Fenwick Elliott

ADJUDICATION: EFFECTIVE DISPUTE RESOLUTION

STARTING AN ADJUDICATION

Jon Miller

October 2004

ASSOCIATION OF INDEPENDENT CONSTRUCTION ADJUDICATORS ANNUAL CONFERENCE

Introduction

Aims

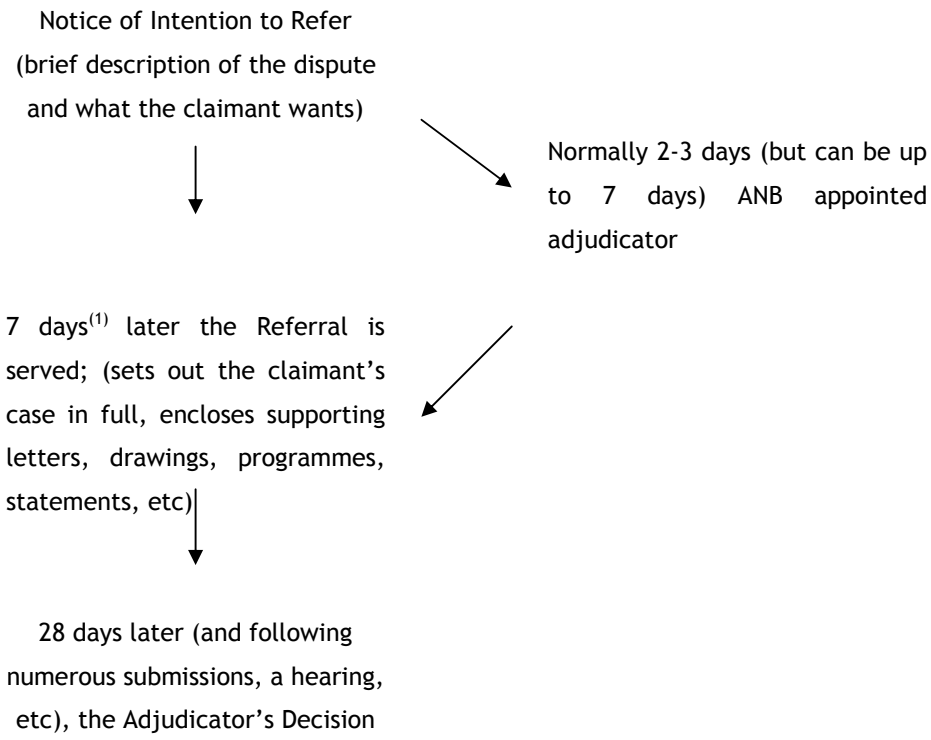
1. The aims of this talk are to:

1.1 highlight the common problems faced with notices of intention to refer and referrals, and how to avoid them; and

1.2 give some ideas to parties and adjudicators on how to manage referrals, submissions, etc so that the adjudication can move more efficiently.

The adjudication process

2. The adjudication process to put it simply is:



3. Speed is the essence of adjudication. A construction dispute can now be dealt with in four weeks. Previously this would have taken years to reach a court or be heard by an Arbitrator.

> Adjudication is intended to be a speedy process in which **mistakes will inevitably concur…**(2)

Starting an adjudication

Dispute

4. We all know that the Act allows parties to refer a "dispute" to adjudication.(3)

> It has to be borne in mind that the…."dispute" is an ordinary English word which should be given its ordinary English meaning.(4)

(1) AICA Rule 7(a) requires the referral to be served as soon as the adjudicator is appointed
(2) *Sherwood and Casson -v- McKenzie* 30 November 1999
(3) See Section 108(1) of the Act, paragraph 1(1) of the Scheme and paragraph 1 of the AICA Adjudication Rules by way of example.
(4) *Bech Peppiatt Limited -v- Norwest Holst Construction Limited*

5. Nevertheless the meaning of "dispute" has kept the courts busy from time to time! There are large numbers of cases dealing with the question when a dispute crystallises. In broad terms the position is:

5.1 For there to be a dispute there must be a clear point that has emerged from the process of discussion or negotiation on something that needs to be decided.

5.2 The parties should have had an opportunity to exchange views on the dispute – I say "opportunity" because if the paying party does not take the opportunity by remaining silent, this will not prevent a dispute from occurring. The paying party should have had the opportunity of looking at the claim and the supporting documentation.

6. In *Orange EBS Limited* v *ABB* there was an issue as to damages for breach of contract but the referring party did not submit its final account until 2 December 2002. Christmas and New Year intervened and on 6 January 2003 the referring party proceeded with an adjudication. The point was a difficult one for the court but it was decided that the balance by 6 January 2003 sufficient time had elapsed for a valuation[5].

6.1 I suggest that whether or not there is a "dispute" should be, and indeed often clear. In the vast majority of adjudications problems only occur if:

6.1.1 One party wishes to commence an adjudication quickly and has not given the respondent sufficient time to consider the claim/application/final account. How long the Respondent has to consider documents will depend on the time limits in the underlying contract, and the sheer volume of information in the claim, etc.

6.1.2 The referral should not include any document which the respondent has not already seen, save for witness statements and possibly internal notes and site diaries. It is when the issues in "dispute" start to change that problems are caused for adjudicators and the courts.

7. At appendix A is a notice that was presented to me as an Adjudicator which had a fundamental flaw concerning the "dispute" that was referred - see paragraph 2.

[5] The Judge on this case was HHJ Frances Kirkham

The notice gives the adjudicator his powers

8. Although judges tend to give notices a "benevolent interpretation"[6], every care should be taken when drafting a notice.

9. With an Adjudicator's decision, "If he has answered the right question in the wrong way, his decision will be binding. If he has answered the wrong question, his decision will be a nullity[7]". It is the notice that must set the correct question.

10. The notice is not a formal document. The claimant can start an adjudication at any time and the claimant has control over what goes into the notice. The notice is a route map for the adjudication – it lists the issues which the adjudicator can look at. The adjudicator cannot stray outside the terms of the notice.

    The adjudicator is appointed to decide the dispute which is the subject matter of the notice and that notice determines his jurisdiction[8].

    > …the scope of an adjudication is defined by the notice of adjudication…[9]

    > ...in the context of any notice of adjudication it is essential to inform the other party and the adjudicator of the basis upon which such claims are being made and which justifies these invoices, i.e. the statement of the nature of the redress, as required by the Scheme.[10]

11. A notice can be a simple document. At appendix B is a surprisingly short notice.

The Scheme

12. The Housing Grants Act 1996 makes no mention of what should be included in a notice. Section 108(2)(a) merely states: "The contract shall…enable the party to give notice at any time of his intention to refer a dispute to adjudication." When drafting a notice consideration needs to be given to the rules which govern the adjudication. Unfortunately different rules impose different requirements.

---

[6] Judge Lloyd QC in *David McLean* v *Swansea Housing* 27 July 2001, paragraph 12
[7] *Nikko Hotels (UK) Limited* v *MERPC Plc* 1991 2EGLR 103 at page 108B approved by the Court of Appeal in *Bougues UK Limited* v *Dahl-Jensen* 31 July 2000 at paragraph 12
[8] *KNS Industrial* v *Sindall* 17 July 2000, paragraph 21
[9] *The Construction Centre Group Limited* v *The Highland Council* – approving the same sentiments in the KNS case, Outer Court of Session, 23 August 2002, paragraph 19
[10] K&D Contractors v Midas Homes Limited, 21 July 2000

13. Part 1 of the Scheme for Construction Contracts (England and Wales Regulations 1998) does not leave drafting of the notice to chance. According to the Scheme, a notice

> ...shall set out briefly –
>
> (a) the nature and a brief description of the dispute and of the parties involved;
>
> (b) details of **where** and when the dispute has arisen;
>
> (c) the nature of the redress which is sought; and
>
> (d) the names and the address of the parties to a contract, including where appropriate, the addresses the parties have specified for the giving of notices.[11]

14. At appendix C is a notice which has been drafted in accordance with the Scheme.

15. Under the Scheme it is not enough for a notice merely to say that there has been a dispute in relation to an extension of time, set-off, variations, etc. and seek payment. A notice has to give details such as the parties involved, when and where the dispute arose, the "redress", i.e. what the claimant wants the adjudicator to do, and the names and addresses of both parties to the contract.

Notices under other adjudication rules

16. The AICA rules provide that the notice

> …shall state in sufficient detail the nature of the dispute and the remedy sought, together **with a request to refer the dispute for Adjudication.**[12]

Under the AICA rules, as well as the Scheme, the remedy must be specified.

17. TeCSA adopt a different approach. Here a notice must be served

> …identifying **in general terms** the dispute in respect of which adjudication is required. [13]

[11] Paragraph 13 of the Scheme
[12] See Rule 2(a) – emphasis added

18. The Institution of Civil Engineers Adjudication Procedure has different requirements. Here the notice must give:

18.1 the details and date of the contract;

18.2 the issues which the adjudicator has been asked to decide;

18.3 details of the nature **and extent**[14] of the redress sought.

19. CEDR ask for a copy of the Adjudication provisions in the contract[15].

20. The JCT 1980 Form of Contract provides that a claimant need only

> ….give notice to the other Party of his intention to refer the dispute or difference, **briefly identified in the notice…**[16]

Jerome Engineering Limited v Lloyd Morris Electrical Limited

21. In this case[17] the notice stated "…you have failed to properly make interim valuation and payment in accordance with clause 21.1 of the sub-contract". The underlying contract was DOM/2, which had the same provisions as to what was to be included in the notice as JCT 80. Significantly, the notice made no mention of what the claimant wanted the adjudicator to do, i.e. award payment.

22. However, under the DOM/2 form of contract the notice need only briefly identify the dispute or difference. The referral contained particulars of dispute or difference, sum of the contentions, etc, and a statement of the relief or remedy which was sought. Under DOM/2 form of contract the relief or remedy was to be stated in the **referral**, and not the notice. Accordingly, the notice in this case was still valid, even though it did not state what remedy the claimant wanted.

23. If, however, the adjudication was governed by the Scheme the Institution of Civil Engineers Adjudication Procedure or the AICA Adjudication Rules, the notice would have been invalid as it failed to state what the claimant wanted.

---

[13] TeCSA Rules, Rule 3
[14] Institution of Civil Engineers Adjudication Procedure, paragraph 2.1 – emphasis added
[15] ….and other information
[16] Clause 41A.4.1 - emphasis added
[17] 23 November 2001

24. The *Jerome Engineering* case illustrates the importance of understanding some of the subtle differences governing notices between the various adjudication rules.

Problem notices

Vague notices

25. In *Ken Griffin and John Tomlinson (trading as K&E Contractors)* v *Midas Homes Limited,*[18] the adjudication was subject to the Scheme which, as we have already seen, sets out a clear requirement as to what should be included in the notice.

26. In this case the notice stated:

> We refer to our two letters to Midas Homes dated 11 and 13 April respectively… As no payments have been received from your client in respect of either of these letters, a dispute now exists between our client and your client, and this dispute will now be referred to adjudication, in accordance with the Act.
>
> The letter of 11 April referred to two earlier invoices and stated that payment was overdue. The letter of 13 April enclosed two further invoices. Each stated to be a "Final Invoice".

The notice did not comply with the Scheme.

27. The defendant's solicitors in response stated:

> We have absolutely no idea from your Notice of Adjudication which of these numerous items you are intending to refer to the adjudicator or the grounds in which you seek to do so.

The adjudication nevertheless proceeded, and the adjudicator awarded the claimants £52,493.91.

28. The defendant refused to pay and when the claimant sought enforcement of the adjudicator's decision. The court confirmed that the notice under the Scheme should record the dispute with some precision.

[18] 21 July 2000

29. Here, there was a "range of possibilities"[19]. It was not clear whether the notice included damages for breach of contract, loss of profit, loss and expense, or loss as a result of terminating the contract. The judge, in view of the fact that the notice and ensuing adjudication were so vague, decided to enforce only the clear parts of the adjudicator's decision and the sum awarded was reduced to just under £12,000.

30. However, adjudicators and judges alike can be sceptical of a party who is faced with a possibility of making a substantial payment alleging that the notice is vague. In one case it was stated:

> While the formulation of the Notice…seems to me to be lacking in focus and unduly discursive in my judgment it was tolerably clear on a fair reading of the Notice as a whole…[the Respondent] was in law and responsible to the [Referring Party] for the deficiencies alleged in the operation of the Gate and, if so, to what sum by way of damages was [the Referring Party] entitled.[20]

Stating the remedy

31. Even if the remedy is not a necessary requirement of the Notice under rules which govern your adjudication, it is good practice to set the remedy out in a Notice. The remedy is in essence what the adjudicator is asked to do.

32. The adjudicator will normally look at the remedies asked for when finalising his decision to make sure he has answered all the key issues raised by the referring party.

33. In *David McLean Housing Contractors Limited* v *Swansey Housing Association Limited*[21] the Scheme applied. The notice stated:

> There are matters in dispute as follows:
>
> 1. the Referring Party's, entitlement to direct loss and/or expense pursuant to Clause 26 of the Contract;
>
> 2. the Referring Party's entitlements to extension of time pursuant to Clause 25 of the Contract;

[19] Transcript page 7, paragraph C
[20] *Dean & Dyball Construction* v *Kenneth Grubb Associates Limited*, 23 October 2003, TCC
[21] 27 July 2001

3. a proper valuation of variations carried out by the Referring Party pursuant to Clause 12 of the Contract;

4. the proper valuation to be ascribed to measured work;

5. release of Retention;

6. Expenditure of Provisional Sums.

As to what the adjudicator was required to do, the notice went on to state:

(i) without prejudice to the Referring Party's right to add to the remedies sought in its Referral, its claims are set out in the Application (attached) or as assessed in the adjudication.

34. His Honour Judge Lloyd QC reiterated that the essential question was:

> …did the adjudicator really do what he was being asked to do?

It was described as:

> …unfortunate that the notice did not say clearly that the contract was claiming what ought to have been paid that was not said in so many words, at least until the submissions were made in the adjudication itself.

35. Whereas in this case a failure to state a remedy in an adjudication governed by the Scheme would cause a problem, here it did not as a result of the Defendant's actions. Within a few days of the adjudicator's award and a claim for a substantial sum, the employer issued a Withholding Notice deducting liquidated and ascertained damages reducing the amount due to the claimant under the adjudicator's decision. Essentially by acting in this way the employer accepted that the adjudicator had the right in the adjudication to award payment, even though payment was not one of the remedies specifically asked for in the notice.[22]

[22] The *David McLean* decision turns on its own facts. Unless the adjudicator lacks jurisdiction, his decision must be complied with. However, here the adjudicator's decision that the works should have been completed by X date meant that the claimant had not completed on time, and then **under the terms** of the adjudicator's decision liquidated and ascertained damages were payable to the Employer. However, in the majority of cases it is difficult to resist a payment awarded by an adjudicator.

36. Some commentators have argued that the **referral** should include not only the referring party's position, but a statement of the respondent's position – thus setting out the "dispute" which includes both parties' side of the story. I personally have never seen this done and am dubious of this approach as I doubt that a referring party can truly give the respondent's position justice.

Changing cases

37. Whilst *Fastrack* dealt with the issue that quantum changing in the run up to an adjudication, changing the actual items in dispute is a different matter. In *Edmund Nuttall* v *R G Carter*,[23] the differences between the claimant preceded the adjudication and the Notice was as follows:-

Item	Claim	Notice
Prolongation	£474,018	£531,284.68
Off-site cost	£108,938	£113,722.79
Staff thickening[24]	£242,070	£nil
Overtime	£213,175	£213,175
Disruption	£626,866	£nil
Increased costs	£4,043	£41,946.89
Attendances	£22,627	£nil
Overheads	£212,227	£277,528
Financing	£75,788	£75,788

38. Further, during the course of the adjudication, the claimants produced an Expert's Report for the first time. The Report asked for the same extension of time of 235 days as per the original claim, but put forward a different justification. Some items were now said to have had no delaying effect and other items, according to the Expert's Report, now caused significant delays. New items were introduced into the adjudication via the Report which had not featured in the claim at all. The claimants sought to rely upon *Fastrack* in the sense that the amounts claimed had changed and the other changes were questions of degree which did not prejudice the parties.

39. However, the court would not accept this agreement. His Honour Judge Seymour QC said that a party in an adjudication can refine its arguments and abandon points

[23] 21 March 2002
[24] A novel phrase which lends itself to many jokes which I will not make here

without fundamentally changing the nature of the "dispute". What a party could not do was abandon wholesale facts relied upon and then advance new arguments for the first time in an adjudication. A party had to make claim which was then either rejected or ignored so as to turn it into a dispute that was capable of adjudication. If the adjudication was the first time the defendant had heard of the "claim" there could be no opportunity to reject or ignore it and therefore no dispute.

40. The *Edmund Nuttall* case was appealed but settled before the Court of Appeal gave its judgment. In a rare move the Court of Appeal issued an order indicating that although it did not have the opportunity to give judgment, there was a real prospect that the appeal would have been successful.

41. In the meantime the *Edmund Nuttall* case has caused considerable concern to adjudicators and parties. Cases often "develop" during an adjudication. The first time a party may see experts' reports, witness statements, build-ups, etc. may be in the referral. There is a real question, and it is best a question of degree, as to how far a party can depart from what was being claimed in the adjudication.

What should a notice contain?

42. This depends on the underlying adjudication rules. As a broad rule a notice should contain:

42.1 brief descriptions of the parties and the underlying contract;

42.2 brief description of the dispute;

42.3 a request for £x or such other sum as the adjudicator thinks is due to the claimant, together with interest for such period and at such rate the adjudicator thinks fit;

42.4 a request to be paid by x date or such other date as the Adjudicator thinks fit;

42.5 a request for payment of costs. If you are not entitled to your own costs, make sure you ask for the adjudicator's fees to be paid by your opposite number or alternatively to be apportioned as the adjudicator thinks fit. Make sure you also claim the fee paid to the AICA for the appointment of the adjudicator.

Adjudicator Nominating Bodies ("ANB")

43. Please bear in mind the ANB only receives a form, a copy of the notice and on occasion a copy of the adjudication clause in the contract on which to base their decision to appoint an adjudicator. Therefore:

43.1 the form/covering letter needs to set out clearly why the adjudicator should be a quantity surveyor/barrister/undertaker, etc.

43.2 the referring party can speak to the ANB. This should not mean the ANB is placed under pressure to appoint a particular person – this is likely to be counter-productive. If there is a particular issue which should be brought to their attention, most appointing offices are willing to speak to the referring party on the telephone.

Referral

Preparation

44. It never ceases to surprise me how often referrals are served late. Whilst late service in itself may not invalidate the adjudication – see later. The referring party will have had many months to prepare his notice, referral, supporting documents, etc, but it does not reflect well on the referring party if the referral is served late.

45. I suggest the Referral is drafted first, and then followed by the notice. Only by drafting and agreeing the referral will the issues become clear. Further, by the time the notice is served and the adjudication started, the referral and all of the supporting documents should be ready, save for pagination and copying.

Different rules, different Referrals

46. Once the notice has been served, the claimant then sets out his case in the referral. The referral is a detailed document explaining what the Claimant is entitled to, what he is claiming, and would normally include supporting documents and may even include experts' reports, witness statements and whatever else the claimant decides to put in. The referral should follow on from the notice.

47. As with notices, different adjudication rules have different requirements for what should be put in the referral:

47.1 according to the Scheme, the referral is to be accompanied by copies of all relevant extracts from the construction contract and such other documents as the claimant relies upon.[25] The referral is to be served within 7 days of the notice;[26]

47.2 the AICA Rules require the referral to be accompanied by copies of documents the claimant relies upon "suitably annotated".[27] Under the AICA Rules, the referral is to be served as soon as the adjudicator is appointed;[28]

47.3 the JCT form of contract requires the Referral to have

> …particulars of the dispute or difference together with a summary of contentions on which [the claimant] relies, the statement of the relief or remedy which is sought and any material which [the claimant] wishes the Adjudicator to consider;[29]

47.4 limiting the scope of the referral or setting out rules as to whether the referral (or notice) should be served is a common way of restricting the scope of adjudication.

For example, in one case the Scheme was amended whereby

> …the referral…shall not exceed 30 single-sided sheets of A4 in total and any further sheet shall be disregarded by the adjudicator.[30]

48. There are ways round limiting the length of referrals and supporting documents:

48.1 whilst the referral may be very short, the main text of the claim etc is often put in another document;

48.2 any attempt to prevent the adjudicator from calling for additional information and documents is likely to contravene the requirement that the adjudicator can take the initiative and ascertain the facts and the law and the Scheme which requires the adjudicator to consider relevant documentation.

---

[25] Paragraph 7(2)
[26] Paragraph 7(1)
[27] Rule 7(b)
[28] Paragraph 7(b)
[29] Clause 41A.4.1
[30] *Solland International* v *Daraydan Holding*, 15 February 2002

Kitchen sink adjudications

49. A lengthy Notice is an appetiser for a rambling referral which is accompanied by lever arch files of documents, very few of which are relevant and many of which do not make sense. Although an adjudicator is empowered to take the initiative and ascertain the facts in the law, in these sorts of referrals it is difficult to work out precisely what is being claimed, asked for or supported, and the temptation is to drown under a sea of paperwork.

50. A claimant should try to:

50.1 set out his case clearly and to the point. This is very difficult to do as the points raised may develop during the course of an adjudication;

50.2 documents should be paginated! The referral should refer to the pagination numbers of the documents, this makes it far easier to follow;

50.3 resist the temptation to send large bundles of documents by way of "background" information. If a document is not mentioned in the referral, there is probably no need to include it.

Helping the adjudicator understand your position

51. Bear in mind that the adjudicator will know nothing about the project, let alone the dispute, save for what he learns from the referral and the following submissions. The referral should follow events chronologically and refer to each sheet and paragraph within paginated bundles. Ignore the temptation to refer to a section within a lever arch file of documents and let the adjudicator try to find the relevant documents and paragraph you are referring to. The impact of your message will be lost whilst the adjudicator is trying to find the supporting evidence.

52. Also bear in mind how the presentation involved in the Referral will look to the adjudicator. I receive papers that have been crammed into overflowing files. Also, if (say) a contractor is alleging that the administration and the management of a project was run smoothly and efficiently, it hardly supports the contractor's case when the referral makes little sense, has copies missing, is confusing, not paginated, etc.

53. Keep in mind human nature. If an adjudicator does not understand what is being said – he is likely to dismiss it.

54. I am dubious as to whether adjudication can be used for large-scale loss and expense claims. Frequently adjudicators can get lost in a wealth of detail and surrounded by a large number of lever arch files. I try to seek a series of selective adjudications in these circumstances wherever possible, such as whether one party has repudiated the contract. Or whether a particular item or items of works were variations.

Time limits

55. When a notice or referral is served late, the responding party may argue that the notice/referral is invalid as it failed to comply with the time limits set down in the relevant adjudication rules - therefore the adjudicator has no jurisdiction to consider the notice/referral, late submission, etc. Two recent cases dealt with what happens when an adjudicator does not issue his decision within the required timescale. In both these cases when a draft decision was issued with the final decision following within a week or so, it was held that although the importance of complying with the time limit set down was important, the delays in issuing decisions which the adjudicator's gave notice of, one of which was unavoidable due to the death of the adjudicator's mother, did not render the decisions nullity.

56. I submit that the same applies to the parties' submissions. Serving a submission one or two days late will not render nullity but the adjudicator should always look at the effect in serving the document late. Normally serving a referral a day or two later than planned can be cured by giving an extension to the other party. An adjudicator should, however, be weary of what happened in *London & Amsterdam Properties Limited* v *Waterman Partnership Limited.*[31] Here the referring party served the supplemental statement with its enclosures which consisted of over 1,000 pages with only 7 days remaining in the adjudication process. The judge decided that this was "clearly deliberate" evidential ambush, and in this case there was insufficient time for the respondent to deal with the information, and the adjudicator had the power to exclude the new evidence.

[31] 18 December 2003

Jargon

57. Avoid it. Parties can "admit" a particular fact, but why not say this "agreed"? Why use "not admit" or "it is averred"? Clear English is more easily understood and within the time constraints of an adjudication is likely to have more impact.

Defences

No such thing as an ambush

58. As we have already seen the dispute and documents should have been sent to the responding party before an adjudication starts – there is no such thing as an ambush in adjudication. What is surprising, however, is when the responding party does little or nothing until they have actually received the referral. Admittedly, parties threaten adjudication regularly without carrying out the threat. If faced with a substantial financial dispute and a threat to adjudicate, the referring party should at the very least collate his documents personally, etc and get an idea of how he will deal with the inevitable claim. If any of the parties are given 7 days to submit a defence then the quality of the document will be poor if preparations only start once the referral is received.

Setting out the Defence

59. Defences, like referrals, can be very confusing. The same rules apply to defences as to referrals – defences should be to the point, clear and include a paginated set of supporting documentation with the adjudicator being taken to the individual sheet and paragraph which the responding party is relying upon.

60. Nevertheless, I sometimes find it difficult to match up the allegations in the defence to the referral. Defences are prepared at speed and many respondents vent their anger in the defence. It is inevitable that the parties will be upset but I find that "loaded" language, ranting, etc only serves to confuse the adjudicator and detract from the main message that the respondent and indeed the referring party are trying to make.

61. At appendix D is a sample submission I send to the parties when sitting as an adjudicator. Essentially what I try to do is to ensure that the point I am making on behalf of the responding party immediately follows the point that was made by the respondent in the referral. This has two benefits:

61.1 it ensures that the responding party answers every point in the referral.

61.2 the defence is more likely to have more impact. The Adjudicator will read the referral and immediately hear what the responding party has to say about a particular point.

Conclusion

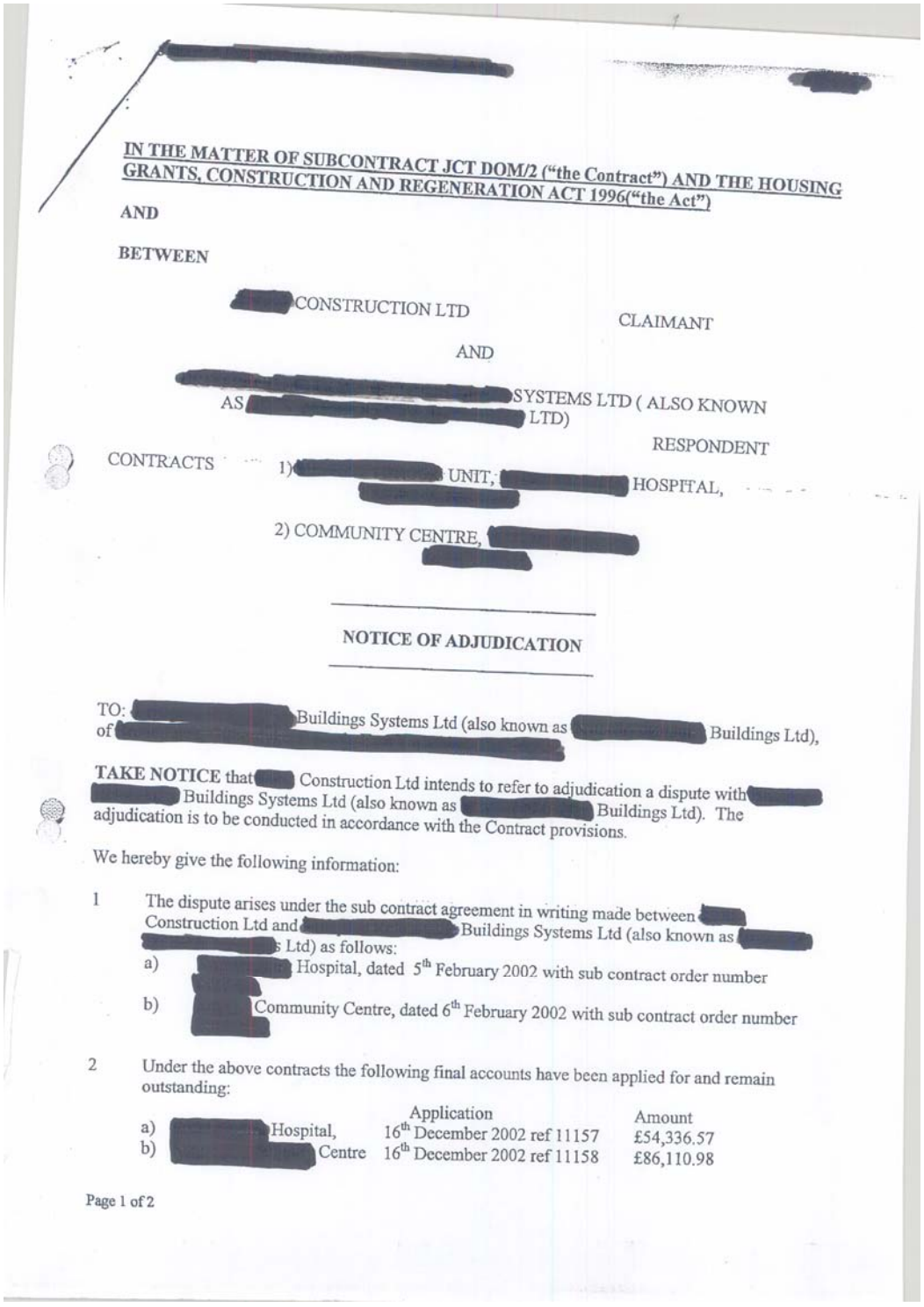
62. Notices are relatively simple documents. Subject to complying with the underlying adjudication rules a notice should contain a brief description of the parties, the contract, the dispute, how much the claimant wants and give the adjudicator discretion to award a different amount. The notice should also have a request for interest and the adjudicator's fee and nomination fee.

63. If a notice and the subsequent submissions are simple, they should be clear and easy to understand.

64. Prepare. Have the referral and the supporting documents ready before the **notice** is served. Don't be afraid to speak to the ANB.

1 October 2004
Jon Miller
Fenwick Elliott LLP

Appendix A



[redacted]

IN THE MATTER OF SUBCONTRACT JCT DOM/2 ("the Contract") AND THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996("the Act")

AND

BETWEEN

[redacted] CONSTRUCTION LTD — CLAIMANT

AND

[redacted] SYSTEMS LTD (ALSO KNOWN AS [redacted] LTD)

RESPONDENT

CONTRACTS 1) [redacted] UNIT, [redacted] HOSPITAL, [redacted]

2) COMMUNITY CENTRE, [redacted]

NOTICE OF ADJUDICATION

TO: [redacted] Buildings Systems Ltd (also known as [redacted] Buildings Ltd), of [redacted]

TAKE NOTICE that [redacted] Construction Ltd intends to refer to adjudication a dispute with [redacted] Buildings Systems Ltd (also known as [redacted] Buildings Ltd). The adjudication is to be conducted in accordance with the Contract provisions.

We hereby give the following information:

1 The dispute arises under the sub contract agreement in writing made between [redacted] Construction Ltd and [redacted] Buildings Systems Ltd (also known as [redacted] Ltd) as follows:

a) [redacted] Hospital, dated 5th February 2002 with sub contract order number [redacted]

b) [redacted] Community Centre, dated 6th February 2002 with sub contract order number [redacted]

2 Under the above contracts the following final accounts have been applied for and remain outstanding:

		Application	Amount
a)	[redacted] Hospital,	16th December 2002 ref 11157	£54,336.57
b)	[redacted] Centre	16th December 2002 ref 11158	£86,110.98

Page 1 of 2

[redacted]

NOA 17/01/03

3 [redacted] Construction Ltd's applications became due for payment on 15th January 2003, and no payment or Notice of Intention to Withhold Payment was received within the prescribed period as laid down by the Contract

4 [redacted] Construction Ltd seeks payment of £140,447.55 together with interest of £1,142.82 calculated to 17th February 2003 at the rate of 9% and continuing at the daily rate of £34.92 until payment, or such other rate as the Adjudicator may decide.

5 [redacted] Construction Ltd seeks payment of the costs and expenses of the Adjudicator

6 [redacted] Construction intends to apply to The Chartered Institute of Arbitrators for nomination of the Adjudicator.

17th February2003

[redacted] Construction Ltd

[redacted]

Tel: [redacted]
Fax: [redacted]

Page 2 of 2

Appendix B

The Contractor
1 Station Road
London
SE1

Today's date

Dear Sir

Tower of London[32]

We refer to Interim Application No. 12 for £150,000 plus VAT.

As of today's date, you have only paid £100,000. This, according to you, is due to the allegation that we delayed the works and you are entered to deduct £50,000 liquidated and ascertained damages.

We deny that the works are delayed and we hereby request the dispute our entitlement to an extension of time as to payment of £50,000 (or such other sums which the Adjudicator finds is due) as a result of delays to the works from Interim Payment No.11 be referred to adjudication. We will also be asking for interest on the sums due to us.

We are applying to the AICA for the appointment of an Adjudicator today.

Yours faithfully

Sub Contractor

[32] This is a very simple notice. Some adjudication rules require far more detail.

Appendix C

IN THE MATTER OF THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

AND IN THE MATTER OF AN ADJUDICATION

BETWEEN:

CONTRACTOR CONSTRUCTION LIMITED

(The Referring Party)

-AND-

EMPLOYER PLC

(The Responding Party)

NOTICE OF ADJUDICATION

INTRODUCTION

1. On or about 23 October 2004 Contractor Construction Limited ("Contractor") entered into a contract with Employer Plc ("Employer") for the supply and installation of WC Fit Out Works Package 837687436 at 54 The Lane, London, WC10 8KB ("the Works"). The Contract was based upon Employer's Purchase Order Conditions as amended. The Sub-Contract Price was £957,133.41.

THE NATURE AND A BRIEF DESCRIPTION OF THE DISPUTE AND OF THE PARTIES INVOLVED

2. During the course of the Works disputes have arisen regarding:-

   i. Contractor's entitlement to an extension of time.

   ii. The value, and Contractor's entitlement to be paid, in respect of (amongst other items) measured works, dayworks, variations and site instructions.

   iii. The value of and Contractor's entitlement to be paid loss and expense/damages for breach of contract and interest for late payment.

DETAILS OF WHERE AND WHEN THE DISPUTE HAS ARISEN

3. The dispute arose in connection with Employer's offices at 54 The Lane on or between 16 October 2004 and March 2005.

THE NATURE OF THE REDRESS WHICH IS SOUGHT

4. Contractor seek a decision from the Adjudicator that:-

i. Contractor are entitled to an extension of time for 23 weeks or such other period as the Adjudicator may decide.

ii. Employer shall make payment to Contractor of £1,049,161.13 plus VAT, or such other sums as the Adjudicator may decide, in respect of the application of 20 February 2005, or alternatively damages for breach of contract.

iii. Employer shall pay Contractor interest on all late payments throughout the course of the Works and sums which the Adjudicator decides are to be paid at such rate and at such period which the Adjudicator thinks fit.

iv. All payments to be made in connection with this adjudication shall be made within 7 days of the Adjudicator's Decision, or such other period as the Adjudicator may decide.

v. For the avoidance of doubt the Adjudicator will be asked to request Employer to produce copies of completion records and other documents that are relevant to the issues in dispute and Employer have refused to produce. If Employer refuse to produce copies, Contractor will be asking the Adjudicator to draw inferences from Employer's failure.

THE NAMES AND ADDRESSES OF THE PARTIES TO THE CONTRACT (including where appropriate, the addresses which the parties have specified for the giving of notices)

5. Contractor's full name and address is:

Contractor Construction Limited
New House
New Road
New Town
London
WC2 0BE

6. Employer's full name and address is:

Employer Plc
15 Appeal Street
London
EC2U 9JB

7. Under Clause 41 of the Contract, all Notices are to be given to Employer's and Contractor's Registered Offices. Both parties' registered offices are as above. Contractor ask all matters relating to this adjudication be sent to their solicitors, Fenwick Elliott, whose details appear below.

SERVED on 26 May 2005 by Fenwick Elliott, 353 Strand, London, WC2R 0HT, Tel: 020 7956 9354, Fax: 020 7956 9355; email jmiller@fenwickelliott.co.uk (contact Jon Miller) Solicitors to Contractor Construction Limited.

Appendix D

IN THE MATTER OF THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

AND IN THE MATTER OF AN ADJUDICATION

B E T W E E N:

Sub-Contractor

Referring Party

and

Main Contractor

Respondent

Sub-Contractor's Referral served on 1 January 2005
[*dd/mm/yy] (1)**

Contractor's Response served on 15 January 2005
[*dd/mm/yy] (2)**

Background

1. On or about 1 January 2004 the Sub-Contractor entered into a Sub-Contract ("Sub-Contract") with [The Contractor] to install mechanical services in connection with the refurbishment of new offices, London, WC1 (See Documents1-14)(1).

1.1 Agreed, save that the contract areas entered into on 2 January 2004 (2).

2. The Sub-Contractor submitted accounts for payment of its fees under the terms of the Sub-Contract. In particular, the Sub-Contractor issued accounts on 1 March and 1 April 2004 which to date have not been paid by the Contractor.(1)

2.1 The accounts were not submitted in accordance with the Sub-Contractor. More details are given in paragraph 23.1 below(2).

3. The background to this matter and the details raised in this dispute are set out in the statement of Mr Smith, who is the site manager of Sub-Contractor (see Documents 15-22)(1).

3.1 The facts in Mr Smith's statement are denied, see Mr Jones' statement (see Documents 201-205)(2).

4. On [***dd/mm/yy] [***Referring Party's expert/witness] was contacted by [***Respondent's expert/witness] (see Document [***]), who are [***job title] appointed by [***Respondent] (see Document [***]) and acting as [***Respondent]'s agent for the appointment of consultants and professionals. [***Referring Party] was asked to provide a report on the Planning use and Means of Escape of the premises leased by [***Respondent].(1)….etc, etc…..

4.1 Correct. (2)

[***…….and so on. Any comments which do not fit this format can be included in a "General" section at the back]

Dated [***]

Contacts

[***] Referring Party
[***Address, telephone number, fax number and name of contact]

[***] Responding Party
[*Address, telephone number, fax number and name of contact]**