



**CIC BUILT ENVIRONMENT
PROFESSIONS TOGETHER**

CIC LOW VALUE DISPUTES MODEL ADJUDICATION PROCEDURE

CONSULTATION DRAFT SECOND EDITION

An adjudication procedure for low value disputes complying with the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009 (the "Construction Act").

CIC Low Value Disputes Model Adjudication Procedure

CIC 2019: An adjudication procedure for low value disputes complying with the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009 (the "Construction Act").

All parties must rely exclusively upon their own skill and judgment when making use of this document. Neither the CIC nor any other contributor assumes any liability to anyone for any loss of damage caused by any error or omission whether such error or omission is the result of negligence or any other cause. Any and all such liability is disclaimed.

The CIC thanks Gillian Birkby, Martin Burns, Christian Charles, Niall Lawless, John Munton, Timothy Willis and Chi Wong for their work preparing the CIC Low Value Disputes Model Adjudication Procedure.

© Copyright Construction Industry Council
Reproduction is authorised, provided it is without amendment and the source is acknowledged.



**BUILT ENVIRONMENT
PROFESSIONS TOGETHER**

CIC LOW VALUE DISPUTES MODEL ADJUDICATION PROCEDURE

CONSULTATION DRAFT SECOND EDITION

An adjudication procedure for Low Value Disputes complying with the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009 (the "Construction Act").

The CIC encourages the reproduction of this Low Value Disputes Model Adjudication Procedure (LVD MAP) and strongly encourages its use unamended. If it is amended, it may not comply with the Housing Grants, Construction and Regeneration Act 1996 as amended.

The MAP is for use where the law of the Contract is that of England and Wales.

Where the law of the Contract is that of Scotland, the following amendments should be made:

- amend paragraph 38, line 2, by deleting the word 'summary';
- in paragraph 44, line 2, substitute 'Scotland' for 'England and Wales';
- in the Form of Agreement, clause 6, substitute 'Scotland' for 'England and Wales'.

The LVD MAP is accompanied by an agreement for the appointment of an adjudicator.

CIC Members

Association of Consultant Approved Inspectors
Association for Consultancy and Engineering
Association for Project Management
Association for Project Safety
Association for Specialist Fire Protection
British Approvals for Fire Equipment
Chartered Institute for IT
British Institute of Interior Design
Building Research Establishment
Building Services Research and Information Association
Chartered Association of Building Engineers
Chartered Institute of Architectural Technologists
Chartered Institution of Building Services Engineers
Chartered Institute of Building
Chartered Institution of Highways & Transportation
Chartered Institute of Plumbing and Heating Engineering
Chartered Institute of Procurement & Supply
Construction Industry Research and Information Association
Ground Forum
Institution of Civil Engineers
Chartered Institution of Civil Engineering Surveyors
Institute of Clerks of Works and Construction Inspectorate
Institution of Engineering and Technology – Built Environment Sector
Institution of Fire Engineers
International Institute of Risk and Safety Management
Institute of Specialist Surveyors and Engineers
Institution of Structural Engineers
Institute of Workplace and Facilities Management
Local Authorities Building Control
Landscape Institute
National House-Building Council
Royal Institute of British Architects
Royal Institution of Chartered Surveyors
Royal Town Planning Institute
The Safety Assessment Federation

Purpose of the CIC LVD MAP

Preamble

1. An adjudication procedure for low value disputes complying with the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009 (the "Construction Act").

Whereas the object of adjudication is to reach a fair, rapid and inexpensive decision upon a dispute arising under the Contract, there is evidence that Parties are deterred from using adjudication because of the costs involved.

The CIC LVD MAP sets out a streamlined adjudication procedure for Low Value Disputes, and by linking the Adjudicator's fee to the amount claimed provides certainty as to how much the Adjudicator will be paid for making an Adjudicator's Decision. 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.

Meaning of terms used in the CIC LVD MAP

Definitions

2. In this MAP:-

'Adjudication' is a process for resolving a dispute arising under the Contract, whereby an independent Adjudicator decides the matter within a prescribed timescale, usually 28 days.

'Adjudicator' means the person nominated in accordance with this procedure by the CIC or another participating Adjudicator Nominating Body (ANB), or agreed by the Parties and who will apply the CIC LVD MAP. **The Adjudicator will sit on one of the panels of qualified Adjudicators as set out in paragraph 40 below.**

'Adjudicator's Decision' is the Adjudicator's decision on the dispute.

'Adjudicator's fees' are the fees and disbursements charged by the Adjudicator as set out in Schedule 1.

'Application fee' is the fee charged by the Construction Industry Council, or another participating Adjudicator Nominating Body, for appointing an adjudicator, at the request (application) of the Referring Party. The list of participating Adjudicator Nominating Bodies is set out in Schedule 2.

'Contract' is the formal agreement between the Parties for the carrying out of construction operations as defined in the Construction Act. The Contract may be an oral agreement between the Parties.

'Low Value Dispute ("LVD")' is where the total amount claimed is £50,000 or less excluding VAT.

'Notice of Adjudication' is the first procedural step in adjudication. The Notice shall set out brief details of the parties involved, the nature and extent of the dispute and the redress sought. Only the dispute described in the Notice may be decided by the nominated Adjudicator.

'Party' means a party to the Contract. 'Referring Party' means the Party who commences adjudication by giving a 'Notice of Adjudication'. 'Responding Party' is the other Party.

'Jurisdiction' is an Adjudicator's authority to make a decision.

'Referral Notice' is a keystone document and as the Referring Party's principal submission in adjudication, it should contain everything that the Referring Party wants the Adjudicator to consider.

'Response' is the Responding Party's answer to the allegations set out in the Referral Notice.

'Reply to Response' is the Referring Party's answer to the allegations set out in the Response. Its purpose is not to make good any deficiencies in the Referral Notice.

Impartiality

3 The Adjudicator shall act impartially.

The Adjudicator's role

4 The Adjudicator may take the initiative in ascertaining the facts and the law. The Adjudicator may use their own knowledge and experience. The adjudication shall be neither an arbitration nor an expert determination.

Decision binding in interim

5 The Adjudicator's Decision shall be binding until the dispute is finally determined by legal proceedings, by arbitration (if the Contract provides for arbitration or the Parties otherwise agree to arbitration) or by agreement.

Implementation of the decision

6 The Parties shall implement the Adjudicator's Decision within 7 days from the date of the decision or, if later, by the final date for payment of any sum which the Adjudicator has decided should be paid, whether or not the dispute is to be referred to legal proceedings or arbitration.

Application

- Boilerplate LVD adjudication clause
- 7 “The Parties agree that any Low Value Dispute arising from a Contract for the carrying out of construction operations may at any time be referred to adjudication in accordance with the CIC LVD MAP”.
- Application
- 8 This procedure will be adopted if the Parties have incorporated it into the Contract directly by reference, the procedure shall be deemed to be to the edition current at the date of the Notice of Adjudication, unless expressly stated otherwise in the Contract. Alternatively, the Parties may agree to use this procedure on an ad-hoc basis when a dispute arises.
- Conflict
- 9 If a conflict arises between this procedure and the Contract, unless the Contract provides otherwise, this procedure shall prevail.

Appointment of the Adjudicator

- Notice of Adjudication
- 10 Either Party may give notice at any time of its intention to refer a dispute arising under the Contract to adjudication by giving a written Notice of Adjudication to the other Party.
- Nomination
- 11 The Referring Party shall request the Construction Industry Council, or another participating Adjudicator Nominating Body to nominate an adjudicator within 5 days of receipt of the request. The request shall be in writing, accompanied by a copy of the Notice of Adjudication and the appropriate fee.
- Conflict of interest
- 12 Prior to nomination by the Construction Industry Council, or another participating Adjudicator Nominating Body the prospective Adjudicator will confirm that they:-
- Have no current relationship towards either Party nor any connection with the subject matter of the dispute.
 - Have no conflict of interest.
 - Will comply this procedure and on the basis of the fees and other costs as set out in Schedule 1.
 - Wish to be nominated as Adjudicator.
- Adjudicator’s terms and conditions
- 13 Unless the Parties and the Adjudicator otherwise agree, the Adjudicator shall be appointed on the terms and conditions set out in the attached Agreement and shall be entitled to be paid the fee and other costs as set out in Schedule 1 below.
- Objection to appointment
- 14 If a Party objects to the appointment of a particular person as adjudicator, that objection shall not invalidate the Adjudicator’s appointment or the Adjudicator’s Decision that may be made.

Dispute not suitable

15 If the Adjudicator decides that the dispute is not suitable for adjudication using the CIC LVD MAP, the Adjudicator will resign. If the Adjudicator resigns the CIC LVD MAP will not be used by a different Adjudicator to decide the same dispute. This provision is not an impediment to the dispute being decided by adjudication. A non-exhaustive list of factors which the Adjudicator may consider as demonstrating a dispute is not suitable for adjudication using this procedure is set out in the 'Guidance on suitability' in paragraph 48 below.

Conduct of the Adjudication

Party representation

16 The Parties may choose to be assisted by professional representatives at any stage of the Adjudication. The Adjudicator will communicate directly with the Parties and copy any Party representatives into such communication.

Referral Notice – statement of case

17 Within 7 days of the Notice of Adjudication, the Referring Party shall send the Adjudicator and the Responding Party the Referral Notice. The Referral Notice is a statement of the Referring Party's case including a copy of the Notice of Adjudication, the Contract, details of the circumstances giving rise to the dispute, the redress sought, the reasons why it is entitled to the redress sought, and the evidence upon which it relies. The Referral Notice shall include an index which sets out what documents are in the Referral Notice and where the Adjudicator can find each document, or section of document.

Date of referral

18 The date of referral shall be the date on which the Adjudicator receives the Referral Notice.

Adjudication timetable

19 After receiving the Referral Notice, the Adjudicator shall, as soon as reasonably practicable, confirm the adjudication timetable to the Parties in writing. Unless the Adjudicator directs otherwise, the adjudication timetable will be as follows:-

- Based upon the Referral Notice being received by the adjudicator on Day 1.
- The Responding Party will respond to the Referral Notice no later than Day 14.
- If the Referring Party wishes to make any Reply to the Response, it may do so in writing no later than Day 21.
- The parties will receive the Adjudicator's Decision not later than Day 28.

Reckoning periods of time

20 Day means a calendar day. Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales or, as the case may be, in Scotland, shall be excluded from the adjudication timetable.

Period for decision	21 The Adjudicator shall reach their decision within 28 days of the date of referral, or such longer period as is agreed by the Parties after the dispute has been referred. The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the Referring Party.
Procedure	22 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.
Documents only	23 Disputes under this procedure are to be decided by the Adjudicator on a documents only basis unless the Adjudicator directs otherwise. Without prejudice to the generality of the powers set out above, the Adjudicator may:- <ul style="list-style-type: none"> (i) request a written response, further argument or counter argument; (ii) limit the length or time for submission of any statement, response or argument; request the production of documents; (iii) proceed with the adjudication and reach a decision even if a Party fails to comply with a request or direction of the Adjudicator; (iv) issue such further directions as the Adjudicator considers to be appropriate.
Meeting the Parties	24 Where the Adjudicator directs, or the Parties mutually agree that they want to meet the Adjudicator, the Adjudicator will convene a meeting and request the attendance of people whom the Adjudicator considers could assist. The Adjudicator may meet and question the Parties and their representatives, in addition the Adjudicator may meet the Parties separately (should the Adjudicator be able to meet the Parties separately?) . Where the Adjudicator meets the Parties the Adjudicator will be paid additional fees in accordance with Schedule 1.
Visit the site	25 Where the Adjudicator directs, or the Parties mutually agree that the Adjudicator should visit the site, the Adjudicator will visit the site. Where the Adjudicator visits the site the Adjudicator will be paid additional fees in accordance with Schedule 1.
Parties to comply	26 The Parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.
Power to open up certificates	27 The Adjudicator may open up, review and revise any certificate, decision, direction, instruction, notice, opinion, requirement or valuation made in relation to the Contract.
Obtaining advice	28 The Adjudicator will make the Adjudicator's Decision relying solely on the Adjudicator's own experience and judgement.
Matters to be determined	29 The Adjudicator shall decide only the matters set out in the Notice of Adjudication.

- Adjudicator to apply the law 30 The Adjudicator shall determine the rights and obligations of the Parties in accordance with the law of the Contract.
- Resignation 31 The Adjudicator may resign at any time on giving notice in writing to the Parties.

The decision

- The decision 32 The Adjudicator shall reach their decision within the time limits in paragraph 21 above and issue the decision as soon as possible after that. The Adjudicator shall be required to give reasons unless both Parties agree at any time that the Adjudicator shall not be required to give reasons.
- Late decisions 33 If the Adjudicator fails to reach or issue a decision in accordance with paragraph 32 above, the Adjudicator shall not be entitled to any fees or expenses.
- Interest 34 The Adjudicator may in the Adjudicator's Decision direct the payment of such simple or compound interest if claimed from such dates, at such rates and with such rests, as the Adjudicator considers appropriate.
- Correction of errors 35 The Adjudicator may on their own initiative or on the application of a Party correct the Adjudicator's Decision so as to remove a clerical or typographical error arising by accident or omission. Any correction must be made within 5 days of the delivery of the Adjudicator's Decision to the Parties. As soon as possible after making the correction in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected Adjudicator's Decision to each of the Parties. Any correction forms part of the Adjudicator's Decision.
- Costs 36 The Parties shall bear their own costs and expenses incurred in the adjudication. **Notwithstanding that, the Adjudicator may direct either Party to pay the Application Fee.**
- Adjudicator's fees and expenses 37 The Parties shall be jointly and severally liable for the Adjudicator's fees and expenses as set out in Schedule 1 below. A general principle of the Law of Costs is that costs follow the event; accordingly the Adjudicator shall apply that norm when deciding which Party will pay the Adjudicator's fees and expenses. If the Adjudicator makes no such direction, the Parties shall pay them in equal shares.
- Enforcement 38 The Parties shall be entitled to the redress set out in the decision and to seek summary enforcement, whether or not the dispute is to be finally determined by legal proceedings or arbitration. No issue decided by the Adjudicator may subsequently be referred for decision by another adjudicator unless so agreed by the Parties.

Subsequent decision by arbitration or court

39 In the event that the dispute is referred to legal proceedings or arbitration, the Adjudicator's Decision shall not inhibit the right of the court or arbitrator to determine the Parties' rights or obligations as if no adjudication had taken place.

Miscellaneous Provisions

Adjudicator qualifications

40 The CIC or other participating Adjudicator Nominating Bodies (ANBs) will maintain a panel of qualified Adjudicators.

Adjudicator not to be appointed arbitrator

41 Unless the Parties agree, the Adjudicator shall not be appointed arbitrator in any subsequent arbitration between the Parties under the Contract. No Party may call the Adjudicator as a witness in any legal proceedings or arbitration concerning the subject matter of the adjudication.

Immunity of the Adjudicator

42 The Adjudicator is not liable for anything done or omitted in their discharge or purported discharge of their functions as adjudicator (whether in negligence or otherwise) unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected from liability.

Reliance

43 The Adjudicator is appointed to determine the dispute or disputes between the Parties and the Adjudicator's Decision may not be relied upon by third parties, to whom the Adjudicator shall owe no duty of care.

Proper law

44 This procedure shall be interpreted in accordance with the law of England and Wales.

Schedule 1 – Adjudicator's fees and expenses

Adjudicator's Fees and Expenses

45 The Adjudicator's fees exclusive of VAT will be fixed as set out below.

Acting as Adjudicator Fees

Claim value	Adjudicator's fee
Up to £10,000	£2,000
£10,001 to £25,000	£3,500
£25,001 to £50,000	£6,000
Over £50,000	Negotiable (see note below)

Meeting the Parties

46 Where the Adjudicator meets with the Parties, in addition to the fee above, the Adjudicator will be paid £1,000 plus reasonable travel expenses.

Visit the site

47 Where the Adjudicator visits the site, in addition to the fee above, the Adjudicator will be paid £1,000 plus reasonable travel expenses.

Guidance on suitability

- 48 A non-exhaustive list of factors which the Adjudicator may consider as demonstrating a dispute is unsuitable for adjudication using the CIC LVD MAP is where:-
- Where the total amount claimed is greater than £50,000.
 - Where a non-financial remedy such as a declaration of entitlement is sought.
 - The documents included in the Referral, the Response, or the Reply to the Response exceed more than one A4 Lever Arch File.
 - The dispute is prima facie not suitable for the Adjudicator to make an Adjudicator's Decision on a documents only basis.
 - There is any argument as to whether the parties have consented to use the CIC LVD MAP.
 - The terms of the contract between the Parties are not easily discernible.
 - There are any challenges to the Adjudicator's jurisdiction, which the Adjudicator decides cannot be dealt with by the Adjudicator within two hours of the Adjudicator's time.

Disputes exceeding £50,000

- 49 Where the Parties have a dispute where the claim exceeds £50,000, they may choose to follow this procedure. In such circumstance the prospective Adjudicator shall write to the Parties setting out the basis of their proposed fees and expenses, for the Parties' agreement. (We need to decide to delete or include this provision – some consultation feedback is that it detracts from the focus of the LVD MAP)!

Schedule 2 Participating Adjudicator Nominating Bodies

List

- 50 • Construction Industry Council (CIC)
- ANB One
 - ANB Two
 - ANB Three.
 - ANB Four ...

FORM OF AGREEMENT

This agreement

is made the day of 20

Between

1.

of.....

.....
(the Referring Party)

2.

of.....

.....
(the Responding Party)

3.

of.....

.....
(the Adjudicator)

A dispute has arisen between the Parties under a Contract between them
dated..... in connection with.....

.....

which has been referred to adjudication in accordance with the CIC
Low Value Disputes Model Adjudication Procedure and the Adjudicator
has been requested to act.

The Parties and the Adjudicator agree that their rights and obligations
shall be as set out in and subject to the terms of this Agreement:

1. The adjudication shall be conducted in accordance with the
CIC LVD MAP.
2. The Parties shall be jointly and severally liable to pay the
Adjudicator's fees and expenses as set out in the Schedule 1
and in accordance with the CIC LVD MAP.

3. The Adjudicator and the Parties shall keep the adjudication confidential, except so far as is necessary to enable a Party to implement or enforce the Adjudicator's Decision.
4. The Adjudicator may destroy all documents received during the course of the adjudication 6 months after delivering the Adjudicator's Decision.
5. The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of their functions as adjudicator (whether in negligence or otherwise) unless the act or omission is in bad faith, and any employee or agent of the Adjudicator shall be similarly protected from liability.
6. This Agreement shall be interpreted in accordance with the law of England and Wales.

Schedule

- a. The Adjudicator shall be paid £..... in accordance with Schedule 1 – Adjudicator's fees and expenses above.
- b. The Adjudicator is / is not* currently registered for VAT (where the Adjudicator is registered for VAT, it shall be payable in accordance with the rates current at the date the work is done).

* delete as applicable

Signed on behalf of the Referring Party

.....

Signed on behalf of the Responding Party

.....

Signed by the Adjudicator

.....

