

## Assessors in adjudication

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Since the introduction of Adjudication as we now know it via the Housing Grants Construction & Regeneration Act of 1996, the size and complexity of cases being referred to Adjudication has exceeded industry's original understanding of the process.

However Referring Parties are rarely willing to extend the duration of the Adjudication to reflect such complexity which creates considerable difficulties for Adjudicators as the requirement for investigation of the disputed issues increases. This results in Adjudicators constantly finding innovative ways in which to quickly cut through issues in dispute because they simply do not have the time to deal thoroughly with all the issues before them.

One means open to the Adjudicator is to obtain expert advice. The power the Adjudicator has to do this can be found in the Scheme at paragraph 13(f) and can prove to be more significant than simply a delegation of duties without delegation of responsibility.

The obligation upon the Adjudicator prior to appointment of the assessor/expert is that he notifies the Parties of his intention to make such an appointment. A similar provision can be found in the 1996 Arbitration Act (S37(i) (a)) upon which the Scheme is based.

The Scheme and the Arbitration Act 1996 are relatively similar in the way in which they oblige the Adjudicator to act upon any information received from any expert, assessor or legal representative appointed:- Section 37 (1) (b) of the Arbitration Act 1996 specifically provides that "the parties shall be given a reasonable opportunity to comment on any information,

opinion or advice offered by such a person", unless otherwise agreed by the parties.

The Scheme on the other hand only deals with the appointment of an expert, assessor or legal advisor and is silent on the subject of the Adjudicator's conduct once an appointment has taken place. Case law has assisted in determining the Adjudicator's actions and also the Scheme at paragraph 17 stipulates that the Adjudicator must "make available to them [i.e. the parties] any information to be taken into account in reaching his decision."

Effectively both the Scheme and the Arbitration Act 1996 provide that the Parties to Adjudication/Arbitration must be given the opportunity to comment on any information obtained by the Adjudicator/Arbitral Tribunal via an expert, assessor or legal advisor. On reviewing the requirements set out within the Scheme a number of points require consideration.

At paragraph 13 of the Scheme you find the term "assessor". This term is not defined, however, it is clear that any assessor who is appointed to assess a claim does not do so in any decisive sense and having regard to the Adjudicator's obligation to inform the Parties the assessor's contribution could be no more than the provision of an opinion which the Adjudicator must decide to adopt or ignore after having invited the Parties views on such opinion.

In considering complex Adjudications, referred to within the opening paragraphs, within which the parties usually provide a mountain of data it may be nigh on impossible due to imposed time constraints for the Adjudicator to read through and process it all, hence the need to seek some assistance.

An Adjudicator is primarily engaged to Adjudicate, an assessor however is not so restricted and thus is free to meet with the parties and/or their experts to try to cut through the detail and get to the heart of the dispute. By adopting such procedures the expert can reach an opinion which can then be taken into account by the Adjudicator in reaching his decision.

It can be seen that the role of the assessor within the Scheme is extremely useful in the event that the parties have not engaged experts as the assessor can provide useful expertise to the Adjudicator. It is also the case where the Adjudicator is deemed to possess sufficient knowledge on the issue(s) disputed; it may still be astute of him to appoint an expert to aid him in the Adjudication because it is the Adjudicator's job to simply Adjudicate and time may restrict him in analysing all relevant data provided by the Parties.

An advantage of using assessors can be the removal of any ground for challenge to the Adjudicator's decision insofar as the Adjudicator may have exceeded his jurisdiction by reaching his own conclusion using his own knowledge without inviting comment from the Parties. This has happened and may equally happen again if large-scale disputes continue to utilise Adjudication.

Complex Adjudications are here to stay as industry wants it that way and in my view, it may be in the Parties best interest to embrace the use of assessors in such complex disputes in order to enable an Adjudicator to focus on the issues in dispute and not get bogged down in detail.

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