
The Construction Contracts Act, 2013, commenced on 25 July 2016 and applies to all construction contracts entered into after that date.

It introduced for the first time in Ireland a statutory dispute resolution mechanism for payment disputes arising under construction contracts. Section 8 of the Act provided for the establishment of a Panel of Adjudicators appointed by the Minister for Public Expenditure and Reform.

The role of the Chairperson of the Construction Contracts Adjudication Panel includes a requirement to report annually to the Minister of State with responsibility for the Construction Contracts Act 2013. On 27 September, 2018 the Chairperson, Dr Nael G Bunni, published his Report, a summary of the key findings of which is set out below.

The report covers the period from July 2017 to July 2018. It is stated that 11 applications were received by the Construction Contracts Adjudication Service of the Department of Business, Enterprise and Innovation. In relation to nine of these an Adjudicator from the panel was appointed. In relation to the other two applications no adjudicator was appointed because the applications did not comply either with the legislation and/or the Code of Practice Governing the Conduct of Adjudications. This can be contrasted to the single application received by the panel in the same period last year (which incidentally was rejected).

**Record amount disputed**

The Report sets out detailed information on cases that were completed during the period in question, including both information on cases where the parties
agreed to appoint an adjudicator and cases where the Chairperson appointed an adjudicator under s. 6(4) of the Act to the payment dispute. One of the disputes referred to the Panel was stated to be worth €32million – the highest amount in dispute that has been referred for the appointment of an Adjudicator to date.

It is stated that the Construction Contracts Adjudication Service received seven Adjudicator Statistical Data returns during the period in question. The low return rate for statistics is reportedly due to the fact the legislation does not carry an obligatory provision in respect of reporting.

The Chairperson makes some interesting observations despite the limited information reported to him. He states that there has been relatively low activity despite stakeholder organisations’ positive views regarding a statutory adjudication service. He attributes this to:

+ a residual lack of knowledge and awareness of the legislation;
+ tolerance towards the long-established payment procedures among subcontractors;
+ success of conciliation as a method of dispute resolution;
+ a fear of the possibility of escalating cost if a hearing is required or ordered;
+ a move in Ireland to follow the international experience towards methods of dispute avoidance.

He also made some other comments:

+ There were low instances of pay disputes, presumably due to the recovery of the construction sector in the recent past;
+ There is evidence to support the reluctance on the part of subcontractors to engage in a potentially adversarial dispute resolution process that may mitigate against them securing further work from a contractor in addition to suffering reputational damage;
+ There is strong preference for consensual dispute resolution methodologies based on a ‘everyone knowing everyone else’ culture within our comparatively small construction sector.
The Chairperson concludes his statement by speculating that the real value of the legislation will become apparent in the event of a slowdown in the economy, which he states will make payment vulnerability an area of concern for subcontractors. It is further concluded that possible enhancements of the code and legislation have been in discussion amongst those involved in adjudication, but that any changes to the Act will inevitably manifest through the responses by the courts in the event of any challenges to the Act.

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