

The Caravan Rally 2007

To be held at Winchcombe
The Cotswolds, near
Tewkesbury

The camping and caravan site has two fishing lakes, Bed & Breakfast near by for those joining this annual event. Train ride, Boat trip. Visit the lovely Cotswold villages, if you live near by join us for the day.



For a full itinerary and names for B&B, contact Mike Bishop 01962 713000.

4-7 May

THE INSTITUTE OF CONSTRUCTION MANAGEMENT



An established institute for
all levels of management

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Hush-hush

It is now nearly a year since a group of EU 'suits' gathered in the Spanish town of Bilbao for a junket to discuss how the European workforce could be better protected from noise and to hand out gongs to those companies that have already made advances in this field.



It is estimated that up to 60 million workers (all industries) in the EU are exposed to excessive noise in the workplace. A campaign under the imaginative title of STOP THAT NOISE! has been launched and can be accessed on <http://ew2005.osha.eu.int>. Has your company launched any new initiative to protect the hearing of its workforce as a result of this initiative?

Pay up with interest

The rate chargeable for unpaid invoices is set in six month periods by adding 8% to the Bank of England base rate. The Better Payment Practices Group sets the rate for each period and reference can then be made under statutory rights to recover this interest and compensation on unpaid accounts. The rate is set on 1 January and 30 June each year. If you are in the unenviable position of needing to calculate the amount of statutory interest on an overdue invoice you can access a calculator on <http://microsite.businesslinksolutions.co.uk> (you will need to register your firm on line but registration is free of charge)

Diary dates

January 2007

- 10 York Handmade Brick.
Southern Region Lecture
- 23 Part L in practice seminar, London
Cost: £349.00 – 0845 056 8069;
www.ajpartlin-practice.co.uk

February 2007

- 10 47th Annual Dinner & Dance
Southern Region
Royal Beach Hotel, Southsea
- 14 AGM Southern Region

April 2007

- 11 Commercial Marine and Piling
Southern Region Lecture

Notes: Food is available at all Southern Region lectures which are all CPD rated and certificates will be issued.

Please send any dates and venues of interest, socially or professionally, to the editor at the address below and in written form.

VIEWPOINT is the newsletter of the Institute of Construction Management (ICM) and is for circulation to the members of the Institute. Articles or comments for inclusion are very welcome and in any form.

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Viewpoint

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Adjudication is still a good option

Adjudication has received some bad press over the last year or so. There appears to be a perception that adjudication has become too costly, and people are being put off using it. I'm not convinced that they should be.

Adjudication became a new dispute resolution option in May 1998 under the Housing Grants, Construction and Regeneration Act 1996 (the "Act"). A party to a construction contract is given the right to refer a dispute arising under the contract for adjudication. The construction contract should (and if it doesn't similar conditions will be implied by law into the contract) enable a party to give notice at any time of its intention to refer a dispute to adjudication; enable the adjudicator to be appointed and the dispute to be referred to him or her within seven days of that notice; require the adjudicator to reach a decision within 28 days of receipt of the referral (extendable by a further 14 days by the referring party or longer by agreement of both parties); impose a duty on the

adjudicator to act impartially and enable the adjudicator to take the initiative in ascertaining the facts and the law. The decision of the adjudicator is binding until the dispute is finally determined by legal proceedings, arbitration or agreement, and the parties are free to agree to accept the adjudicator's decision as finally determining the dispute.

The definition of construction contract in the Act is extremely wide, and would include not only contracts between employers and main contractors and those between main contractors and subcontractors, but also consultants' agreements with employers and contractors. So, for example, disputes over architects' or engineers' fees are referable to adjudication.



David Fearon MRICS MCIQB MCIARB is a solicitor advocate and partner at leading UK law firm Halliwells. He specialises in Construction and Engineering law and here provides us with an overview of adjudication and some practical comments on adjudication costs.

"The Act does not apply to contracts with residential occupiers."

It has also been confirmed by the courts that unless the parties agree (which can of course be written into the adjudication provisions in the contract) the adjudicator does not have the power to order the losing party to pay the winning party's legal costs, though he or she can decide who pays the adjudicator's fee and any associated referral fee.

One of the big issues that exercised commentators in the past was the rough and ready nature of the process. However, the courts recognise that by its nature the process is rough and

ready and will generally enforce adjudicators' decisions even when the adjudicator gets the law and the facts wrong. The courts will do this because the fundamental point about adjudication is that it was only ever intended to be temporarily binding. It's actually all about cash-flow. Parliament brought in the legislation that created a statutory right to refer construction disputes to adjudication in tandem with legislation intended to try to deal with payment abuses in the construction industry. Or as Mr Justice Jackson of the Technology and Construction Court puts it:

"The purpose of an adjudication was and is to determine who shall hold the disputed funds, and in what proportions, until such time as a dispute is finally resolved.... In order to achieve this objective it is necessary that adjudication should be as speedy and as inexpensive as circumstances permit"

(Carillon Construction Limited v Devonport Royal Dockyard [2005] EWHC 778 (TCC))

“The problem is that adjudication is not perceived by some as being an inexpensive option.”

There are a number of reasons for this. Firstly there have been cases where parties have commenced an adjudication which has, by agreement, run on for many months resulting in a significant build up of costs. In one reported case the combined legal fees exceeded £1 million! Far from inexpensive, but neither is it the norm.

Secondly, in most adjudications the parties end up bearing their own legal costs. So unless a party can agree those up front with its legal team, there is likely to be a concern that much of the monies recovered will in fact be used to pay those fees. This is particularly the case where smaller sums of money are being pursued.

I believe that this second problem is soluble in most cases and that adjudication should still be seriously considered by any party with a dispute under a

construction contract, particularly one where the sum claimed would justify initiating any other proceedings i.e arbitration or litigation other than small claims. The first key point is that legal costs are traditionally based on the time that is expended by the lawyer on any case. It seems to me that if an adjudication is going to take place in a prescribed period i.e. 28 days, (and in 60% of adjudications the decision is given within 28 days of referral*) then the time which can be expended on legal work on behalf of the parties is not open-ended. At the very least a party should be able to get a good indication from its legal advisers as to the likely costs. At my firm we've gone a step further and will actually give a fixed cost for a 28 day adjudication.

Secondly, while there is always the problem that in most adjudications a party cannot recover its legal costs from the other side, it must be remembered that the successful party in litigation or arbitration

rarely recovers all its legal costs either. Costs recovery can often be anywhere between 50% and 70%, particularly with issue-based costs awards. So if a party is trying to recover say £60,000 in unpaid fees for additional design work, or for a number of variations to the contract works, the cost of fully litigating such a claim potentially over a 12 month period could easily be £30,000. Even assuming 70% recovery of costs that would still leave £9000 not recovered. The option of having an adjudicator's decision within a mere 28 days ordering that the £60,000 be paid forthwith and where the irrecoverable legal costs are of the same order or less suddenly becomes more attractive!

Even for smaller sums, if £10,000 can be recovered at a cost in legal fees of £2,000, the recovering party is still £8,000 better off than if no action was taken.

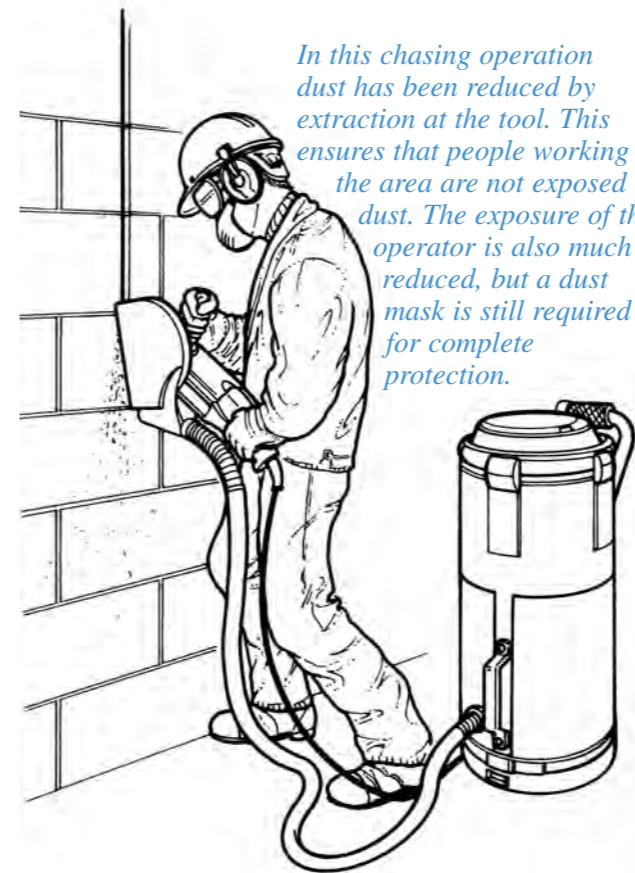
Obviously, any party will be aggrieved that it has to pay money to recover money properly due to it. Unfortunately, the inescapable truth is that in any business, once someone refuses to pay money properly due to another it will always cost the aggrieved party something to recover that money. The good news is that if it happens to a party to a construction contract, adjudication can often still provide a quick and cost effective route to recovery. Adjudication can, as intended, be speedy and inexpensive.

*Report No. 7, August 2005, of the Adjudication Reporting Centre at Glasgow Caledonian University.

adjudic8
Fixed Price Adjudication

£1 million claim. £8,000 legal fees!
for further information please call the number below and ask for adjudic8

0870 365 8000 Halliwells



In this chasing operation dust has been reduced by extraction at the tool. This ensures that people working in the area are not exposed to dust. The exposure of the operator is also much reduced, but a dust mask is still required for complete protection.

Breathe easy

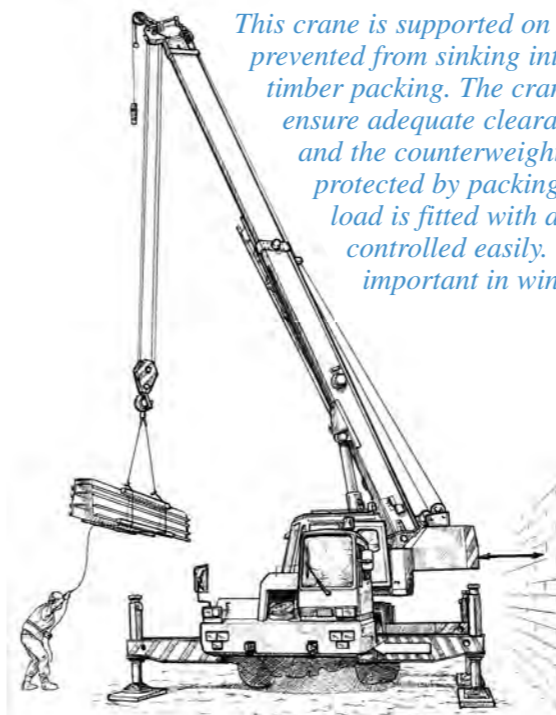
There is a much revised and re-worked guide available on the correct choice and use of respiratory equipment available from the HSE. Respiratory protective equipment at work : A practical guide gives straightforward guidance to employers and employees on respiratory protective equipment (RPE).

Industry in the UK spends over £250million every year on RPE but regrettably a large percentage of this expenditure is wasted because of inappropriate choice or use of the equipment. This exposes RPE users to avoidable hazards. Chronic ill health involving respiratory sensitisation and even death have occurred due to ignorance on the part of employees, employers and site managers when choosing the type of RPE.

The new booklet contains a “selector path” which has a straightforward step-by-step series of questions to assist in the decision to pick the appropriate RPE for the task to be undertaken. There is good information on matching the filter type to the hazardous substance to be encountered. There are also illustrations showing how to ensure that the equipment is comfortable and therefore more likely to be worn for the duration of the task. There is also a section giving examples of typical misuse of equipment and how to recognise and prevent it.

The guide should be essential reading for all site managers and can be obtained by telephoning 01787 881165.

Something to give you a lift at Christmas



This crane is supported on outriggers which are prevented from sinking into the ground by timber packing. The crane is positioned to ensure adequate clearance between the wall and the counterweight. The slings are protected by packing around the load. The load is fitted with a tail line to allow it to be controlled easily. This is particularly important in windy conditions.

The Health and safety (Safety Signs and Signals) Regulations 1996 and BS 7121 give examples of signals to be used when guiding cranes. It should be clear which system is being used on site. This should be decided before lifting begins

Information on this page courtesy of HMSO "Health & Safety in Construction"

