



PROJECTS AND CONSTRUCTION

Construction Adjudication in Ireland: The Latest Trends

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Construction Adjudication in Ireland: The Latest Trends

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The latest report by the Chair of the Construction Contracts Adjudication Panel has been published.

It covers the period from 26 July 2019 to 25 July 2020 and provides an insight into the statutory adjudication landscape in Ireland. While we cannot be certain that the Report captures information in respect of all adjudications under the Construction Contracts Act 2013 (the Act) during this period, it does give us an indication of various trends.

Key Takeaway: The trajectory is upward both in terms of the volume of disputes being referred and the quantum in dispute.

In the year to 25 July 2019 the Construction Contracts Adjudication Service (CCAS) received 39 applications seeking an Adjudicator to be appointed. The Chair reports that in the most recent period, such applications increased to 54 and 46 appointments were made. The disputes for the period to 25 July 2020 had a combined value of just over €35.5 million. For additional context, in the year leading to 25 July 2018 the CCAS received only 11 applications and 9 appointments were made.

The above figures do not include adjudications under the Act where the parties agreed between them who would adjudicate the dispute.

While there are requirements in the 'Code of Practice Governing the Conduct of Adjudications' for Adjudicators to provide information to the CCAS on their appointment, resignation and on the outcome of adjudication cases, this requirement is not enshrined in the Act. In any event, it seems that 36 data returns were made to the CCAS by Adjudicators for the period to 25 July 2020. This compares with 34 in the period to 25 July 2019 and 7 in the year prior.

Based on the information available on the 36 data returns submitted, the following trends arise:

1. **Where are the sites located in respect of which disputes arose?** The principal site location for almost 45% of the disputes was Dublin, accounting for 16 out of the 36. The remainder were fairly evenly grouped across a number of counties. Interestingly, there were two disputes where the site location was London.
2. **What are the primary qualification of the Adjudicators?** In terms of the primary professional qualification of the adjudicators appointed, most were Quantity Surveyors (11 appointments), while 9 appointees were Fellows of the Chartered Institute of Arbitrators. At the other end of the spectrum, only one Solicitor Adjudicator was appointed in the 36 disputes reported on.
3. **Who is in dispute?** 72% of the disputes were between the sub-contractor and main contractor.
4. **What is in dispute?** The majority of the 36 disputes (22) related to final payments, with 12 disputes relating to interim payment applications. This represents a shift in position from prior years when the number of disputes about interim payments was marginally higher.
5. **How much is in dispute?** In terms of the quantum in dispute, 6 of the reported disputes involved claims in the €1 million - €5 million range. This represents a significant jump at this higher end of the range. There were 16 disputes reported on that fell within the €100,001 - €1 million range.
6. **Who wins?** Information was provided on the outcome of Adjudicators' decisions in 25 matters. In terms of outcomes, the decisions, as in prior years, favoured the referring parties; with the referring

party succeeding in 14 of the disputes, split decisions in 5 and the responding party succeeding in the remainder.

7. **The awards?** Interestingly, notwithstanding the jump in quantum of disputes mentioned above, the highest reported award was in the €500,001 - €1 million range, with only 1 award being made within this range;
8. **How long?** 13 of the Adjudications were completed within 28 days and 10 were completed within 42 days. There were 2 cases in which the decision was issued after 42 days from the date of referral. It cannot be denied that the process is fast!
9. **How much?** In terms of the Adjudicator's fees, the maximum fees charged by any Adjudicator were in the €35,000 - €39,999 range and only one Adjudicator charged fees within this price band.

What is the status of the Adjudicator's decision?

Adjudicators' decisions under the Act are binding in the interim and enforceable, unless and until overturned by a superseding arbitrator's award or Court order.

The Rules of the Superior Courts were updated to include what is effectively a fast-track procedure for enforcement of awards, with a view to ensuring that the aim of the Act is achieved (i.e. that a successful party can secure payment). We understand that there are proceedings extant before the High Court whereby parties are seeking to enforce Adjudicators' awards. Stakeholders have been waiting for these applications to appear before the Court so that we can gauge whether the attitude of the Court in this jurisdiction to enforcement of awards is as robust as the one that has been taken by the Technology and Construction Court in England.

In another twist this year, Judicial Review proceedings have issued arising from an appointment of an Adjudicator under the Act. It is understood that these proceedings are due to be heard imminently and it will be interesting to see what, if any, impact the outcome of those proceedings has on the statutory adjudication landscape generally.

More to follow...

About the Author