

Given the problems with Adjudications, how useful are they?

What are the alternatives, and when should you use them?

David Pliener

12 October 2022

Overview

- What *are* the problems with Adjudication?
- Is there anything we can do about them?
- What are the Alternatives? When should we use them?



“What is the single worst thing about Adjudications that would dissuade you from using them?”



7 May 1996 (Tuesday)



Robert Jones MP...

- *“The Bill promotes a clear system of dispute resolution called adjudication. The industry is clear about what it means by that: it wants a mechanism that produces a fast and impartial resolution of a dispute and allows the contract to continue. The industry does not want the decision necessarily to be the final one. It wants to ensure that disputes are tested at the time, on the spot and are resolved quickly to the parties’ satisfaction”*
- *“There will be a field day for lawyers”*





Single worst thing...



- Tight Timetable – inevitable risk of bad decision
- Bad Adjudicators – make this risk greater
- Cost – large and irrecoverable (and Adjudicator fees)
- Incessant Jurisdictional Challenges – really annoying

What can we do about it?



- Tight Timetable
 - Agree what you can – use of hearings?
 - Don't mandate Adjudication if you don't want it: *Greater Glasgow HB v Multiplex* [2021] SCOH 115
- Bad Adjudicators - Specify in the contract – lawyers?

What can we do about it?



- **Costs:**
 - **No cost recovery:**
 - ‘Clarified’ by s.108A; “made in writing” after notice to refer
 - No LPCD(I) Act 1998 loophole; *Environflow Management v Redhill Works* [2017] EWHC 2159
 - And possible in subsequent litigation; *Board of Trustees of National Museums v AEW Architects* [2013] EWHC 2403
 - **Adjudicator Fees** – check the small print, reasonable fee, but robust; *Fenice Investments v Jerram Falkus* [2011] EWHC 1678

What can we do about it?

- Incessant Jurisdictional Challenges



What are the Alternatives? Pros/Cons

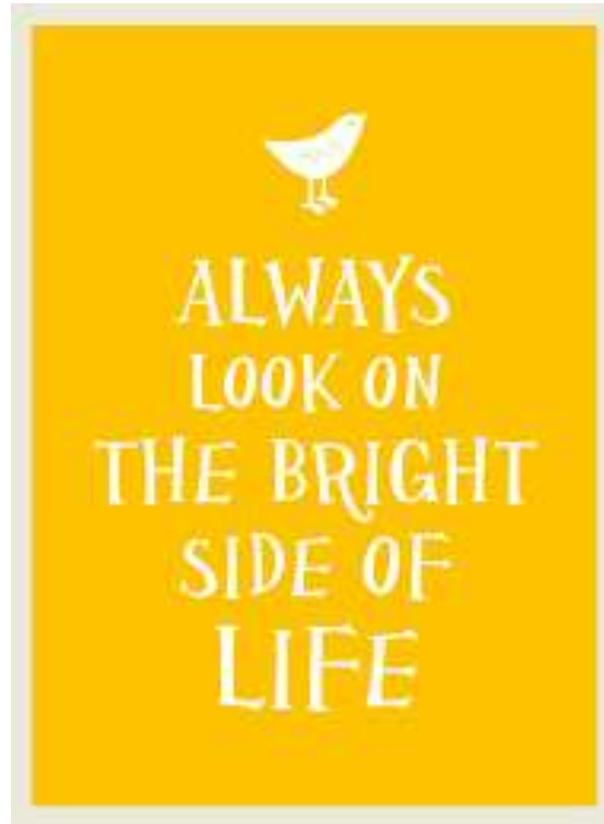
- Court
- Arbitration
- Expert Determination
- Negotiation/ADR



Interface Issues

- Adjudication grenade; *Twintec v Volkerfitzpatrick* [2014] EWHC 10:
 - 6-party litigation over £170m defects claim
 - Fixed for 27 October 2014
 - Twintec's experts engaged
 - Adjudication 3 December 2013
 - Still not "*oppressive and unreasonable*"

But, actually...



Thank you!

Any questions?

david.pliener@gatehouselaw.co.uk