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Adjudication Update: 30 years on

5 February 2026

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Daniel Churcher, 4 Pump Court

AGENDA

1. Case Law Update
2. Current Issues & Trends
3. Statistics & Areas for Improvement

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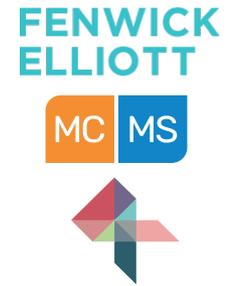
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Case Law Update

Daniel Churcher, 4 Pump Court



Vision Construct V Gypcraft Drylining [2025] EWHC 2707



- Contract requires:

16/1/23	2/2/23	16/2/23
Application	Payment notice due	Payless notice due

- What actually happens:

16/1/23	2/2/23	7/2/23	16/2/23
Application		Payment notice issued	

- Can the 7 February out of time payment notice serve as an *in time pay less notice*?

Vision Construct V Gypcraft Drylining [2025] EWHC 2707

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- No: it was, on its face, a payment notice, not a pay less notice.
- Why was this result unsurprising?
 - *Advance v Enisca [2022] EWHC 1152 (TCC): “the key question for present purposes is whether the Pay Less Notice was also ... in substance, form and intent a pay less notice”*
 - *Jawaby Property Investment Limited v The Interiors Group Limited, Andrew Stephan George Black [2016] EWHC 557 (TCC): “If a contractor wishes to have the benefit of the interim payment regime such as that contained in the Contract, then its application for interim payment must be in substance, form and intent an interim application stating the sum considered by the contractor as due at the relevant due date and it must be free from ambiguity.”*

London Eco Homes v Raise Now Ealing [2025] EWCH 1501

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- Various disputes as to payment under a construction contract.
- Parties enter into a settlement agreement making provision for payment by instalments of the settlement sum.
- Payments not made – C commences an adjudication claiming the unpaid instalments.
- D says the adjudicator lacks jurisdiction, because the settlement agreement is not a construction contract for the purposes of the 1996 Act
- Court disagrees, and allows enforcement of the adjudicator’s decision:

“In my judgment, the settlement agreement can properly be construed as constituting a variation of the original contract”

London Eco Homes v Raise Now Ealing [2025] EWCH 1501

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- Why is this not surprising?
- *Murphy v Maher* [2016] EWHC 1148 (TCC), Sir Robert Akenhead:

“If Murphy was right, save by ad hoc agreement, one could never adjudicate in a construction contract on an interim or final account which had been agreed in some binding way; that makes commercial and policy nonsense in circumstances in which such agreements must occur all the time and should be encouraged and supported by retaining the right to adjudicate if one party seeks to challenge the settlement on one basis or another.”

Lapp Industries v 1st Formations [2025] EWHC 943 (TCC)

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- Contractor issues application for payment
- No payment notice or pay less notice
- Challenge to adjudicator's jurisdiction on the basis that the works which formed the application for payment were subject to multiple contracts, and therefore the adjudicator lacked jurisdiction to hear the dispute
- Adjudicator finds that there was one contract
- On enforcement, Court notes, rightly, that the Adjudicator had the power *in principle* to decide whether there was one contract or many
- So the losing party turns to various natural justice arguments, including a suggestion the adjudicator went on a frolic of her own

Lapp Industries v 1st Formations [2025] EWHC 943 (TCC)

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- Unsurprisingly, the Court rejects that argument:

“Before considering this complaint, it is important to remember that the authorities show that the ‘frolic’ line of cases is intended to provide a safeguard for a losing party where the adjudicator has decided the dispute (or an important issue within the dispute) upon a basis as to which the parties have not had the opportunity to make submissions or put forward evidence. The touchstone is that the court, making every allowance for the inherently rough and ready and speedy nature of adjudication, will nonetheless intervene where unfairness has occurred.”

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Current Issues & Trends

Jonathan Cope, MCMS



Current Issues & Trends



1. Jurisdictional challenges
2. Types of disputes referred
 - a. High and low-value disputes
 - b. Notified sum disputes
 - c. Building safety disputes
3. Future trends

Jurisdictional challenges

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- 50 appointments up to December 2025 (including 7 Irish adjudications)
- I resigned from 11 of the 50 appointments as a result of an early settlement (10 appointments) or a conflict of interest which became apparent after the appointment (1 appointment). No jurisdictional challenges in respect of these 11 appointments
- Of the remaining 39 appointments, jurisdictional challenges were raised in 21 (54%)

Jurisdictional challenges

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- Of the 21 appointments where challenges raised:
 - 13 involved threshold jurisdictional challenges (62%)
 - 8 involved internal jurisdictional challenges (38%)
- Of the 13 appointments where threshold challenges were raised:
 - On 3 occasions I accepted the challenge and resigned (23%)
 - On 1 occasion I partially accepted the challenge and continued, albeit with a reduced scope (8%)
 - On 9 occasions I rejected the jurisdictional challenge (69%)

Jurisdictional challenges

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- Types of threshold challenges:
 - No crystallised dispute
 - Invalid service of the Notice of Adjudication
 - No true value dispute until immediate payment obligations satisfied
 - Claim statute barred
 - More than one dispute
 - Same dispute as one previously decided
 - Late service of Referral (Irish)
 - Appointment under incorrect contract
 - Dispute the subject of a settlement agreement
 - Contract does not comprise a construction contract and/or not construction operations
 - Responding Party in the adjudication not a party to the contract

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Jurisdictional challenges

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- Of the 8 appointments where internal challenges were raised:
 - On 3 occasions I accepted the challenges (37.5%)
 - On 3 occasions I partially accepted the challenges (37.5%)
 - On 2 occasions I rejected the challenges (25%)
- Types of internal challenges:
 - Referring Party trying to expand the scope of the dispute in the Reply, e.g. trying to expand to a true value dispute in circumstances where the dispute referred was based on a lack of a payless notice
 - No jurisdiction to consider the Responding Party's defence (Referring Party challenge) – *Global Switch Estates 1 Limited v Sudlows Limited* [2020] EWHC 3314 (TCC) and *VMA Services Ltd v Project One London Ltd* [2025] EWHC 1815 (TCC)
 - Part of the dispute the same as one previously decided in an adjudication
 - Limits on the scope of the declarations which can be granted
 - Limits on the scope of the dispute set out in the Notice of Adjudication
 - No crystallised dispute concerning part of the dispute referred

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Jurisdictional challenges

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- Key take aways:
 - Around 20% of disputes referred to adjudication settle at an early stage
 - In respect of the disputes that do not settle, jurisdictional challenges are raised in more than half of the adjudications
 - The majority of challenges are threshold jurisdictional challenges, but less than 25% are successful
 - Internal jurisdictional challenges are more likely to be successful

High- and low-value disputes

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- High-value disputes
 - The disputes referred to adjudication have adapted from those envisaged when the Housing Grants, Construction and Regeneration Act 1996 was enacted
- Low-value disputes
 - In the six months leading up to October 2025, RICS saw a 29% increase in the number of adjudications being referred under the CIC Low Value Disputes Model Adjudication Procedure (CIC LVD MAP)
 - The CIC LVD MAP applies to disputes in value up to £100,000, and there are caps on the adjudicator's fees, in particular in increments from £2,000 for a dispute up to £10,000 in value to £5,000 for a dispute between £75,000 and £100,000. Further allowance of £1,000 for a meeting and £1,000 for a site visit

High- and low-value disputes

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- Low-value disputes (continued)
 - The consent of both parties is not required to use the CIC LVD MAP, and where the Scheme for Construction Contracts (England and Wales) Regulations 1998 (“the Scheme”) applies, the procedure can be adopted unilaterally *“following a request by one of the parties, or at the adjudicator’s discretion”*
 - The parties are required to condense their documents into no more than one A4 lever arch file per submission (when printed)
 - The adjudicator can decide that the dispute is unsuitable for adjudication using the LVD MAP, and the adjudication will thereafter proceed in accordance with the Scheme.

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High- and low-value disputes

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- Non-exhaustive list of factors which the adjudicator may consider as demonstrating a dispute is unsuitable for adjudication using the LVD MAP includes where:
 - The total value of the dispute is greater than £100,000
 - A non-financial remedy such as a declaration of entitlement is sought
 - The documents included in the Referral, the Response, or the Reply exceed more than one A4 Lever Arch File (when printed) per submission
 - The dispute is prima facie not suitable for the adjudicator to make a Decision on a documents-only basis
 - The terms of the contract are not easily discernible
 - There are any challenges to the adjudicator's jurisdiction, which the adjudicator decides cannot be dealt with within two hours
- TECSA also has its own LVD adjudication service, the rules for which are very similar to the CIC LVD MAP (can apply where the Scheme applies, same fee limits, etc.). Differences arise as to what the adjudicator can do under the TECSA LVD rules in the event that the dispute is unsuitable, and no additional fees for a site visit or meeting

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Notified sum disputes

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- Historical background – withholding notices: *Rupert Morgan Building Services (Llc) Ltd. v Jervis & Anor* [2003] EWCA Civ 1563 and *SL Timber Systems Ltd v Carillon Construction Ltd* [2001] ScotCS 167
- Notified sum disputes remain common
- Common issues concerning the validity of the payment and/or pay less notices, whether there was an entitlement to serve an application for payment (particularly in the event of a schedule of valuations), etc.
- Arguments as to whether a party had a “...*genuine belief*...” in their assessment in a payment and/or a pay less notice are becoming increasingly common following *Downs Road Development LLP v Laxmanbhai Construction (UK) Ltd* [2021] EWHC 2441 (TCC)

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Building safety disputes

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- There are an increasing amount of building safety disputes being referred to adjudication
- Although the Court of Appeal gave permission to appeal in *BDW Trading Ltd v Ardmore Construction Ltd* [2024] EWHC 3235 (TCC), this will now not proceed due to Ardmore going into administration and the administrators deciding not to pursue the appeal
- As a result, we may see an increase in fire safety claims under the Defective Premises Act 1972, thanks to the extended limitation period under the Building Safety Act 2022

Future trends

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- Economic influences:
 - Increased adjudication activity in the event of a recession?
 - Increased numbers of insolvency disputes being referred to adjudication in the event of a recession?
- Use of AI in adjudication
- Increased relevance of regulatory requirements relating to climate-change

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Statistics & Areas for Improvement

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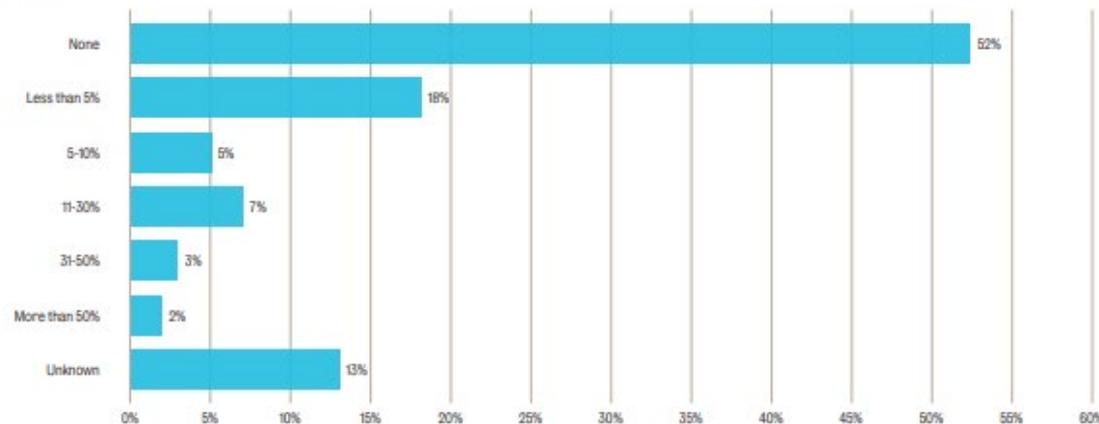


Statistics: How is adjudication doing?



- Best statistics available on adjudication are from the King's College Reports (sponsored by the Adjudication Society)
 - 2024 Report:

Figure 23: Percentage of adjudicated disputes that were referred to litigation or arbitration in the past year
Based on 164 received responses



Statistics: How is adjudication doing?

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- Adjudication is frequently the end of the dispute:
 - 2024 Report:
 - 52% of questionnaire respondents stated that, in the past year, not a single adjudicated dispute was referred to litigation or arbitration
 - 18% stated that less than 5% of cases were subject to such referral
- Vast majority of adjudication decisions are enforced
 - TCC fully enforced 77% of adjudication decisions if the case resulted in a reported judgment since 2011
 - Strong policy to enforce unless a lack of jurisdiction, breach of natural justice

Complaints?



8. Complaints about adjudicators before adjudicator nominating bodies

Seven participating ANBs – apart from CIC, LCIA and TECBAR – have formal procedures through which a complaint may be brought against an adjudicator. If such a challenge succeeds, ANBs can exclude or suspend the individuals' membership with the ANB or remove them from the panel of adjudicators.

Figure 20 below shows that the number of such formal complaints is low. In the past year, only 12 complaints were received by two ANBs – RIBA and RICS. Only one complaint was upheld but it did not result in the removal of the adjudicator from the ANB panel/list. The number of complaints is a very small fraction, at less than 1%, of the number of adjudication referrals received by those ANBs.

Figure 20: Formal complaints regarding adjudicators between May 2023 and April 2024

Adjudicator nominating body	Total number of adjudication referrals	Number of formal complaints regarding adjudicators received	Number of complaints upheld	Number of complaints resulting in the adjudicator's removal from ANB panel/list
CI Arb	98	0	–	–
ICE	101	0	–	–
RIAS	3	0	–	–
RIBA	75	1	Pending	–
RICS	1,340	11	1	0
TECSA	148	0	–	–
UK Adjudicators	461	0	–	–
Total	2,226	12	1	0

RIBA and RICS recognise four main grounds of complaint against adjudicators:

- Breach of natural justice
- Conflicts of interest
- Amount of total fees charged
- Incorrectness of the decision.

October 2022

Figure 23: Have you ever suspected that an adjudicator was biased towards one party in cases that you were involved with?
Based on 200 received responses. Adjudicators were excluded



“The second suggests a potential problem with construction adjudication which has been lurking close to the surface for quite a while now. Section 11, and figures 23 and 24, pull no punches on the issue of perceived bias. 40% of users have suspected that, on at least one occasion, an adjudicator was biased towards one party, and the vast majority of those based their suspicion on the adjudicator’s relationship with the parties or the parties’ representatives. That is a truly startling message, and it is to be hoped that the comprehensive and authoritative nature of this Report will mean that it is promptly and fully addressed.”

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What can be done to address this?

- Training by the ANBs and strict CPD requirements
 - Reviews of decisions rendered within certain time periods (e.g. every 5 years?)
 - Refreshing panels and bringing on new talent as required
- Mechanisms to ensure that feedback is provided from parties?
- Objectivity and transparency in the appointment processes of the ANBs
 - Panels that publish who is on them
 - Transparent processes for getting on them
- ANBs taking care to ensure party representatives can't game the system re who they get (or don't get) as a decision maker
 - *RNJM Ltd v Purpose Social Homes Ltd* [2025] EWHC 2224 (TCC)
 - Held: the adjudicator lacked jurisdiction on the basis that RNJM had made a false statement about a conflict of interest on the adjudication referral form

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Diversity of Adjudicators

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- Why does it matter?
 - Perception of a closed shop can lead to a perception of bias
 - New talent and ensuring the next generation of Adjudicators is recruited and trained up
 - Objectivity re getting onto the panel and qualifications – confidence in the process
 - Confidence in the decisions makers = confidence in the process

Diversity of Adjudicators

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- Progress:
 - All of the major ANBs have now signed the Pledge (RICS, TECSA, ICE, CI Arb, UK Adjudicators)
 - TECSA – currently 14% but with 30% women in the pipeline
 - RICS:
 - Up to 10% since interviews for the panel (9 new female Adjudicators) with 30% women in the pipeline (on courses)
 - Scholarship for the Adjudication exams
 - Transparent processes to get onto the panels (e.g. ICE and TECSA)
 - Panels reopening to admissions

Priorities going forwards?

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“We are not paid to get it right, we are paid to make a decision in time.”

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Questions?
Thank you.

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