** in the prestigious international directory **The Legal 500**, and commended by The Times 'Best Law Firms 2019'. Therefore, you can be reassured you will receive a high quality and truly bespoke service.



How We Work.

Every client is different, and we are here to support you every step of the way.

Personal, Partner-led Service. Our experienced solicitors get to know you and your business inside out. We strive to become your trusted advisers, providing added value and most of all, a genuine, personal service.

The Highest Level of Expertise. Combining commerciality, practicality and legal expertise enables us to deliver every time. With more than twenty years of experience, we specialise in advising and acting on procurement strategy, contracts and disputes for building, construction and engineering projects.

A Team You Can Trust. You're in safe hands. We help clients nationwide with high-value and complex construction matters and disputes on a daily basis. You can rest assured that our expert team knows its stuff!



Your Solicitors



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The solicitors that will be working with you are specialists.

We know within construction, decisions made early on can have significant implications during a project or development. Therefore, we ensure you have a strong team of specialist solicitors with a breadth of experience to support you. Providing practical advice and working closely with you, so you can concentrate on what's important, running your business.

You can find out more about our Construction Team by clicking [here](#).

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Construction Adjudication

This is a back to basics guide to construction adjudication, intended to help understand the basic process detailing the advantages and disadvantages of adjudication.

What is construction adjudication?

Adjudication is a form of dispute resolution which is commonly used for resolving construction disputes which are determined by an independent adjudicator.

Any party to a construction contract has a statutory right, under **the Housing Grants, Construction and Regeneration Act 1996** as amended (“the Construction Act”) to refer a dispute to adjudication at any time, provided the contract is a ‘construction contract’ as defined in the Construction Act.

Adjudication is often described as “pay first, argue later” as it can be a mechanism for resolving disputes on an interim basis.

When is adjudication used?

Adjudication is typically used for claims relating to:

- Interim payments
- Delay and disruption of the works
- Extensions of time for completion of the works
- Defects in the works
- The final account
- Breach of contract
- Termination of a building contract
- Professional negligence

Although the framework of adjudication lends itself to less complex construction disputes, e.g. for payment disputes rather than professional negligence, there is an increasing reliance on the process due to its expediency in deciding disputes at a fraction of the cost of proceedings in the courts.

What is the adjudication process?

The party starting the adjudication process serves a Notice of Adjudication, which briefly sets out the nature of the dispute and the relief sought. After service of the notice, that party applies for the person named in the contract to act as adjudicator or, if no-one is named, applies to one of the nominating bodies to nominate an adjudicator.

Once appointed, the referring party must serve its referral notice on the adjudicator, setting out details of its claim accompanied by copies of all documents on which that party intends to rely. The responding party will have an opportunity to submit a response to the referral notice (defence) and further submissions may be required.

The adjudicator's decision is to be issued within 28 days of the referral notice, but this period can be extended by up to 14 days with the agreement of the referring party.

Is adjudication legally binding?

The decision is binding unless revised by legal proceedings, arbitration or agreement and can be enforced quickly by an expedited process through the courts.

Often contracts can make a decision binding if formal proceedings to challenge it are not issued within a specific period.



What are the advantages of adjudication?

- Getting a decision is quicker through an adjudication than the courts. It typically takes 28 days from service of the referral notice whereas the courts or arbitration can take considerably longer.
- It can result in a significant reduction in legal costs because of the speed of the process. Many smaller construction companies are often unable to dedicate the time and bear the financial burden of court proceedings or arbitration and therefore see adjudication as a practical solution.
- A meeting/hearing may not be necessary, and the entire process can be paper based.
- The parties are generally only liable for their own costs so there is no risk of having to bear the other party's costs regardless of the outcome.
- Whilst it was intended to assist cash flow during projects, it can be and is now used for a wide range of disputes not just those related to interim payments.
- There are only limited grounds on which the courts will refuse to enforce an adjudicator's decision.
- Whilst it can be enforced, the decision is not final and it can be decided afresh by litigation/arbitration or by agreement.

What are the disadvantages of adjudication?

- The speed of the process can mean that there is not enough time to evaluate and examine all facts and issues relating to the claim, so the decision is inherently 'rough and ready'.
- The process can be intense requiring responses in short time periods so adequate time needs to be set aside for the process.
- Parties cannot recover legal costs incurred in adjudication without written agreement after service of the adjudication notice.
- In complex disputes, it can be an expensive process due to the intensive preparation that is required to meet uncomfortably short deadlines.
- If a meeting/hearing is not required, the parties will not get their 'day in court' with no opportunity to cross-examine witnesses.
- There are limited grounds on which the courts will not enforce an adjudicator's decision which can lead to an unfair result.

Should I refer a dispute to adjudication?

The main aim of adjudication was to keep cash flowing and projects on track. It was designed to be limited to single disputes and to deal swiftly with discrete issues to avoid them developing into disruptive, expensive matters.

Payment disputes during the contract are ideally suited to adjudication but it can also be used to deal with more complex disputes. Adjudication is a powerful tool for resolving disputes quickly and it keeps construction projects on track without the need for costly and protracted court proceedings. However, it pays to weigh up the complexity of the dispute and consider whether adjudication is, in fact, the best remedy particularly since costs are unlikely to be recoverable.

It is always worth looking at alternative methods of dispute resolution such as mediation, expert determination or even by starting the pre-action protocol procedure prior to commencing legal proceedings but if a quick decision is preferred in order to keep a project on track or to secure payment, adjudication should be high on the agenda even if the decision may be a little 'rough and ready'.

Myerson's construction team understand that adjudication can be an efficient means of resolving a dispute whilst also recognising the potential pitfalls and issues that parties to this process can face. Our specialist construction team can help you realise the best possible outcome with a strategy that is tailored to your commercial circumstances.



Don't just take our word for it...

"I trust the knowledge and abilities of Myerson to take care of my issues. The team are easy to work with and prompt in their responses, which is important in today's fast-paced society."

"Their communication is excellent, and I would have no hesitation in recommending Myerson in the future."

"We have used Myerson for over 20 years for all our property requirements. We have always found them to be commercial in their approach and able to offer a first rate service. I would highly recommend them."

"The growing team at Myerson handles the full range of property work, the partners are easy to get in touch with and the other members of the legal team are quick to respond."

To view more Myerson reviews visit our Review Solicitors page by [clicking here](#).



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You're in safe hands!

If you would like further information about construction adjudication and how we can help you, or if you have any questions, please don't hesitate to contact a member of our Construction Team today.

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Because
life is rarely
black and
white.



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