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What Is the Fairest and Most Effective Way to Structure an Adjudicator's Fee Clause?

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Adjudication; Adjudicator Fees; Fee Caps; Hybrid Fee Structures; Procedural Fairness; Payment Security; Cost Predictability; Scheme for Construction Contracts; Low Value Disputes; Payment Notice Disputes; ICE PND Procedure; CIC LVD MAP; TECSA LVD; UK Adjudicators; Reasonable Fees; Conditional Caps; Jurisdictional Risk; Enforceability; Institutional Design; Neutrality and Legitimacy; Construction Dispute Resolution

A deceptively simple question and as anyone familiar with adjudication will recognise, deceptively simple questions have a habit of mutating into legally consequential ones with remarkable speed.

Because fairness, in this context, is not simply about price. It is about neutrality, predictability, enforceability — and the part we usually address only obliquely — ensuring that adjudicators are actually paid, without compromising either their independence or their sanity.

That is not melodrama. It is a structural reality.

The Problem, Properly Framed

A genuinely fair adjudicator's fee clause must satisfy four competing demands at the same time:

1. **Procedural neutrality**
2. **Payment security for the adjudicator** — who, it bears repeating, cannot suspend work for non-payment without effectively ending their adjudication career
3. **Cost predictability for the parties**
4. **Enforceability** — *Ward v Davies*, *Linnett v Halliwells*, *Donal Pugh* and their now well-established progeny

Any fee model that fails on one of these axes may still operate but it does so by exporting risk elsewhere in the system. In practice, that risk almost always lands with the adjudicator.

The three dominant models — hourly, fixed, and capped — each attempt to manage that tension. None resolves it entirely.

Hourly Fees: Accuracy at the Expense of Anxiety

The hourly model — familiar from standard Scheme, contractual and institutional appointments — is conceptually orthodox and legally robust.

It reflects work actually undertaken.

It protects adjudicators when disputes expand, fragment, or acquire jurisdictional side-quests.

It copes with document-heavy cases and late procedural surprises.

And it is firmly underwritten by statute and authority.

The Scheme ensures reasonable fees.

Ward v Davies offers a basis for entitlement following resignation.

Linnett reminds us that participation itself creates contractual liability.

From a doctrinal perspective, hourly charging is uncontroversial.

But adjudication does not operate in a purely doctrinal environment.

Hourly fees generate anxiety. Parties fear the meter. They worry about open-ended exposure. And they perceive — wrongly, but perceptibly — that delay may advantage the decision-maker.

That perception matters, even when it is unfair. Fairness in adjudication is not assessed solely by legal correctness but by how the process is experienced.

Fixed and Capped Fees: Certainty by Design, Rigidity by Consequence

At the opposite end of the spectrum sit fixed-fee and capped-fee regimes — most prominently the CIC Low Value Disputes Model Adjudication Procedure, TECSA LVD, and the UK Adjudicators Capped Fee Scheme.

The CIC LVD MAP deserves to be treated as the reference point. It is carefully drafted, institutionally endorsed and explicitly designed to address cost deterrence. Its fee caps, linked to dispute value and supported by a maximum hourly rate, provide certainty from the outset.

Its virtues are obvious:

- predictability,
- accessibility,
- and procedural discipline.

But design choices carry consequences.

Under the CIC LVD MAP — as with TECSA LVD and UKA CFS — the Scheme's default "reasonable fee" regime is displaced for so long as the procedure applies. Even though these models permit:

- recovery of fees on withdrawal or settlement,
- exit where disputes prove unsuitable,
- and, in some cases, continuation by agreement beyond the cap,

the structural feature remains unchanged.

The cap does not disengage automatically while the adjudicator remains seised of the dispute.

If complexity outgrows expectations, the adjudicator's options are familiar:

- continue under the cap,
- persuade the parties to agree to exit the regime,
- or resign.

This is not a defect. It is a coherent policy choice. But it is not a hybrid design. Risk is managed by exit or consent, not by conditional reallocation of entitlement.

Hybrid Models: Where Practical Fairness Actually Lives

Which brings us to the solution most experienced adjudicators gravitate towards — usually after learning the hard way.

The hybrid model.

A true hybrid does not abolish hourly charging. It disciplines it.

A properly constructed hybrid typically includes:

- a predictable core fee or cap,
- time-based entitlement as the underlying mechanism,
- a **conditional**, rather than absolute, cap,
- staged invoicing for payment security,
- and automatic protection if the dispute collapses, mutates, or proves unsuitable.

This combination provides cost certainty at the front end and payment security at the back end.

Balanced.

Psychologically reassuring.

And aligned with how adjudications actually behave, rather than how we might wish them to behave.

There is, in fact, one procedure that achieves a hybrid structure — and only one.

The ICE Payment Notice Dispute Procedure: A Genuine Hybrid

At first glance, the ICE Payment Notice Dispute Model Adjudication Procedure appears to be a conventional capped-fee regime.

Rule 6.2 sets caps ranging from £2,000 to £15,000, with a separate £1,500 allowance for jurisdictional issues.

It would be easy to stop there.

That would miss the point entirely.

Because this is not a tariff-based capped system, it is a deliberately engineered hybrid.

First, the adjudicator's underlying entitlement remains time-based. Fees are earned by time spent.

The cap operates as a limiter, not as a substitute valuation of labour.

Second, exceptional work is structurally recognised. Jurisdictional challenges are carved out. They do not erode the substantive cap.

Third — and this is the defining feature — the cap is conditional.

It applies **only** if the dispute truly qualifies as a Payment Notice Dispute.

Rule 3(b) requires the Referring Party to give an express undertaking to pay the adjudicator's reasonable fees if it does not.

If the dispute fails to meet the PND criteria:

- the adjudicator determines that fact,
- the capped regime disengages automatically,
- the undertaking is triggered,
- and Scheme-based reasonable fees or underlying Act-compliant contractual adjudication provisions apply to work already undertaken.

No party agreement is required.

In shorthand:

- **PND → capped**
- **Not PND → time-costed**

That is a hybrid design in its purest form.

Fourth, remuneration is cleanly separated from procedural consent. While party agreement is required to continue under a different procedure, entitlement to reasonable fees on misclassification arises independently, by operation of the undertaking itself.

That separation — between procedural legitimacy and fee security — is precisely what other capped models do not provide.

Why ICE PND Stands Apart

The landscape therefore, looks like this:

- **CIC LVD MAP**: capped recovery displacing Scheme reasonableness, with exit by agreement or resignation
- **TECSA LVD**: capped recovery with structured exit ramps
- **UKA CFS**: hard caps maximising predictability
- **ICE PND**: conditional caps preserving Scheme/ contractual adjudication entitlement through automatic reversion

All are legitimate.

All are thoughtfully designed.

But only one reallocates risk dynamically without forcing the adjudicator to choose between

underpayment and withdrawal.

That is why only the ICE PND Procedure comfortably supports the statement:

“My entitlement was always to reasonable fees; the cap applied only conditionally — and that condition failed.”

Conclusion

So what is the fairest and most effective model?

Institutional practice, statutory design, case law and lived adjudication experience all point to the same answer.

It is a **hybrid fee structure** that combines:

- capped certainty for core work,
- time-based entitlement underneath,
- a conditional cap,
- staged invoicing,
- and automatic entitlement to reasonable fees where classification fails or disputes derail.

That structure:

- feels fair to parties,
- is fair to adjudicators,
- is enforceable,
- reduces cost anxiety,
- discourages tactical behaviour,
- and reinforces neutrality.

So the answer, stated plainly, is this:

The fairest and most effective approach is a hybrid fee model—one that provides parties with cost certainty without turning adjudicators into unsecured creditors.

The ICE Payment Notice Dispute Procedure shows precisely how that balance can be struck: disciplined, enforceable, and quietly fair.

Disclosure
The author was a member of the drafting group responsible for the ICE Payment Notice Dispute Model Adjudication Procedure. The views expressed in this article are analytical and explanatory and do not represent an official position of the ICE or the ICE Dispute Resolution Committee.

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Law Society Panel Arbitrator
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RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012

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