

Level 3 Award in Adjudication in the Construction Industry

April 2009

Credit Value: 3

Ofqual Qualification Number 500/5943/9

Description:

The *Level 3 Award in Adjudication in the Construction Industry* is a qualification that covers the basic principles of adjudication. The qualification is based on the National Occupational Standards developed by the Construction Industry Council.

Holders of this qualification will have demonstrated their knowledge and understanding of the legal basis of adjudication, how adjudication is used in the construction industry, how it compares with other processes for dispute resolution and the practical application of adjudication. The qualification provides an introduction to the general principles of construction adjudication and is suitable for persons of 'A' level standard or equivalent, or those with practical experience in dispute resolution procedures, who are, or expect to be, members of a dispute resolution team.

Summary of Outcomes:

To achieve this qualification a candidate must:

1. **Understand the legal basis of adjudication, *by being able to:***
 - Describe the statutory basis of adjudication in the construction industry
 - Explain the rules which may apply to adjudication
 - Outline contract provisions relevant to adjudication.

2. **Understand the use of adjudication, *by being able to:***
 - Summarise the features of adjudication as applied within the construction industry
 - Compare the process of adjudication to other dispute resolution processes.

3. **Understand how adjudication is applied in practice, *by being able to:***
 - Describe the processes involved in adjudication
 - Summarise the roles, rights and obligations of parties involved in adjudication
 - Outline the role of the adjudicator in the adjudication process.

Content:

1. The legal basis of adjudication

The Statutory basis: The Housing Grants, Construction and Regeneration Act 1996; sections 104 – 108 of the Act; definition of construction contracts; definition of construction operations; exclusions; inapplicability to residential occupiers; the need for contracts to be in writing or evidenced in writing; the right to adjudicate: the definition of a “dispute”; the applicable timetable; the duties of the adjudicator; the applicable procedure.

Applicable Rules: The Scheme for Construction Contracts Regulations 1998; the Notice of Adjudication; mechanisms for appointment of the adjudicator; the Referral; the Response; the adjudicator’s powers; the Decision; Technology and Construction Solution Association (TECSA) rules; Institution of Civil Engineers (ICE) Rules; incorporation into contracts.

Contract Provisions: the relevant articles and clauses in Joint Contracts Tribunal (JCT) contracts; the relevant articles and clauses in ICE contracts; the relevant articles and clauses in Engineering and Construction Contract (ECC) / New Engineering Contract (NEC) contracts.

2. The Use of Adjudication

The features of adjudication: types of dispute; the use of written submissions; timescales; documentary evidence; the use of witnesses; visits to project works; meetings with the adjudicator; specific powers of the adjudicator; contents of the Decision; the binding nature of the Decision; enforceability.

Comparison with other dispute resolution processes: litigation; arbitration; mediation; conciliation; negotiation; hybrid processes; consideration of formality; timescales; tribunal powers; binding non-binding outcomes; further proceedings; appeals.

3. How Adjudication is Applied in Practice

The Processes: identifying a dispute; single or multiple disputes; preparing the Notice of Adjudication; content of the Referral; the Response; further submissions; hearings and meetings; extending the timescale.

The roles, rights and obligations of parties: crystallization of the dispute; the collection and presentation of evidence; representation; adherence to the applicable rules and contract provisions; *ex-parte* proceedings; application of the Decision; challenging the Decision; negotiated settlements.

Outline the appointment and role of the adjudicator: appointment of the Adjudicator; party agreement, naming in the contract, nomination by an Adjudicator Nominating Body (ANB); the Adjudicator's terms; the JCT Adjudication Agreement; adjudicator powers; limitations upon powers; investigation of the facts and the law; deciding the dispute referred; contents of the Decision; reaching and delivering the Decision.

Assessment:

Attainment of the Learning Outcomes for this qualification will be assessed by an assignment. The assignment will typically consist of a number of situations encountered and actions taken during different adjudications. Candidates will have to state, with reasons, what actions should be taken or whether actions taken were appropriate for the various situations.

In order to be awarded a *Pass*, candidates must be able to recall relevant knowledge and facts from all parts of the specification and demonstrate a satisfactory level of understanding of the principles and concepts used in adjudication within the construction industry such that the candidate will be able to satisfactorily work as a member of a dispute resolution team. Candidates who attain a mark of 55% or greater will be deemed to have achieved the criteria for a *Pass*.

Assignments are provided by RSPH Qualifications.

Guidance:

Essential Reading:

Housing Grants Construction and Regeneration Act 1996. HMSO
Scheme for Construction Contracts. HMSO
Construction Adjudication – Principles and Practice (2007) Entwistle
Continuing Professional Development (CPD) Study Pack – RICS Books

Recommended Reading:

RICS Guidance Note "Surveyors Acting as Adjudicators" 2nd Edition RICS Books 2008
CIC Users Guide to Adjudication. 2003

Recommended prior learning:

There are no recommended prior learning requirements for this qualification, which is introductory in nature. RSPH does, however, recommend that candidates have experience of working in the built environment and are familiar with the types of dispute that may occur during construction projects.

Key Skills:

It is expected that the delivery of this qualification should provide opportunities for the development of the following *key skills*:

- Application of Number Levels 2 and 3
- Communication Levels 2 and 3
- Improving own Learning and Performance Levels 2 and 3
- Working with Others Levels 2 and 3

Guidelines for key skills are shown in Appendix 1.

Other Issues:

The delivery of this qualification could provide opportunities for contributing to an understanding of Ethical, Economic and International issues and an awareness of Legislation, Health and Safety considerations and Equal Opportunities. Possible areas for discussion are shown below.

Ethical	Ethical issues can be discussed in the context of contracts and complying with requests from adjudicators and adjudicator Decisions
Economic	Economic issues can be raised by discussion of the costs involved in parties seeking adjudication.
International	European legislation could be discussed with respect to how EC law affects UK legislation
Legislative	The role of UK legislation in the adjudication process is explicit in this qualification.
Health, Safety and Welfare	The need for health and safety during visits to project works to obtain evidence and interview witnesses should be stressed

Equal Opportunities, Diversity and Respect for People

The importance of effective communication with minority groups and speakers of other languages and awareness of cultural sensibilities could be discussed in relation to obtaining evidence from witnesses. Equal opportunities could be discussed with reference to the roles, rights and obligations of parties and ensuring that access to adjudication is available to all.

National Occupational Standards

The qualification has been mapped to the following National Occupational Standards of the Construction Skills Council:

- BEDP5/008.1 Evaluate potential implications for the resolution of disputes
- BEDP5/008.2 Evaluate information relevant to a dispute
- BEDCL3/O18.1 Gather information relevant to a dispute
- BEDCL4/O21.1 Prepare evidence for submission
- BEDCL4/O21.2 Present evidence to legally constituted adjudicating bodies
- AD2.1 Formalise preliminary actions

Further details of these National Occupational Standards can be obtained from RSPH Qualifications.

Restrictions on Candidate Entry:

There are no restrictions on candidate entry. RSPH does, however, recommend that candidates have experience of working in the built environment.

Special Needs:

Centres that have candidates with special needs should consult The Society's *Regulations and Guidance for Candidates with Special Assessment Needs*; this is available from The Society and The Society's web site (www.rsph.org.uk).

Recommended Qualifications and Experience of Tutors:

Tutors should have verifiable relevant current industry experience and knowledge of the adjudication process as used in the construction industry at or above the level being taught. This experience and knowledge must be of sufficient depth to be effective and reliable when discussing problem issues and possible solutions with candidates.

Centres should be registered with The Society

Any enquiries about this qualification should be made to:

The Qualifications Department,
Royal Society for Public Health,
3rd Floor, Market Towers,
1 Nine Elms Lane,
London
SW8 5NQ

Tel 020 3177 1600

Appendix One: Key Skills Guidelines

This qualification provides a number of opportunities for candidates to develop competence in key skills and to produce evidence towards attainment of key skills. Successful completion of the qualification does not in itself imply attainment of the listed key skills; this is dependent on the candidate producing a portfolio of evidence and the teaching and learning methods adopted by the tutor(s) and candidate in the delivery of the qualification.

The specification content, which provides the most appropriate opportunity for key skill development, is signposted below.

Application of Number

Skill		Specification Content
N2.1	Interpret information from a suitable source.	Graphical, tabular and statistical data can be used to obtain information relating to the number of adjudications per year and the proportion of cases which are settled before the final Decision stages of adjudication.
N2.2	Use your information to carry out calculations to do with: a amounts or sizes b scales or proportion c handling statistics d using formulae.	
N2.3	Interpret the results of your calculations and present your findings.	
N3.1	Plan an activity and get relevant information from relevant sources.	Candidates can use information such as number of people involved in adjudication processes, their professions, time involved, number of meetings, cost of formal hearings etc to estimate the likely cost of a company proceeding with different stages of the adjudication process
N3.2	Use this information to carry out multi-stage calculations to do with: a amounts or sizes b scales or proportion c handling statistics d using formulae.	
N3.3	Interpret the results of your calculations, present your findings and justify your methods.	

Communication

Skill	Specification Content
C2.1a Take part in a group discussion.	Any part of the content could be used as the basis for a discussion.
C2.2 Read and summarise information from at least two documents about the same subject. Each document must be a minimum of 500 words long.	Any part of the content could be researched from textbooks and specialist journals
C3.1a Take part in a group discussion	Any part of the content could be used as the basis for a discussion.
C3.2 Read and synthesise information from at least two documents about the same subject. Each document must be a minimum of 1,000 words long.	Any part of the content could be researched from textbooks and specialist journals

Improving own Learning and Performance

Skill	Specification Content
LP2.1 Help set targets with an appropriate person and plan how these will be met.	The manner in which candidates plan and carry out their programme of learning for this qualification, in consultation with their tutors/trainers, could provide evidence for this key skill or some elements of this key skill.
LP2.2 Take responsibility for some decisions about your learning, using your plan to help meet targets and improve your performance.	
LP2.3 Review progress with an appropriate person and provide evidence of your achievements.	
LP3.1 Set targets using information from appropriate people and plan how these will be met.	
LP3.2 Take responsibility for your learning, using your plan to help meet targets and improve your performance.	
LP3.3 Review progress and establish evidence of your achievements.	

Information and Communications Technology

Skill	Specification Content
ICT2.1 Search for and select information to meet your needs. Use different information sources for each task and multiple search criteria in at least one case.	Information about any part of the content could be obtained from web-sites dealing with adjudication. Books and articles can be accessed by on-line searches.
ICT3.1 Search for information, using different sources, and multiple search criteria in at least one case.	

Working with Others

Skill	Specification Content
WO2.1 Plan work with others.	The manner in which candidates work with others in carrying out their programme of learning for this qualification, in consultation with their tutors and trainers, could provide evidence for this key skill or some elements of this key skill.
WO2.2 Work co-operatively towards achieving the identified objectives.	
WO2.3 Review your contributions and agree ways to improve work with others.	
WO3.1 Plan work with others.	
WO3.2 Seek to develop co-operation and check progress towards your agreed objectives.	
WO3.3 Review work with others and agree ways of improving collaborative work in the future.	