

CIC Low Value Disputes Adjudication Appointment Service Goes Live



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As of 5 May 2020, the CIC's Low Value Disputes appointment service has gone live. In this article we take a look at:

- the key components of that process;
- its anticipated application;
- how it operates;
- its pros and cons; and
- the Register of Adjudicators.

Firstly, who are the CIC?

The Construction Industry Council (CIC) is the representative forum for professional bodies, research organisations and specialist professional services providers in the construction industry, first established in 1998. It has now over half a million members across more than 25,000 construction companies.

What is the Low Value Disputes Service for?

The Low Value Disputes ("LVD") Model Adjudication Procedure (referred to as "the MAP") First Edition was published on 1st May 2020 for use in disputes where the total amount claimed is £50,000 or less excluding VAT. It is intended to bring cost certainty to lower value disputes and does so by setting out capped fees for the adjudicator (excluding VAT) in Schedule 1 of the MAP, as follows:

Claim Value	Adjudicator's fee
Up to £10,000	£2,000
£10,001 - £25,000	£3,500
£25,001 - £50,000	£6,000
Over £50,000	Negotiable by agreement with parties

How does it operate?

The LVD MAP operates by agreement between the parties to a dispute, either at

inception of the contracts or at any time on an ad-hoc basis when a dispute arises.

Who are the Adjudicators?

The CIC Panel Adjudicators are held on a "Register" as members of CIC member organisations and Fellows of the Chartered Institute of Arbitrators, with a minimum of 10 years' post qualification experience in their primary construction profession and who have attained a relevant Construction Adjudication qualification.

How are the Adjudicators appointed?

The administration fee for the nomination of an adjudicator is £300 (inclusive of VAT).

The CIC will nominate an adjudicator within 5 days of request.

For those who wish to become an Adjudicator on the Register

CIC continues to accept applications from adjudicators who:

- are a member of CIC Member organisations;
- have a minimum of 10 years' post professional qualification experience in their primary construction profession;
- are a Fellow of the Chartered Institute of Arbitrators;
- have obtained a suitable adjudication (as listed on the CIC website).

What are the Pros?

Time

The Map confirms that the prescribed timetable is 28 days, as with standard adjudication process. By including an outline timetable for the procedural stages, it provides a flexible yet simple to understand approach to the key elements of the adjudication process.

Reduced cost / Cost Certainty

There is evidence that parties to disputes have been deterred from using adjudication because of the ever-increasing costs involved.

To address this problem, the CIC sets out a streamlined adjudication procedure for LVDs and, by linking the adjudicator's fee to the amount claimed, provides certainty as to how much the adjudicator will be paid for making a Decision.

The parties may still choose to be assisted by professional representatives at any stage of the adjudication.

Multiple disputes

In contrast to some forms of adjudication, the adjudicator is appointed to decide the dispute or disputes. This would assist in multiple smaller claims which may prove particularly useful for sub-contractors.

Administratively light

The adjudicator may decide the dispute is unsuitable under the MAP where the documents included in the Referral, the Response, or the Reply to the Response exceed more than one A4 Lever Arch File per submission. This is positive considering some of the files we have seen and compiled!

Less Room for Jurisdictional challenges

If any challenges are made to the adjudicator's jurisdiction, the adjudicator must decide on this within two hours of the adjudicator's time. This aims to keep jurisdictional challenges (which can run into days) to a minimum.

What are the Cons?

Overall Jurisdiction

The MAP is for use where the law of the contract is that of England and Wales. For Scotland, there are three amendments to bring the terminology into line. There is, however, no mention of Ireland, North or South of the border.

Unsuitable Disputes

The MAP provides a non-exhaustive list of factors under which the adjudicator may consider a dispute to be unsuitable for adjudication. This includes:

- Where a non-financial remedy such as a declaration of entitlement is sought. This is important as it infers only disputes involving money may be suitable at the adjudicator's discretion.
- There is any argument as to whether the parties have consented to use the MAP.
- The terms of the Contract are not easily discernible. This may be a major negative as often the terms of the contract (even in much higher value sums) are somewhat in doubt.

Adjudicator's Discretion

It is stated in the MAP that the Adjudicator:

"shall have complete discretion as to how to conduct the adjudication, and shall not be required to observe any rule of evidence, procedure or otherwise, of any court or tribunal".

Being a little vague, this does little to enhance the reputation of some rogue adjudication decisions we have seen!

Implications for the Construction Industry

Due to the overall process being for lower value disputes, those I think will benefit most would be parties at the lower end of "the food chain", i.e. primarily sub-contractors. Consequently, as sub-contractors will have easier access to adjudication, it may mean a better cash-flow to the lower tiers, something I see as a continuous grievance when giving contract training to subbies.

What's next?

So, having looked at the intention, appointment system and envisioned usage of the MAP, we simply have to wait and see the fruits of the CIC's labour. My thoughts? It seems another move in the right direction, towards Michael Latham's intentions spawning from his "constructing the Team" report and should have positive influences on cash flow and abuse of the system by the paying party. I, for one, welcome it.

If you have any questions regarding any of the above, you can contact Stephen McKenna at Stephen.McKenna@QuiggGolden.com

The CIC Map can be found at the below link:

<http://cic.org.uk/admin/resources/cic-low-value-disputes-model-adjudication-procedure-first-edition.pdf>

To request for the appointment of an adjudicator under the new CIC LVD adjudication scheme Please follow this link:

<http://cic.org.uk/services/cic-low-value-disputes-adjudication.php>

