

Your route through Counterclaim Defence

A sample report, built from invented answers, to show what yours will look like.

This report is based only on your answers, before we have seen any of your papers. It is not legal advice, and you should not rely on any date or time limit in it: check every date against your subcontract. Legal questions go to your solicitor.

Something in your answers may not wait. Start with the first step under What to do now, today.

Where you stand

An adjudication is running, so its timetable comes before everything else. You may have only days to respond. A strong defence that is late or badly presented can lose to a weaker claim that is well organised.

The claim has been referred, so the adjudicator's directions set your response date. The decision is due 28 days after the referral, unless it is extended by agreement.

Parts of the claim may have been first put to you in the adjudication itself. Whether the adjudicator can decide those parts is a legal question for your solicitor or representative. It needs raising at the start, so they need to know on the first day.

Your records are strong where their figures are thin. That is the best footing for a defence, and it is where your answer starts.

Whether each deduction already taken was made the right way, by a valid notice in time, is a separate question from the claim. If it was not, that money may be recoverable on its own, through Contra-Charge Claim or Delay Damages Claim.

Delay costs laid at your door turn first on who caused the delay. A programming expert shows that from the programme and the records made at the time. We price the money side and test their figures, such as whether the cost was spent at all and the rates used.

Some parts come with workings and some do not. The parts without are unproven until your main contractor shows how each sum was worked out.

Some of the claim is new to you. Where your subcontract required notice at the time, such as notice of a defect or of a delay, a head claimed without it may be weaker. We mark each head where a notice is missing or late.

Some of the claim has already come off your payments. Claims often count the same money twice, once as a deduction and again in the claim, so each sum is checked against the payment record.

You are owed money on the same job. The claim and what you are owed are set against each other

before anything is accepted or settled, so the right sums are netted off.

What to do now

In order: the first ones cannot wait.

1. Get the adjudication papers to us today (today)

Why: The time to respond is short and set by the adjudicator. A response prepared in a rush, or missed, can decide the outcome.

How: Email contact@quantsurv.com today with the parties, the project and your response date, so we can check we are free to act. Once we confirm, forward the notice of adjudication, the referral and any directions as the emails that carried them, with every appendix. We start that day. Whoever runs the adjudication for you should see them today too.

2. Deal with the date first, today (today)

Why: Some dates cannot be recovered once they pass: a response that misses its date in an adjudication may not be considered at all. Everything else can wait a day; the date cannot.

How: Write down the date, the time of day and how the response must be delivered, and to whom. Put it at the top of your first email to contact@quantsurv.com today, with the parties and the project. We confirm every date back to you in writing, and set our own deadline at least 2 working days before the real one.

3. Ask for more time through whoever runs the adjudication (today)

Why: The adjudicator may allow more time for a large claim, but only if someone asks, with reasons. It may not be granted, so work on your response starts now either way.

How: Tell whoever runs it for you how big the claim is and what has to be tested. Once we have the claim, we give them the reasons in figures: what is left to test and how long it takes.

4. Flag any doubt about what the adjudicator can decide, on the first day

Why: A challenge to what the adjudicator can decide generally has to be raised at the start. Raised late, it may be lost.

How: Send them the subcontract, or every version of it if the terms are disputed. Add a note of which parts of the claim you had never heard of before. They decide whether to raise a challenge. Your response on the figures still goes in on time.

5. Line up a programming expert for the delay on the first day

Why: Who caused the delay is shown by a programming expert, and that analysis takes time. In an adjudication there is very little of it.

How: Ask whoever runs the adjudication for you to line one up now. Send the expert your programme and your dated records of what held you up. We price the money side and test their figures alongside.

6. Gather your dated records of what held you up

Why: Whether you caused the delay, or others did, is shown from records made at the time. Any delay analysis and your answer both start from them.

How: Collect your site diaries, allocation sheets, and any emails, texts or photos showing when your gangs were waiting on other trades, access or information. Add any delay notices you sent. Keep them

as they are, with their dates showing.

7. Ask in writing for the workings behind each figure

Why: A head with no workings cannot be tested, and should not be paid on trust. A written request also shows, later, that the evidence was asked for.

How: List each head that has no workings, and ask your main contractor for the quantities, rates, invoices and records behind it by a set date. Keep it short and factual, and keep the sent email. If an adjudication is running, send it through whoever runs it for you.

8. List what has already come off your payments

Why: A list shows exactly what has been taken, when and on what notice, so no sum is answered, or paid, twice.

How: From your payment record, list each deduction: the payment it came off, the date, the sum, the reason given and any notice that came with it. A simple table is enough.

9. Pull together what you say you are owed

Why: Your net position, not the headline claim, is the figure that matters, and your own figures decide it.

How: Gather your latest account, your valuations and any claim of your own, as the working spreadsheets rather than PDF printouts. Note what has been paid and what is still outstanding.

10. Keep the claim and every notice exactly as it arrived

Why: Your answer turns on dates and on exactly what was claimed. A forwarded original keeps its date, time and attachments; a copy, a printout or a screenshot may not.

How: Make one folder for this claim. Save the claim, every notice, any directions from an adjudicator and every reply in it as the original emails. Do not edit or rename the attachments.

11. Tell us the parties and the project before you send the claim

Why: We check we are free to act before any confidential papers reach us. If we have worked for your main contractor, or on a linked job, you hear that before anything moves.

How: Email contact@quantsurv.com with your company, your main contractor, anyone else named in the claim and the project. We tell you the result of the conflict check before you send anything confidential.

What to gather

Everything the work is built from. Copies are fine: send what you have and we will tell you what is missing.

- **The claim, counterclaim or referral, exactly as served.** The letter, schedule, notice of adjudication or referral exactly as it arrived, appendices included and paginated.

Where to find it: Whoever received it first: the email or letter from your main contractor or its solicitor, forwarded exactly as it arrived.

- **Every date that is running.** The adjudicator's directions, any response date in the letter, and any Pay Less Notice or other notice the claim relies on, forwarded exactly as they arrived.

Where to find it: The same email or letter, and whoever has spoken to the adjudicator or the main contractor since.

- **The subcontract.** A complete PDF or scan, every schedule and amendment included, and the main contract terms it incorporates.

Where to find it: The order email or the job's commercial folder; if it was never signed, send the last version exchanged and say so.

- **The account and the payment record.** Your applications, the Payment Notices and Pay Less Notices received, the deductions taken and the payments actually made.

Where to find it: Whoever issues your applications, your accounts package, and the main contractor's notices in the project inbox.

- **The correspondence.** Forwarded as the original emails, dates, recipients and attachments intact.

Where to find it: An inbox search across the main contractor's contacts and the project name; forward threads whole rather than picking from them.

- **The site records.** Diaries, allocation sheets, handover and snagging records, delivery tickets and photographs, exactly as they were kept at the time.

Where to find it: The site office, the site manager's files and the team's phones.

- **Your own figures and any claim of your own.** Your account, valuations and any claim you have made or plan to make, as the working spreadsheets rather than PDF printouts.

Where to find it: The working files of whoever values your account each month.

Why Quantsurv

You can do a good deal of this yourself, and the steps above show how. If you would rather have it done for you, or want the notices checked before you act, this is the work we do.

- **Specialists in exactly this.** We work only for subcontractors, on the claims and disputes that cost them money. Behind it: 10 years on the commercial side of construction, and £100m+ of construction projects worked on.
- **A fixed fee, agreed first.** We never bill by the hour. Fixed fee agreed before each stage: assessment, then response and negotiations or adjudication support. For a live adjudication, all stages and fees are agreed on day one. If the work runs over, the cost is ours, not yours.
- **Fast where it matters.** The timetable is agreed in writing at scoping and then kept. A fixed fee also gives us every reason to finish quickly.

How Counterclaim Defence would run for you

The whole service, step by step. Where your answers decide a route, it is shown under the step it belongs to.

Step 01 You tell us what has arrived

Name the parties and the project first, so we can check we are free to act. Then tell us what has arrived and every date in it. The first conversation is free.

- **If an adjudication has already started:** we start that day, and your response comes before anything else.

Step 02 We check we are free to act

We check the names against our other work before any papers about the claim reach us. We tell you the result before you send anything confidential.

What you get: The result of the conflict check, before you send anything confidential

Step 03 You send us the claim and every date you know

Send the claim, counterclaim or referral exactly as it arrived, and every date in it or around it. If an adjudication has started, send the directions the day they arrive.

Step 04 We fix the timetable first

We write down every date from the claim and the directions, with the time of day and how the response must be delivered. We set our own deadlines at least 2 working days before the real ones.

What you get: The timetable in writing: every date, its time of day and how the response must be delivered

- **If the claim has been referred to adjudication:** the adjudicator's directions set your response date, often only days away. The decision is due 28 days after referral unless extended by agreement, so the response comes first.
- **If the timetable is too short to answer properly:** whoever runs the adjudication for you can ask the adjudicator for more time. We give them the reasons in figures: what is left to test and how long it takes.
- **If there may be a challenge to the adjudicator's jurisdiction:** that goes to your solicitor or representative on the first day, because it needs raising at the start. We carry on with the figures meanwhile.

Step 05 We agree the first stage and its fixed fee in writing

The first stage is the test of the claim. We set out what it covers and its fixed fee, and it starts once you agree in writing.

What you get: A written scope and fixed fee for the first stage, or for every stage if an adjudication is running

- **If an adjudication timetable is already running:** we agree every stage and its fee on the first day, so no stage waits on paperwork.

Step 06 You decide whether to go ahead

The test of the claim starts once you agree the scope and the fee in writing. In adjudication, that is the same day.

Step 07 You send us the paperwork

Send everything on the list below in one go, then be available for quick questions while we work through the file.

Step 08 We read the subcontract and the notices the claim relies on

We read the signed subcontract, amendments first, and any main contract terms it brings in. For each head we find the clause it claims under and the notices that clause requires.

What you get: For each head, the clause it claims under and the notices that clause requires

- **If a notice the claim depends on was never given, or came late:** we mark that head. Your solicitor says what the missing notice means for it.

Step 09 We test the claim head by head

We check each head for its arithmetic, quantities, rates, source records, cause and notices, and for overlap with sums already deducted. Each is rated supported, disputed or awaiting their evidence, with the reason traced to a document.

What you get: The rating for each head of the claim, with its reason traced to a document

- **If a head is awaiting their evidence:** we ask for the build-up behind it in writing, or point out its absence in your response. Until it arrives, that head is unproven.
- **If a head turns on who caused delay:** a programming expert provides the delay analysis. We price the money side and test their figures.
- **If a head repeats a sum already deducted:** we show the overlap from the payment record, so the same money is not claimed twice.

Step 10 We report the findings and your net position

We take you through the findings head by head. You see what each head is worth, what fighting it would cost, and the claim set against what you are owed.

What you get: The findings head by head, with what each is worth, what fighting it would cost and your net position

- **Where the claim sits beside money you are owed:** the two are set against each other before anything is accepted or settled, so the right sums are netted off.

Step 11 You decide what to accept, dispute or offer

Each head is your decision. We give you a recommendation for each one, with the reason.

Step 12 We build your answer

We build your answer head by head, with a Scott schedule setting each of their figures beside yours. It shows each head as accepted, disputed or awaiting their evidence, traced to a page in the bundle.

What you get: Your answer, the Scott schedule and the bundle index, with every figure traced to a page

Step 13 You approve the answer before it goes

You read the answer and approve it, or tell us what to change. Nothing goes out in your name until you do.

Step 14 We negotiate from the answer

We put the answer to your main contractor and negotiate from it, head by head. Every concession is recorded in writing.

What you get: Every concession and offer recorded in writing

Step 15 You decide whether to settle or go on

With the offer, the findings and the cost of going on in front of you, you choose the route. We give you our recommendation.

Step 16 We support any adjudication to the decision

Whoever runs it for you conducts the adjudication. We answer the money points in any reply, or any question from the adjudicator, inside the directions.

What you get: The money side of every reply, and a check of the decision's figures against your answer

Step 17 We close it out and hand over the Handover Pack

You receive an assessment of each claim and the cost of contesting it, with a documented comparison of their figures and yours. The work includes your approved response and a written record of the outcome or the dispute that remains.

Your path through the questions

The questions you answered, in order, as the page crew them. Your answers are in yellow, with the line running through them.

What has your main contractor sent you?

A claim or counterclaim, in a letter, email or schedule

A notice of adjudication, or papers from an adjudicator

Only money taken off a payment, for charges or delay damages

A warning that a claim is coming, but no claim yet

I am not sure what kind of document it is

How far has the adjudication got?

Only the notice of adjudication has arrived so far

The referral has arrived, or the adjudicator has set a timetable

I started it, and they have answered with a claim against me

Not sure which papers I have

Does a response date, or any other date in the claim, fall this week?

Yes

No

Not sure

Who will run the adjudication for you?

A solicitor or claims representative is already acting for me

No one yet

We plan to run it ourselves

Does the time you have look too short for the size of the claim?

Yes, far too short

No, it looks manageable

Not sure yet

Do you have a signed copy of your subcontract?

Yes

No, it was never signed, or the terms are disputed

Not sure

The flowchart guides the user through a series of questions to generate a report. It starts with 'What is the claim mainly for?' and proceeds through questions about cost breakdowns, complaint timing, payment deductions, money held by the contractor, and records. The final question is 'Roughly how much is at stake?'. The selected answers are highlighted in yellow, and yellow arrows show the path through the form. The final output is 'Your report'.

What is the claim mainly for?

Delay: its own costs, or other trades' costs, laid at my door Defects, or damage to finished work

Money it says it overpaid me A mix of these, or other costs Not sure: it is hard to tell what it is for

Does the claim show how each sum was worked out?

Yes, with workings behind each part **For some parts, not others**

No, mostly totals with little behind them It names no sum, only says I am to blame Not sure

Did your main contractor raise these complaints with you at the time?

Yes, most were raised in writing at the time **Some were, but some are new to me**

No, most of it is new to me Not sure

Has your main contractor already taken any of this off your payments?

Yes, some of it No, nothing yet Not sure

Is your main contractor holding money you say you are owed on this job?

Yes No, I have been paid up to date Not sure

For the things it claims for, do you have records made at the time?

Yes, for most of it For some of it Very few Not sure

Roughly how much is at stake?

Under £5,000 £5,000 to £25,000 **£25,000 to £100,000** Over £100,000 Not sure

Your report

Next step

The first conversation is free and commits you to nothing. Reply to the email this report came with, or email contact@quantsurv.com, and we will already have your answers.