

## Insights

# IS THE ADJUDICATION PROCESS UNFAIR?

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On 17 June 2025 the Adjudication Society held a panel discussion, hosted by BCLP, looking at whether the adjudication process is unfair to employers, main contractors or subcontractors or does it just feel that way. The panel consisted of Nigel Davies (Davies & Davies Associates), Abdul-Lateef Jinadu (Keating Chambers), Jeniffer Jones KC (Atkin Chambers), Rashda Rana SC and Shy Jackson (BCLP).

### The key takeaways:

- Clear guidelines and expectations: establishing and communicating clear procedural guidelines is essential to reduce ambiguity and ensure fairness. When all parties understand the rules, timelines, and expectations, it helps maintain trust and parties can be encouraged to collaborate in agreeing the appropriate procedure. This is especially important in adjudication, due to the short timeline.
- Recognising the purpose of adjudication: It was noted that adjudication is designed to facilitate cash flow and will often favour the subcontractor or main contractor who are likely to seek payment. The key points being the time imbalance as the referring party has time to prepare, while the responding party must react quickly, and the advantage is for the referring party who controls the timing and framing of the dispute. In some cases, however, the full position only becomes known when a response is provided and that may present a challenge for the referring party.
- Transparent and reasoned decision-making: It is important for adjudicators to provide clear and detailed reasoning, especially when rejecting a party's position. This builds confidence in the process and helps parties understand the rationale behind decisions, which should reduce any perception of unfairness. However, the 28-day deadline for decisions limits the depth of analysis and explanation, but adjudicators should still be conscious of the need to reflect on their decision and the benefits of using templates and consistent structures for decisions. This time pressure can lead to oversights or perceived lack of thoroughness.
- Training for adjudicators: to improve fairness and trust, adjudicators should recognise the need for clear communications with the parties as well as the need to acknowledge and take

account of any unconscious biases that may affect the decision. The panel highlighted that studies suggest bias does exist, which undermines confidence in the process. There was also a need to ensure that conflicts of interest are avoided where possible, and for nominating bodies to ensure they address any such issues and provide additional training.

- Handling complaints and feedback: formal complaint and feedback mechanisms are important for accountability and can help improve quality. However, overemphasis on complaints can influence how adjudicators set out their decisions and may give rise to concerns about conflicts in subsequent appointments.

Overall, the panel reflected on the fact that the adjudication process is a pragmatic tool that prioritizes speed and cash flow over what may be seen as procedural fairness. This can create tension between parties, which can be minimised by improving transparency and the way decisions are written. This will help to reduce the perception of adjudication as being unfair, which can occur when a party is unsuccessful.

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