

TeCSA Low Value Disputes (LVD) Adjudication Service

GUIDANCE FOR TECSA ADJUDICATORS ON THE TECSA LVD ADJUDICATION SERVICE

INTRODUCTION

1. On 21 June 2019 TeCSA launched a low value disputes (LVD) adjudication service on a pilot basis and following the success of the pilot this became a permanent offering with effect from 1 January 2020. The LVD service reflects the proposal which was sent to TeCSA adjudicators on 30 April 2019 (the "Proposal").
2. It is aimed at giving parties who wish to refer disputes to adjudication certainty as to the costs of the Adjudicator for claims for fixed amounts of up to £100,000 (excluding VAT and interest).
3. TeCSA have decided to launch the LVD Service as there is considerable evidence that the costs of adjudication are a disincentive to parties to use adjudication for resolving low value disputes.
4. Crucially, as the LVD Service only limits the fees which the Adjudicator can charge, it is not necessary to get the opposing party to agree to the use of the LVD Service: the claimant can simply apply to TeCSA for the nomination of an adjudicator using the specified form (see below). In this way, the opposing party cannot easily seek to derail the process.

LVD SERVICE CRITERIA

5. The values of the amount being claimed and the Adjudicator's fee caps are set out below.

Claim Value	Fee Cap
Up to £10,000	£2,000

£10,001 to £25,000	£2,500
£25,001 to £50,000	£3,500
£50,001 to £75,000	£4,500
£75,001 to £100,000	£5,000

6. Note that the claim value excludes VAT and interest. Therefore, for example, a claim for £100,000 plus VAT and interest would qualify.

7. The Adjudicator's fee cap excludes VAT but is otherwise all inclusive and therefore includes any expenses.

8. The LVD Service only applies to claims for a specified amount i.e. a liquidated sum, as between two parties. Whilst there is no restriction on the type of financial claims which could be made (e.g. the claim could be for retention, sums certified under a contract, damages and loss and expense), the LVD Service does not apply to claims where the amount sought has not been quantified e.g. damages or loss and expense to be assessed.

9. The LVD Service is also only for claims where the relief claimed is for payment of a specific sum of money and therefore for example does not apply to claims for declarations as to the meaning of contract terms, albeit it may be necessary under the LVD Service when determining a financial claim for the adjudicator to form a view and make a decision on what the contract means.

10. The LVD Service only applies to claims under construction contracts within the meaning of the Housing Grants, Construction and Regeneration Act 1996 (as amended) – the "Construction Act"- or to claims under other types of construction contracts which have adjudication provisions which incorporate the Scheme for Construction Contracts made under the Construction Act (the 'Scheme') or have adjudication provisions substantially the same as the Scheme. Accordingly, the LVD Service can be used where the Scheme applies or where other adjudication rules very similar to it are to apply under the relevant contract. However, if of course the Contract specifies an adjudicator nominating body other than TeCSA, then the TeCSA LVD Service cannot be used, unless the parties so agree.

11. Whilst it is anticipated that the majority of Users of the LVD Service will be businesses, provided that the construction contract incorporates adjudication provisions such as the Scheme (or provisions substantially the same as it) the LVD Service could be used: for example, residential occupiers could use the LVD Service where the contract incorporates the Scheme, such as under the JCT Minor Works Contract.
12. The Chairman of TeCSA reserves the right to decide that a particular matter referred is not suitable for adjudication under the LVD Service, in the Chairman's absolute discretion. This is very unlikely to occur in practice as the Chairman does not have time to review the nomination application or notice of adjudication in detail.
13. In the event that an adjudicator is appointed under the LVD Service and the adjudication proceeds but it becomes clear that the Claimant has undervalued the claim, then the adjudicator may either: (a) resign and claim his fees up to the date of resignation, or (b) if the under valuation means that the claim falls into a higher band in the table above, continue with the adjudication and charge up to the relevant fees cap, or (c) if the claim then exceeds £100,000 (excluding VAT and interest) continue with the adjudication with the agreement of both parties and charge his normal fees i.e. the fees will not be subject to an overall cap (but subject always to the general TeCSA daily cap for adjudicators of £2,500 plus VAT).
14. Therefore, it is important for the Claimant not to under value its claim, whether deliberately or otherwise.
15. Save where the claimant has undervalued the claim, or the claim is not for a specific sum of money only, or involves more than 2 parties, subject to any provisions in the construction contract, the Adjudicator does not have any right to resign over and above the usual grounds for resignation (for example, the dispute referred is the same as one already decided by a previous adjudicator). In particular, the Adjudicator ought not to resign because the matter becomes more complex than anticipated (for example if the respondent raises numerous defences).
16. It is also important to note that the fee is all inclusive and includes expenses. There is also no right to charge extra fees for meetings or site visits or if you decide to appoint expert advisors. This was made clear in the Proposal. Whilst this may seem quite tough, the idea is that the claimant has certainty as to the Adjudicator's maximum fees.

17. Subject to complying with the rules of natural justice there is, however, nothing to stop you from limiting the number or length of submissions. Therefore, for example, it may be sensible to make clear to the parties at the outset that you will not permit any submissions after the Reply. You may also wish to be more strict with deadlines and endeavour to reach your decision on or before the normal 28 day period.
18. TeCSA and its adjudicators have gained a reputation for quality and integrity, which TeCSA wishes to maintain. Therefore, the standards set out in the current TeCSA Adjudication Service (March 2018 version, and which is available on the TeCSA web site) will apply to adjudications under the LVD Service. Therefore, the criteria for the content of adjudicator's decisions as set out in the TeCSA Adjudication Service will apply to LVD Service adjudicator's decisions.

APPLICATION FOR NOMINATION FORM AND FEE

19. TeCSA have created a separate panel of LVD Service adjudicators from their existing panel, and if claimants wish to commence an adjudication then they will need to use the specific LVD Service application form which can be downloaded from the TeCSA website (www.tecsa.org.uk). The nomination fee which applicants need to pay is £250.

RIGHT TO MODIFY SCHEME

20. TeCSA does reserve the right to withdraw the LVD Service or to modify it in the future albeit this will not affect any adjudications which have already been commenced under the LVD Service
21. If you have any queries about the LVD Service or wish to provide any feedback then please e-mail Andrew James (ajames@hcrllaw.com), Simon Tolson (stolson@fenwickelliott.com), and Caroline Pope (caroline.pope@dlapiper.com).

Date 18/3/21