

IT'S THE LAW



Adjudication:

*a cheaper and speedier
method for resolving disputes*

Changes introduced by the Woolf Reforms to cut back on delays and expense mean that a party to a construction contract has the right to refer a dispute arising under the contract for adjudication under The Housing Grants Construction and Regeneration Act 1996 (the 1996 Act) Section 108 (1). This came into force on 1st May 1998. 'Dispute' includes any difference. How does a party use this right?

Where a construction contract does not comply with Section 108(1) to (4) of the Act i.e. a contract has been drawn to minimise or neuter the effects of the Act, the adjudication provisions in Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 apply. For the purpose of this Article it is assumed that the provisions of the Scheme apply. The following steps are a guide and will vary depending on the 'adjudication clause' in the contract and other factors:

- 1 Clearly identify the dispute and seek advice.
- 2 Prepare your case.
- 3 Issue the written notice of adjudication to every other party to the contract. In order to comply with the Scheme the notice of adjudication briefly sets out the following:
 - (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 addresses of the parties to the contract (including, where appropriate, the addresses which the parties have specified for the giving of notices).
- 4 Request the appointment of an adju-

Adjudication: A Guide to using the Scheme for Construction Contracts (England and Wales) Regulations 1998.



dicator. The contract may have already specified a person to act as adjudicator, or specified a nominating body to select a person to act as adjudicator. If no provisions are contained within the contract the referring party shall request an adjudicator nominating body to select a person to act as adjudicator. This will almost certainly involve a fee.

- 5 A person requested to act as adjudicator is required to indicate whether or not he is willing to act within two days of receiving the request.
- 6 The adjudicator nominating body must communicate the selection of an adjudicator to the referring party within five days of the request to do so.
- 7 Following the selection of the adjudicator, you will be required by not later than seven days from the date of the notice of adjudication, to refer the dis-

pute in writing to the adjudicator. This is known as the 'referral notice'. The referral notice must be accompanied by copies of the relevant documents which you intend to rely on, and these, including the referral notice, must be copied to every other party to the dispute.

- 8 The date the adjudicator receives your referral notice is the commencement of the 28 day period prescribed for the adjudication. The adjudicator may request up to an additional 14 days to reach his decision if the issue is complex.
- 9 The adjudicator will decide how he wishes to conduct the adjudication and will advise the parties of his requirements. All communications are copied to each party. You may be required to provide some additional information or comment on any evidence provided by the other party. In view of the very limited time allowed for the adjudication it should be your aim prior to commencing the process to ensure that all of your papers are issued with your referral notice.
- 10 Upon your receipt of the adjudicator's decision it will be binding upon the parties. If you or the other party disagree with the decision you may take the matter to court or arbitration. Alternatively, you and the other party may agree not to abide by the decision.

The above ten steps are a brief guide through the adjudication process. They are not intended to cover all eventualities. Do not be afraid to ask for advice but please ensure that your adviser has the necessary experience to deal with your dispute. ■

Comments and questions relating to this article are welcome and can be e-mailed to: Anthony@antongill.force9.co.uk or Tony can be reached on 01747 824727.