

CIC Low Value Disputes Model Adjudication Procedure

Friday 1st May 2020



Construction Industry Council Low Value Disputes Model Adjudication Procedure (CIC LVD MAP)

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Research and Development

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The CIC LVD MAP is “Construction Act compliant adjudication”

The Housing Grants Construction and Regeneration Act 1996 (as amended) allows any party to a construction contract in the UK to refer a dispute, at any time, to a 28-day procedure where the matter will be decided by an independent adjudicator.

The objective of adjudication is to reach fair, rapid and cost-effective decisions on disputes arising under construction contracts.

In some cases, however, small and medium sized businesses have been deterred from using adjudication because the amount of money they claim is low, and the relative cost of adjudication has been seen as prohibitive.

The objectives of CIC LVD MAP

The procedure has been developed to provide parties involved in low value disputes, especially SMEs, with:

- A streamlined, Construction Act compliant, adjudication procedure
- A procedure which is uncomplicated in its content and overall structure
- A timetable and programme to manage disputes that avoids unnecessary costs and use of endlessly complicated evidential measures.

In the current COVID-19 crisis, the CIC LVD MAP will help to free up cash flows for struggling businesses by quickly and effectively resolving disputes i.e. issues which can hold up payment.

Key features of the procedure

- The procedure is designed to deal with low value disputes, typically £50,000 or less
- The issue(s) in dispute must be clear-cut and not complicated by legal/technical questions for the adjudicator to deal with. (If there is any doubt then the final decision on this should be made by the nominated adjudicator)
- The nominated adjudicator can proceed under the LVD MAP where the referring party has applied to an ANB for the matter to be dealt with under the procedure and:
 - the adjudicator concludes that the dispute is suitable for determination under the procedure, and
 - there is no reasonable objection made by the respondent to the matter be dealt with under the procedure

Powers and duties of adjudicators to make CIC LVD MAP work effectively

- If the adjudicator decides the dispute is suitable for determination under the LVD MAP, but the respondent objects, the adjudicator may exercise his/her powers under the Scheme for Construction Contracts as follows:

Adjudicator's duty

S.12(b) Scheme for Construction Contracts – duty to avoid incurring unnecessary expense

E.g. where there is an unreasonable objection from the respondent to the use of the procedure, the adjudicator is able to exercise discretion to determine whether applying the LVD MAP will enable him to comply with the requirement to avoid unnecessary expense.

Adjudicator's power

S.13 The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the dispute and shall decide on the procedure to be followed in the adjudication.

Powers and duties of adjudicators to make CIC LVD MAP work effectively

The adjudicator is empowered under the Scheme to:

- Request either or both parties to provide such documents as he reasonably requires to decide the dispute,
- Obtain and consider such representations and submissions as he requires, give directions as to any deadlines, or limits as to the length of written documents.

The parties must

Comply with any request or direction of the adjudicator in relation to the adjudication. It follows that an adjudicator could direct that the procedure to be followed will be the LVD MAP (unless there is a good reason not to).

If, without showing sufficient cause, a party fails to comply with any request, direction or timetable of the adjudicator, or fails to provide any document or written statement requested by the adjudicator, the adjudicator may continue in the absence of that party.

Thank you



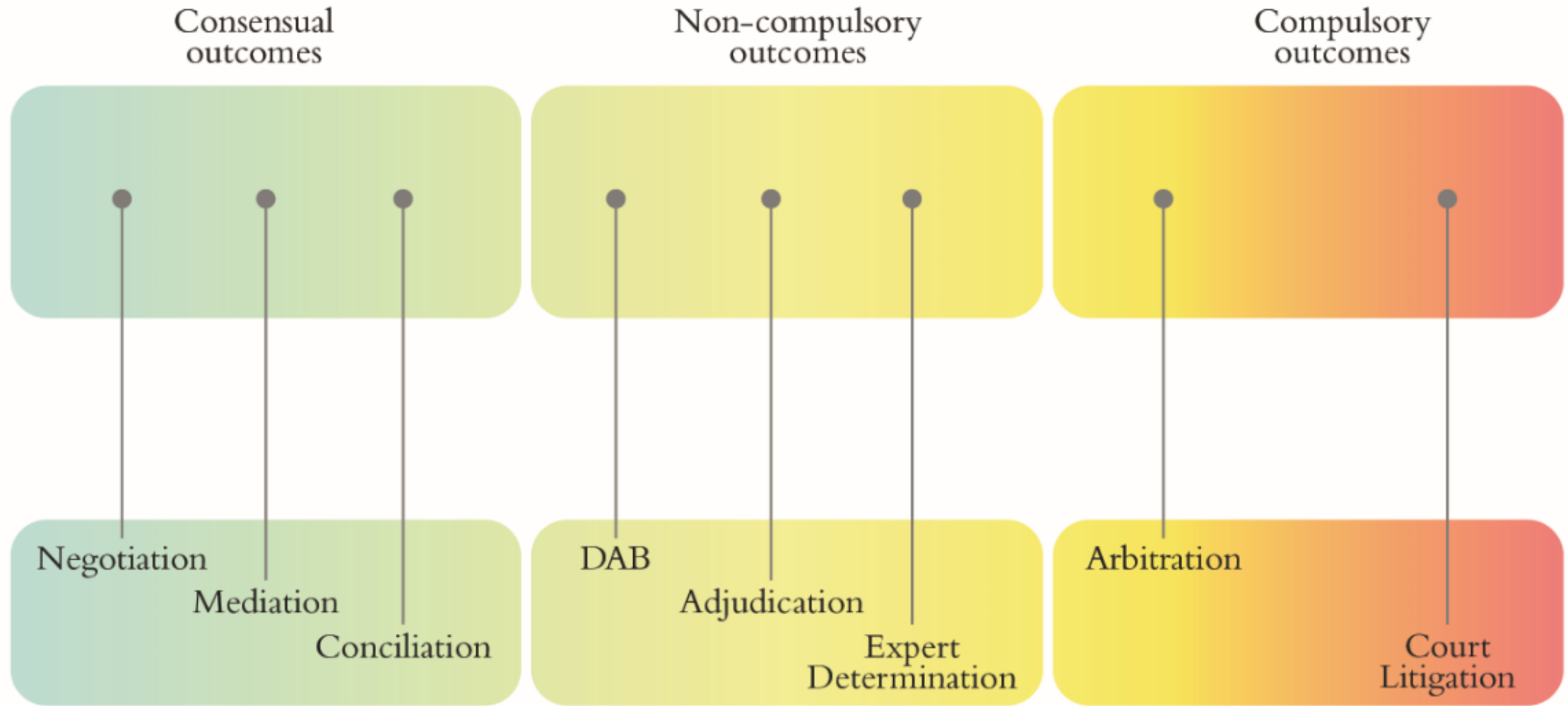
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**Launch Event via CIC Webinar
1 May 2020**

**Niall Lawless
Chair of the CIC ADR Management Board**

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Array of dispute resolution methods

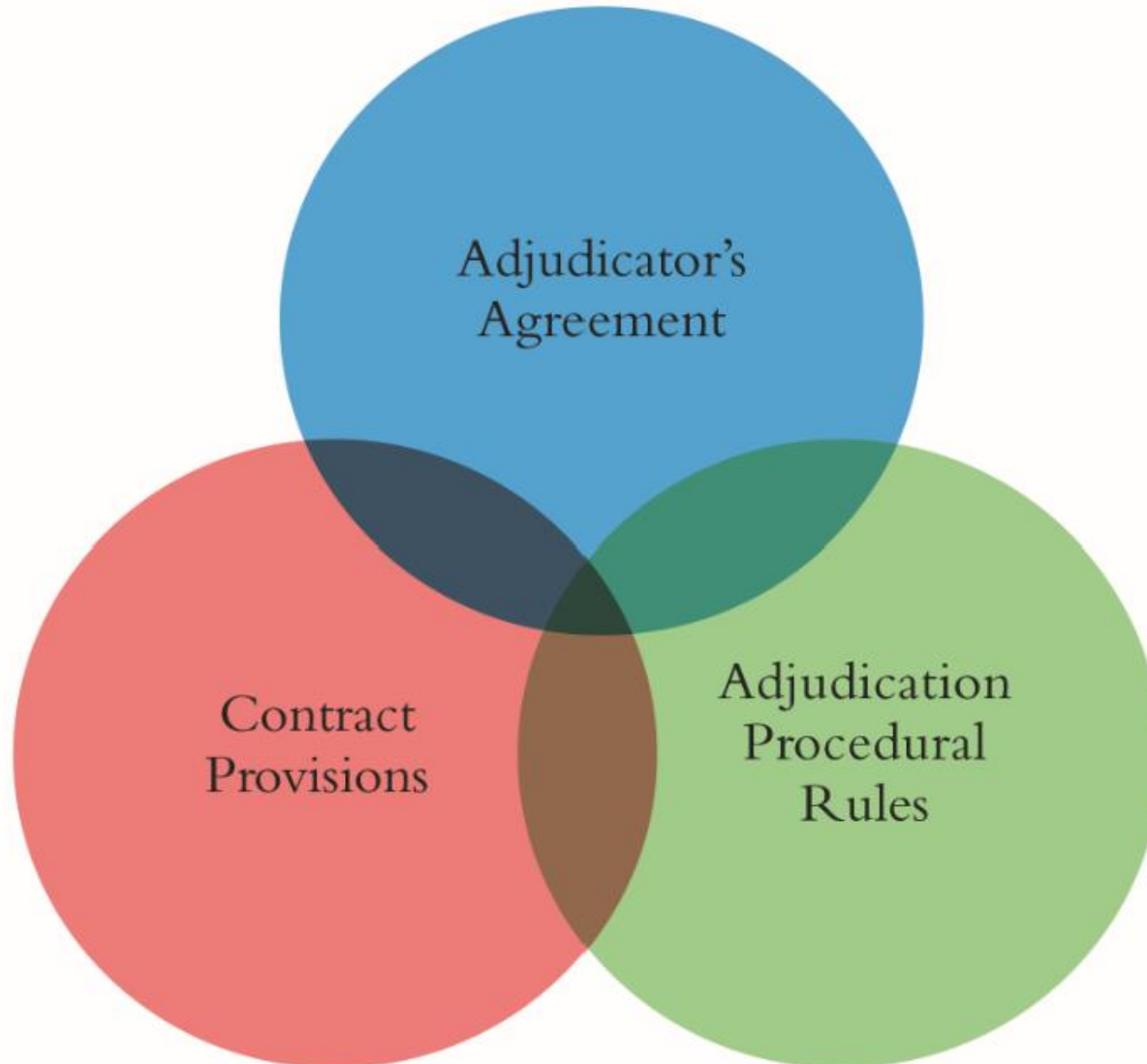


CIC convened an ANB forum

CIC convened ANB forum Thursday, 18 January 2018:-

- The construction industry would benefit from a small value dispute adjudication procedure which takes into account a balance between adjudicators' fees and the value of the dispute in question.
- Additionally, the small value dispute adjudication procedure could allow younger adjudicators or those lacking experience as adjudicator to get experience and thereby develop a track record of acting as adjudicator so as to qualify for other established ANB adjudicator panels.
- CIC has defined a Low Value Dispute (“LVD”) as where the amount claimed is £50,000 or less.

Adjudication Procedural Rules



CIC LVD MAP Timeline

- CIC convened ANB forum, Thursday 18 January 2018.
- On 3 May 2018 the CIC ANB Management Board formed a Working Group comprising Gillian Birkby (*Fladgate LLP*), Martin Burns (*RICS*), Niall Lawless (*CIC*), John Munton (*CEDR*), Timothy Willis (*Adjudication Society*) and Chi Wong (*CIC*).
- On 6 February 2019, the CIC ANB Management Board agreed on the CIC LVD MAP general principles, and that the LVD MAP would be updated applying the terminology incorporated in the CIC Model Adjudication Procedure (*5th Edition*).
- CIC LVD MAP (*Consultation Draft*) approved by CIC Business Panel on 1 May 2019 and the CIC ANB Management Board on 9 May 2019.
- On 4 June to 5 July 2019, the CIC LVD MAP First Consultation took place with the construction industry and other stakeholders. Comprehensive feedback was received, which enabled the improvement of the CIC LVD MAP.

CIC LVD MAP Timeline

- RICS Thought Leadership Programme Addressing the Access to Justice Challenge for SMEs in the Construction Sector. Round Table Event, 24 September 2019.
- CIC convened ANB forum, Wednesday 25 September 2019.
- CIC LVD MAP (*Consultation Draft Second Edition*) reviewed and approved by the CIC ADR Management Board on 2 October 2019.
- CIC LVD MAP Second Consultation, 5 to 25 October 2020. Consideration of some important general principles.
- ANBs were to confirm if they wish to be a participating Adjudicator Nominating Body by 17 November 2019.
- CIC LVD MAP (*Consultation Draft Third Edition*) reviewed and approved by the CIC Business Panel on 27 November 2019.
- CIC LVD MAP (*Consultation Draft Fourth Edition*) reviewed and approved by the CIC ADR Management Board on 5 February 2020.
- CIC LVD MAP (*First Edition*) published on 1 May 2020.

CIC LVD MAP First Consultation



- I have considered the procedure and I wholeheartedly support it.
- I think the proposals are fair, reasonable and will work.
- I applaud this initiative.
- I agree this is a positive step to try to reduce the costs of adjudication for low value disputes.
- It all looks very sensible to me.
- The suggested approach for low value disputes should be adopted.
- I think the initiative is a good idea.
- I consider the procedure to be excellent in principle and well overdue.
- I feel very strongly that a procedure of this sort is needed.
- I wish the CIC well with this venture.

CIC LVD MAP Second Consultation



CIC LVD MAP's general principles that the CIC was considering again were:-

- Sections 2 and 40. Should the CIC LVD MAP require the Adjudicator to sit on one of the panels of qualified Adjudicators?
- Section 24. Should the CIC LVD MAP provide that Adjudicator may meet the Parties separately?
- Section 28. Should the CIC LVD MAP provide that the Adjudicator will make the Adjudicator's Decision relying solely on the Adjudicator's own experience and judgement? That is, the Adjudicator will not appoint any legal or technical advisor.
- Section 36. Should the CIC LVD MAP provide that the Adjudicator has the power to direct either Party to pay the ANB Application Fee?
- Sections 45 and 49. Should the CIC LVD MAP provide that Parties may choose to use the CIC LVD MAP where the claim exceeds £50,000?
- Section 48. What should the guidance on suitability include?

CIC LVD MAP - application

- This procedure will be adopted if the Parties have incorporated it into the Contract by reference, the reference 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.
- If a conflict arises between this procedure and the Contract, unless the Contract provides otherwise, this procedure shall prevail.

Appointment of the Adjudicator



- 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.

Adjudication timetable

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

- Based upon the Referral being received by the adjudicator on Day 1.
- The Responding Party will respond to the Referral 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.

Adjudicator's fees and expenses

The Adjudicator's fees and expenses will be fixed as set out below.

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

Adjudicator's fees and expenses

- Where the Adjudicator meets with the Parties, in addition to the fee for acting as Adjudicator, the Adjudicator will be paid £1,000 plus reasonable travel expenses.
- Where the Adjudicator visits the site, in addition to the fee for acting as Adjudicator, the Adjudicator will be paid £1,000 plus reasonable travel expenses.
- 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.

Dispute unsuitable for CIC LVD MAP



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:-

- Subject to paragraph 49, 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 per submission.
- 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 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.

CIC LVD MAP - participating ANBs



There are 10 participating ANBs who will maintain a panel of qualified adjudicators who agree to fully comply with the terms of the CIC LVD MAP:-

- Centre for Effective Dispute Resolution (CEDR)
- Chartered Institute of Arbitrators (CIArb)
- Chartered Institute of Building (CIOB)
- Construction Industry Council (CIC)
- Institution of Civil Engineers (ICE)
- Institution of Engineering & Technology (IET)
- Institution of Mechanical Engineers (IMechE)
- Royal Institute of British Architects (RIBA)
- Royal Institution of Chartered Surveyors (RICS)
- UKANB Limited (UK Adjudicators)

CIC LVD MAP – Adjudicator Panel



New CIC LVD MAP Panel Adjudicators will be members of CIC member organisations, have a minimum of 10 years' post professional qualification experience in their primary profession, and be Fellows of the Chartered Institute of Arbitrators. They will have attained one of the following qualifications:-

- Chartered Institute of Arbitrators (CI Arb):- Construction Adjudication Pathway to Fellowship, Module 1, Module 2, and Module 3.
- King's College, University of London Centre of Construction Law: MSc Construction Law and Dispute Resolution, including the Award Writing Examination
- Leeds Beckett University School of the Built Environment: MSc Construction Law and Dispute Resolution, including the Award Writing Examination
- Royal Institution of Chartered Surveyors (RICS): Diploma in Adjudication, including the Award Writing Examination.
- University College of Estate Management (UCEM): Postgraduate Diploma in Adjudication, including the Award Writing Examination.



Thank you for your attention

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