

Let's have a re-cap. Back in March, [I told you about 12 year old Adjudication](#) . In April and May, I had a look at [watching for disputes](#) and [getting an adjudication underway](#) . In June, we also looked at [different ways of getting the right adjudicator for your adjudication](#) . This month: it's all about what an adjudication really is.

"The intention of Parliament... was to provide a speedy mechanism for settling disputes on a provisional interim basis... the (28 day) timetable is very tight... and likely to result in injustice... Parliament is taken to know all this. Parliament hasn't abolished arbitration or litigation of construction disputes. It has merely introduced an intervening provisional stage in the dispute resolution process" So said Mr Justice Dyson in the first ever case to come to the High Court asking "What is Adjudication?"... that was in 1999.

Since then the Court at all levels approve what Lord Ackner said when the proposed legislation was in the House of Lords: "this Adjudication process comes under the rubric of 'Pay now, argue later'..."

In 2005, the Court of Appeal in Carillion v. Devonport said: "The task of the adjudicator is not to act as arbitrator or Judge. The time constraints within which he is expected to operate are proof of that. The task of the adjudicator is to find an interim solution, which meets the need of the case. The Statutory scheme provides a means of meeting the legitimate cash-flow requirements of contractors and their subcontractors, the need to have the "right" answer has been subordinated to the need to have an answer quickly".

Perhaps it is useful to characterise Adjudication as a dispute management system but not a dispute resolution system. Adjudication is a temporary binding answer only. Moreover, the Courts appear satisfied if the Adjudicator asks (merely), "Whether 'A' should pay 'B' now and argue later?" That is quite a different test than 'A' having to prove its case, and prove issues and sub-issues. So, a lawful question for the adjudicator to ask himself is whether, (given the idea is to argue later), the money in question should or should not be paid over until later argued or compromised? Put another way the adjudicator need only be satisfied as to who should have the benefit of the monies until properly argued. It is a light probe about the quarrels rather than a deep dig.

But, and this is important, in practice the parties “fight” the case in adjudication as though it was super fast arbitration or litigation. Lawyers are brought up on litigation. They argue rights and remedies, law and evidence, hardly surprising when the 28-day timetable is left behind. The Adjudicator has to be super fast too... to decide rights on all and every issue. We become a tribunal. But the Courts remind us that they see it as “Pay now, argue later”, an interim question about the money and which way it ought go.

“What is Adjudication?” A light probe about who holds the money until a deep dig. Except in practice.