



CI Arb
evolving to resolve

ADJUDICATION

'98 – 11



A DIY GUIDE



THE CI Arb and The CIOB
21 June 2018
Warrington



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Conduct in communications and at meetings

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- Bringing a claim – Referring Party
- Defending a claim – Responding Party



Adjudicator's T&C's

- Accepting the adjudicator's terms of engagement
- Acceptance by conduct
- Christopher Linnet V Harding EWHC 1781 (TCC) (25th July 2017)



Service of submissions

- Read the contract for rules on service of submissions
- Usually 7 days from Referral Notice to Response and 3 days thereafter for service of Reply
- Application by Responding Party for extension of time to serve Response
- Application by adjudicator for extension of time (up to 14 days with consent of Referring Party or joint party agreement) for Decision
- Application by Referring Party to serve Reply and extensions of time to serve a Reply.



General Conduct

- How to address the adjudicator in correspondence
- Words/narrative used in correspondence should be respectful
- Use plain English and avoid the use of Latin
- Invite the adjudicator to agree with you as opposed to using words like “you must” or “you cannot” - use persuasive language
- “Take the adjudicator “by the hand” and show him/her the “way home”
- Remember your mission is to persuade the adjudicator that yours is the version to accept



Procedural matters

- Prompt response to adjudicator's queries & participation in the process
- Do not contact the adjudicator by phone and always simultaneously copy correspondence/communications to the other party
- Most adjudications proceed on documents-only basis
- Be as accommodating yet assertive as you comfortably can
- Avoid the "bunker" mentality



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The Power of Words

*“Her eyes they shine so bright that even
the birds would sing and think it not night”*

William Shakespeare



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The Power of Words

“...we shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills ...”

Winston Churchill



Meetings & Site visits

- Difference between meetings, hearings and trials
- Purpose of requesting a meeting/site visit
- Adjudicator has duty to avoid incurring unnecessary expense
- Configuration of attendees at a meeting
- Venue – time and place
- Addressing the adjudicator/spokesperson
- Rehearsal



Defending a claim

- The Ostrich Approach – doing nothing – silence isn't golden
- Lobo V Corich (2017) EWHC 1438 (TCC)
- Reserving your legal rights
- Always a good idea to put a general marker down
- 'All our rights remain reserved' or 'All our rights including the adjudicator's jurisdiction and the matter of natural justice (procedural fairness) remain reserved'
- CPR Part 8 application for declaratory relief will only be considered if certain criteria are met- see Hutton V Wilson (2017) EWHC (TCC)
 - Short and discrete
 - Issue must have been raised during adjudication process
 - The issue requires no oral evidence
 - The issue would be one in which it would be unconscionable for the court to ignore
 - Failed application would be penalised on the indemnity basis
 - Application must be started immediately following publication of the Decision



Questions





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Future Events

19 July 2018 – Keating Construction Law Update

13 Sept 2018 – Arbitration and Adjudication Surgery

11 Oct 2018 – Mock Arbitration

15 Oct 2018 – Introduction to Construction Adjudication

17 Jan 2019 – The Manchester Lecture Further details

of events are available at:

<http://www.ciarb.org/branches/great-britain/north-west>