



# **Report No 13**

**October 2014**

Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) and from a sample of Adjudicators.

J L Milligan and L H Cattanach  
Construction Dispute Resolution  
Pavilion 1,  
Parkway Court  
Glasgow Business Park  
Glasgow G69 6GA  
0141 773 3311

## **FOREWORD**

Whilst this report should be considered an extension of the research carried out by the authors in conjunction with the Adjudication Reporting Centre at Glasgow Caledonian University (GCU), it should be noted that the authors (both Directors of Construction Dispute Resolution (CDR)) now work in conjunction with the Adjudication Society to publish this research. Therefore, this work, whilst building on the previous reports of the Adjudication Reporting Centre (ARC), is entirely separate from GCU. For clarity, statistics which relate to research carried out under this new partnership are highlighted in **purple** within the tables, and where appropriate figures, in this report.

For completeness, the years that will be focused on in this report are as follows: -

- Year 13 (May 2010 – April 2011);
- Year 14 (May 2011 – April 2012);
- Year 15 (May 2012 – April 2013); and
- Year 16 (May 2013 – April 2014).

## **1.0 INTRODUCTION**

The Adjudication Reporting Centre (ARC) considered both the trends in the number of Adjudication nominations and data on various aspects of Adjudication from Adjudicators up to the end of April 2012. Reports 1-12 can be found on the GCU Adjudication Reporting Centre website (<http://www.gcu.ac.uk/ebe/businessservices/Adjudicationreports/>). For continuity purposes this report is called Report No 13 and can be found at <http://www.cdr.uk.com/research.html>. This report records ARC's findings, as well as building on them to reflect the research of CDR in conjunction with the Adjudication Society, discussing statistics relating to the period May 2012 to April 2014 (years 15 and 16).

## 2.0 NUMBER OF REFERRALS

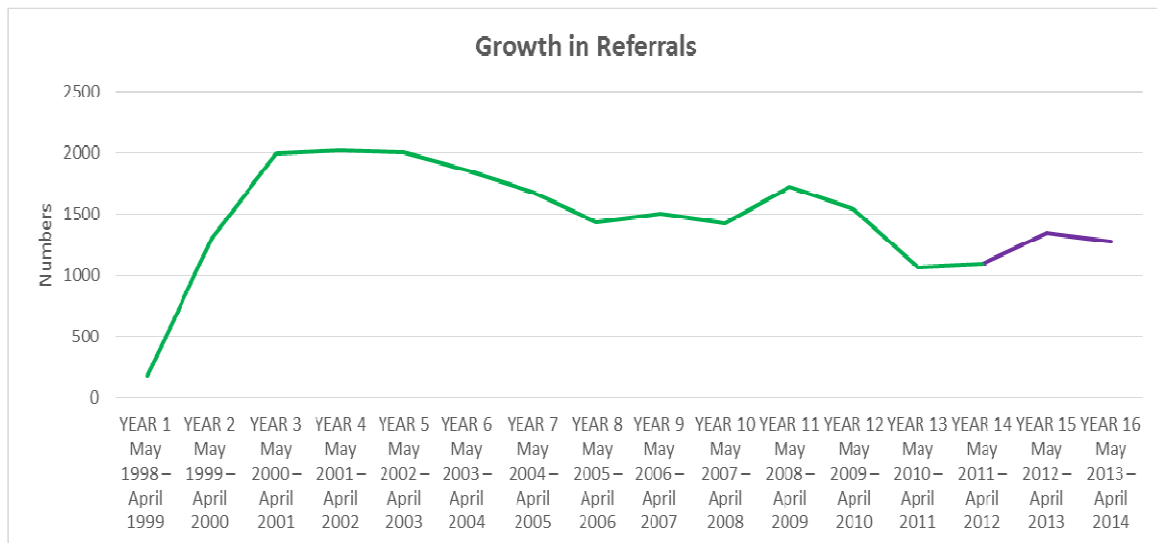
### 2.1 Adjudicator Nominating Body Appointments

Since the last published ARC Report there has been an overall increase in Adjudication referrals, with an initial increase from 1093 to 1351 during year 15 (May 2012 – April 2013), followed by a slight decrease in year 16 (May 2013 – April 2014).

TIME PERIODS	ALL ANBs REPORTING	% GROWTH
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%
<b>YEAR 15 – May 2012 – April 2013</b>	<b>1351</b>	<b>24%</b>
<b>YEAR 16 – May 2013 – April 2014</b>	<b>1282</b>	<b>-5%</b>

**Table 1: Adjudications by all reporting Adjudicator Nominating Bodies (ANB)**

In the early years as the market gained confidence in Adjudication a steep incline in appointments was witnessed peaking at around 2000 per year up to year 5, see Figure 1 below. Between year 6 and 10 the numbers slowly dropped to around 1500 appointments at year 10. A sharp increase in referrals in year 11 was followed by a reversal in years 12 and 13. There was a noticeable increase in years 14 and 15. Year 16 records a decline in the numbers which average around 1300 appointments in the year. The research team consider the pattern in years 11 to 14 may have been due to the economic recession causing resource constraints within the industry and a willingness to settle disputes rather than resort to Adjudication. See COBRA Report published on the Adjudication Reporting Centre website.<sup>1</sup> It follows, therefore, that the overall increase in years 15 and 16 by comparison with year 14 may be explained by some economic recovery in the industry, as well as a renewed unwillingness of those further down the supply chain to accept lower recoveries without resistance. It is also possible that the introduction of new payment procedures in the Local Democracy, Economic, Development and Construction Act 2009, which came into force in late 2011, may have impacted upon the number of Adjudications as the industry familiarises itself with the amended legislation.



**Figure 1: Growth rate in Adjudication referrals in the UK**

<sup>1</sup> Kennedy, P., Milligan, J. L., Cattanach, L., McCluskey, E., 'The development of Statutory Adjudication in the UK and its relationship with construction workload', COBRA, Proceedings of RICS Construction and Property Conference, September 12 – 13, 2011.

## 2.2 Sources of Appointment

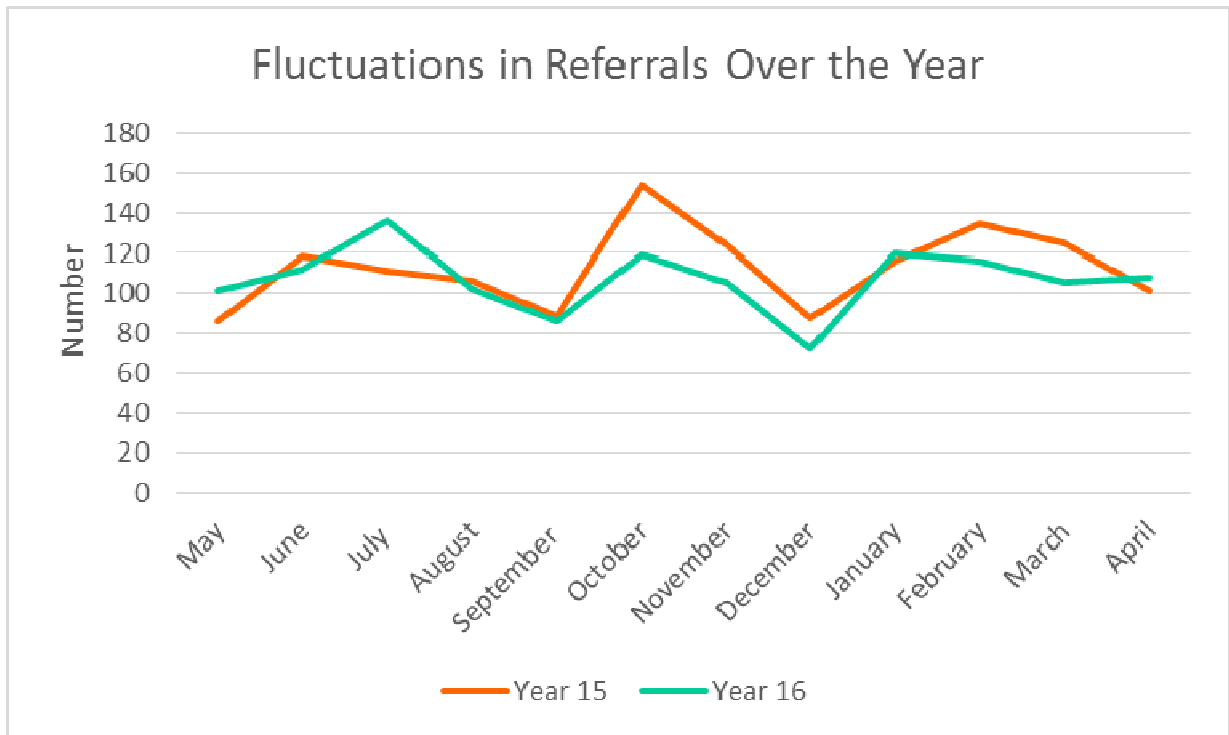
The main source of appointment of an Adjudicator remains via ANBs. In years 13 & 14 the nominations through an ANB were steady at 90.7% increasing to 96.0% in year 15, before reducing to 93.5% in year 16. The other two means of appointment are by agreement of the parties and being named in the contract with those accounting for 2.9% and 1.1% respectively in year 15; and 4.2% and 2.3% in year 16.

Sources of Appointment	Year 13 April 2011	Year 14 April 2012	Year 15 April 2013	Year 16 April 2014
Through an ANB	90.7%	90.7%	96.0%	93.5%
By agreement of the parties	8.1%	7.8%	2.9%	4.2%
Named in the contract	1.2%	1.6%	1.1%	2.3%
Total Adjudications in the samples	86	257	276	306

**Table 2: Sources of appointment of Adjudicators**

## 2.3 Fluctuations in Referrals

In previous reporting years, the discernible trend in the number of Adjudications throughout the year was a peak in November, followed by a sharp drop in December, as well as a further peak in March, again followed by a drop in April. In respect of the reporting period of year 15, the pattern is relatively similar to previously observed trends, however both peaks in referrals are experienced approximately one month prior to that of previous years; i.e. October and February rather than November and March, refer to Figure 2.



**Figure 2: Fluctuations in referrals over the year**

In terms of the reporting period of year 16, it can be seen that there are some differences. Perhaps most notably is that the peak in the first period of the year has shifted from October/November as in previous years, to July. Further, the peak in the following 6 months was again experienced a further month earlier than the previous general trends, peaking in January, followed by a decline in February and March.

Years 15 and 16 show that referral numbers drop significantly in December, thus dispelling the ‘Christmas ambush’ theory.

### 3.0 ADJUDICATORS & DISCIPLINES

#### 3.1 Number of Adjudicators Registered with ANBs

ADJUDICATOR NOMINATING BODY	Year 13 April 2011	Year 14 April 2012	Year 15 April 2013	Year 16 April 2014
Association of Independent Construction Adjudicators	34	31	28	26
Chartered Institute of Arbitrators	119	145	145	145
Confederation of Construction Specialists	15	15	14	12
Construction Industry Council	86	76	80	75
Institution of Chemical Engineers	15	16	16	16
Institution of Civil Engineers	75	63	60	53
Royal Institute of British Architects	74	68	67	67
Royal Institution of Chartered Surveyors	114	114	114	110
Institution of Mechanical Engineers	NR	NR	NR	NR
Chartered Institute of Building	40	38	38	34
Scottish Building	10	11	11	8
Royal Incorporation of Architects in Scotland	12	12	11	10
Royal Institution of Chartered Surveyors in Scotland	20	24	23	22
Centre for Effective Dispute Resolution	33	46	34	40
Institution of Electrical Engineers	NR	NR	NR	NR
Technology and Construction Solicitors Association	138	136	88	93
Chartered Institute of Arbitrators (Scottish Branch)	17	15	14	13
The Law Society of Scotland	23	23	N/A	N/A
Technology and Construction Bar Association	NR	82	82	123
Adjudication.co.uk	NR	NR	NR	26
<b>TOTALS</b>	<b>825</b>	<b>915</b>	<b>825</b>	<b>847</b>
<i>NR - not reporting</i>				

**Table 3: Number of Adjudicators**

Table 3 above shows the number of Adjudicators registered with ANBs. The number of Adjudicators registered decreased from 915 in year 14 to 825 in year 15 (-90). The reasons for this movement were the decrease in TeCSA Adjudicators, falling from 136 to 88 (-48), as well as changes at the Law Society of Scotland. The Law Society rather than relying on a specific list of Adjudicators, now reverts to its list of accredited specialists in the construction field. In year 15, only one ANB reported an increase in Adjudicators – the Construction Industry Council (+4).



With regards to the change from year 15 to year 16 there has been an increase from 825 to 847 (+22). The major contributor to this increase is the rise in TECBAR Adjudicators (+41) as well as including figures from Adjudication.co.uk (+26), who had previously not contributed to the research. As well as these significant increases there were small decreases; for example, CIC (-5) and ICE (-7). The Chartered Institute of Arbitrators has the largest panel. The research team recognises that Adjudicators can be registered with more than one ANB and so the actual number of practicing Adjudicators is likely to be far less than the figure of 847 shown.

### 3.2 *Discipline of Adjudicators*

The ANBs were asked to state the principal area of expertise of their Adjudicators. As with previous results the top three, in years 15 and 16 were Quantity Surveyors, Lawyers and Civil Engineers in that order. As can be seen in Table 4, following the increase in Lawyers being registered with an ANB in 2012, the percentage has dropped, with statistics returning to be in line with previously observed trends. Also of note is the sharp rise in Mechanical Engineers being registered with an ANB; now accounting for 4.2% of all Adjudicators.

<b>DISCIPLINE</b>	<b>Year 13 April 2011</b>	<b>Year 14 April 2012</b>	<b>Year 15 April 2013</b>	<b>Year 16 April 2014</b>
<b>Quantity Surveyors</b>	37.00%	34.80%	<b>35.5%</b>	<b>35.1%</b>
<b>Lawyers</b>	27.40%	34.50%	<b>29.8%</b>	<b>30.5%</b>
<b>Civil Engineers</b>	14.20%	11.30%	<b>11%</b>	<b>11.1%</b>
<b>Architects</b>	6.80%	6.50%	<b>7%</b>	<b>6.3%</b>
<b>CIOB/Builders</b>	6.10%	4.30%	<b>4.9%</b>	<b>4.4%</b>
<b>Construction Consultants</b>	2.00%	2.20%	<b>2.3%</b>	<b>2.3%</b>
<b>Structural Engineers</b>	1.40%	1.10%	<b>1.4%</b>	<b>1.3%</b>
<b>Building Surveyors</b>	1.20%	1.80%	<b>1.8%</b>	<b>1.7%</b>
<b>Project Managers</b>	0.60%	0.80%	<b>1.3%</b>	<b>0.7%</b>
<b>Mechanical Engineers</b>	0.40%	0.90%	<b>0.5%</b>	<b>4.2%</b>
<b>Electrical Engineers</b>	0.10%	0.20%	<b>0.7%</b>	<b>0.2%</b>
<b>Other</b>	2.80%	1.60%	<b>3.8%</b>	<b>2.2%</b>

**Table 4: Primary discipline of Adjudicators**

## 4.0 DISPUTES – SUBJECT, VALUE & PARTIES IN DISPUTE

### 4.1 Subject of Dispute

At year 15, disputes regarding payments constituted the largest proportion of referrals to Adjudication at 25.8%, followed by Extension of Time / Loss and Expense at 20.3% and Value of work at 13%. Final Account value, Damages and Variations were also significant at 11.1%, 7.4% and 7.4% respectively. Refer to Table 5 below.

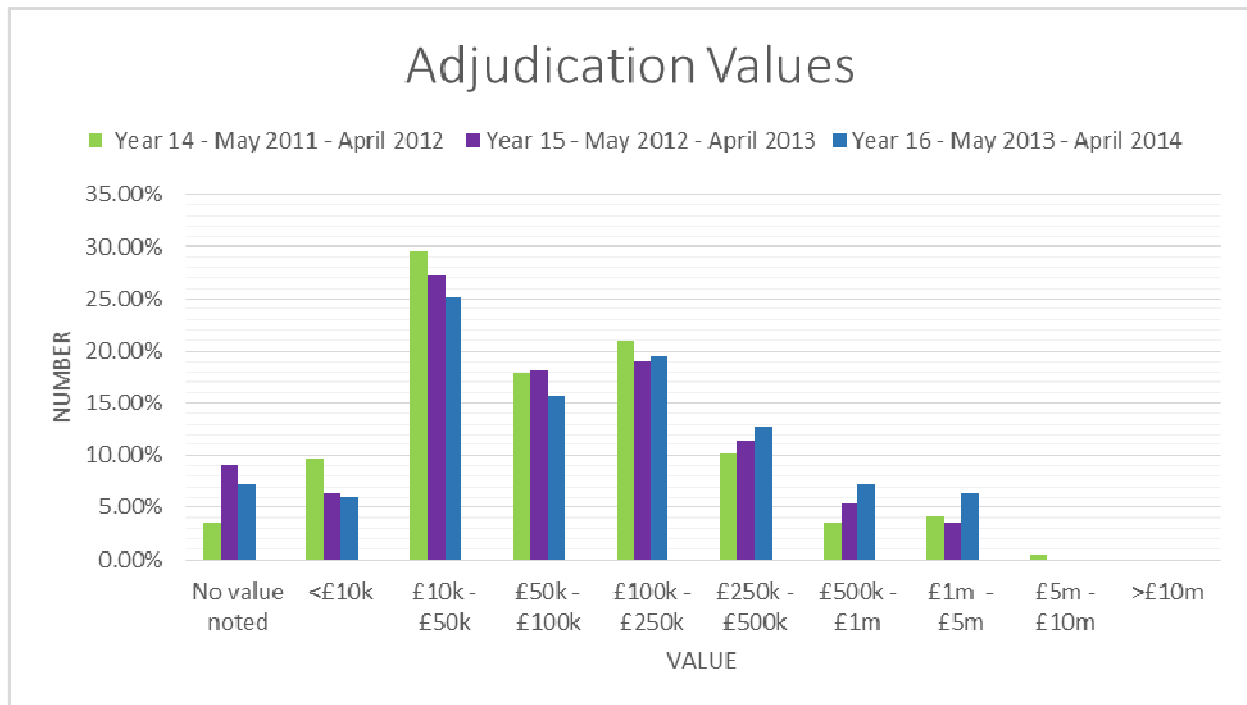
Subject	Year 15 April 2013	Year 16 April 2014
LAD's / Damages	7.4%	7.7%
Value of work	13.0%	7.3%
Final account value	11.1%	23.5%
Payment	25.8%	20.4%
Extension of time / Loss and Expense	20.3%	10.4%
Variations	7.4%	5.0%
Defective work	1.9%	7.3%
Withholding monies	5.6%	3.8%
Contract terms	1.9%	4.6%
Other	5.6%	10.0%

**Table 5: Primary subject of the disputes**

In year 16, Final Account value disputes constituted the largest proportion of Adjudications at 23.5%, followed by payment at 20.4% and Extension of Time / Loss and Expense at 10.4%. Causes such as 'Professional Negligence'; 'Design' and 'Identity of Contracting Party' each representing less than 1% of the total, accumulate to 10% as 'Other'. Descriptions used by Adjudicators are not uniform and this leads to some diversity and a very much longer list of topics. For example, several subjects have significant cross-over in terms of their description. As such the research team has standardised this, including, for example, 'interim application', 'non-payment', 'money' and 'interim payment', under the heading of 'payment'. Of note is the increasing diversity of disputes referred to Adjudication over the two reporting periods year 15 and year 16.

## 4.2 Adjudication Values

In years 15 and 16, in line with previous trends, the majority of referrals were in the value range £10,001 - £50,000. However, in year 16, the value ranges £250,000 to £5million all had an increased number of referrals than the previous two years.

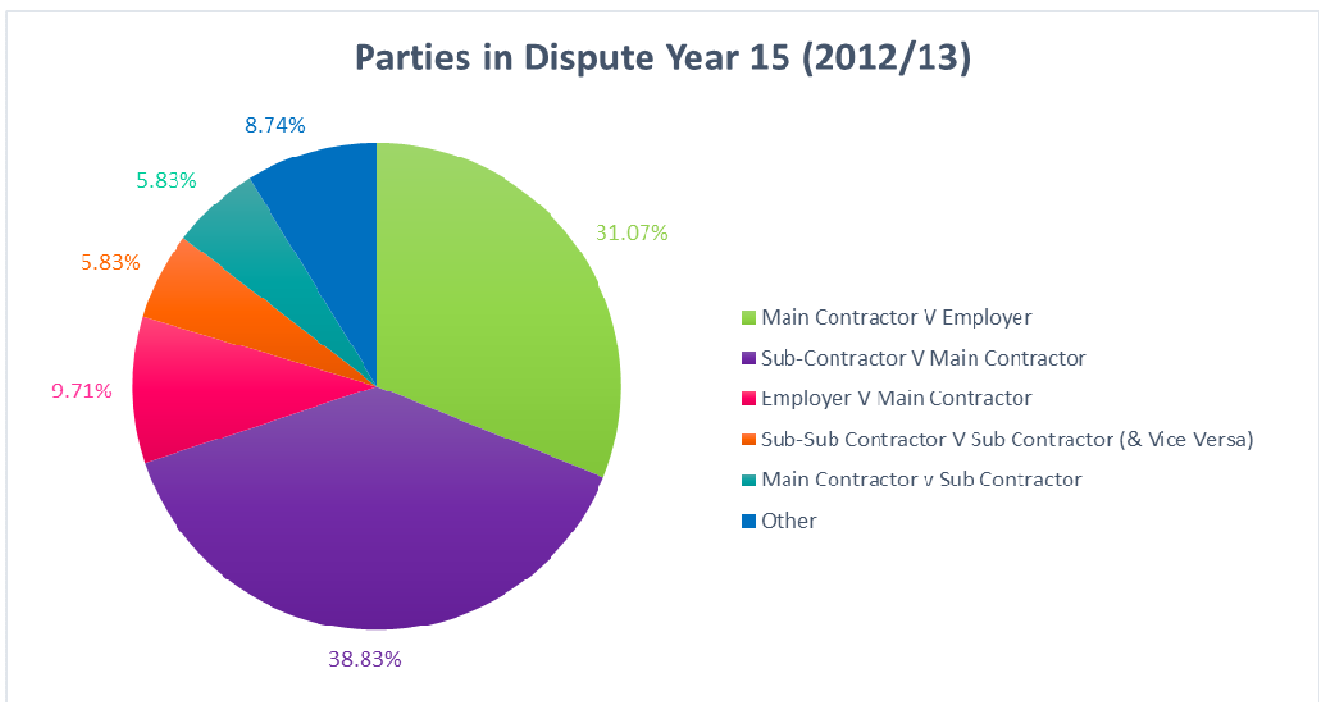


**Figure 3: Proportion of Adjudications in each value group**

Of particular interest in years 15 and 16 is the rise in 'no value' Adjudications, rising from 3.57% in year 14 to 9.05% and 7.23% in years 15 and 16, respectively. This would indicate that parties are becoming increasingly likely to pursue an Adjudication on a point of principle, which may pave the way to a financial claim as a result.

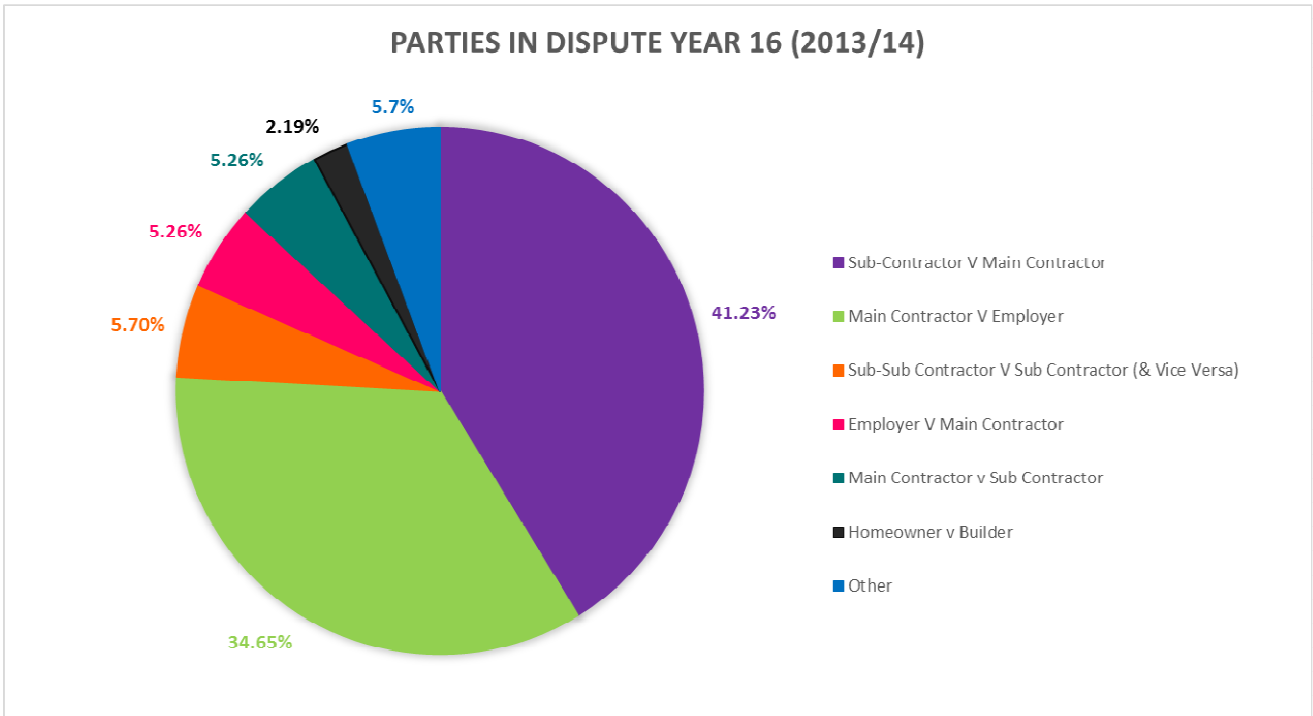
### 4.3 Parties in Dispute

In year 15 the parties most likely to enter into dispute were Sub-Contractor v Main Contractor, refer to Figure 4 below. This is consistent with previous years. Disputes referred by an Employer against a Main Contractor represent 9.71% of the total; those referred by a Sub-Sub-Contractor against a Sub-Contractor represent 5.83%; and those referred by a Main Contractor against a Sub-Contractor account for a further 5.83%. 'Other' parties in dispute account for 8.74% and include, by way of example, Specialist Contractor v Employer, Architect v Client and Client v QS.



**Figure 4: Parties in dispute 2012/13**

In year 16 the parties most likely to enter into dispute were again Sub-Contractor against Main Contractor, accounting for 41.23%. Disputes referred by Main Contractor against Employer represent 34.65% of the total, whilst those referred by a Sub-Sub-Contractor against a Sub-Contractor represent 5.70%, see Figure 5 below.



**Figure 5: Parties in dispute 2013/14**

## 5.0 PROCEDURE, TIMETABLE, CHALLENGES, SUCCESS & FEES

### 5.1 Adjudication Procedure Adopted

Employing a “documents only” procedure remains the most common method adopted by Adjudicators in years 15 and 16 being 75.0% and 76.8%, respectively.

Procedure Adopted	To April 2011	To April 2012	To April 2013	To April 2014
Employ a documents only procedure	62.1%	69.0%	75.0%	76.8%
Employ an interview procedure with one party present	0%	0%	0%	0.4%
Employ an interview procedure with both parties present	28.8%	14.5%	0%	5.0%
Carry out a full hearing procedure	3.1%	11.5%	20.4%	12.0%
Carry out a conference call	3.0%	5.0%	4.6%	2.5%
Site Visit	3.0%	-	0%	3.3%
Other	-	-	-	-

**Table 6: Procedures adopted by Adjudicators**

The statistics for recent years would indicate that there is an increasing preference for “documents only”, see Table 6. Employing an interview procedure with both parties has reduced significantly, from 14.5% to 0% (years 14 to 15), then rising again in year 16 but only to 5.0%. Further, carrying out of a full hearing procedure remains popular, throughout years 14 to 16. Surprisingly, in year 16 we have one recorded instance of an interview procedure with one party present. This is the first occurrence of this procedure since 2004. It is suggested this is likely to be as a result of an ex-parte referral.

### 5.2 Timescale for Issuing Decisions

There was an overall increase in decisions given within 28 days, to 52% in year 15, before dropping slightly to 49% in year 16, refer to Table 7 below. Decisions given between 28 and 42 days continued to decrease, which in part reflected an increase in Decisions being published in more than 42 days. This figure has increased to 20% in year 16. This may be the result of more

complex issues being referred to Adjudication and the need to review voluminous submissions by parties.

Timescale for Adjudication	Year 13 April 2011	Year 14 April 2012	Year 15 April 2013	Year 16 April 2014
Decisions given within 28 days	49%	44%	52%	49%
Between 28 and 42 days	40%	37%	36%	31%
More than 42 days	11%	19%	12%	20%

**Table 7: Compliance with time limits**

### 5.3 *Proportion of Appointments Leading to a Decision*

For years 15 and 16 the figures remain relatively consistent in respect of the proportion of appointments proceeding to a Decision, see Table 8. There has been an overall increase in Adjudications in which a Decision was issued, from 69% in year 14 to 71% in years 15 and 16. The proportion of Adjudications settled by the parties has remained relatively consistent. In respect of those Adjudications which were abandoned, results show this to be around 10% over the last three years. This is consistent with previous trends; only year 13 has been considerably different, at 20%.

Proportion of Adjudication appointments proceeding to Decision	Year 10 April 2008	Year 13 April 2011	Year 14 April 2012	Year 15 April 2013	Year 16 April 2014
Decisions issued	56%	60%	69%	71%	71%
Adjudication settled by the parties	23%	14%	19%	19%	17%
Adjudications abandoned	11%	20%	10%	10%	11%
Adjudications still ongoing	10%	6%	2%	0%	1%

**Table 8: Adjudications proceeding to a decision**

### 5.4 *Challenges to Adjudicator's Appointment*

The challenges to the Adjudicators' appointments have increased to 42% in years 15 and 16 which is notably more than the inherent trend of around one third. In all periods, the main challenge was noted as being that there was no dispute/the dispute had not crystallised.

	Year 12 April 2011	Year 13 April 2012	Year 14 April 2013	Year 15 April 2014
Appointments in sample	86	194	201	226
Challenges	28	54	84	96
Appointments challenged	33%	28%	42%	42%

**Table 9: Challenges to Adjudicators' appointments**

### 5.5 Which Party is the most Successful?

In respect of years 15 and 16; as with previous years; the data collected shows that the Claimant remains the more successful party in Adjudication. This, however, continues a downward trend from year 13 in which the success of the Claimant was 71%, compared to 50% in year 16. There is also a decrease in success for the Respondent over years 14 to 16 from 23% to 13% respectively. As a result, there is a corresponding increase in split Decisions rising to 37% in year 16.

	Year 13 Apr 2011	Year 14 Apr 2012	Year 15 Apr 2013	Year 16 Apr 2014
Claimant	71%	68%	54%	50%
Respondent	17%	23%	18%	13%
Split Decision	12%	9%	28%	37%

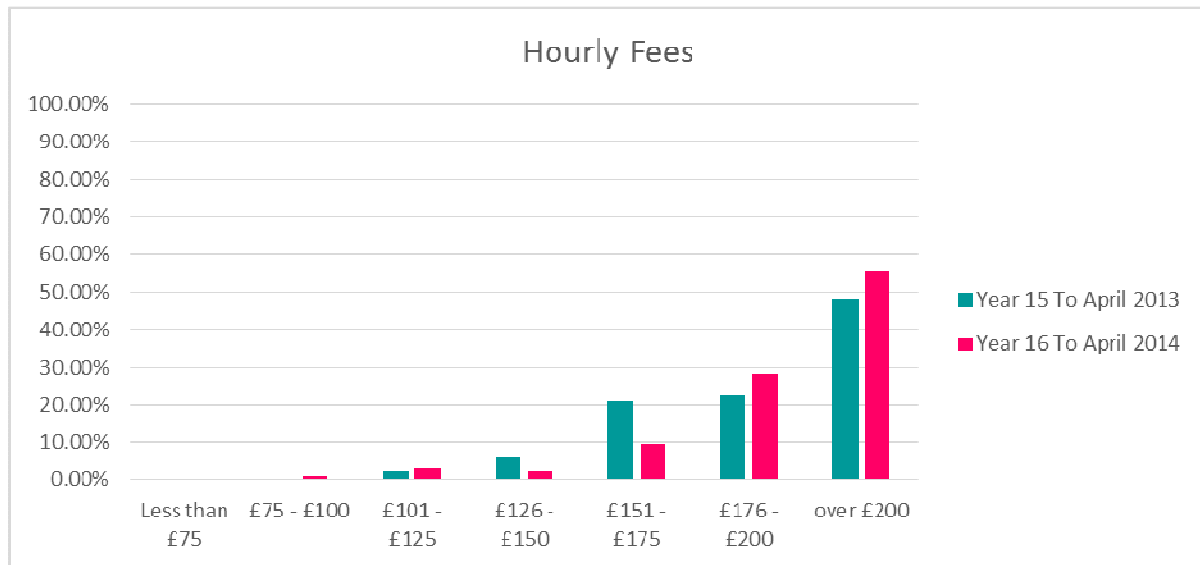
**Table 10: Comparison of successful parties in Adjudicators' decisions**

The figures for years 15 and 16 have been based on the Adjudicators' apportionment of fees between the parties which the research team consider is a more objective measure of success. Previously we had invited Adjudicators to decide who was successful which was considered a subjective test. We do however understand that there may be several reasons why Adjudicators apportion fees other than success alone.



## 5.6 Adjudicator's Fees

The data collected for reporting period to April 2013 (year 15) shows that the most common hourly fees are in excess of £200 (48.02% of sample). This would appear in line with previous trends which indicated a general increase in hourly fees. The remainder of hourly fees were concentrated in the ranges £176 - £200 (22.47%) and £151 - £175 (21.15%).



**Figure 6: Hourly fees charged by Adjudicators**

This trend continues in year 16, with 55.77% of Adjudicator's fees now in excess of £200, and there is a further increase in fees in the value range £176 - £200. There was a corresponding decrease in fees charged between £151 and £175.

In general, it would appear that there continues to be a trend towards increasing Adjudicators' fees, with fees becoming increasingly concentrated in the range of £200 per hour and above.

## 6.0 CONCLUSION

Since Report 12, which covered the period up to year 14, there has been, overall, significant recovery in the number of Adjudication referrals, initially increasing by 24% in year 15, with a slight decline of 5% in year 16. This recovery is perhaps indicative of an improving financial outlook and a change to the statutory legislation.

There appears to be no evidence in the data to support the widespread use of the ‘ambush’ tactic of initiating Adjudication around popular holiday periods, with the peaks appearing to be in July/October and January/February. In the main, the number of referrals remains fairly constant in the first six months of reporting commencing May and fluctuates in the second six months. This fluctuation is somewhat consistent with previous reporting years, despite these slight shifts in the months in which peaks in referrals are experienced.

Quantity Surveyors and Lawyers continue to dominate the role of Adjudicator, accounting for around three quarters of all Adjudicators.

The most successful party in Adjudication remains the Referring Party, although the margin is decreasing. Of particular note was the continued increase in split Decisions over the reporting periods.

The primary subject of dispute in year 15 was unsurprisingly payment, which is in line with previous years’ statistics, and whilst it was not the dominant subject in year 16, it was a close second. With the respect to the nature of disputes, there has been an increasing trend towards a greater variety in the issues referred, however, this does not necessarily signal that construction disputes themselves are becoming more complex.

Trends in dispute values remained consistent with previous years’ research with the most being in the banding £10,001 to £50,000. However, in years 15 and 16 there was also a notable increase in disputes with no value, perhaps indicating that parties are now more willing to refer

Adjudications purely on a point of principle.

Disputes between Main Contractor and Employer, and Sub-Contractor and Main Contractor remained the most common, accounting for in excess of 70% of disputes in the year 15 and over 75% of disputes in year 16.

The majority of Adjudications were conducted on a 'documents only' basis. This perhaps may be due to speed and convenience, avoidance of claims of procedural error or bias or it could be due to the preference of the Adjudicators to avoid hearings which are arguably traditionally within the comfort zone of lawyers. The use of an interview procedure with both parties present continued to decline, while the use of full hearings remained a common procedure.

There is a growing trend towards longer Adjudications. In the year to April 2014 (year 16), less than half of Adjudication Decisions were given within the 28 day period, with the remainder split between Decisions issued within 28 and 42 days, and those issued after 42 days.

Adjudicators' fees remain relatively consistent with previously observed trends. Results show an increasing tendency towards charging higher hourly rates, with around 29% in year 16 charging £176-£200 and 56% charging over £200. These increases have largely been reflected in the corresponding decline in hourly fees of between £151 and £175.

As always, the authors are indebted to the Adjudicator Nominating Bodies and to our loyal group of Adjudicators 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 L H Cattanach

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