AUTHOR(S): TODD, N. and EZEANI, E.C.

TITLE: Adjudication costs under the Housing Grants, Construction and Regeneration Act 1996: the attractions of Singapore's Building and Construction Industry Security of Payment Act 2004

YEAR: 2016

Adjudication Costs under the UK's HGCRA: the attractions of Singapore's SOPA

Nicholas Todd[*] and Elimma C. Ezeani[**]

Abstract

Escalating costs in UK statutory adjudications under the Housing Grants, Construction & Regeneration Act (HGCRA)1996 have restricted the use of the procedure by some of the very parties whose interests the legislation was set up to protect. This paper analyses those provisions including under the amendments in the Local Democracy Economic Development and Construction Act (LDEDCA) 2009 which may be contributing towards this problem. It provides a comparative overview of the equivalent Singaporean legislation in order to determine which provisions from the latter could be adopted to improve the situation in the UK. The paper concludes that to reduce costs in the statutory adjudication process under the UK HGCRA, incorporating a maximum cap on adjudicator's fees and providing for an adjudication review procedure both of which are found in Singapore's Security of Payment Act 2004 may assist to keep adjudication costs and expenses in the UK building and construction industry reasonable.

1. Introduction

By the 1990's, parties to construction contracts, especially those who were smaller in size such as sub-contractors with limited resources, would have been reluctant to take a dispute to litigation or arbitration, particularly if it was relatively low in value. A smaller party's resources tied up during the course of the lengthy proceedings could be better used elsewhere. In some cases, it is conceivable that any victory in the settlement of a dispute could be completely offset by the costs of the proceedings. It would appear for these parties, a less formal and faster method of resolution, such as adjudication would be appealing. Since the first UK standard form to incorporate an adjudication provision was a sub-contract agreement, it is evident at this time adjudication was intended as the "smaller" party's alternative to litigation and arbitration. However, in order for the full benefit of a dispute resolution process such

[*] BA (Hons), MSc, LLM, MRICS, MCIArb, MACostE, ICIOB n.a.todd@rgu.ac.uk (correspondence author)
[**] LLB, BL(Nig), LLM, PhD, FHEA. Law School, ABS, Robert Gordon University Aberdeen e.ezeani@rgu.ac.uk

as adjudication to be enjoyed by all types of parties to construction contracts, adjudication would have to be made widely available.

In 1994 Michael Latham compiled a report which was commissioned by the UK construction industry council and the UK government entitled "Constructing the Team". The report made thirty recommendations for the construction industry to adopt which were aimed at improving the industry as a whole, for all stakeholders. Recommendation number 26 proposed that Adjudication should be the normal method of dispute resolution for the UK construction industry[1].

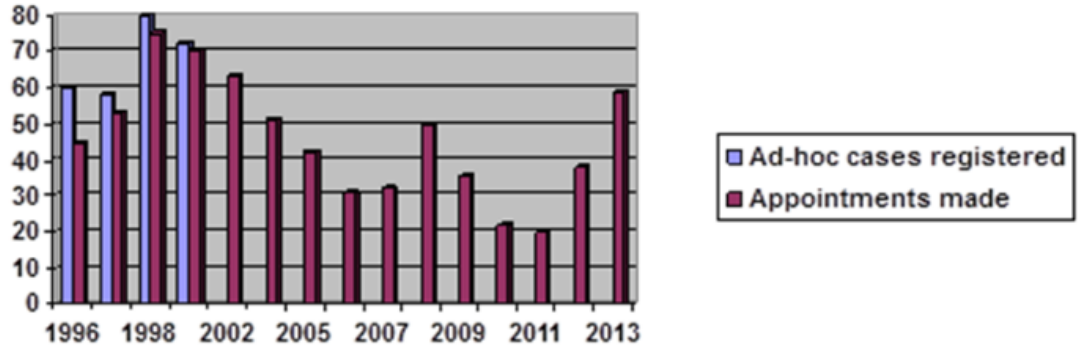
Following Latham's 1994 report, the Housing Grants, Construction and Regeneration Act 1996 (hereinafter, HGCRA) was passed by the House of Lords. The HGCRA, which encapsulated many of the recommendations made in the report, contained provisions for statutory adjudication (hereinafter, SA) for disputes arising under construction contracts. Since the implementation of the HGCRA in 1998, the number of litigations and arbitrations used to settle construction disputes has declined steadily[2]. Graph 1 shows the number of new proceedings in the Technology and Construction Court falling from approximately 1500 in 1996 to around 500 a year on average between 2000 and 2013.

Graph 1: Decline in new proceedings issued in the Technology and Construction Court since 1995[3]

[1] Michael Latham, *'Constructing The Team: Final Report of the Government/Industry Review of Procurement and Contractual Arrangements in the UK Construction Industry'* (HMSO 1994).
[2] Abdul Jinadu, *'Resolving Construction Disputes – The UK Experience'* (Keating Chambers 2014) <https://ciarbng.wildapricot.org/Resources/Documents/Resolving%20Construction%20Disputes%20-%20The%20UK%20Experience%20Final%20%281%29.pdf> accessed 4 February 2016.
[3] ibid.

Graph 2 shows the reduction in the number of new appointments of arbitrators made by the Chartered Institute of Arbitrators for construction disputes from approximately 75 and 70 in 1998 and 1999 respectively, to around 20 in 2010 and 2011, with a steady increase in 2012 and 2013 back up to 60.

Graph 2: Reduction in number of appointments made by the Chartered Institute of Arbitrators[4]



Graph 1 demonstrates the decline in popularity of litigation since 1996. However, whilst graph 2 does demonstrate a gradual decline in popularity of arbitration since 1998, the number of new appointments made has increased in recent years. This resurgence could be a sign that arbitration is being favoured as an alternative to SA, or it may be that more adjudications are now being referred to arbitration for final determination.

This paper aims to draw attention to the areas that merit closer examination in UK statutory adjudication, namely, the costs incurred by parties. Section 2 of this paper reviews the adjudication process under the HGCRA. Section 3 examines the disparity between statute and practice and section 4 reviews the amendments brought in by the Local Democracy, Economic Development & Construction Act 2009 (LDEDCA). Section 5 draws on the comparisons between statutory adjudication in Singapore. The paper concludes in section 6.

[4] ibid.

2. Adjudication under the Housing Grants, Construction and Regeneration Act 1996

The HGCRA came into force on 1 May 1998 in England, Wales and Scotland; and 1 June 1998 in Northern Ireland[5]. Section 108 sets out provisions for referring a dispute under a Construction Contract to SA. Section 108(1) clearly states that a dispute means "any difference", which could mean the smallest disagreement over the interpretation of a sentence in the contract, or the difference in value of £5m on a final account on a multi-million-pound project. In the case of *Banner Holdings Ltd v Colchester Borough Council*[6] a contract attempted to limit the type of dispute that could be referred to adjudication. When a certain dispute was referred under that contract, it was claimed that when the adjudicator accepted act, he had no jurisdiction. It was held that the adjudicator did have jurisdiction to decide with the judge stating that section 108 contains no qualification or limitation, upon the nature, scope and extent of the disputes that can be referred to an adjudication under a construction contract. The decision in this case reiterates that any dispute arising under the contract, no matter how complex or simple, can be referred to SA. There is literally no limit so long as it arises under a Construction Contract and satisfies sections 104-107 of the HGCRA, which gives parties freedom to refer any grievance they have, which is very much in line with the original intention of the Latham Report.

On one hand, this is very useful to a party, especially one with less financial clout and stature, since it's a process they can use if they find themselves being bullied by a larger party. Conversely, as does sometimes happen in practice, there is the opportunity to refer several different small disputes (via different notices) to SA one after the other, which can mean that several adjudications end up running concurrently, increasing the costs for those same smaller parties who will need to submit responses to each, with additional adjudicators fees and the cost of their own resources and/or solicitors and experts.

[5] John Riches, Construction Adjudication (2nd edn, Blackwell 2004) 3.
[6] [2010] EWHC 139 (TCC).

Section 108(2) states that a party can give notice *at any time* of its intention to refer a dispute to adjudication[7]. In *A&D Maintenance and Construction Ltd v Pagehurst Construction Services Ltd*[8] it was decided that a dispute which arose under a sub-contract which had already been determined previously was allowed to be referred to adjudication since it was still a "dispute arising under the contract". This decision demonstrates that even if a contact is brought to a close, it can still be opened up and a dispute under it be adjudicated upon. This may be problematic to companies who felt that they had finalised a final account for a project and had made allowances in their budgets based upon that, only for the final account to be opened up again.

In *Herschel Engineering Ltd v Breen Property Ltd*[9] Herschel commenced adjudication proceedings against Breen after court proceedings were commenced for the same dispute. It was held that they were entitled to do so, as a referral to adjudication can be made any time including after court proceedings have been issued. This case demonstrates that a company may have to fight the same dispute concurrently, in two different dispute resolution forums. This could mean that a party finds itself paying two lots of costs to attempt to determine the same dispute and to a smaller contractor this could be fatal in terms of its survival.

In *London Borough of Camden v Makers UK Ltd*[10] Camden sought to prevent Makers from adjudicating on a dispute due to its poor financial position and that any decision that was given should not be enforced due to its financial troubles. It was held that this was not a reason to deprive Makers from its right to adjudicate under the HGCRA, even if it would not be able to pay any money and it could be seen as pointless. Even if it is obvious that payment from one party to another after the decision may not be possible due to financial problems, the right to refer to SA is maintained. However, the decision to allow this to happen, whilst upholding the principles of SA, may not actually make sense for either party as both will incur costs, potentially for a result that cannot be upheld because there is no money to change hands.

[7] The Housing Grants, Construction and Regeneration Act 1996 s 108(2)(a).
[8] [1999] July 1999 CILL 1518 (TCC).
[9] [2000] BLR 272 (TCC).
[10] [2009] EWHC 2944 (TCC).

Disagreements as to complexity in disputes does not appear to affect the time limits set out under S108(2). In the cases of *London & Amsterdam Properties Limited v Waterman Partnership Limited*[11] and *AWG Construction Services Ltd v Rockingham Motor Speedway Ltd*[12] it was suggested by the judges that the disputes in question in those two cases were too complex to be decided fairly within the time limits of adjudication. Furthermore, in *CIB Properties Ltd v Birse Construction*[13] Birse argued inter alia that the size and complexity of the dispute meant that it could not be resolved fairly by adjudication. However, it was decided that the dispute was not too complex as the adjudicator's decision clearly stated that if he had felt unable to provide decision, he wouldn't have adjudicated. Therefore, there is no limit on complexity of dispute that can be referred to adjudication. Whilst it was suggested that the disputes were too complex to be fairly decided at SA, enforcement of the decisions was not resisted on these grounds. Therefore, whilst it may be true that the disputes were too complex and should have been settled by arbitration or litigation, it was technically correct to settle them via SA.

In allowing a dispute to be referred at any time, it can be argued that section 108(2)(a) can be both positive and negative to parties. On one hand, a dispute can be referred the same day that it arises, during the course of the project, which means it will be settled sooner, potentially leading to less external expense. On the other, a dispute on a final account can be referred a year after the project has finished. In this situation, a party may have thought the final account figure was agreed, only for that figure to be adjudicated long after the project has completed.

It is important at this point to mention the *Scheme for Construction Contracts (England & Wales) Regulations 1998* (the Scheme). The Scheme was introduced in conjunction with the HGCRA. It states the SA provisions that shall be used, should the Construction contract not comply with the provisions of the HGCRA. Specifically, it sets out a procedure for adjudication, including the rights and duties of the parties, the duties and powers of the adjudicator and the objective timetable for the

[11] [2003] EWHC 3059 (TCC).
[12] [2004] EWHC 888 (TCC).
[13] [2004] EWHC 2365 (TCC).

adjudication[14]**.** Part 1 of the Scheme provides regulations for SA and is split into four main sections: Notice of intention to seek adjudication; The powers of the adjudicator; The Adjudicator's decision and; The effects of the decision. These are discussed below.

2.1 Notice of Intention to Seek Adjudication

Section 8(3) of the Scheme enables the extension of the 28-day period in which an adjudicator must reach a decision: It is similar to section 108(2)(d) of the HGCRA in stating that the 28-day period can be extended, however Section 108(2)(d) of the HGCRA states it can be extended by 14 days, whilst Section 8(3) of the Scheme puts no limit on how far it can be extended by. On one hand, Section 8(3) is positive in that it allows the adjudicator more time to deal with potentially complex disputes that have been referred to him, thus enabling him to better analyse the information provided to him and give a clearer and better informed decision to the parties on the dispute. Conversely, by allowing the adjudication to go on for a further non-specific period of time, often a lot longer than 28 days (lasting up to 5 months in some cases in our own experience) the costs the parties incur will greatly increase.

2.2 Powers of the Adjudicator

Section 12(b) relates to adjudicators actions during the adjudication and requires the adjudicator to "avoid incurring unnecessary expense." In theory this should keep the costs passed on to the parties down to those absolutely essential. However, in practice "unnecessary" can be seen as a subjective term. Therefore, it is perhaps quite difficult to determine what is an unnecessary cost incurred unless it is a cost so blatant, such as something passed on to the parties that has nothing to do with the adjudication. Therefore, unless the adjudicator is conscientious when incurring costs and doesn't pass down those costs which are unnecessary to the parties, it can be argued that the provision at Section 12(b) does not hold much power.

[14] Martin Burns, *'Adjudication and the resolution of disputes in the construction industry'* (2002) 7(2) Coventry law Journal 38.

2.3 The Effects of the Decision

The Scheme allows the adjudicator "…such reasonable amount as he may determine by way of fees and expenses reasonably incurred by him…"[15] Any outstanding costs are borne by the parties jointly and severally, "…following the making of any determination on how the payment shall be apportioned."[16] These provisions are essentially subjective and may make it difficult for parties to determine their SA costs, *a priori.* Whilst the adjudicator will provide his hourly/daily fee rates before he is appointed, there is no cap or maximum to what can be incurred within the HGCRA or the Scheme. Therefore, it is difficult for users of SA to undertake a cost/benefit analysis and decide whether it's worth referring a dispute to SA.

Section 26 of the Scheme concerns the adjudicator's liability in his role. Liability is limited to acts or omissions committed in bad faith and this limitation is extended to employees or agents of the adjudicator. Section 26 provides cover for the adjudicator should he make any genuine mistake in undertaking his duties. This is required since the adjudicator often has to contend with a lot of information from both parties and provide a decision in a short timescale. Section 26 therefore ensures that he can do his job without fear that he will be punished for genuine mistake. However, in allowing genuine mistakes within decisions, parties could be given decisions which are erroneous and since the decision is binding, have no recourse until final determination. This would be harsh on smaller parties with less financial resources, since they would have incurred costs for the adjudication and have a decision which is essentially wrong.

3. Statutory Adjudication in the UK : between intention and reality

The intention of SA was to provide a quick and cheap interim remedy to disputes arising during a construction project, to protect cash-flow. It was envisaged that SA would deal with simple disputes quickly, such as delay and disruption claims, extensions of time and payment disputes[17]. Furthermore, it was thought that SA

[15] Ibid s25.
[16] Ibid.
[17] A Willis, *'The Other Side of the Adjudication Coin'*, (2014) 25(5) Construction Law Journal 23.

would be used to resolve many minor disputes as the works progressed[18]. It was also envisaged that the tight time frame in which an adjudication decision was to be given meant that injustice would often occur[19]. However, this was seen as part and parcel of the process. In the early case of *Balfour Beatty Construction Ltd v The Mayor & Burgesses of the London Borough of Lambeth Council*[20] the judge in his decision noted that "..,the purpose of adjudication is not to be thwarted by an overly sensitive concern for procedural niceties."[21]

It appears that SA would be ideally suited to those sub-contractors and smaller main contractors for which cash flow was critical to survival as it would allow them to quickly and cheaply as the works progressed. The judge's comments in Balfour Beatty also reinforce that the procedure should be fast, above all else.

Yet in the 18 years the HGCRA has been in force, matters which are referred to SA have developed to be quite different to those originally imagined. It now often includes claims for complex contractual interpretation, misrepresentation, and professional negligence disputes, which are frequently made months or even years after the conclusion of the contract. Consequently, the quick and cheap process takes much longer and is much more expensive (Willis 2014)[22]. In a paper reviewing SA, Anderson observes and we agree, that the reality is vastly different from what was envisaged under the statutory provisions.[23] He notes that in practice, the vast majority of SA's normally arise quite far through the course of works, either in the form of a disputed application for interim payment, or for final account. Although half of all adjudications appear to be for less than £50,000, quite large sums, often in the order of £10 million are regularly adjudicated upon; Although SAs do appear to be being dealt with expeditiously, with the admittedly very tight time-limits for SA largely being adhered to, it is normal practice for the parties, or their representatives, to agree

[18] R.N.H Anderson, *'For the greater good - a pre adjudication protocol?*' (2006) 22(7) Construction Law Journal 437.
[19] *Macob Civil Engineering Ltd v Morrison Construction Ltd* [1999] EWHC Technology 254.
[20] [2002] EWHC 597 (TCC).
[21] [2002] EWHC 597 (TCC) at Paragraph 27
[22] A Willis, *'The Other Side of the Adjudication Coin'*, (2014) 25(5) Construction Law Journal 23.
[23] R.N.H Anderson, *'For the greater good - a pre adjudication protocol?*' (2006) 22(7) Construction Law Journal 437.

to give the adjudicator something in the way of an extension of time to produce his or her decision.

Furthermore, SAs can no longer be considered a cheaper alternative in resolving construction disputes. Although the average fee for an adjudicator is said to be in the region of £3,725, fees of £40,000 or so are not unusual and, in the larger cases, fees of the order of £100,000. Party's costs can also spiral, having been known in some cases to exceed £1,000,000.[24] In addition, only a small number of SA's are actually taken forward for "final determination" in the form of either arbitration or litigation. To this effect, it can be argued that SA appears to have replaced arbitration.

In *AWG Construction Services Ltd v Rockingham Motor Speedway*[25] the judge made observations as to what adjudication had become:

> It has developed into an elaborate and expensive procedure which is wholly confrontational, a full-scale trial normally, on the documents, of the issues referred to the adjudicator (not necessarily the whole dispute) within a timetable of 42 days from notice of adjudication to decision by the adjudicator…

It is clear that in reality SA is taking longer since the disputes that are referred are more complex than was originally envisaged, leading to extensions to the 28-day period and therefore the costs of participating have increased accordingly. Whilst this is a positive development for SA practice, in that it is seen as a forum in which more complex disputes which have often occurred after project completion can be settled, the costs incurred by longer periods of SA cannot however be ignored. While the 7-day notice period for referral to SA is strictly enforced, save for external factors that the referring party cannot control [26], the 28 day period for a decision is not.

Section 108(2)(c) of the HGCRA and Section 19(1)(a) of the Scheme state that the adjudicator shall reach his decision within 28 days of the date of the referral notice.

[24] *CIB Properties Ltd v Birse Construction* [2004] EWHC 2365 (TCC).
[25] [2004] EWHC 888 (TCC) at paragraph 122.
[26] See *Cubitt Building & Interiors Ltd v Fleetglade Ltd* [2006] EWHC 3413 (TCC); *Hart Investments Ltd v Fidler & Anor* [2006] EWHC 2857 (TCC).

This period was deliberately designed to ensure a swift answer when a dispute has been referred[27]. In *Ritchie Brothers (PWC) Ltd v David Philp (Commercials) Ltd*[28] it was determined that the 28-day period for adjudication commenced when the notice of referral was dispatched. However, in the case of *Aveat Heating Limited v Jerram Falkus Construction Limited*[29] it was decided that the 28-day period starts from the date the referral notice was received by the adjudicator. These two cases throw up ambiguity as to when the 28-day period commences. Although in reality, there will often not be much difference in time between when the referral is dispatched and received, it is believed that if there is any conflict between the two positions, the position in *Aveat v Jerram* is preferred [30].

However, in *Barnes & Elliot Ltd v Taylor Woodrow Holdings Ltd & Amor*[31] an adjudicator's decision was completed within the 28-day period but the decision was not delivered to the parties until after the 28-day period, due to an error by the adjudicator. It was held that the reaching of a decision and its delivery were two separate segments of the adjudication process and that the decision was made in compliance with section 108(2)(c) of the HGCRA, even if its delivery was a few days late. In *Ritchie Brothers (PWC) Ltd v David Philp (Commercials) Ltd*[32] the adjudicator's decision was due, in line with section 19(1) of the Scheme, on 16 October. The Adjudicator asked the parties for an extension to give the decision, to 23 October. However, he did not provide the decision until 27 October. It was held that the adjudicator was outside his jurisdiction since the decision was too late and therefore the decision was null. Similar decisions were reached in the cases of *Mott McDonald Limited v London & Regional Properties Ltd*[33] and *Lorraine Lee v Chartered Properties (Building) Limited*[34]. These judgements demonstrate that as long as the decision is reached within 28 days, it is enforceable. In this scenario, through no fault of their own, the parties to an adjudication will potentially have gone to all the trouble and cost of preparing documents, hired and paid for experts, paid the

[27] Peter Coulson, *'Coulson On Construction Adjudication'* (2nd edn, Oxford 2011) 2.114.
[28] [2004] ScotCS 94.
[29] [2007] EWHC 131 (TCC).
[30] Peter Coulson, *'Coulson On Construction Adjudication'* (2nd edn, Oxford 2011) 2.118.
[31] [2003] EWHC 3100 (TCC).
[32] [2005] ScotCS CSIH_32.
[33] [2007] EWHC 1055 (TCC).
[34] [2010] EWHC 1540 (TCC).

adjudicator his fees for his services and still received a decision which may have been acceptable on its merits, but cannot be enforced because it was technically served late. This will be particularly tough on the party whom the decision favoured, since they would have essentially spent money at the adjudication for no purpose.

There are other factors that merit closer consideration in reviewing the reality of SA:

3.1 Ambush

The time limits imposed on SA place the referring party at an advantage as the procedure, with its 28-day timetable, does not commence until the notice of adjudication has been served by the referring party, therefore it has had a chance to get its case in order[35]. This could have been taking place over a number of months and could mean that the documents submitted are copious. In comparison, the responding party will only have a very limited amount of time to present its case. This procedure has become known as 'ambush' and is thought by some to be an abuse of the SA process[36]. In *London & Amsterdam Properties Limited v Waterman Partnership Limited*[37] the judge stated that "…mere ambush however unattractive does not necessarily amount to procedural unfairness." [38]

Unfortunately, whilst 'ambush' is not desirable, it appears acceptable for a party to do so. It will be particularly harsh if, for example, a large company with many resources has spent 6 months preparing its case against a small company and in doing so has employed many lawyers and experts, spending lots of money. As soon as it gives notice and sends the referral, the responding party, who may or may not be more modest in terms of size and resources, will need to answer to the referral quickly. To do so, it either has to employ many resources itself, which will cost a lot of money. Alternatively, it may attempt to answer to the referral without the use of these additional resources, but in doing so risks submitting a poor representation of its case,

[35] Dominic Rawley, '*Construction Adjudication and Payments Handbook'* (2nd edn, Oxford 2013) 10.22.
[36] *Austin Hall Building Ltd v Buckland Securities Ltd* [2001] EWHC Technology 434.
[37] [2003] EWHC 3059 (TCC).
[38] [2003] EWHC 3059 (TCC) at paragraph 179.

thus losing and having to pay a substantial amount of money to the referring party. It seems that in terms of costs, the responding party will often be in a lose-lose situation.

3.2 Errors

In the case of *Bouygues v Dhal Jensen*[39] the adjudicator miscalculated the amount due to the Dhal Jensen as being £200,000, when it should have been an amount of £140,000 due to Bouygues. It was found that although the adjudicator had made an error, he had answered the right question in the wrong way, therefore it was an erroneous decision which he was entitled to reach and had not acted outside his jurisdiction. However, in the case of *Bloor Construction Ltd v Bowmer & Kirkland Ltd*[40] an adjudicator communicated a decision which contained a miscalculation in Bloor's favour. Upon being informed, the adjudicator checked and amended the decision and sent a corrected version out the same day. Bloor sought to enforce the first decision but the second was held to be valid, since the adjudicator had made a 'slip'.

It can be seen from these two cases that if there is an error in law or fact that is included in the decision, it will remain as part of the decision. However, if there is an error which has occurred as a result of an arithmetic miscalculation this is known as a 'slip'. This can occur when the previous workings in the decision were not added up correctly. Where spotted quickly by the parties or the adjudicator himself, the error in the decision can be corrected and the decision reissued. On the one hand this demonstrates that in the cut and thrust of SA, errors may be made that the parties will have to accept. However, allowing the correction of slips at least allows some recourse when a blatant error in a calculation is made. In terms of costs this is good for parties, since a large miscalculation could mean they have to pay a large amount of money in the interim, before taking the dispute to arbitration or litigation to attempt to getting that money back.

[39] [2002] EWCA Civ 507.
[40] [2000] EWHC 103 (TCC).

In *Steve Domsalla v Kenneth Dyason*[41] under a contractual adjudication, the adjudicator made an error in making his decision when he failed to consider Dyason's defences of abatement and set off due to a lack of withholding notice. This amounted to procedural unfairness since the adjudicator made an error of law and fact, which meant he failed to answer the question asked of him, thus the decision was not enforceable. If this had happened in a SA under the HGCRA, it may have been acceptable and the decision enforced due to 'the doctrine of unreviewable error of an adjudicator within jurisdiction' ensuring an error in law or fact will not render a decision unenforceable[42]. The decision in *Domsalla v Dyason* demonstrates the freedom and relative lack of liability an adjudicator performing a statutory adjudication under the Act. Errors which would render him in breach of natural justice in a contractual adjudication will most likely not affect him in a SA due to the 'doctrine of unreviewable error'. In other words, his decision cannot be opened up for review for errors in fact and law. Whilst this enables the adjudicator to perform his task within the tight 28-day period without hindrance, it will be frustrating for a party against whom his decision goes if it is full of obvious errors, especially if they have incurred great cost in obtaining that decision.

3.3 Costs & Fees

In *Prentice Island Ltd v Castle Contracting*[43] an adjudicator carrying out an adjudication under the Scheme should have resigned because the dispute was the same as one previously referred, but did not. It was held that the adjudicator had acted in good faith and was entitled to be paid his fees regardless of the fact that he had no jurisdiction and carried on with the adjudication, even though the parties did not have an enforceable decision. This decision demonstrates that even if the parties do not get a decision which is enforceable and therefore essentially useless, through no fault of their own, they are still liable to pay the adjudicator his fees and will have incurred other costs for experts and solicitors throughout the course of the SA. For a small sub-contractor with a good case, relying upon a favourable decision, this could be disastrous since its cash flow may be so tight that they spent the money on an SA

[41] [2007] EWHC 1174 (TCC).
[42] Peter Coulson, *'Coulson On Construction Adjudication'* (2nd edn, Oxford 2011) 7.01.
[43] [2003] ScotCS 61.

knowing that they needed the adjudicator's decision at the end of the 28-day period to obtain money from the other side to allow the company to survive.

In *Griffin v Midas Homes*[44] an adjudication decision was taken to enforcement on the grounds that the adjudicator had no jurisdiction since the dispute hadn't crystallised. In this case, the responding party was not liable to pay fees for any part of the decision that could not be enforced, whilst the referring party was. In contrast to the decision in *Prentice v Castle*, in this case the responding party did not have to pay some of the fees since there was no dispute. This seems fair on the responding party as it was not them who referred the non-dispute to SA. However, the same questions are raised as to whether the parties should pay anything for any part of the decision which was not enforceable.

With the above cases in mind, in the case of *Dr Peter Rankilov v Perco Engineering Services*[45]the judge made a comment that it surprised him that even if the adjudicator had breached the rules of natural justice and therefore produced a worthless decision without any binding effect whatsoever, he would still be entitled to his fees for producing that decision. However, in the recent case of *P.C. Harrington Ltd v Systech International Ltd*[46] the court of appeal overturned a previous judgement that the adjudicator was entitled to fees for producing an unenforceable decision, due to an innocent mistake he made. Now, the adjudicator was not entitled to the fees and it was stated that he would only be entitled to fees if he had produced an enforceable decision. This recent case appears to alter the position with regard to adjudicator's fees when a decision is unenforceable. The effect of this may be that adjudicators think more carefully when they first receive a notice of adjudication and a referral document as to whether they have jurisdiction to adjudicate or not. The effect of this will be that less SA's that should not go ahead do not proceed and the parties will therefore save on wasted costs.

In *Fenice Investments v Jerram Falkus Construction*[47]the adjudicator decided that the losing party would pay his fees. However, the losing party only paid a small portion of his fees claiming they were excessive. At enforcement, it was held that the fees

[44] [2000] 78 Con LR 152 (TCC).
[45] [2006] Adj LR 1/27.
[46] [2012] EWCA Civ 1371 (CA).
[47] [2011] EWHc 1678 (TCC) 141 Con LR 206.

were reasonable and the losing party had to pay them. This case is an example where a party has felt that the adjudicator's fees were excessive, yet cannot do anything about it. There is nothing in the HGCRA or the Scheme which limits the adjudicator's fees and it is unlikely that an adjudicator will cap his fees himself in his fee proposal since he won't know how much time he'll have to spend on the dispute at the start. Therefore, the parties are at the mercy of the adjudicator in this respect and will have to accept this is a risk of SA.

4. Amendments under the Local Democracy, Economic Development and Construction Act 2009

Hoar writes that one of the most controversial matters since the introduction of the SA regime under the HGCRA has been the costs of the process. The HGCRA contains no provision in relation to payment of the costs of the SA process and the assumption is that the parties will be responsible for bearing their own costs. The position on SA costs was the subject of considerable Parliamentary scrutiny whilst the *Local Democracy, Economic Development and Construction Act 2009* (the LDEDCA) passed through the legislative process[48]. However, whilst the LDEDCA has made amendments to the SA provisions, generally speaking, they are not nearly as comprehensive and far-reaching as those to the payment provisions[49].

The LDEDCA introduced several key changes to the SA provisions within the HGCRA and introduced new provisions in certain areas, namely: Oral Contracts; Adjudicator's slips; and Apportionment of costs. The Scheme is also updated by The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 (Scheme amendments)[50]. The extent of the amendments in these three areas are discussed below.

[48] Chris Hoar, *'Change is Coming*' (2011) Jul/Aug Construction Newsletter 2.
[49] D Helps, *'Construction Act Review (October): Outlawing Tolent Clauses and the LDEDC Act 2009 - the denouement of section 108A'* (2011) 27(7) Construction Law Journal 575.
[50] The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011.

4.1 Oral Contracts

Section 139(1) of the LDEDCA repealed section 107 of the HGCRA[51] which had provided that only agreements in writing could give grounds for adjudication. The decisions in cases such as *RJT Engineers Ltd v DM Engineering (Northern Ireland) Ltd*[52] and *Mast Electrical Services v Kendall Cross Holdings Limited*[53] had previously meant that in the majority of instances when there was no written contract, there would be no option to settle disputes by SA. However, this provision is now removed and all oral contracts are now included. Coulson believes that superficially this amendment is a positive since it does away with the complex decisions relating to whether a particular contract is in writing or not. However, he states that this new provision will add considerable burden to the work of adjudicators since they may use a considerable portion of the 28-day period trying to determine if there is a contract in place or not, meaning they may not have enough time left to fairly decide the dispute[54].

Indeed, it seems likely that allowing SA for oral contracts will mean that a longer period (extended beyond the 28 or even 42-day period) is required for the proceedings due to more time taken to determine whether there was actually an oral contract or not, which will be much harder than determining whether there was a written contract in. In terms of costs incurred by the parties, extended SAs will mean higher adjudicator fees, higher legal and expert fees and higher expenses. Also, management time will be tied up with SAs for longer periods, preventing them from concentrating on other areas of their business, thus potentially losing money elsewhere. However, in allowing disputes under oral contracts to be referred to SA, more of the original companies that the act intended to help who may not have the ability or leverage to put in place written contracts, will in theory be given the chance to stand up against bigger companies.

In the recent case of *Rob Purton t/a Richwood Interiors v Kilker Projects Limited*[55] Rob Purton undertook joinery works for Kilker projects at the Dorchester Hotel.

[51] The Local Democracy, Economic Development and Construction Act 2009 s 139(1).
[52] [2002] EWCA Civ 270.
[53] [2007] EWHC 1296 (TCC).
[54] Peter Coulson, *'Coulson On Construction Adjudication'* (2nd edn, Oxford 2011) 4.08 - 4.09.
[55] [2015] EWHC 2624 (TCC).

Purton claimed that he entered into an oral contract with Kilker to undertake works for £350,000. The dispute was referred to SA where the adjudicator awarded a sum of 147,223 (the requested final account sum) plus the SA costs of £4,184. Following the adjudicator's decision, Kilker refused to pay on the grounds that the adjudicator had no jurisdiction due to there being no contract and the decision was taken to the TCC for enforcement. The court rejected that there was no contract in place, with the judge stating[56] "[*T]o my mind it seems clear beyond argument that there was a contract. There was substantial "performance" on both sides, with Mr Purton doing the works and Kilker making payments.*"[57] The court also decided that even in circumstances where each term of a contract was not identified with complete accuracy that did not prevent the adjudicator having jurisdiction.

Based upon limited case since the amendments, it seems as though in future adjudicators will attempt to go to the lengths required to find the existence of an oral contract, which will be difficult to prove as by its very nature, even the 'best' oral contract will often be one party's word against the others.

4.2 Slips

Section 140 of the LDEDCA adds section 108(3A) to the HGCRA which codifies the Adjudicator's power to make corrections to his decisions.[58] This amendment essentially codifies the decision in *Bloor v Kirkland*[59] which allowed the adjudicator to correct his 'slip' in his decision.

Section (10)(2) of the Scheme amendments adds section 22A to the Scheme which reflects amendments made to the HGCRA allowing an adjudicator to amend his decision within five days of delivery to the parties. Whilst this amendment only puts into legislation what is already case law, the 5-day limit to change a slip in the decision puts a time limit which gives the parties further clarity.

4.3 Apportionment of Costs

[56] ibid.
[57] [2015] EWHC 2624 (TCC) at paragraph 18.
[58] The Local Democracy, Economic Development and Construction Act 2009 s 140.
[59] [2000] EWHC 183 (TCC).

Section 141 of the LDEDCA adds a new section 108A to the HGCRA which deals with the apportionment of costs between the parties.[60] These amendments codify the decisions made in recent cases. In *Bridgeway Construction Ltd v Tolent Construction Ltd*[61] a clause was written into the contract which meant the party who referred a dispute to SA would bear all the costs regardless of whether they won or lost. This contractual provision was upheld as valid in this case. However, in *Yuanda Co Ltd v WW Gear Construction Ltd*[62] a construction contract contained provisions stating the referring party will pay the legal fees of both parties and the adjudicator, irrespective of whether or not it wins or loses. It was held that these provisions were not valid and replaced by the whole of Part I of the Scheme.

This amendment essentially guarantees that at least in terms of apportionment of costs, a paying party cannot be 'put off' from referring a dispute to SA for financial reasons. For example, an employer who writes such a term into a contract will know that often the contractor who is tendering for the work will adhere to a clause such as this, as they could be in no position to turn down the work from a financial standpoint. Therefore, they will sign up to the contract regardless. However, this amendment redistributes the power slightly and reinforces the intention of SA, namely any party no matter how small in stature, can refer any dispute at any time for quick determination.

5. Statutory Adjudication in Singapore

Following the success of the statutory adjudication provisions contained in The HGCRA, other commonwealth jurisdictions followed suit and introduced similar legislation. The first to be introduced was the New South Wales Building and Construction Industry Security of Payment Act[63] (NSW Act) in 1999[64], with amendments made in 2002[65] to overcome early decision enforcement issues and make

[60] The Local Democracy, Economic Development and Construction Act 2009 s 141.
[61] [2000] CILL 1662.
[62] [2010] EWHC 720 (TCC).
[63] Building and Construction Industry Security of Payment Act 1999 (NSW).
[64] R. Rana, *'Is adjudication killing arbitration?'* (2009) 75(2) Arbitration 223.
[65] Building and Construction Industry Security of Payment Amendment Act 2002 No 133 (NSW).

the legislation more effective[66]. Following the NSW Act, Western Australia[67], Queensland[68], Northern Territory[69], New Zealand[70] and Singapore[71] quickly adopted similar legislation between 2002 and 2004. The Australian state of Queensland and Singapore chose to base its legislation primarily on the NSW Act rather than the UK Construction Act. Subsequently NSW, Queensland and Singapore are known as "The Australian East Coast Model" as opposed to "The UK model" [72].

The Singapore Building and Construction Industry Security of Payment Act 2004 (SOPA) however, presents interesting challenges for SA in the UK, with regard to the development of statutory control of the payment process.[73] The SOPA came into force on 1 April 2005 and essentially follows the New South Wales Act whilst being clearly inspired by the HGCRA. The SOPA Regulations[74] are a set of regulations used in conjunction with the SOP Act, in a similar way to the Scheme and the HGCRA in the UK. In general, the SOPA and the Regulations are a lot more descriptive than the UK legislation, attempting to leave less ambiguity than the HGCRA has.

5.1 Statutory Adjudication under the Singapore Building and Construction Industry Security of Payment Act 2004

Under the SOPA disputes for adjudication must arise under agreements made in writing,[75] unlike the amendment to include oral contracts in UK SA, introduced under the LDEDCA. Sections 4(3)(a) and 4(3)(b) SOPA are essentially the same as the HGCRA Sections (107)(2)(a) and (b), whilst 4(3)(c) and 4(3)(d) are more elaborative

[66] Peter Sheridan, Dominic Helps, Robert Fenwick Elliot & Jeremy Coggins, '*Construction Act Review (July) 2007*' (2007) 23(5) Construction Law Journal 364.
[67] Construction Contracts Act 2004 (WA).
[68] Building and Construction Industry Payments Act 2004 (QL).
[69] Construction Contracts (Security of Payment Act) 2004 (NT).
[70] Construction Contracts Act 2002 (NZ).
[71] Building and Construction Industry Security of Payment Act 2004 (SG).
[72] Peter Sheridan, Dominic Helps, Robert Fenwick Elliot & Jeremy Coggins, '*Construction Act Review (July) 2007*' (2007) 23(5) Construction Law Journal 364. It appears as though the overarching difference between the models centres essentially around the desired scale of what can be decided in an adjudication and how quickly it can be referred and concluded. Indeed, Hudson's states that in reality, the Australian East Coast model deals with the perceived problem of cash flow in relation to construction work in a much more direct and prescriptive way than the UK model and that this is much more in line with the original intention of the HGCRA.
[73] Chow Kok Fong, *'Publication Review: Security of Payment and Construction Adjudication'* (2006) 22(2) Construction Law Journal 145.
[74] The Building and Construction Industry Security of Payment Regulations 2006 (SG).
[75] S4(1) SOPA.

versions of the Section 107(2)(c) which states that the HGCRA applies if the agreement is evidenced in writing.

In the case of *QM Pte Ltd v Mr QN*[76] the contract documents under which the dispute was referred to the adjudicator were clearly incomplete, yet the adjudicator found there to be a contract in writing due to the existence of a memorandum of agreement which recorded in writing the essential terms of the contract between the parties. In *JL Pte Ltd v JM Pte Ltd*[77] the only written evidence of a contract was a quotation which the respondent argued did not constitute a written contract. The adjudicator agreed that there was only an oral contract between the parties and that the burden of proof must fall on the party relying on the existence of a contract to demonstrate that it was made in writing. Therefore, the dispute could not be referred to SA under the SOPA. Contrastingly, in *LH Pte Lt v LI Pte Ltd*[78] the adjudicator found there to be a written contract based upon a quotation with handwritten comments which was followed by an oral instruction to commence works.

The above cases demonstrate that the position on written contracts in Singapore is essentially the same as it was in the UK before the LDEDCA amendments to allow oral contracts. It is apparent that in most instances the adjudicator will try his utmost to find the existence of a written contract, from various documents and correspondence between the parties. Fong states that many domestic Singapore sub-contracts, especially for the supply of labour, will often be wholly oral and will therefore be excluded from the SOPA.[79] He notes this is regrettable from a public policy standpoint as these are the type of companies that lack the contractual leverage and would have relied upon SA.

5.1.1 Timescales under the SOPA

Section 12 of the SOPA states the very specific circumstances under which a SA can be commenced under the SOPA:

i) When a claimant disputes a payment response (Section 12(2)(a));

[76] AA118 0f 2009 [2009] SCAdjR 654.
[77] AA05 of 2009 [2009] SCAdjR 75.
[78] AA36 of 2009 [2009] SCAdjR 181.
[79] Chow Kok Fong, *'Security of Payments and Construction Adjudication'*, (2nd edn, Lexis Nexis 2013) 3.41

ii) When a claimant is not provided with a payment response (Section 12(2)(b));
iii) When a claimant fails to receive payment by the due date (section 12(1)).

These provisions are in contrast to S108 (1) and (2) of the HGRCA where any party can refer any dispute to SA at any time. This means that whereas in the UK, anything under the contract can be adjudicated upon, in Singapore a dispute will only be entertained where it arises over a payment claim. However, it is clear that the items in that payment claim can be far ranging and in opening up the payment claim, the adjudicator could be dealing with many commercial aspects of the project. In addition, the adjudication process under the SOPA is more timescale driven than that under the HGCRA. Whilst there are deadlines under the HGCRA, they are not as stringent as those in the SOPA[80.]

In the UK, the referral must be served to the adjudicator within 7 days of his appointment. However, under the SOPA once notice is given to the other party, the claimant shall make an 'adjudication application' (the equivalent of the referral in the UK) within 7 days of when he is entitled to do so at specific points in time as dictated by section 12 of the SOPA mentioned above. In the case of *JFC Builders Pte Ltd v Lion City Construction Co Pte Ltd*[81]it was decided that the earliest date that the adjudication notice could be served to the responding party was *before* the entitlement to apply for adjudication crystallises in line with Section 12(2) of the SOPA. Conversely, the latest date for serving of the notice of adjudication is earlier in the same day that the adjudication application is submitted to the nominating body under section 13(2) of the SOPA[82]. These cases demonstrate the earliest and latest dates that the claiming party can serve its notice on the responding party. Although there is a period in line with the SOPA in which a party is entitled to refer a payment claim dispute to SA, they can actually pre-empt this and give notice to the responding party earlier than the commencement of this period. The latest date is the same date that the adjudication application is submitted to the nominating body. Contrastingly, in the UK a party can serve notice of intention to refer a dispute to SA at any time. Despite some leeway in terms of earliest and latest dates, there is still a window in which the

[80]Building & Construction Authority, 'Security of Payments Act Flowchart' (BCA, 2006) <https://www.bca.gov.sg/SecurityPayment/others/SOP_flowchart.pdf> accessed 3 March 2016.

[81] [2012] SGHC 243.

[82] ibid.

notice can be raised in Singapore. If this is missed, the chance to adjudicate is forfeited until the next month's payment claim is served.

In the UK, there is no specified timescale for the submission of a response to the referral. The adjudicator and the parties will decide upon this once the adjudication has commenced. In Singapore, once the referral is submitted, the responding party gets 7 days to submit its response. The SA does not actually commence until the response is submitted. Under Section 16(2)(b) if the responding party does not submit its document within the 7-day period, the SA is commenced without it and there is no option to submit it in the future. There is no equivalent provision in the HGCRA. Also, the SA does not commence until the adjudicator has been appointed and the referring and responding parties have submitted their respective documents[83]; by contrast in the UK the SA commences when the adjudicator has been appointed and he is in possession of the referring party's documents.

Section 17(1)(a) and Section 17(1)(b) state the maximum length of the SA is between 7 and 14 days depending on the type of dispute. In comparison to the UK, the maximum is 28 days[84] with the option to extend to 42 days[85]. However, both the SOPA and the HGCRA allow the adjudicator and the parties to agree on any further time period. The fact that the default time scales are shorter than those in the HGCRA indicates an even greater importance upon speed in resolving the dispute and getting cash flowing again. However, it could be argued that a shorter timescale is adequate for disputes under the SOPA since they only relate to payment, whereas the greater range of disputes and both oral and written contracts which fall under the HGCRA mean that the 28-day period is necessary.

Just as under S108 (3) HGRCA, s21 SOPA provides that the SA decision in binding until final determination by arbitration or litigation; or if the parties agree to settle. Also, S17(6) SOPA directly follows the position in the UK with regard to 'slips'.

[83] S16 (1) SOPA.
[84] The Housing Grants, Construction and Regeneration Act 1996 s 108(2)(c).
[85] ibid s 108(2)(d).

5.1.2 Adjudication Review Procedure

Section 18 of the SOPA contains an 'Adjudication review procedure'[86] which is unique to the SOPA and does not appear in the HGCRA, the New Zealand Act or any of the Australian Acts[87]. The adjudication review procedure allows any injustices inflicted upon parties during the cut and thrust of the original SA to be remedied at a stage before they are referred to final determination by arbitration or litigation[88]. However, the review procedure allows the substantive merits of the original determination to be re-examined, it doesn't enable the determination to be completely overruled, as a court may do[89].

Section 18(2) of the SOPA states[90]:

> …where a respondent to whom this section applies is aggrieved by the determination of the adjudicator, the respondent may, within 7 days after being served the adjudication determination, lodge an application for the review of the determination with the authorised nominating body with which the application for the adjudication had been lodged under section 13.

The review procedure is only available to the respondent and must be made within 7 days of the serving of the determination.[91] Upon reviewing the determination, the review adjudicator or panel will have 14 days[92] to provide a new 'substitute' determination or refuse the review application and uphold the original determination.[93] In *RN & Associates Pte Ltd v TPX Builders Pte Ltd*[94] it was decided that if a respondent is aggrieved with the decision in the SA and that the difference in the sum in question is above S$100,000, the proper course of action would be to refer the determination to the review procedure so that the substantive findings could be re-examined and analysed, rather than try to get the determination set aside at court.

---

[86] ibid s 18.
[87] Chow Kok Fong, *'Security of Payments and Construction Adjudication'*, (2nd edn, Lexis Nexis 2013) 17.1.
[88] *SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2009] SGHC 257 at [24].
[89] ibid at [38].
[90] Building and Construction Industry Security of Payment Act 2004 s 18(2) (SG).
[91] S18 (6) SOPA.
[92] Ibid S19(3).
[93] Ibid s19(4).
[94] [2012] SGHC 225.

This case considered the scope of adjudication reviews and decided that the adjudication review procedure should always be actioned first before attempting to get a determination set aside. This makes sense, since there would be no point in having the procedure available if it was not used in the first instance. This is also a way of keeping party's costs down, since a review procedure will cost less than trying to set the determination aside in court.

In *MU Pte Ltd v MV Pte Ltd*[95] it was decided that whilst there might be extenuating circumstances meaning that new evidence had come to light between the first SA and the review, this new evidence will in most cases not be considered as only the maters presented before the adjudicator in the first instance should be considered. The decision in this case means that in all but the rarest circumstances, the review adjudication should only consider the evidence presented in front of the first adjudicator. This is sensible, in so much as if too much new evidence is submitted, it essentially could be that the review adjudicators will be assessing a completely different case to that in the first adjudication.

5.2 Costs

Section 16(3)(b) is the same as section 12(b) of the Scheme in the UK which provides against an adjudicator incurring unnecessary expense. Section 2 defines costs as having two components, namely application fees and the fees and expenses of the adjudicator. Section 30 (1) of the SOPA specifically provides that "[T]he costs of any adjudication shall not exceed such amount as may be prescribed by the Minister."

The SOPA puts a maximum cap on the costs of an SA which is prescribed by the government. Regulation 12 of the Regulations sets out the maximum fees for adjudication applications and for adjudicator's hourly and daily fees.[96] The current costs set out in the Regulations are worth citing in detail:

> *For the purposes of section 30(1) of the Act –*
> *(a) the fee payable to an authorised nominating body shall not exceed —*

[95] ARA01 of 2009 [2009] SCAdjR 995 at [28].
[96] The Building and Construction Industry Security of Payment Regulations 2006 s 12 (SG).

(i) $600 for each adjudication application; and
(ii) $1,200 for each adjudication review application;

(b) the fee payable to an adjudicator (excluding a review adjudicator or a panel of review adjudicators) shall be computed on the basis of a rate not exceeding $300 per hour or $2,400 per day, and shall not exceed in the aggregate the following maximum amount:

(i) where the claimed amount exceeds $24,000, 10% of the claimed amount; or
(ii) in any other case, $2,400.

There is no such maximum cap in the UK and fees and expenses incurred by the Adjudicator can be passed down to the parties. This maximum cap was put in place in Singapore to "safeguard policy objectives and to ensure that the costs of adjudication are controlled within certain bounds to maintain the affordability of the recourse under the Act"[97]. This cap in fees ensures that to some extent SA costs are kept down, ensuring that the original intention of SA as an affordable dispute resolution method is preserved. The cap in fees will reduce the risk of putting smaller companies such as sub-contractors off referring disputes. When this is coupled with shorter timescales for the process, the costs to the parties may be considerably lower than the UK, where there is no cap and the SA process is longer. Section 30(2) is however similar to Section 25 of the Scheme in the UK wherein it provides that as in the UK, the adjudicator will determine how his costs (fees) are apportioned between the parties. Nevertheless the SOPA's cap on costs ensures that the parties who are in an adjudication will have an idea of the maximum fees they will have to pay at the outset.

5.3 Fees

Here again, it is beneficial to iterate the detail of Section 31 of the SOPA which deals with the adjudicator's fees:

[97] Chow Kok Fong, *'Security of Payments and Construction Adjudication'*, (2nd edn, Lexis Nexis 2013) 15.134.

(1) Subject to this section, an adjudicator is entitled to be paid, in relation to an adjudication application —

(a) such fees as may be specified by the authorised nominating body which appointed the adjudicator; and

(b) such amount, by way of expenses, as may be agreed between the adjudicator and the parties to the adjudication or, if no such amount is agreed, then as the authorised nominating body considers to be reasonable having regard to the work done and expenses incurred by the adjudicator.

This section is different to the HGCRA. In the UK, section 25 of the Scheme states that the adjudicator is entitled to payment of such amounts in relation to fees and expenses. However, section 31 of the SOPA clearly states that he is entitled to fees as agreed with the nominating body at the commencement of the proceedings, as well as expenses. Here the SOPA is clearly more specific than the HGCRA - if the parties do not agree to the adjudicator's expenses, the nominating body will determine what is reasonable.

6. Conclusion

The HGCRA and Scheme contain several provisions for SA, some of which by their nature have a direct or indirect impact on the costs of SA to the parties. The comparisons between the HGCRA and the SOPA reveal that while there are similarities, there are also contrasts primarily with regards to costs, which our examination of the SA process in Singapore demonstrate, may be of use in a future review of the HGCRA.

Such a future review could consider for the reasons already examined in the foregoing discussions: (i) a maximum cap on adjudicator's fees, and (ii) provisions for Adjudication review procedures.