

TeCSA Low Value Dispute Adjudication Service (LVDs)

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For some years there has been strong evidence in the construction industry of a call for a fresh approach to using adjudication as a method for resolving disputes in lower value disputes. By that I mean less complex and essentially simple liquidated demands for money. This call is principally a reaction to the increasing cost and complexity of adjudication procedures and higher levels of fees being charged by some adjudicators, legal and claims consultants', mainly resulting from an escalation in the time they need to spend on legal, evidential and procedural issues.

At the Technology and Construction Solicitor's Association (TeCSA) Conference last November a paper fielded by TeCSA Committee Solicitor Andrew James' was that of a new "low cost" TeCSA Adjudication Service. The overwhelming reaction was positive, and many hands went up to say please promote it. Whilst TeCSA cannot control the legal costs of parties, it can seek to make adjudication more attractive by having a Low Value Dispute (LVD) adjudication service where adjudicators' fees are capped, depending upon the value of the claim.

The intention is LVDs will be more agile and a cost-effective way to determine disputes, and allow small businesses to attain fair, cost effective and transparent decisions on their quarrels. There is an obvious access to justice point in all this too.

TeCSA will launch a six month LVD pilot in June 2019 and call upon our established panel to give a little back by participating in the pilot.

Whilst TeCSA would not expect adjudicators to routinely act as adjudicators and incur a loss in terms of fees, equally most adjudicators have earned a good living out of the construction industry and therefore if they do deal with LVDs and recover less in terms of fees, it should be viewed by adjudicators and TeCSA as "putting something back" into the industry. An LVD adjudication procedure will provide a valuable service to the industry, to those that currently feel ill served and those who have adjudication clauses in their building contracts.

If the pilot is a success, which it is bound to be, the intention is to use it to grow the panel and bring on the next generation of adjudicators.

I am aware that the Construction Industry Council, RICS and Federation of Master Builders, are also looking to develop bespoke adjudication procedures for low value disputes for claims valued at less than £50,000, but that service is not yet launched. TeCSA steals the march it seems. There are some issues with the CIC's procedure and proposed fees and the early draft I have seen appears over complex. A little competition is never a bad thing.

TeCSA main committee's approval of this pilot follows consultation with existing TeCSA adjudicators, it will run on a trial basis for 6 months, TeCSA will then review progress and any issues at the annual TeCSA adjudication conference in November 2019.

Summary of LVD adjudication service

The proposed claim value and fee cap are set out below:

Claim Value	Fee Cap
Up to £10,000	£2,000
£10,001 to £25,000	£2,500
£25,001 to £50,000	£3,500
£50,001 to £75,000	£4,500
£75,001 to £100,000	£5,000

Note that it is a fees cap, not a fixed fee and that the claim value excludes VAT and interest. The fee is also all inclusive (except for VAT).

The LVD Adjudication Service will apply to adjudications under the Construction Act or under contractual procedures equivalent to an adjudication under the Construction Act.

Other than the fee levels, the normal TeCSA Adjudication Rules will apply and it will be important that TeCSA maintain the quality of its Adjudication Service. Nevertheless, as it is likely that the majority of the disputes will be fairly straightforward, adjudicators are cautioned to consider limiting the number of submissions and the length of submissions, whilst always being mindful of complying with the rules of natural justice.

Claims will be limited to those for a liquidated sum but for the sake of simplicity and accessibility, the types of claims are not otherwise prescribed and therefore there could be claims for interim or final payments, claims for damages, loss and expense and variations etc. although it is suspected that in the majority of cases they will be straightforward claims for retention monies or interim payments based on a failure to give a payment notice or a pay less notice (i.e. a "smash and grab" adjudication). However, TeCSA do recognise and adjudicators will need to appreciate that as a Respondent can raise any defence, there is a possibility that matters will become more complicated than it may first appear, but that will not give the adjudicator the right to resign or charge higher fees unless the dispute changes out of all complexion and to that extent there would be an element of "taking the rough with the smooth".

We believe the LVD facility will provide a valuable service to the industry and whilst in the very lowest value adjudications the fee recovery will be modest, the object served will be an important need. Not everyone in our industry of small margins has deep pockets for small disputes to go 'legal'.

TeCSA will review the experiences of adjudicators and users of the new service and deal with any teething problems at the end of the pilot and I will update readers then.