

## The suitability of adjudication for multiparty disputes

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Earlier this year I acted as adjudicator in *four related adjudications* that ran simultaneously, and I thought it would be worthwhile sharing my experience as I think there are some interesting points for parties and their representatives who might be considering using adjudication for multiparty disputes.

Before any of you shout “confidentiality!”, to be absolutely clear I am only going to discuss the process, and have changed the facts so that nothing in this blog will reveal details of the factual disputes, parties or the substantive cases advanced.

### The appointments

In mid-May 2022, a building owner and main contractor agreed to *my appointment as adjudicator* on a building defects claim of circa £6.5 million (the Main Contract Adjudication). For the purposes of this blog, let us imagine that the building was a new panda enclosure at London Zoo.

The Zoo alleged defects to five different elements of the panda enclosure, and the two with the highest value were the façade glazing to the viewing galleries, and the roofs. Due to the size and complexity of the dispute, an extended timetable was agreed and off the main contractor went to prepare its response.

However, a couple of weeks after my appointment the main contractor contacted me to advise that it had issued notices of adjudication against the façade sub-contractor and the roofing sub-contractor, and that these sub-contractors had agreed to my appointment as adjudicator.

I explained to the parties that, although I could see merit in the same adjudicator dealing with the connected disputes under the sub-contracts, under *paragraph 8(2) of Part I of the Scheme for Construction Contracts 1998*, the Zoo was required to give its consent. The Zoo duly consented, subject to the parallel adjudications (the Façade Adjudication and the Roofing Adjudication) not delaying the Main Contract Adjudication. Therefore, I set about agreeing a procedure with all the parties.

### The parallel adjudication procedure

After some negotiations, the parties agreed to a simple procedure (it was set out on a single page of A4), and some of the key points were:

- The parallel adjudications would remain separate and it followed that they had not been consolidated.
- The parties' waived confidentiality between themselves in respect of each of the three adjudications.
- All communications to and from me, including those issuing substantive submissions, were to be copied to all parties. Therefore, there was complete transparency.

The timetable for the Main Contract Adjudication remained unchanged. Therefore, the responses in the Façade and Roofing Adjudications had to be submitted before the responses in the Main Contract Adjudication. Likewise, the reply in the Main Contract Adjudication had to be served before the replies in the Façade and Roofing Adjudications.

Just to complicate matters, around a week after I was appointed in the Façade and Roofing Adjudications, the façade sub-contractor advised that it had commenced an adjudication against the manufacturer of the glazing for the viewing gallery, and that the parties had agreed to my appointment as adjudicator. The Zoo and the roofing sub-contractor also agreed to my appointment, although the roofing sub-contractor did not agree to the glazing manufacturer being added to the parallel adjudication procedure for confidentiality reasons.

### **The evolution of the parallel adjudication procedure**

There were some delays in the timetable due to the availability of experts for inspections, as well as the need for an online meeting concerning the roofing defects and a site inspection of the other defects (including the glazing).

Furthermore, during the course of the adjudications, I wrote to the parties stating that, given the circumstances of the parallel adjudications were somewhat unusual, the parties may wish to address me on the final allocation of *my fees and expenses* and (if necessary), the award of legal and/or expert costs for investigating the defects (amongst other things – a blog for another day perhaps), after they had read my findings on the substantive disputes. I proposed splitting my decisions, and all of the parties agreed to me doing so. A timetable was therefore agreed for further submissions on costs, and two decisions were issued in each adjudication.

### **My thoughts**

The parallel adjudications were certainly different from the norm, and procedurally quite time consuming. They also added some challenges for the parties, in particular:

- In its referrals in the Façade and Roofing Adjudications, the main contractor generally adopted the Zoo's case against it (in other words, it argued that these elements were defective). Then, in the response in the Main Contract Adjudication, it adopted the cases of the sub-contractors (that they were not defective). To complicate matters even further, the contractual obligations of the main contractor under the main contract were not back-to-back with the façade and roofing sub-contractors, and so the parties had to address these differences.
- Not having the glazing sub-sub-contractor involved in the parallel adjudication procedure did add to the administrative burden.

However, parallel adjudications certainly have some advantages, in particular the same adjudicator is deciding the disputes and so there should be consistent findings of fact. The worst case scenario would be different adjudicators making different findings concerning the same facts. That would certainly not be in anyone's interest. I also consider that the overall costs were probably less than if separate adjudications had been run.

I acknowledge that parallel adjudications obviously won't work in all circumstances. I was lucky in that I had five different parties and their solicitors agree to my appointment in four adjudications. It could

quite easily have been the case that one of the parties objected (under paragraph 8(2) of Part I of the Scheme). I think that this shows the progress that construction adjudication has made over the past 25 years, in that parties and solicitors are confident in a multi-party parallel adjudication procedure. I suspect that PI insurers were involved in the background for at least one of the parties, and the fact that they agreed to the parallel adjudication procedure also demonstrates that this historically reluctant player in the adjudication market may now be softening.

Multi-party disputes quite often arise when there are alleged defects, and that's particularly poignant at the moment given the investigations into *building safety defects* in the *post-Grenfell era*. Perhaps it's time that a template procedure was produced by my friends at Practical Law?!



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