

THE ROYAL SOCIETY FOR PUBLIC HEALTH

ASSESSMENT FOR THE

**LEVEL 5 CERTIFICATE IN ADJUDICATION IN
THE CONSTRUCTION INDUSTRY**

Date xxxxxx

Paper No. xxxxxxxx

Unit Three:

**Practice and Procedure in Adjudication for the Construction
Industry**

IMPORTANT

READ THE FOLLOWING INSTRUCTIONS CAREFULLY

1. You should attempt to answer ALL of the questions
2. The submission date for this assignment is (21 days)

SPECIMEN

Develop plc of The Rise, Shrewsbury, Shropshire, a developer, built a 5 storey office block in 2006. Tufnell Builders of The Fens, Cambridge, was the main contractor. Lee Decorators, Rowe Plumbing and McInerny Landscapers all of Unit 10, Builders' Industrial Estate, Cheshire were subcontractors on the project and were all on site at the same time.

The contracts between Tufnell Builders and the three subcontractors were awarded in January 2006.

The main contract and all three subcontracts are construction contracts in writing. However, none of the subcontracts comply with the provisions of the Housing Grants, Construction and Regeneration Act 1996 ("the Act") in respect of the payment provisions or for adjudication.

The main contractor and all three subcontractors claim that they have carried out the works and that work is complete.

Tufnell Builders submitted an application for final payment in the sum of £55k to Develop plc in or about December 2006. All three subcontractors have submitted their applications for final payment to Tufnell Builders in or about November 2006.

Develop plc has become insolvent and has not paid Tufnell Builders anything in respect of its application for final payment.

The four contracts:

Contract 1: Between Develop plc and Tufnell Builders. The contract period was 18 months. Develop plc has not paid Tufnell Builders anything in respect of its application for final payment in the sum of £35k on the grounds that it has become insolvent and that Tufnell has done a bad job.

Contract 2: Between Tufnell Builders and Lee Decorators. The contract period was 2 months. Tufnell Builders refuses to pay Lee Decorators anything in respect of its application for final payment in the sum of £25k on the grounds that Lee Decorators has not finished its work and that Develop plc has become insolvent.

Contract 3: Between Tufnell Builders and Rowe Plumbing. The contract period was 4 months. Tufnell Builders refuses to pay Rowe Plumbing anything in respect of its application for final payment in the sum of £28k on the grounds that Rowe Plumbing has not finished its work and that Develop plc has become insolvent.

Contract 4: Between Tufnell Builders and McInerny Landscapers. The contract period was 1 month. Tufnell Builders refuses to pay McInerny Landscapers anything in respect of its application for final payment in the sum of £26k on the grounds that McInerny Landscapers has not finished its work and that Develop plc has become insolvent.

Tufnell Builders has given notice of adjudication claiming payment in full of its application for final payment in respect of its contract with Develop plc. Lee Decorators, Rowe Plumbing and McInerny Landscapers have given separate notices of adjudication, each claiming payment in full of their applications for final payment in respect of each of their contracts with Tufnell Builders. Mr Adj U. Dicator was appointed adjudicator in all of the adjudications. The Notices of Adjudication in respect of all 4 adjudications were sent to the adjudicator and the responding parties on 3rd February 2007.

- 1 Discuss the factors that should be taken into account by the parties when deciding whether to insert an adjudicator's name into the contract. 10 mks
- 2 You have been instructed to represent Tufnell Builders. Draft a suitable Notice of Adjudication to serve on Develop plc. 10 mks
- 3 You have been instructed to represent Lee Decorators. Draft a suitable Referral Notice to serve on Tufnell Builders. 20 mks
- 4 All four disputes have been referred to the same adjudicator, at the same time.
- a Is this permissible? Explain your answer 5 mks
- b What factors would need to be taken into account by the Adjudicator in deciding whether to continue? Should the Adjudicator proceed with any of the adjudications? 5 mks
- c Draft a letter on behalf of Tufnell Builders to the Adjudicator setting out your position in relation to why you consider the Adjudicator should/should not proceed with any or all of the adjudications. 5 mks
- 5 All the contracts between Tufnell Builders and its subcontractors include a clause which makes payment to Tufnell Builders by Develop plc a condition precedent to payment to its subcontractors.
- a Can Tufnell Builders refuse to pay Lee Decorators, Rowe Plumbing and McInerney Landscapers on the basis that Develop plc has become insolvent? Explain your answer. 5 mks
- b On behalf of Tufnell Builders draft paragraphs to be used in a Response in the adjudications concerning Contracts 2, 3 or 4 setting out why Tufnell Builders is not liable to pay the sum 10 mks

claimed.

- 6 Assume now that Develop plc has not become insolvent.
- a How does the final payment payable under Contracts 1 and 4 differ in terms of when payment must be made and the calculation of how much is to be paid? Why is there a difference? 5 mks
- b On behalf of McInerny Landscapers, draft suitable paragraphs for including in a Referral Notice explaining to the Adjudicator when final payment should be made and calculating the amount of accrued interest at the date of the Referral Notice 10 mks
- 7 Two days have passed since you have received the Decision from the Adjudicator. Having reviewed it, you consider that the Adjudicator has made both mistakes in his thought process and typographical errors.
- a Draft a letter asking the Adjudicator to correct the mistakes you consider he has power to correct. 10 mks
- b Can the Adjudicator correct these types of mistakes? Explain your answer. 5 mks