



Adjudication
Society



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Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) for the year 1 May 2019 to 30 April 2020

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FOREWORD

The period focused on within this report relies upon information received from Adjudicator Nominating Bodies (ANBs) in the United Kingdom for **Year 22 (May 2019 to April 2020)**.

This report sets out findings based on returns from the 18 ANBs listed with full statistical returns from 16 of those ANBs.

All earlier reports (1 to 18), as well as the latest report on adjudicators' fees, together with other papers published by members of the research team, are available on the Adjudication Society's website at: <https://www.adjudication.org/resources/research> and on Construction Dispute Resolution (CDR)'s website at: <http://cdr.uk.com/research.html>

INTRODUCTION

As far as the authors are aware, this research is the only work of its kind, having been carried out continuously and consistently since 1998 when statutory adjudication was introduced to the UK construction industry under the Housing Grants, Construction and Regeneration Act 1996. Over the years, reports have been produced on a regular basis, identifying trends and analysing the development of adjudication based on returned questionnaires from both ANBs and adjudicators.

Since 2012, this research has been collated and published with the support of the Adjudication Society. The research continues the work previously carried out in conjunction with Glasgow Caledonian University, building upon previous findings, and therefore allowing for meaningful comparisons to be drawn and conclusions to be made regarding the changes in adjudication over the years. To ensure this continuity, the research is carried out by a founding member of the research team, Janey Milligan, in conjunction with Amy Jackson, both of CDR.

The team would like to take this opportunity to extend its sincere gratitude to the ANBs and adjudicators who have contributed to this area of research over the past 22 years. The returns have provided invaluable insight into the use and extent of adjudication in the construction industry and how has it evolved over time. The results and conclusions have been shared through the reports which have regularly been cited and relied upon in a variety of arenas over the years.

PART 1 – ADJUDICATOR NOMINATING BODIES

1.0 NUMBER OF REFERRALS

1.1 Adjudicator Nominating Body Appointments

Table 1 below shows that there has been a **2%** increase in adjudication referrals via ANBs from 1905 in Year 21 (May 2018 – April 2019) to **1945** in Year 22 (May 2019 to April 2020).

TIME PERIODS	ALL ANBs REPORTING	% GROWTH ON PREVIOUS YEAR
YEAR 1 - May 1998 – April 1999	187	-
YEAR 2 - May 1999 – April 2000	1309	600%
YEAR 3 - May 2000 – April 2001	1999	50%
YEAR 4 - May 2001 – April 2002	2027	1%
YEAR 5 - May 2002 – April 2003	2008	-1%
YEAR 6 - May 2003 – April 2004	1861	-7%
YEAR 7 - May 2004 – April 2005	1685	-9%
YEAR 8 - May 2005 – April 2006	1439	-15%
YEAR 9 - May 2006 – April 2007	1506	5%
YEAR 10 - May 2007 – April 2008	1432	-5%
YEAR 11 - May 2008 – April 2009	1730	21%
YEAR 12 - May 2009 – April 2010	1538	-11%
YEAR 13 - May 2010 – April 2011	1064	-31%
YEAR 14 - May 2011 – April 2012	1093	3%
YEAR 15 – May 2012 – April 2013	1351	24%
YEAR 16 – May 2013 – April 2014	1282	-5%
YEAR 17 – May 2014 – April 2015	1439	12%
YEAR 18 – May 2015 – April 2016	1511	5%
YEAR 19 – May 2016 – April 2017	1533	1%
YEAR 20 – May 2017 – April 2018	1685	10%
YEAR 21 – May 2018 – April 2019	1905	13%
YEAR 22 – May 2019 – April 2020	1945	2%

TABLE 1: Adjudication appointments by Adjudicator Nominating Bodies (ANBs)

This indicates a continuing positive trend in the number of yearly referrals, however the latest results do suggest the increase may be slowing down, where the previous two years indicated relatively steep inclines in the numbers.

With regard to longer term trends, as can be seen from **Figure 1** below, the trend line produced by the results for Years 1 to 22 shows an overall upward trajectory in the figures. Previously, we reported this was a horizontal line at 1,500 annual referrals, and so the fact that this trend line continues to become more upwardly tilted in recent years indicates sustained growth.

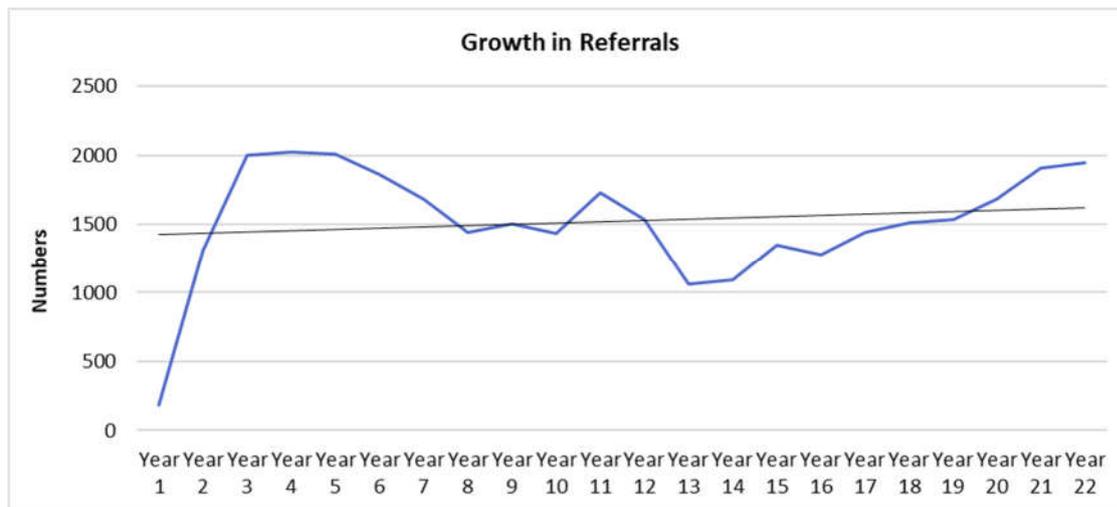


Figure 1: GROWTH RATE IN ADJUDICATION REFERRALS IN THE UK

However, from the period relevant to these statistics, we have and continue to encounter a period of great economic uncertainty, which is likely to impact upon the number of adjudication referrals.

Recent reports¹ have discussed the potential for 'Brexit' related uncertainty in the construction industry to impact upon the level of construction adjudication referrals. This uncertainty remains, and in particular the industry is now bracing itself for a 'no-deal Brexit'. To date, this uncertainty does not appear to have any particular impact on the results, albeit we may see a more prominent effect when the UK officially leaves the European Union in January 2021.

As has been seen previously, during the 2008/2009 financial crisis, wider economic factors can have significant influence over the number of adjudication referrals, and the market impact of 'Brexit' is expected to be no different.

It is also necessary to consider the impact of the global COVID-19 pandemic and the subsequent nationwide lockdown in late March 2020 with ongoing restrictions. This report captures data

¹ Reports 15, 16, 17 and 18, which can all be found here: https://cdr.uk.com/?page_id=15612

during the first 2 months of lockdown; March and April 2020. As set out in greater detail below, these months actually recorded the highest number of monthly referrals. The longer term impact of the pandemic and the subsequent economic downturn is yet to be identified.

Due to the numerous factors at play, it is difficult to determine any clear link or correlation between matters such as those suggested above and the levels of referrals. However, it remains a viable exercise of interest to reflect on events in the construction industry, and the wider economy, to identify potential reasons for movements in the number of adjudication referrals, and to discuss possible future trends.

Finally, the research team recognises that referral to an ANB is not the only way to appoint an adjudicator, and that parties can agree the adjudicator, or the adjudicator may be named in the contract. Our most recent research in this regard concludes that **90%** of appointments are through an ANB.² Consequently as a guide only, it is suggested that a further **10%** of appointments are estimated to be over and above the statistics recorded in **Table 1** and **Figure 1**.

1.2 Fluctuations in Referrals

In Year 22, the average number of referrals per month was **162**; with a number of months being consistent with this figure (May at **161**; July at **166**; and September at **156**). **Figure 2** below sets out the movements throughout the year, where the second half of the period (November 2019 to April 2020) shows significantly more volatility than the first half.

In Year 22, the highest number of referrals occurred in March (**199**), followed by April (**192**). This differs significantly to the comparable periods in Year 21 (162 and 159 referrals, respectively). It is possible that the COVID-19 pandemic and the lockdown restrictions introduced on 23 March 2020 may have impacted on these results. This is particularly so for April 2020, when ongoing uncertainties and site closures could have encouraged companies to focus their efforts elsewhere to maintain cashflow resulting in an increase in referrals to ANBs.

It is also noted that the returns for April 2020 include 5Nr. referrals to RICS using the new low value adjudication service, launched on 1 April 2020. This service follows the CIC Low Value

² Report No. 18, available at: <https://cdr.uk.com/wp-content/uploads/2019/12/Report-No-18.pdf>

Disputes Model Adjudication Procedure (LVD MAP), which was more widely launched in May 2020, and is aimed at relatively uncomplicated disputes with a value of £50,000 or less. It is the intention that the LVD MAP will cater to a gap in the market and make the process more accessible. In turn, it is anticipated that there will be an increase in the number of referrals going forward.

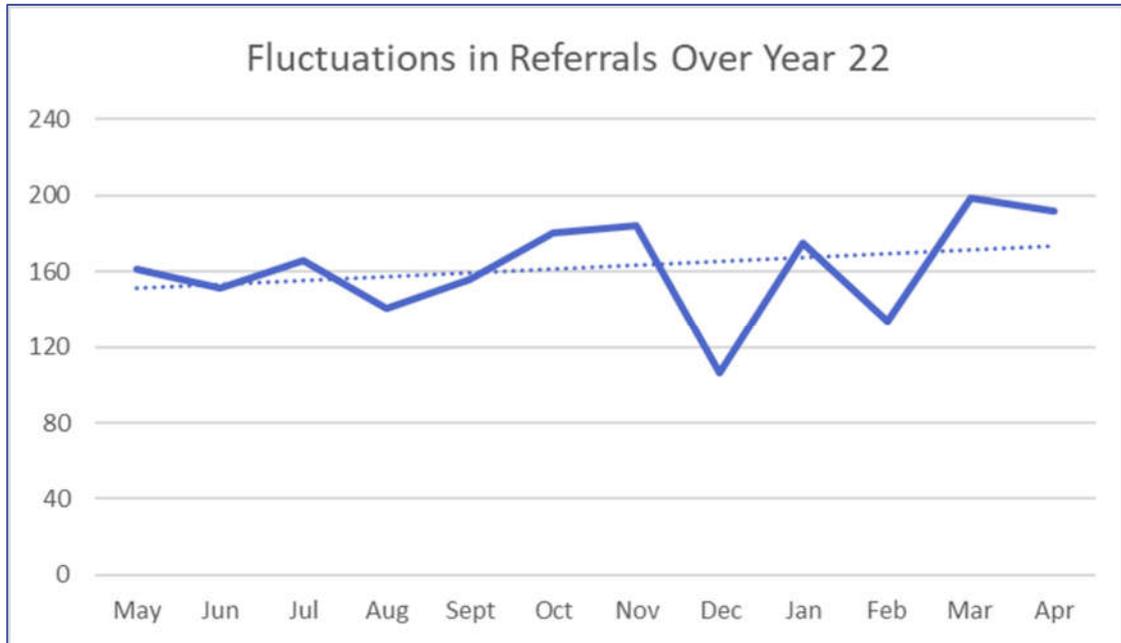


Figure 2: Fluctuations in Referrals over the Year

The lowest number of referrals was experienced in December (**106**), adding further support to the growing consensus that ‘Christmas ambush’ tactics are generally no longer popular or a significant threat. It is also of note that the decline in referrals in December as compared to the previous month equates to 78, or a decline of **42%**. However, the figures for November (**184**) and January (**175**) indicate that parties are compensating for this quieter festive period by an increasing number of referrals in the adjacent months. It may be that parties themselves are choosing to delay referring adjudications until January to avoid the practical issues which are imposed as a result of an adjudication falling over the ‘Christmas shutdown’ period.

2.0 ADJUDICATORS AND DISCIPLINES

2.1 Number of Adjudicators Registered with ANBs

From **Table 2** below, it can be seen that the number of adjudicators registered with ANBs has increased from **728** in Year 21 to **772** in Year 22 (+44).

The year-on-year increase is attributable to a handful of large shifts, namely in UK Adjudicators (+35); a relatively new ANB which continues to establish itself in the marketplace; and in TECBAR (+16). There have also been some smaller increases; in CIC (+4), and CEDR (+2). These are offset by some relatively minor decreases, in TECSA (-5), RIBA (-4), and ICE (-1).

ADJUDICATOR NOMINATING BODY	Year 21 April 2019	Year 22 April 2020
Construction Industry Council (CIC)	54	58
Royal Institute of British Architects (RIBA)	68	64
Centre for Effective Dispute Resolution (CEDR)	30	32
Technology and Construction Solicitors Association (TECSA)	72	67
Royal Institution of Chartered Surveyors (RICS)	90	90
Chartered Institute of Arbitrators (Scottish Branch) (CI Arb Scot)	9	9
Scottish Building	8	8
Royal Incorporation of Architects in Scotland (RIAS)	12	12
Royal Institution of Chartered Surveyors in Scotland (RICS Scot)	23	23
Institution of Civil Engineers (ICE)	35	34
Chartered Institute of Building (CIOB)	25	25
Institution of Chemical Engineers (ICHEME)	10	10
Chartered Institute of Arbitrators Dispute Appointment Service (CI Arb-DAS)	84	84
Technology and Construction Bar Association (TEC BAR)	148	161
London Court of International Arbitration (LCIA)	*	N/R
UK Adjudicators	45	80
CLG / ConstructionAdjudicators.com (CLG)	15	15
Law Society of Scotland	**	**
TOTALS	728	772

* The London Court of Arbitration does not keep a formal register of adjudicators

** The Law Society of Scotland, rather than relying on a specific list of Adjudicators, reverts to its list of accredited specialists in the construction field.

TABLE 2: Number of Adjudicators

As always the research team recognises that adjudicators can be registered with more than one ANB, so the actual number of practicing adjudicators is likely to be far less than the total figures

shown in **Table 2**. Our most recent research³ indicates that, on average, adjudicators are registered with **4** ANBs, which would suggest that there are around **190** practicing adjudicators in the UK.

2.2 Discipline of Adjudicators

The ANBs were asked to state the principal area of expertise of their adjudicators. Where there are adjudicators with dual qualifications it is requested that the primary discipline be counted. In recent years this has become an interesting point. From **Table 3** below it can be seen the top two disciplines remain lawyers and quantity surveyors, in that order, accounting for more than **three-quarters** of all adjudicators registered with ANBs in Year 22.

Of particular note is that lawyers account for almost **43%** of all adjudicators registered with ANBs in Year 22; indicating only a change in decimal points from Year 21. In recent years there has been a steady increase in lawyer adjudicators, coupled with a decrease in quantity surveyor adjudicators, as discussed in our earlier reports.⁴ The most recent results provide credence to the view that this is a continuing trend; with the level of both lawyer and quantity surveyor adjudicators now appearing to level out; rather than being illustrative of a passing phase in the research.

DISCIPLINE	Year 20 April 2018	Year 21 April 2019	Year 22 April 2020
Lawyers	41.7%	43.4%	42.5%
Quantity Surveyors	34.2%	34.8%	34.7%
Civil Engineers	10.2%	7.9%	7.4%
Architects	7.6%	6.9%	6.4%
Construction Consultants	1.7%	1.8%	2.0%
CIOB/Builders	1.4%	1.4%	2.0%
Other	3.2%	3.8%	5.0%

TABLE 3: Primary discipline of Adjudicators

Figure 3 below presents the information from **Table 3** above in respect of Year 22 in graphical form for ease of reference.

³ Report No. 18, available at: <https://cdr.uk.com/wp-content/uploads/2019/12/Report-No-18.pdf>

⁴ See: https://cdr.uk.com/?page_id=15612

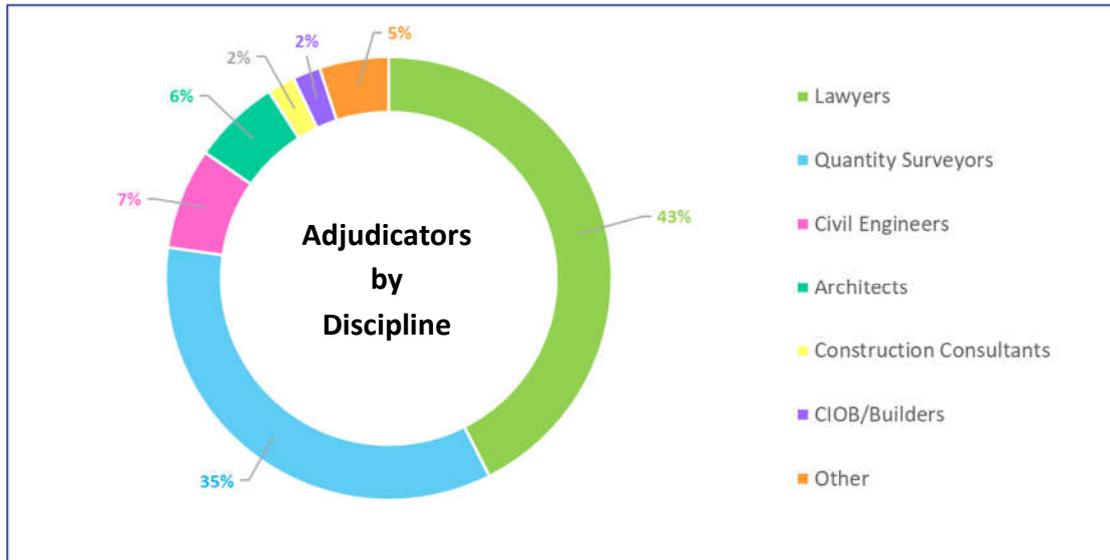


Figure 3: DISCIPLINE OF ADJUDICATORS

3.0 NOMINATING FEES & CPD

3.1 ANB Nominating Fees

The range of nominating fees charged by ANBs in Year 22 is between **£0** and **£1,250** (excluding VAT), as set out in **Figure 4** below. There have been no changes to the nomination fees charged by ANBs in comparison with Year 21.

This range of fees provides parties with options, and in particular the £0 nominating fee charged by UK Adjudicators provides smaller parties who are less 'cash rich' readier access to adjudication. The obvious outlier is LCIA, charging a nomination fee of £1,250, however this is a flat rate appointment fee for arbitration, mediation, adjudication, expert determination, or other forms of alternative dispute resolution proceedings.

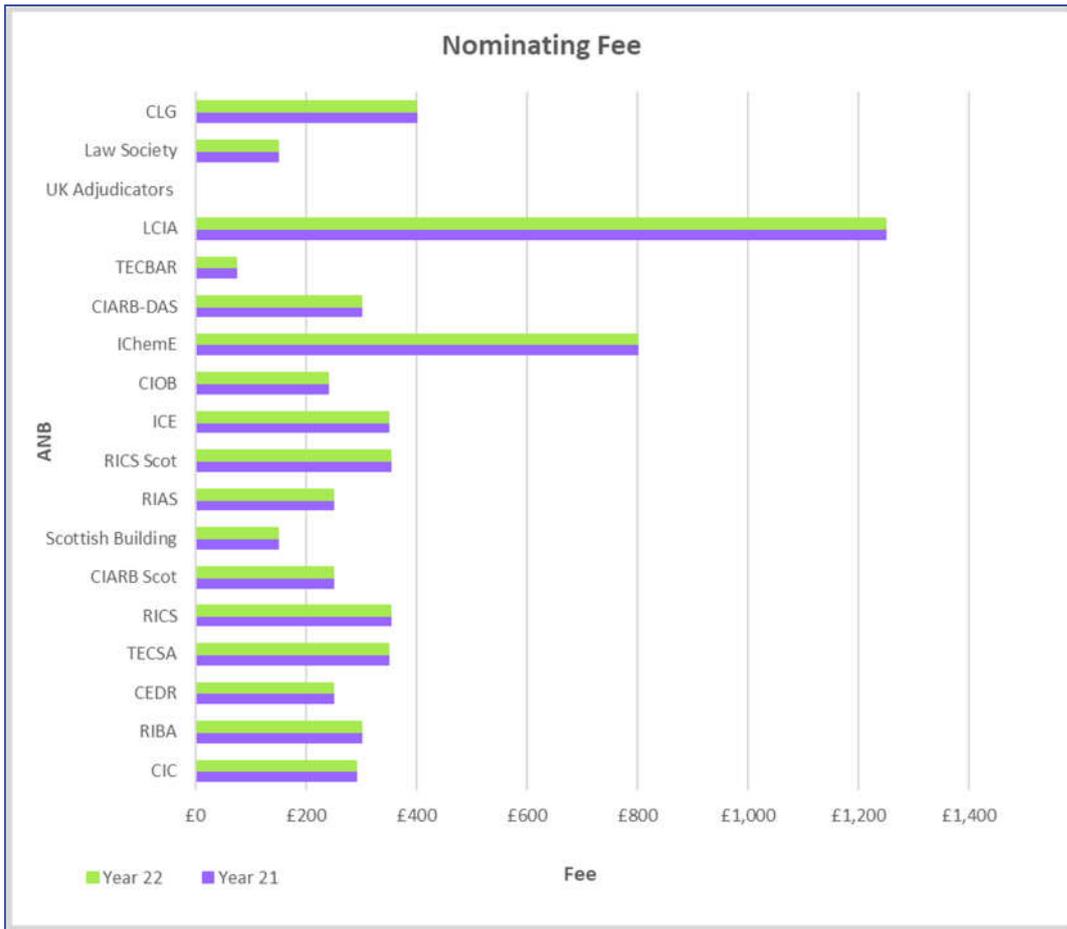


Figure 4: NOMINATING FEES

Notwithstanding that there is a range of nominating fees charged, the most common nominating fee is £250. Although there are variations from this amount, it can be seen in **Figure 4** above that the range of variation indicates a general level across the board. ANBs that are offering the CIC's LVD MAP⁵ have agreed to charge an administration fee of £250 for the nomination of an adjudicator, which is reflective of the most common charge currently in place across all of the ANBs captured by our data.

3.2 Continuing Professional Development Requirements

In Year 22, **14** of the ANBs required their registered adjudicators to keep a formal record of CPD carried out for annual submission. This represents an increase on Year 21 as UK Adjudicators now require a formal record to be kept.

⁵ CEDR, CIARB, CIOB, CIC, ICE, IET, IMechE, RIBA, RICS and UK Adjudicators

Examples of CPD activity considered to be relevant by the responding ANBs include:

- Attending lectures or courses on adjudication or relevant aspects of construction law;
- Attending workshops;
- Reading articles, papers, books, and law reports;
- Lecturing and writing articles, papers and books;
- Serving on adjudication related committees; and
- Practical adjudication experience including acting as adjudicator or representative in an adjudication (number of hours allowed on this basis often restricted).

Of those ANBs which require a formal record to be kept, there was a range of CPD requirements in terms of the relevant activities and the required number of hours. Where a minimum number of CPD hours were stated, the minimum requirement was **20 hours**.

It is possible that the range of CPD requirements of panel adjudicators across the ANBs could impact on the selection process of an ANB.

Table 4 below provides a summary of the CPD requirements of the various reporting ANBs.

	CPD Log Required?	Minimum Hours
CIC	Yes	24
RIBA	Yes	24
CEDR	No	-
TECSA	Yes	24
RICS	Yes	40
CIARB Scot	Yes	20
Scot. Build.	Yes	Not stated
RIAS	Yes	35
RICS Scot	Yes	20
ICE	Yes	24 **
CIOB	Yes	30
IChemE	Yes	Not stated
CIARB-DAS	Yes	20
TECBAR	No	-
LCIA	No	-
UK Adjudicators	Yes	Not stated
Law Society	Yes	20
CLG	No	-

TABLE 4: CPD Requirements

*** ICE has stipulated a minimum requirement of 24 hours for a number of years. The reference to '0' hours in our previous reports is an error. The research team apologises unreservedly for this error.*

3.3 Complaints to ANBs

The figures for Year 22 again indicate that substantially more complaints about adjudicators are made to ANBs than are upheld. In Year 22, there were **22** complaints made to ANBs with only **2** (9%) of these upheld. By comparison, in Year 21 there were **32** complaints of which only one was upheld (3%).

The continuing disparity between complaints made and upheld could indicate that spurious complaints are being made by parties without sufficient justification. This was considered an intimidatory tactic used by parties and was discussed in previous research into intimidation in

the adjudication process.⁶ However, a further explanation may be that complainants do not necessarily understand that only the approach of the adjudicator can be the subject of a valid complaint; and not the result itself. While a party may be disgruntled and disagree with the adjudicator's decision and the findings set out therein, this does not normally provide grounds for a complaint to the relevant ANB.

In terms of the nature of the complaints made, some ANBs advised that the complaints procedure is of a confidential nature and so no further details could be provided. Of those ANBs that answered the question, the complaints generally related to jurisdictional challenges and fees.

⁶ Please see CDR's paper "The Extent and Impact of Intimidation in UK Statutory Adjudication", available at: <http://cdr.uk.com/wp-content/uploads/2016/09/TheExtentandImpactofIntimidationinUKStatutoryAdjudication.pdf>

4.0 CONCLUSION

From the research carried out, there are interesting observations to be made with several discernable trends developing in recent years.

Firstly, in terms of referral growth, a 2% increase in referrals to ANBs (from 1905 in Year 21 to 1945 in Year 22) has been identified. The results indicate a continuing trend of year-on-year growth, however may indicate a slowdown in growth when compared to the results for Years 20 and Year 21, exhibiting steep growth. Having produced a trendline of all data in respect of Years 1 through to 22, it can be seen that there is an overall upward trajectory of sustained growth, based on historical data since the introduction of statutory adjudication in the UK construction industry.

Where wider economic factors have in the past had an influence on the number of referrals to adjudication, it is anticipated that the impact of both the upcoming 'Brexit' deadline in January 2021 and the economic fallout from the COVID-19 pandemic and related lockdown and restrictions will do the same. How these alter the trendline with the longer term effect is yet to be identified.

In terms of fluctuations in the number of referrals throughout Year 22, there were 'peaks' in March 2020 (199) and April 2020 (192), with a sharp 'dip' being experienced in December 2019 to the lowest number of referrals (106). There are a number of months in the year which do not differ significantly from the average number of monthly referrals (162), however these are concentrated within the first 6 months of the Year (May 2019 to October 2019), where the second half of the year experienced more instability in the number of referrals.

Turning to the number of registered adjudicators, this has increased overall in Year 22, from 728 to 772, driven in large part by a notable incline in the number of adjudicators registered with UK Adjudicators and TECBAR. There were some other small movements; both in respect of increases (CIC, CEDR), and in decreases (TECSA, RIBA, ICE); with this small nett reduction off-set against the larger increases.

With regard to the disciplines of adjudicators, lawyers remain firmly in the top spot, with the data indicating a levelling out for the proportion of lawyer and quantity surveyor adjudicators in the last few years. The most recent results support the view that the tendency for a more

legal approach to adjudication and the disputes being referred may be here to stay, rather than simply being a passing phase.

In terms of nominating fees, there have been no changes from Year 21, where the range identified remains between £0 and £1,250. There are few variations from this average, and the most common fee charged is £250, which reflects the administration fee for nomination of an adjudication agreed by those ANBs who are offering the CIC's LVD MAP.

In respect of the CPD requirements of the various ANBs, 14 of the 18 of ANBs in Year 22 required their adjudicators to produce a formal record of relevant CPD. This is an increase from Year 21, with UK Adjudicators now requiring their adjudicators to keep a formal CPD record.

Finally, the research has indicated a reduction in the number of complaints made to ANBs in Year 22 (22) as compared to Year 21 (32). It is recorded that 2 complaints were upheld this year compared to only 1 in Year 21. It is clear that there remains a disparity between the number of complaints made and upheld, which could indicate spurious complaints being made without sufficient justification, or may highlight that complainants simply do not understand the limited grounds to which complaints about adjudicators can be examined by ANBs.

In all, and in line with the conclusion of Report 18, the future of adjudication as a method of dispute resolution remains promising, with continued growth in the number of referrals to ANBs. However, where 2020 has been an unprecedented year, it is anticipated that a number of changes will be identified going forward. It is clear that adjudication remains a popular choice for resolving construction disputes and the research team are optimistic about the possibility of greater uptake in adjudication with the introduction of CIC's LVD MAP, addressing a potential gap in the market.

As always, the authors are indebted to the Adjudicator Nominating Bodies who have provided a wealth of data to allow an insight into how adjudication is being utilised at present and where it may be going in the future.

J L Milligan and A L Jackson
November 2020

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