

RESOLUTION

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Special points of interest:

- The burden of record keeping
- Adjudicator's decisions and their enforcement
- Why adjudication
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The key members of the Arbicon Team:

Ian J Purser - Director

Jon Nugent - Director

Mike Norrish -
Senior Consultant

Louise Steel -
Marketing Manager

Pauline Steel -
Office Manager

What a burden—but someone has to do it.....or else it fails!



Businesses are potentially wasting thousands of pounds by not managing risk properly. The old adage that prevention is better than cure certainly rings

true in this case. Each year, thousands of contracts end in a dispute of some kind. Of these approximately 50% could have been prevented if proper records had been logged and procedures put in place.

If you have found yourselves in one of the following situations then managing your risk would have significantly increased your success rate.

- Have you written off money in the last 6 months through non-payment?
- Are you finding it difficult to secure

long standing retentions?

By having these procedures in place you can significantly increase your chances of success in any dispute.

In a dispute the responsibility is generally on the wronged party to establish their entitlement to damages, costs or the like. Diary records, confirmations of verbal instructions and labour record sheets are essential to the success of proving entitlement. As the number of disputes grow year on year this is an area that companies cannot afford to leave well alone.

If this is an area that you would like more information on please see the article on page two entitled Seminar Plans.

Adjudicator's decisions and getting the money!

How do you get your money? You've got your adjudication decision but the other party still won't pay you, what can you do? You'll be advised to enforce the decision—but how? The Construction Act says nothing at all about enforcement, merely makes it a condition that it is binding. So how can the opponent be obliged to pay? Isn't this lack of clarity open to all manner of defences?

The difficulty is answered in the first adjudication case that came before the courts—*Macob Civil Engineering Ltd Vs Morrison Construction Ltd* (Feb 1999). In this case many different defences were used to avoid paying the sum of £302,366 plus vat awarded. The court held that the conventional way to enforce an adjudicator's decision would be through an application for a **summary judgement** in

court. The court also stipulated that the normal timetable set out in CPR rule 24 be dispensed with to provide no means of delay—in short enforcement will be swift.

Arbicon can help you obtain a summary judgement—by appointing us you would have access to a solicitor on our panel specialising in this area of law.



Money makes the world go round.... Just make sure you're receiving your just rewards!

Why use adjudication? - a tribute to Arbicon

Adjudication is a contractual process which provides an interim "quick fix" solution to disagreements between contracting parties. It involves the appointment of an adjudicator, normally takes around 35 days to complete and the resulting decision is binding between the two parties. In an industry where one in five contracts end in dispute this is fast becoming an invaluable process.

Case study

"We were frustrated by an unreasonable Main Contractor who

was unwilling to pay us for works he had instructed and he knew we had done. Frankly we were running out of ideas, barring the courts. Arbicon advised us of our rights and explained the Housing Grants Act, issued a notice and we were into an adjudication! Fortunately Arbicon led the process from start to successful conclusion, and we are now wiser and £30,000 better off thanks to their tenacity and professionalism. We simply wanted what was rightfully ours and Arbicon got it for us, at a sensible and affordable cost." Tribute by Steve Pearson of P.I.C.

Steve went on to say that "I would personally recommend Arbicon to other construction companies in a similar position to ourselves. We shall certainly use them again in the future should the need arise and we have already asked them to review our systems and records to minimize disputes in the future."

Arbicon Director, Ian J Purser, was personally involved in the resolution of this dispute and is grateful for this tribute.

"We hope that our seminars can be utilized to instill in all construction firms a regime of record keeping sufficient to enable them to recover monies to which they are due"
Ian J Purser, Director

Seminar Plans

Arbicon are planning quarterly seminars on topically and hopefully interesting and challenging subjects relating to the construction industry.

The first such seminar will take place in January and anyone interested in attending should contact Pauline on her email address stated at the foot of this article.

The initial seminar will look at

risk management and preventative measures to avoid disputes where possible.

Refreshments will be provided during the seminar which will take place in the Arbicon board room at their offices in Huntingdon. These seminars are free and as such we operate a first come first served basis.

For those with the benefits of sat-nav, the postcode is PE29 3GH.

Contact Pauline@arbicon.co.uk



Arbicon are actively seeking good quality QS staff to join their team and would like to hear from anyone interested in joining either via email or by phone on 01480 426560.

Arbicon latest recruitment

Mike Norrish, Senior Consultant and Chartered Quantity Surveyor has recently joined the team at Arbicon, with his extensive construction experience in both building and civils projects, Mike will provide much needed support to the preventative services at Arbicon ADR Limited.

Arbicon have also recently appointed Pauline Steel as their Office Manager, an opportunity that Pauline has grasped and with plenty to keep her busy, is relishing the challenge of a thriving office.

Another appointment that is already reaping rewards is

the post of Marketing Manager occupied by Louise Steel who Arbicon are delighted to welcome given her previous experience in the industry and vast network of contacts.