

# DAVIES & DAVIES

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ASSOCIATES LTD

## PRACTICE PROFILE

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## BUILDING A BRIDGE BETWEEN CONFLICT & RESOLUTION

The construction industry is fundamentally different to most other industries of significant size. Projects undertaken are generally 'one off' instances and as such, require seamless teamwork between people from different disciplines, with varying ideals, qualifications and expectations, to achieve a common goal.

For the majority of construction projects, it is unlikely that the individual stakeholders will have worked together before. Relationships between the architects, engineers and surveyors need time to develop. In addition, there are different motivations: the Contractor or Sub-Contractor wants to maximise profit, while the Employer wants to maximise value. If a contract is not sufficiently clear, each party may interpret their rights and obligations differently.

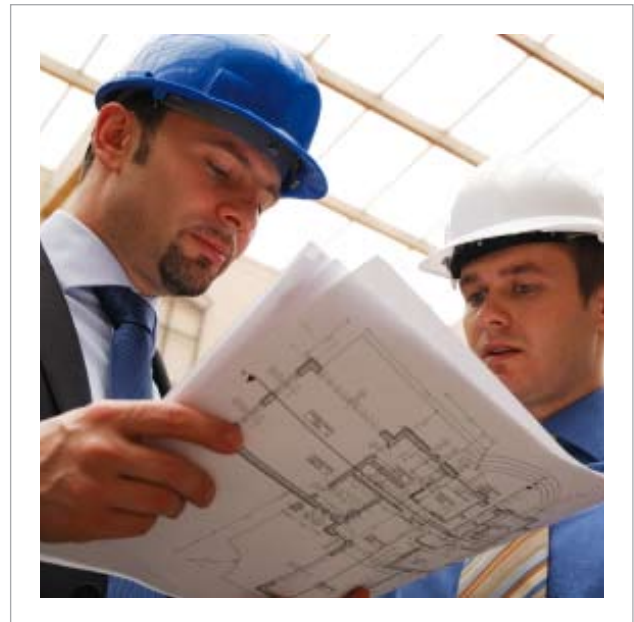
Conflict over cost, time and quality can prove highly emotive, financially damaging, and could tarnish your business reputation.

At Davies & Davies Associates, we offer a true end-to-end solution to resolve conflict. Uniquely qualified as both Chartered Surveyors and Solicitors, we have over 15 years' experience in Alternative Dispute Resolution, Arbitration, and Adjudication within the construction industry.

We can identify early signs of incompatibility within your project's lifecycle and by use of negotiation and compromise help avoid conflict before it happens; or, if a dispute has already arisen, guide you through the process of resolution to a satisfactory conclusion.

Call our Conflict Clinic on 0800 840 4025 to arrange a FREE one hour consultation to help you assess how to resolve your situation.

Whatever the conflict, Davies & Davies will work with you to build the bridge to a positive resolution.



## DAVIES &amp; DAVIES ASSOCIATES SERVICES

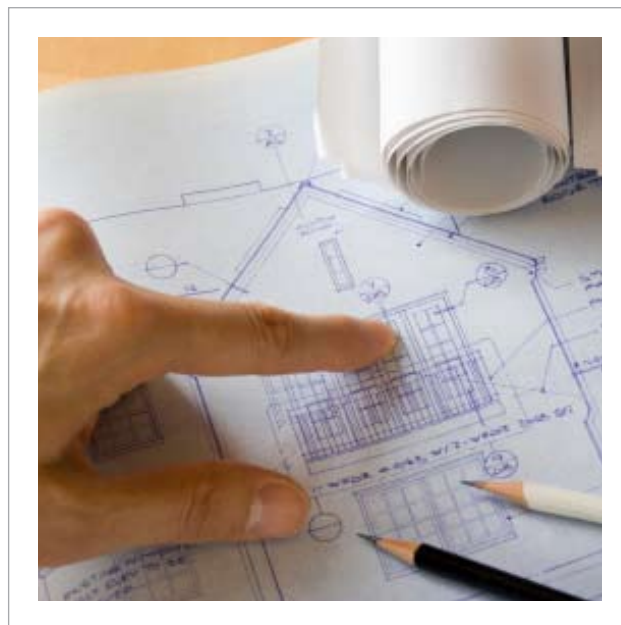
Davies & Davies Associates offers a unique combination of commerce, law, dispute avoidance and resolution gained from more than 15 years' experience within the construction industry.

Offering the services of both qualified quantity surveyors and solicitors, Davies & Davies is a real end-to-end solution for organisations looking for comprehensive, professional, high quality advice and support.

- Our services include:
- Quantity Surveying
- Commercial Services
- Cost Management
- Construction Claims
- Negotiation
- Mediation
- Adjudication
- Arbitration
- Litigation
- Expert Witness
- Dispute avoidance and resolution

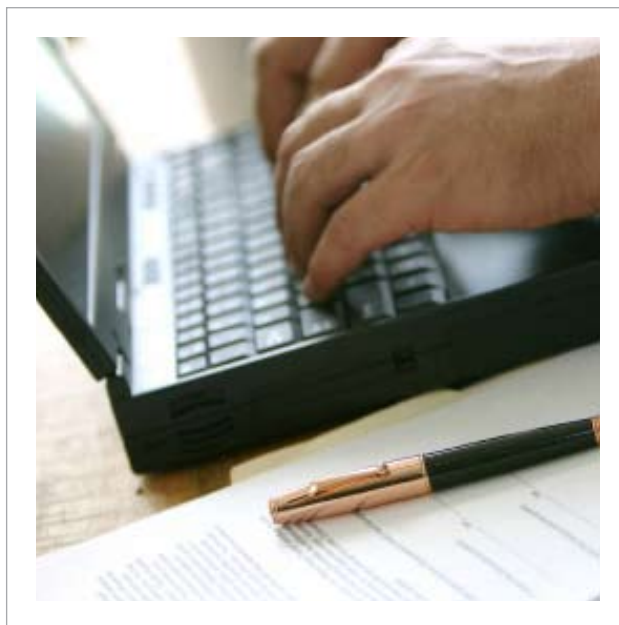
“The firm is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are regulated by the Solicitors Regulation Authority.

We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.”Whatever the challenge, Davies & Davies will work to find the most appropriate solution.



## DISPUTE AVOIDANCE AND RESOLUTION

Conflict can reduce profit and damage your trade. It can arise at any time and when things go wrong, blame can be quickly and unfairly apportioned. It's important, therefore, that disputes are identified and resolved as quickly, and as amicably, as possible. Davies & Davies will help you navigate and understand the legal complexities to resolve disputes as quickly and professionally as possible. Disputes arise when competing interests exist. In construction, the interests are generally the contractor (or sub-contractor) looking for maximum profit and the client looking for maximum value. Disputes arise when a contract is open to interpretation and the job goes wrong. Cost issues often exacerbate the dispute which, if not resolved to the satisfaction of all parties, can become emotional, replacing all reason. Appointing a specialist can avoid much time and cost, allowing you to get on with your business.



There are a number of dispute resolution techniques including:

- Negotiation
- Mediation
- Adjudication
- Conciliation
- Expert determination
- Arbitration
- Dispute resolution boards
- Litigation

Davies & Davies is qualified to advise on all of the above most appropriate solution.

## DISPUTE AVOIDANCE AND RESOLUTION - CLIENT EXAMPLES

Disputes requiring legal action can take many forms. We've outlined some common examples below and how we helped resolve them.

**Delay and disruption: MC Ltd v W Ltd**

Davies & Davies prepared and instructed a delay and disruption claim for £505,000 on behalf of MC Ltd for work undertaken at a leisure centre. This was subsequently negotiated based upon the claim and the referral prepared by Davies & Davies.

**Additional costs resulting from delays by sub-contractors: A Ltd v BJV**

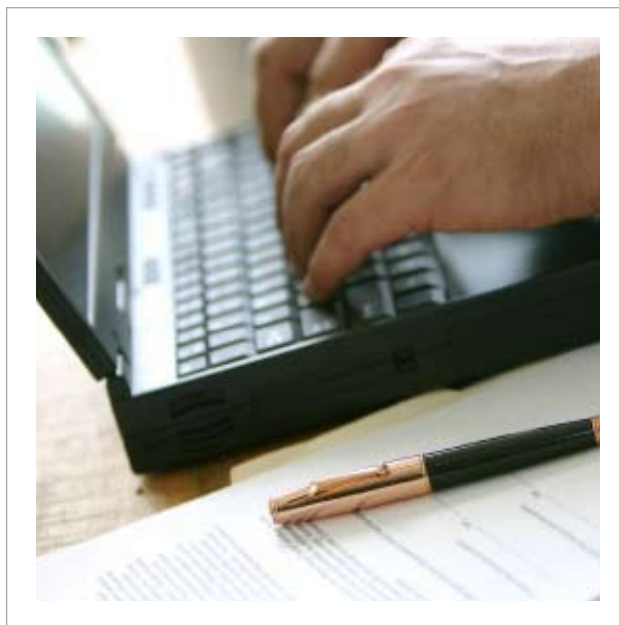
Davies & Davies was instructed by A Ltd to prepare and present a delay and disruption claim for work undertaken at C Hospital by BJV. This had caused the value of "A's" work to increase from approximately £4.5m to approximately £7.5m. Davies & Davies applied negotiation to settle this situation.

**Resolution of a final account: A Ltd v B**

Davies & Davies was instructed to assist with the resolution of "A's" final account with "B". For this, "A" instructed a quantity surveyor to prepare the final account based upon the work Davies & Davies had undertaken in a previous adjudication. "A" wanted to resolve the matter without commencing a formal dispute resolution procedure as it was considered that a more commercially beneficial settlement could be reached by the two parties. Davies & Davies advised "A" of the strengths and weaknesses of the dispute, and the legal and commercial positions of both parties.

**Achieving settlement without damaging relationships: A Developer Ltd v B Wharf**

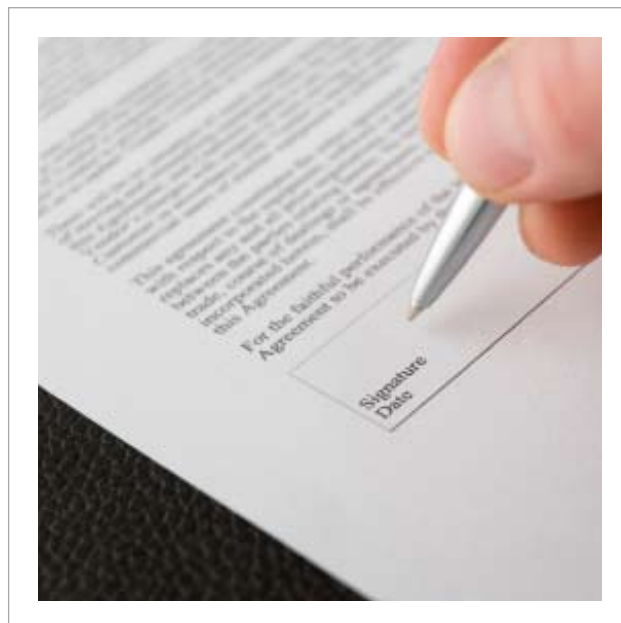
Davies & Davies investigated potential claims against "A" for unjust enrichment, under valuation and breach of contract by "A's" civil engineering and ground works package contractor. Davies & Davies involvement successfully encouraged "A's" package contractor to seek a negotiated settlement without recourse to proceedings or causing the relationship between parties to deteriorate.



## ADJUDICATION

Adjudication is the process, either by contract or implied by statute, by which an independent third party makes a quick decision when a contract is in dispute; it is a process of dispute resolution.

The construction industry has generally welcomed adjudication as a quick and inexpensive process to obtain a legally enforceable and impartial decision. The Scheme for Construction Contracts also provides a comprehensive set of default rules for both payment and adjudication in a contract in implied terms. Davies & Davies offers the services of both Chartered Surveyors and Solicitors experienced in Dispute Resolution and qualified in Adjudication. We are available to receive party appointments to act as an adjudicator, or to provide advice to parties contemplating, or involved in adjudication.



## ADJUDICATION - CLIENT EXAMPLES

**Loss and incurred expenses: MB Ltd v A Charity**

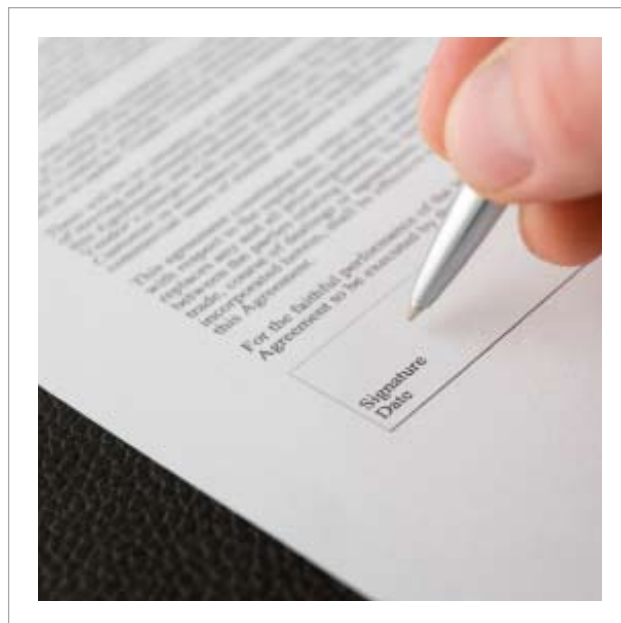
The dispute concerned the payment of loss and/or expense and the valuation of the variation account. Davies & Davies wrote the claim, adjudication notice and adjudication referral for MB Ltd. The Charity was assisted by a QC, based upon the claim, adjudication notice and referral, the Employer was able to settle both the claim and contract account.

**Breach of contract: A Ltd v B Ltd (main contractor v mechanical sub-contractor)**

Working on the instructions of A Ltd, Davies & Davies formulated and presented an adjudication/claim against B Ltd for breach of contract arising from “B’s” failure to complete on time, and the consequential delay caused to the main contract. Due to similarities of the claim with that of an earlier adjudication, “A” was able to utilise the majority of the response document provided during the previous adjudication against “B”. Adjudication proceedings were successfully brought against “B”.

**Against a company in liquidation: A Ltd v Mr B (main contractor v Mr B, liquidator of C Ltd)**

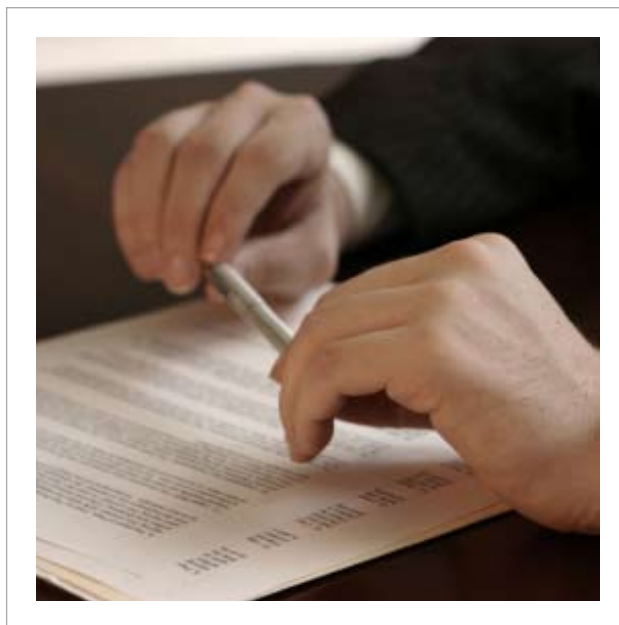
Davies & Davies was appointed by A Ltd with regards to a claim against “C”, a subcontractor, for the defective design and installation of soil and vent pipes, which were in breach of the contract. “C” had been contractually obliged to obtain insurance for its works which it had been through DD Insurance. Davies & Davies commenced an Adjudication against “C” and its liquidator to ascertain the extent of damages for which “C” were liable to “A”. Damages were assessed by a third party so that A could then claim against the DD Insurance policy. The adjudication awarded significantly in “A’s” favour including the adjudicator’s fees and expenses.



## ARBITRATION

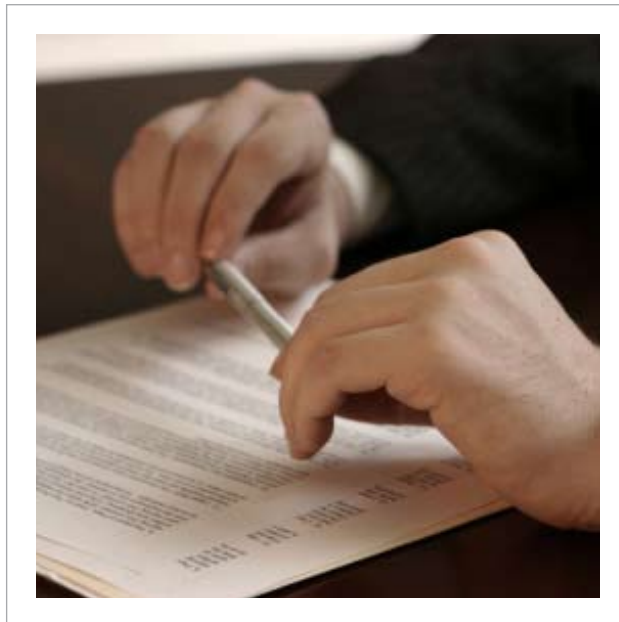
Arbitration is the process that allows both sides of a dispute to agree to allow a third party, the Arbitrator, to make the legally binding and enforceable final decision. In some cases, arbitration may be made by a panel rather than an individual. The arbitrator can be a lawyer or expert within the relevant field of the dispute. Arbitration takes place in private between the dispute parties and their representatives.

Arbitration is often used for more complex disputes when it is not possible for an adjudicator to make an interim and binding decision within the required 28 day timeframe.



## ARBITRATION - CLIENT EXAMPLES

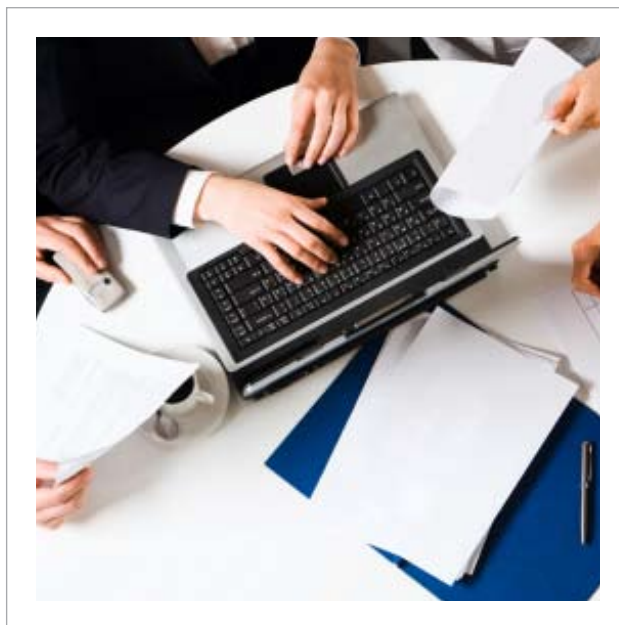
Under valuation and unjust enrichment: A PLC v B Tube Company  
Davies & Davies assisted “A’s” claim team against the Employer, B Tube Company, with the early formulation and preliminary presentation of the claim for under valuation and unjust enrichment. The valuation of this claim was approximately £3.5m.



## EXPERT WITNESS

We can act as informed, objective and impartial expert witness in our role as Chartered Quantity Surveyors. As this expert, we are able to objectively evaluate issues behind many conflicts. Unsurprisingly, the majority of conflicts in the construction industry arise over money and are highly complex.

As Chartered Quantity Surveyors we are able to provide methodical and logical detail that strips away recollection and allegation to uncover the fact. This evidence is capable of withstanding the sustained scrutiny of the tribunal and parties involved in the dispute.



## DEFINITIONS

**NEGOTIATION** is the simplest, cheapest and most obvious way to settle a dispute. In an ideal world, each party would assure the other that it was not the other's fault and amicably resolve the matter between them.

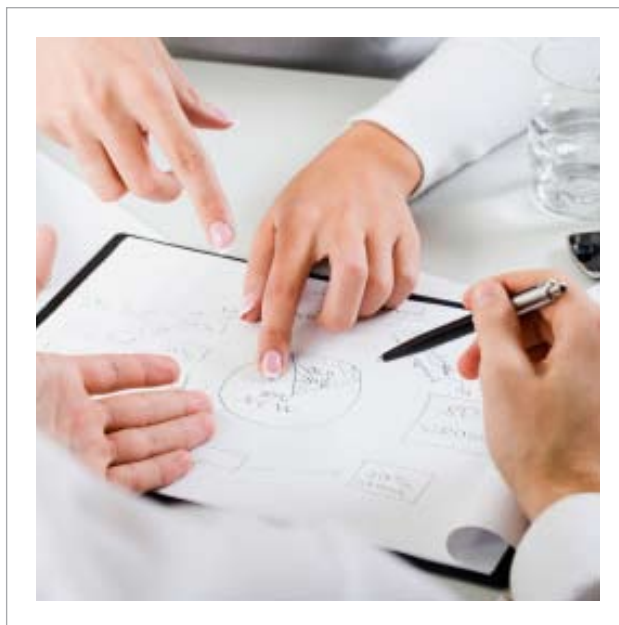
**LITIGATION** is a third party procedure whereby either party refers a dispute to a third party appointed by the State - a Judge - to decide. The cost of the Judge and the Court is free at the moment but this is anticipated to change for civil litigation matters.

**ARBITRATION** is a third party procedure whereby both sides to a dispute agree to let a third party - the Arbitrator - decide. In some instances, this may be a panel. The Arbitrator may be a lawyer or an expert in the field of the dispute. He will make a decision according to the law, known as an award, which is legally binding and can be enforced through the courts.

**EXPERT DETERMINATION** is a third party process in which an independent third party, who is expert in the subject matter, is appointed to decide the dispute. The expert's decision is legally binding for both parties involved in the dispute.

**DISPUTE RESOLUTION BOARDS**, previously known as Dispute Review Boards, are commonly used for large projects. They are typically a panel of three neutrals appointed by both parties who become part of the project team. They are usually technically qualified, experienced and respected.

**MINI TRIAL/EXECUTIVE TRIBUNAL** is a third party procedure in which each party presents its case to a mini-trial panel. This panel generally consists of three members - a representative from each party and a neutral member who acts as mediator or advisor.



**CONSTRUCTION ADJUDICATION** is a third party process with a statutory right that was introduced into all UK construction contracts (by the Housing Grants, Construction and Regeneration Act 1998) and is applicable to all contracts entered into after 1 May 1998. It provides a temporarily binding decision that must be complied with by both parties until overturned or varied by the courts, arbitration or agreement.

**ALTERNATIVE DISPUTE RESOLUTION (ADR)** has traditionally meant anything, other than litigation. However, some commentators have also excluded Arbitration and Construction Adjudication on the basis that these are supported by statute.



## ABOUT DAVIES &amp; DAVIES

**Nigel Davies**

Nigel Davies BSc (Hons) (Q.Surv), GDipLaw, PGDipLP, DipArb, FRICS, FCIQB, MInstCES, FCIArb, FFB, is a Chartered Surveyor, Chartered Builder, Chartered Arbitrator, Solicitor, Panel Registered Adjudicator, Mediator and Mediation Advocate.

Nigel originally launched the business in 2005, and upon incorporation at the beginning of 2008, it changed its name to Davies & Davies Associates Ltd. Davies & Davies has steadily grown year on year, providing quality comprehensive advice and support to organisations in the construction industry involved in difficult projects, high risk/reward contracts, disputes and conflict. The imminent launch of the central London office will establish the business' physical presence in the nation's capital.

As both a Chartered Quantity Surveyor and Solicitor, having worked for building contractors in the construction industry and law firms in the field of construction law, Nigel offers an unusual perspective gained through his hands-on experience which he continues to maintain.

Nigel is conversant with the standard forms of contract and sub-contract currently in use in the building and civil engineering industries together with the associated methods of measurement. He has represented clients across a variety of contentious and non-contentious construction matters - details of which can be found under client examples on the our Services section. Please click on the appropriate tab on the top of the page and follow the links.



In addition, Nigel is a member of the RICS Construction and Dispute Resolution Faculties, The Law Society, the Chartered Institute of Building, the Institution of Civil Engineering Surveyors, The Faculty of Building and a Fellow of the Chartered Institute of Arbitrators. He is also a practicing Adjudicator, a Mediator and a Mediation Advocate.

Nigel's hourly charge-out rate is typically £160.00 per hour. The rate is negotiable dependant upon the size of the matter or contract, and lump sum fee agreements are available for appointments as either Adjudicator or Mediator when approached directly.



## ABOUT DAVIES &amp; DAVIES

**Matthew Davies**

Matthew Davies Bsc (Hons) Quantity Surveying, LLB (Hons), LPC (Commendation), Member of the Royal Institution of Chartered Surveyors, is dual qualified as a chartered quantity surveyor and a solicitor.

Matthew specialises in providing legal, commercial and contractual management, construction claims and dispute resolution services to the construction industry including representing organisations in adjudication and other dispute forums. Matthew also drafts and reviews contracts, sub-contracts and collateral warranties, and advises on a variety of contentious and non-contentious construction matters. He also undertakes the preparation and resolution of complex final accounts and other quantity surveying matters.

Matthew has over 16 years experience in the construction industry originally gained working as a quantity surveyor working on a variety of building projects, then latterly as a consultant and a solicitor specialising in commercial and contractual management and construction law. During this period Matthew has worked and acted for employers, architects, main contractors and specialist sub-contractors in providing quantity surveying, legal and commercial services on a wide range of construction projects operating under a variety of standard and non-standard contracts and sub-contracts. These have included: shopping centres, commercial offices, leisure centres, underground station, industrial facilities, shopping centres, refurbishment, prestige residential developments and social housing.

In addition to the above Matthew is the joint author of the book "Subcontracting under the JCT2005 forms" .



## WHAT OUR CLIENTS SAY

“During the past 5 years, Nigel Davies has expertly resolved many highly complex contractual issues on behalf of Jerram Falkus. Nigel’s dual perspective as both a Chartered Surveyor and Solicitor, combined with his wealth of ‘front line’ experience in the construction industry, make him an invaluable asset. Nigel’s approach is extremely thorough and tenacious; and however challenging a contract becomes, he remains positive and enthusiastic-critical in maintaining stakeholder relationships within a project’s lifecycle. Jerram Falkus anticipates working with Davies & Davies Associates for many years to come.”



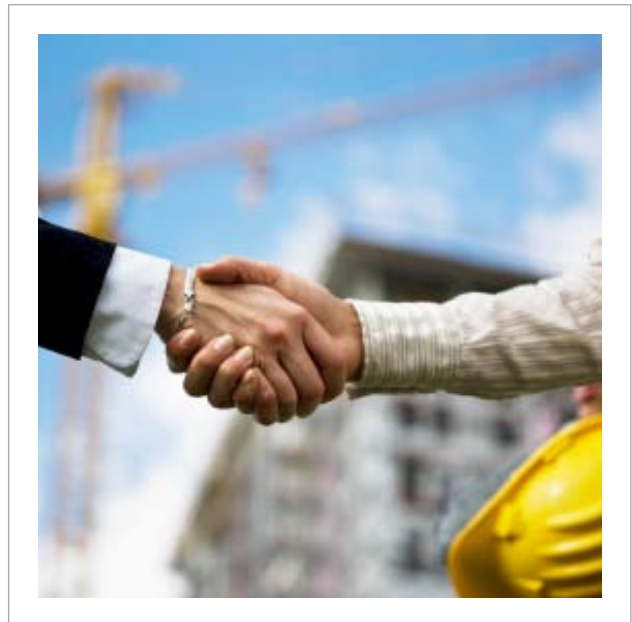
*Robert Jerram, Managing Director,  
Jerram Falkus Construction Ltd*

“Nigel Davies recently represented McGoff & Byrne in a very messy Adjudication case. Throughout, he gave us the best legal advice that I can ever recall having received from any solicitor, and showed an exemplary degree of thoroughness and determination to press home the company’s entitlement during proceedings.

I was entirely satisfied with Nigel’s services and would commend him to any party with a building dispute, without hesitation.”



*D T McGoff, Construction Manager  
McGoff & Byrne Construction Ltd*



## CONTACT US

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