



REPORT No. 18

DECEMBER 2019

Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) for the year 1 May 2018 to 30 April 2019, and from practicing Adjudicators for the year 1 January 2018 to 31 December 2018.

J L Milligan and A L Jackson
Construction Dispute Resolution
Pavilion 1,
Parkway Court
Glasgow Business Park
Glasgow G69 6GA
+44 (0)141 773 3377
jlm@cdr.uk.com
amy@cdr.uk.com

FOREWORD

This report comprises two Parts: Part 1 sets out findings based on returns from Adjudicator Nominating Bodies (ANBs) only; and Part 2 sets out findings based on questionnaires issued to Adjudicators.

The data set out at Part 1 is based on returns from ANBs only, and so the findings are purely statistical in nature, thus the research is entirely objective. The quantitative data gathered allows the research team to apply statistical tests to draw conclusions about the use of adjudication in the UK construction industry, highlighting key facts and trends. The period focused on within Part 1 in respect of the information received from ANBs is **Year 21 (May 2018 – April 2019)**.

Part 2 provides insight from Adjudicators in respect of a ‘snap shot’ timeframe **1 January 2018 to 31 December 2018**. It sets out findings based on questionnaires issued to Adjudicators with regard to procedure, parties in adjudication, costs & fees, and the nature of disputes. ‘Part 2’ should be read in conjunction with ‘Part 1’ of this report which sets out data gathered from ANBs. Read together, this report provides a clear picture of adjudication in the UK today. The qualitative results from Adjudicators have been discussed, with statistical analysis where appropriate.

Accordingly, this report provides a rounded view of the use of adjudication in the construction industry and charts the trends emerging and continuing.

All earlier reports (1 to 17), as well as the latest report on adjudicator’s 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 about 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.

Part 1 of this report reflects findings based on statistical returns from 19 ANBs captured in the sample. All of these ANBs have consistently contributed to the research, with the exception of London Court of International Arbitration (LCIA), who made their first return this year; UK Adjudicators, which is a new ANB; and the Law Society of Scotland, who ceased to provide returns in recent years, however participated again in respect of Year 21.

Part 2 of this report sets out the findings based on responses from Adjudicators to a series of questions focused on procedure, parties in adjudication, costs and fees, and the nature of disputes. The research methodology was by questionnaire, comprising 2Nr. surveys – one in respect of procedure, and the other in respect of parties, costs and fees, and nature of disputes. Twenty-four Adjudicators provided responses to the questionnaires, of a total of 195 Adjudicators approached. However, not all adjudicators provided responses to both surveys. The survey in respect of procedure captured 274 adjudications. The other survey, in respect of parties, costs and fees, and the nature of disputes, captured 184 adjudications. Although, there is cross-over between these two figures, the **minimum** number of adjudications captured is 274 in the worst case.

The response rate from adjudicators is below what is considered to be a reasonable sample size to provide statistical data in order to determine reliable trends. However, the information provided by those adjudicators who participated in the study is considered to be useful in providing insight into the use of adjudication from the adjudicator's perspective.

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 **13%** increase in adjudication referrals via ANBs from 1685 in Year 20 (May 2017 – April 2018) to **1905** in Year 21 (May 2018 to April 2019).

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%

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

These latest results indicate a continuing trend of year-on-year growth in the number of referrals to adjudication through ANBs, although the degree of annual increase has lacked consistency.

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 21 is a relatively straight line at 1,500 referrals per year, although

this trend line does show a slight upward tilt in more recent years. This relatively horizontal trend line reflects the continuous pattern of rising and falling referral numbers, however with a more recent trend indicating steady growth. In previous reports¹, the possible causes of the movements illustrated in **Figure 1** below have been discussed, often attributed to wider economic factors.

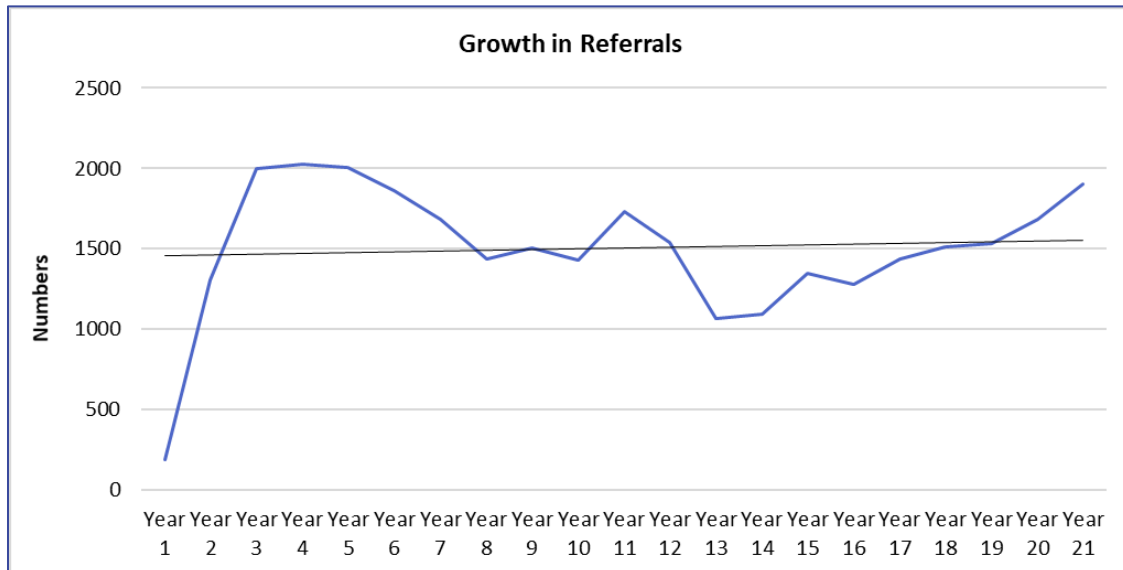


Figure 1: GROWTH RATE IN ADJUDICATION REFERRALS IN THE UK

In Report 16², the judgment of Mr Justice Coulson in *Grove Developments Ltd v S&T (UK) Ltd*³ was discussed, along with its potential to impact on the number of referrals going forward. Of interest was whether the total number of adjudications would decrease as a result of a decline in ‘smash and grab’ adjudications or increase as a result of a rise in subsequent ‘proper value’ disputes. The first instance judgment of February 2018 was upheld by a majority at the appeal court in November 2018. In Report 17⁴, it was noted that, as both judgments were published in 2018 it was not possible to determine any potential relationship to the number of referrals covered in that report as the relevant period only extended to 30 April 2018.

These most recent results may indicate that the judgments have had no negative effect on the number of adjudications being referred. Part 2 to this report, which analyses data gathered

¹ See, for example, Report 13 at: <http://cdr.uk.com/wp-content/uploads/2017/01/Report-13.pdf>

² Available at: <http://cdr.uk.com/index.php/training-research/>

³ [2018] EWHC 123 (TCC)

⁴ Available at: <http://cdr.uk.com/index.php/training-research/>

from practicing adjudicators, provides further insight into the referral of ‘smash and grab’ adjudications.

Recent reports⁵ have also discussed the potential for ‘Brexit’ related uncertainty in the construction industry to impact upon the level of construction adjudication referrals. This uncertainty remains, with the ‘exit’ date ever shifting, and with the increase in referrals to ANBs, it may be that this uncertainty has led to an increase in construction disputes.

Due to the numerous factors at play, it is difficult to determine with certainty 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 in dispute resolution, to highlight potential causes for movements in the number of adjudication referrals, and to discuss possible future trends.

In Report 17 the research team returned to its earlier practice of identifying the number of referrals made by ANBs in Scotland. The research team considers that this point continues to be of interest, particularly to practitioners in Scotland. Accordingly, it is noted that, in Year 21, **92** referrals were made via Scottish ANBs, equivalent to **5%** of all referrals to ANBs across the UK. This reflects previous findings, and indicates that movements in the UK market as a whole are reflected proportionally in the Scottish market.

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. Part 2 to this report sets out the most recent findings on this aspect, and concludes that **90%** of appointments are through an ANB. Accordingly, **10%** of appointments are estimated to not be included in the statistics recorded in **Table 1** and **Figure 1**. Although this will have an influence on the following analysis, it is considered this will be relatively minor given the proportions in question.

1.2 Fluctuations in Referrals

In Report 17, a return to the pattern of referral fluctuations throughout the year as witnessed in early reporting years was identified; peaks in November and March, with a sharp ‘dip’ in

⁵ Reports 15, 16 and 17, which can all be found here: <http://cdr.uk.com/index.php/training-research/>

December. The results for Year 21 indicate similarities but also some important differences, as represented graphically in **Figure 2** below.

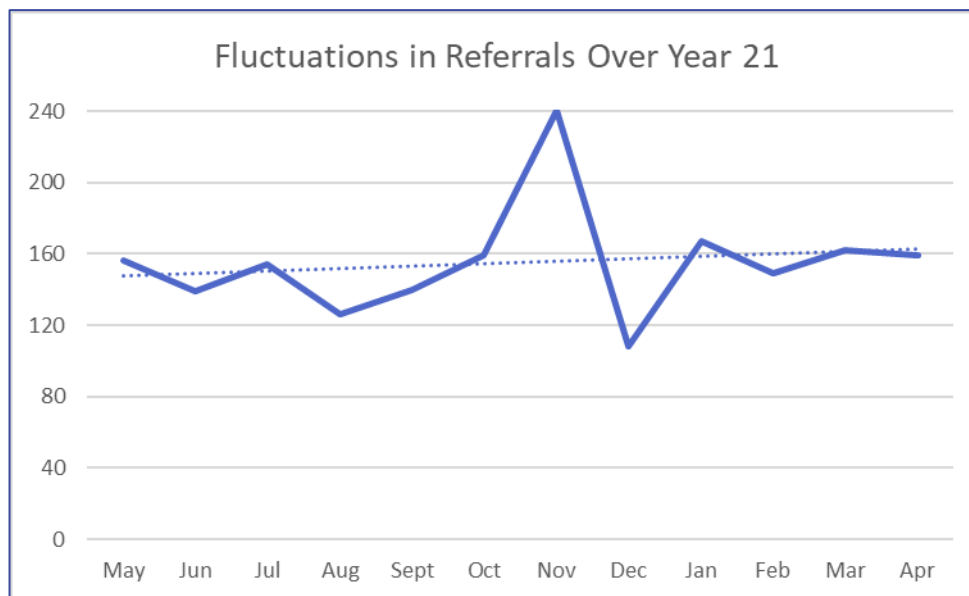


Figure 2: Fluctuations in Referrals over the Year

The average number of referrals per month is 155; with a number of months which barely deviate from this figure (May at **156**; July at **154**; October at **159**; February at **149**; and April at **159**). This indicates that there are only a handful of outliers from this average figure, which is also represented in **Figure 2** above.

In Year 21, the greatest number of referrals was made in November (**240**), followed by January (**167**). The lowest number of referrals was experienced in December (**108**), 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 132, or a decline of **55%**. However, the figures for November and January indicate that parties are compensating for this quieter festive period by an increasing number of referrals in these surrounding months. It may be that referring parties themselves are choosing to delay adjudications until January to avoid the practical issues which it would itself experience with an adjudication falling over the 'Christmas shutdown' period. Alternatively, this could indicate that parties are reaching consensus to delay referral of a dispute to adjudication until the new year to suit both parties. The results do not necessarily mean that disputes do not arise at this time of year.

2.0 ADJUDICATORS AND DISCIPLINES

2.1 Number of Adjudicators Registered with ANBs

From the table below, it can be seen that the number of adjudicators registered with ANBs has reduced from **748** in Year 20 to **728** in Year 21. It is of note however that the statistics are collected over two 6-month periods, and the period to October 2018 actually saw a slight increase to **750** adjudicators prior to the drop.

The overall year-on-year decrease is attributable to a number of reductions across ANBs, however it should also be noted that the overall decline is offset by a relatively significant increase of adjudicators registered with UK Adjudicators; from **22** in Year 20, its first year in business, to **45** in Year 21; as well as small increases in TECSA (from **70** to **72**) and CIOB adjudicators (from **23** to **25**).

ADJUDICATOR NOMINATING BODY	Year 20 April 2018	Year 21 April 2019
Construction Industry Council (CIC)	66	54
Royal Institute of British Architects (RIBA)	71	68
Centre for Effective Dispute Resolution (CEDR)	30	30
Technology and Construction Solicitors Association (TECSA)	70	72
Royal Institution of Chartered Surveyors (RICS)	97	90
Chartered Institute of Arbitrators (Scottish Branch) (CI Arb Scot)	14	9
Scottish Building	8	8
Royal Incorporation of Architects in Scotland (RIAS)	12	12
Royal Institution of Chartered Surveyors in Scotland (RICS Scot)	24	23
Institution of Civil Engineers (ICE)	46	35
Chartered Institute of Building (CIOB)	23	25
Institution of Chemical Engineers (ICHEM)	10	10
Chartered Institute of Arbitrators Dispute Appointment Service (CI Arb-DAS)	84	84
Technology and Construction Bar Association (TECBAR)	148	148
London Court of International Arbitration (LCIA)	*	*
UK Adjudicators	22	45
CLG / ConstructionAdjudicators.com (CLG)	23	15
Law Society of Scotland	**	**
TOTALS	748	728

* 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, now 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**. Part 2 to this report indicates that, on average, adjudicators are registered with **4** ANBs, which would suggest that there are around **180** practicing adjudicators in the UK.

2.2 Discipline of Adjudicators

As always, the ANBs were asked to state the principal area of expertise of their adjudicators. In recent years this has become a particularly notable point in these reports. As can be seen from **Table 3** below, and in line with previous results, the top three disciplines remain lawyers, quantity surveyors and civil engineers, in that order, accounting for **86%** of all adjudicators registered with ANBs in Year 21.

Of particular note is that lawyers account for around **43%** of all adjudicators registered with ANBs in Year 21; a very slight proportional increase on the findings in Year 20. In recent years there has been a steady increase in lawyer adjudicators, coupled with a decrease in quantity surveyor adjudicators – this was a notable shift from previous years, where quantity surveying had consistently been the most common discipline of adjudicators in the UK construction industry. This recent trend had been attributed to, and said to be characteristic of, an increasingly legalistic approach to adjudication, perhaps indicating a shift away from the technical focus which was the intent envisaged at the outset. These 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 a passing phase.

DISCIPLINE	Year 19 April 2017	Year 20 April 2018	Year 21 April 2019
Lawyers	41.9%	41.7%	43.4%
Quantity Surveyors	32.3%	34.2%	34.8%
Civil Engineers	9.4%	10.2%	7.9%
Architects	7.9%	7.6%	6.9%
Construction Consultants	2.6%	1.7%	1.8%
CIOB/Builders	1.1%	1.4%	1.4%
Other	4.7%	3.2%	3.8%

TABLE 3: Primary discipline of Adjudicators

Figure 3 below presents the information from **Table 3** above in respect of Year 20 in graphical form for ease of reference.

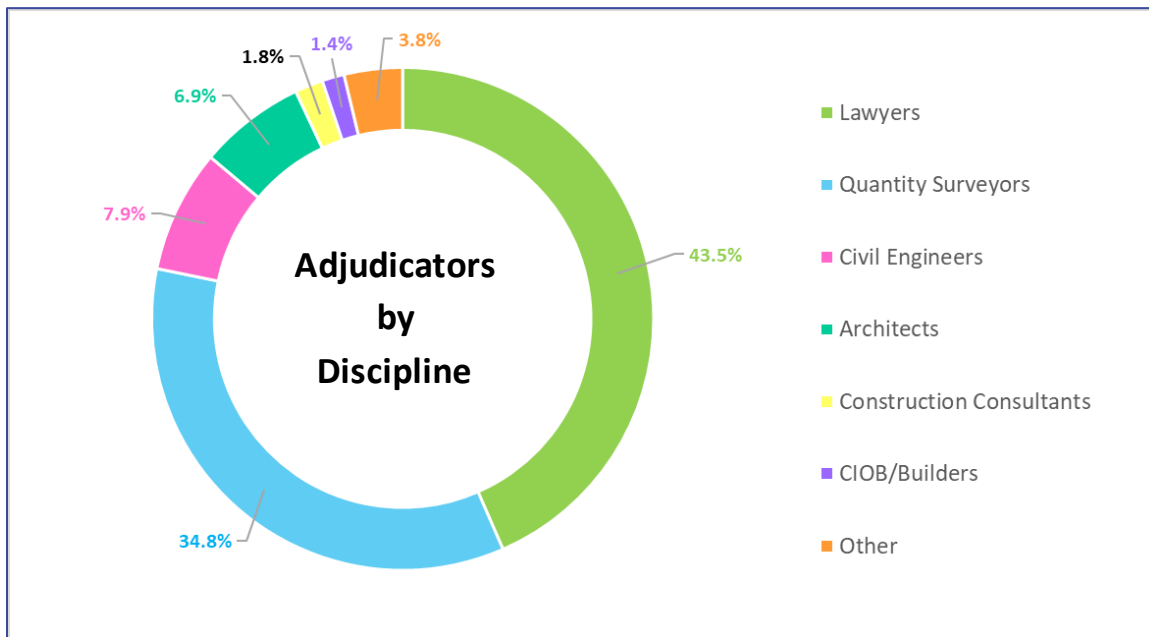


Figure 3: DISCIPLINE OF ADJUDICATORS

3.0 NOMINATING FEES & CPD

3.1 ANB Nominating Fees

In respect of Year 21, the range of nominating fees charged by ANBs is between **£0** and **£1,250** (excluding VAT), as set out in **Figure 4** below, with an average nominating fee calculated at **£340** (excluding VAT). There are only a handful of ANBs charging significantly different amounts, as illustrated in **Figure 4** below.

In terms of shifts in nominating fees from Year 20, set out in Report 17; CLG has increased its nomination fee from **£300** (excluding VAT) to **£400** (excluding VAT); and the LCIA has now advised of its nomination fee of **£1,250** (excluding VAT), which has had a significant impact on the average.

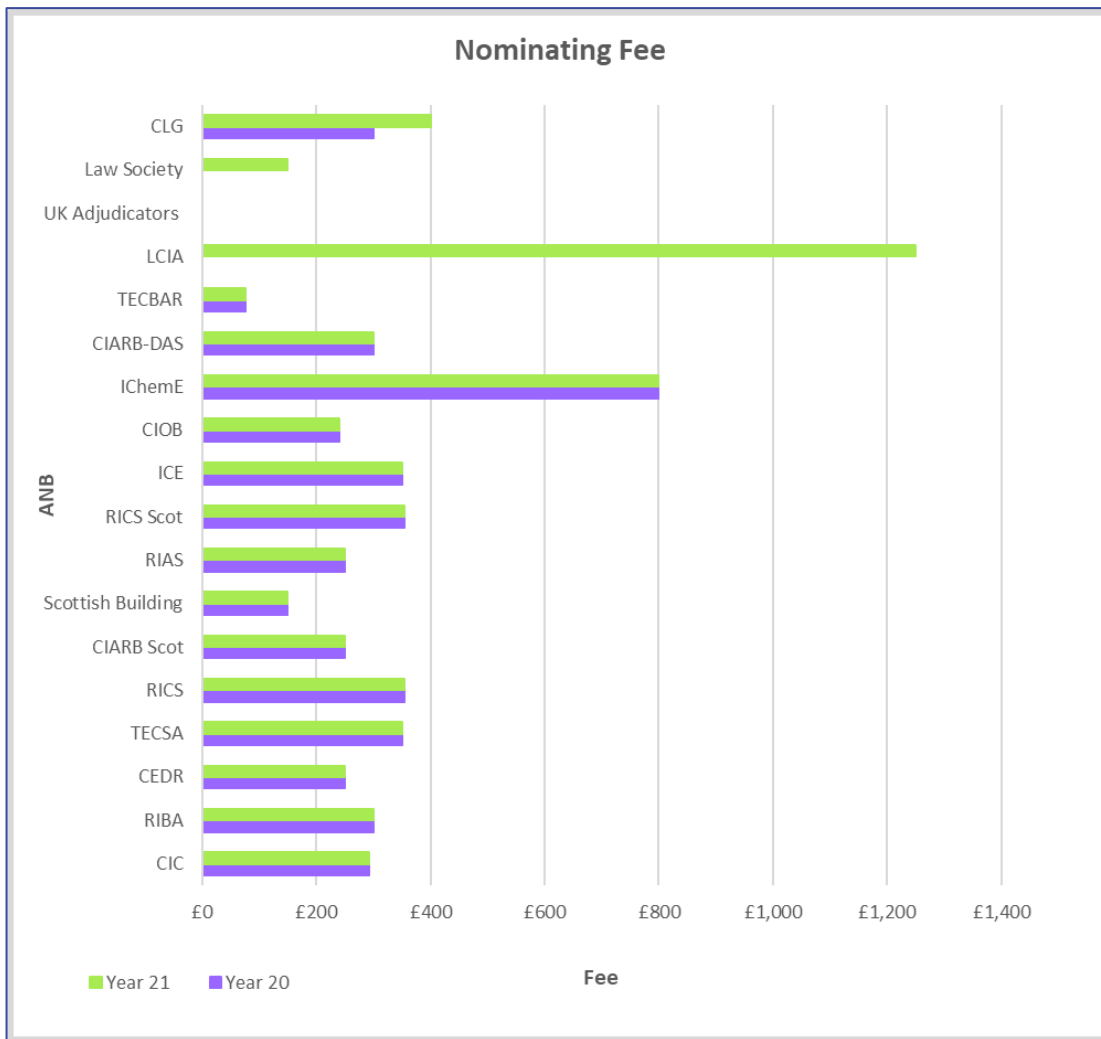


Figure 4: NOMINATING FEES

3.2 CPD Requirements

In Year 21, **13** of the ANBs required their registered adjudicators to keep a formal record of CPD hours carried out. This figure is aligned with the results reported on in respect of Year 20.

Of those ANBs which require a formal record to be kept, there was a significant range of CPD requirements, between no specified criteria and **40 hours**.

Where a minimum number of CPD hours were stated, the minimum requirement was **20 hours**, which mirrors the results in Year 20.

The average number of hours required by ANBs stipulating a formal record of CPD (i.e. also reflecting those that have no stated minimum number of hours) was **20 hours**.

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	0
RIAS	Yes	35
RICS Scot	Yes	20
ICE	Yes	0
CIOB	Yes	30
IChemE	Yes	0
CIARB-DAS	Yes	20
TECBAR	No	-
LCIA	No	-
UK Adjudicators	No	-
Law Society	Yes	20
CLG	No	-

TABLE 4: CPD Requirements

Examples of CPD 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 as party representative and adjudicator).

By way of further explanation of the CPD requirements of certain ANBs, and the importance placed upon same by the ANBs, the research team highlight the following statements from publications by a cross-section of the ANBs, *by way of example only*:

TECSA, in their 'Adjudication Service' document,⁶ record:

"It is important that those included on the Adjudicator List maintain their knowledge and experience and keep up to date with developments in the law affecting adjudication. Also, it is essential for the wellbeing of the adjudication process, as well as for the reputation of TeCSA, that it maintains the highest quality of adjudication expertise.

In order to achieve these objectives TeCSA requires a minimum level of CPD to be undertaken by adjudicators wishing to remain on the Adjudicator List...

The level of CPD required for adjudicators is intended to reflect the knowledge and experience needed to successfully undertake the role of adjudicator. Adjudication can contribute considerably to the resolution of disputes without resort to arbitration or litigation. It can only do this successfully if those who serve as adjudicators are capable of delivering consistently high quality decisions."

The ICE document 'Requirements and Application Procedure also provides:

"Continuing Professional Development (CPD) is defined as the systematic maintenance, improvement and broadening of knowledge and skills, and the development of personal qualities necessary for the execution of professional and technical duties throughout the working life.

As part of the assessment the applicant will be assessed on their commitment to CPD both to date and on plans for the year ahead. CPD can best be demonstrated by regular use of planning and recording documents provided by the ICE or ICES as applicable.

Applicants admitted to the Register will be required on an annual basis to

- demonstrate that they have satisfied the minimum Continuing Professional Development (CPD) requirements,*
- have conducted sufficient referrals to justify remaining on the Register, and*
- continue to be a Fellow of the appropriate Institution.*

⁶ Please see: https://www.tecsa.org.uk/media/1317/tecsa-adjudication-service_08-01-18.pdf

In the event that CPD records are not submitted or are inadequate the DRP may consider removal from the Register.”

The CI Arb Scottish Branch ‘Application Form for Appointment to the Panel of Arbitrators or to the Panel of Adjudicators of the Chartered Institute of Arbitrators (Scottish Branch)’⁷ requires the prospective adjudicator or arbitrator to undertake as follows:

“I will continue to comply with the CPD Policy throughout the period of time during which I remain on one of the SB Panels. I will also attend at least one half day training course arranged by CI Arb, the Scottish Arbitration Centre, or RICS specifically provided for Arbitrators/Adjudicators (as appropriate) in each year during the period of time during which I remain on one of the SB Panels.1. I will also continue to update myself on the relevant law to ensure that I continue to have a sound knowledge of the law and practice of arbitration/adjudication (as appropriate).”

The RICS Criteria for Continuous Training and Reassessment of Adjudicators on the RICS President’s Panel⁸ provides:

“The required total of 40 hours is 20 hours over and above the 20 hours required under the RICS Rules of Conduct for RICS Members. Your CPD records must include the competency workshops. A part (not all) of this additional 20 hours can be in the form of practical experience gained as a party representative or acting as a dispute resolver. This means that for the purposes of panel assessment, the additional 20 hours can include dispute resolution-related professional development or acting as a party representative in third party proceedings or acting as an adjudicator or other dispute resolver. This recognises that some surveyors are not full-time dispute resolvers and the importance attached to surveyors acting as dispute resolvers keeping their practical dispute resolution skills fresh. Such experience does not, however, fall within the RICS definition of CPD for surveyors and so cannot be recorded on the RICS website.”

The CIC (on their website)⁹ provide the following details of CPD required, indicating a stipulated split between practical adjudication experience and other appropriate CPD:

⁷ Please see: <https://www.ciarb.org/media/3773/ciarb-panel-application-form.pdf>

⁸ Please see: <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/drs/panel-of-experts/construction-adjudicators-initial-criteria-for-reassessment.pdf>

⁹ Please see: <http://cic.org.uk/services/becoming-an-adjudicator.php>

“Practical adjudication experience (minimum of 8 hours)

- *acting as adjudicator, or pupil to an adjudicator, in a construction dispute (up to a maximum of 8 hours per adjudication)*
- *advising and/or representing a party in an adjudication in a construction dispute (up to a maximum of 4 hours per adjudication).*

Other appropriate CPD

(minimum of 16 hours which includes a minimum of 6 hours from categories 1 or 2)

- *attending lectures or courses on adjudication or relevant aspects of construction law*
- *attending adjudication workshops or surgeries*
- *reading articles, papers, books, law reports etc. on adjudication or relevant aspects of construction law*
- *lecturing on adjudication (including preparation)*
- *writing articles, papers, books etc. on adjudication*
- *serving on committees concerned with adjudication”*

3.3 Complaints to ANBs

As previously, the research for Year 21 indicates that substantially more complaints about adjudicators are made to ANBs than are upheld. In Year 21, there were **32** complaints made to ANBs, and only **1** of these was upheld. This compares to Year 20 in which there were **14** complaints, none of which were upheld. Accordingly, whilst the number of complaints made has more than doubled, the number being upheld has remained comparatively very low. This 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.¹⁰ However, a further explanation may be that complainants do not necessarily understand that only the approach of

¹⁰ 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>

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 provide grounds for a complaint to the relevant ANB.

In terms of the nature of the complaints made and how they are handled, one ANB advised that the complaint made was in respect of the terms of appointment and the fees charged. This complaint was not upheld by the ANB, but guidance was provided to the adjudicator in relation to amending fees in the future.

Another ANB advised that a disgruntled 'losing' party complained about the procedure adopted by the adjudicator. After an investigation was carried out by the ANB in question, the complaint was not upheld, and instead the complainant was reminded that adjudicators have complete discretion as to the procedure that is to be adopted in reaching their decisions.

Other ANBs advised that the complaints procedure is of a confidential nature and so no further details could be provided.

4.0 CONCLUSION

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

Firstly, in terms of referral growth, a 13% increase in referrals to ANBs (from 1685 in Year 20 to 1905 in Year 21) has been identified. The results indicate a continuing trend of year-on-year growth, although the degree of annual increase lacks consistency. Having produced a trendline of all data in respect of Years 1 through to 21, it can be seen that there is a relatively straight line at 1,500 referrals per year although there appears to be an ongoing trend upward in most recent years.

Of the total referrals identified, 92 referrals (or 5% of the total) were made to Scottish ANBs. This is in line with previous findings, indicating that shifts in the wider UK market are reflected proportionally in the Scottish market.

It is also of note that the findings in Part 2 of this report (focusing on data returns from practicing adjudicators) indicate that 90% of appointments are made through an ANB. Accordingly, the research team is confident that the data presented in this report provides a representative picture of adjudication in the UK.

In terms of fluctuations in the number of referrals throughout Year 21, there were 'peaks' in November 2018 (240) and January 2019 (167), with a sharp 'dip' being experienced in December 2018 to the lowest number of referrals (108). There are several months in the year which do not differ significantly from the average number of monthly referrals (155). This indicates that there is a steady number of referrals throughout the year, with the exception of a handful of notable outliers, particularly those months surrounding the festive period, which may be due to practical considerations due to the unavailability of personnel over the 'Christmas shutdown'.

Turning to the number of registered adjudicators, this has decreased quite notably overall in Year 21, with a number of shifts both up and down within the various ANBs, reducing the number of registered adjudicators from 748 to 728. Of note, the number of adjudicators registered with UK Adjudicators increased from 22 in Year 20 to 45 in Year 21. There were some other small increases, in TECSA and CIOB adjudicators; however a combination of decreases in CIC, RICS, CI Arb Scotland, RICS Scotland, ICE, RIBA, and CLG adjudicators contributed collectively to the overall reduction.

With regard to the discipline of adjudicators, the trend for more lawyer adjudicators continues, with a further slight increase to 43%. The number of quantity surveyor adjudicators has remained stable at 35% in Year 21. These most recent results provide credence to the view that the trend for a more legalistic approach to adjudication is continuing, rather than simply being a passing phase.

In terms of nominating fees, the range identified is £0 to £1,250, with an average fee of £340, marking an increase from £300 in Year 20. The key upward influence on this average is the inclusion of LCIA's fee of £1,250; whereas previously LCIA had not reported its nomination fee. Almost every other ANB has maintained the nomination fee charged in Year 20, with the exception of CLG which reported an increase from £300 to £400.

In respect of the CPD requirements of the various ANBs, 13 of the 18 of ANBs in Year 21 required their adjudicators to produce a formal record of relevant CPD. This figure is aligned with the results for Year 20.

Finally, the research has indicated a marked increase in the number of complaints made to ANBs in Year 21 (32) as compared to Year 20 (14). However, of particular note, only one of 32 complaints was upheld. This indicates that there was no proportionate increase in the number of complaints being upheld as compared to complaints made, which could mean a greater number of spurious complaints are being made by parties. This was previously identified as an intimidatory tactic in earlier research, and so the development of this matter will be a point of interest to practicing adjudicators. 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; and so it may be that further education is required.

In all, and in line with the conclusion of Report 17, the future of adjudication as a method of dispute resolution remains promising with the number of referrals having increased by a substantial 13%. Clearly, adjudication remains a popular choice for resolving construction disputes. The research team hopes that adjudication maintains this status, and it is the intention of this body of research to contribute to the continued success of adjudication.

As set out in the foreword, this Part 1 provides analysis based on returns from ANBs only. These results should be read in conjunction with Part 2 to this report which sets out findings from data gathered from practicing adjudicators.

PART 2 – ADJUDICATORS

1.0 ADJUDICATOR PROFILE

1.1 Principal Discipline of Adjudicators and Proportion of Workload

The vast majority (almost **two-thirds**) of adjudicators who took part in the research were quantity surveyors, followed by engineers at around **one-fifth**.

The remainder of the sample identified themselves as principally chartered building surveyors (**5%**), solicitors (**5%**), dispute resolvers (**3%**), adjudicators (**3%**), and construction dispute practitioners (**3%**).

There are 2 key points of interest in this regard:

1. The relatively small proportion of lawyers / solicitors captured in this study; and
2. The proportion of individuals in the study who principally identify themselves as ‘adjudicator’, ‘dispute resolver’, and ‘construction dispute practitioner’.

Turning firstly to the level of lawyers / solicitors captured by the study. The number is in stark contrast to recent findings in the research based on returns from ANBs which indicate a rise of legally qualified adjudicators. In Part 1 of this report it was found that around **43%** of adjudicators registered with the ANBs captured in the research were principally identified as ‘lawyer’. This also meant that lawyers were the most common profession representing adjudicators, with quantity surveyors following closely behind at around **35%**.

The most likely explanation for this disparity is that Part 1 of this report was based on returns from ANBs. This therefore covers a much greater cross-section of the adjudication sector than the smaller number of adjudicators who provided a completed questionnaire.

It may also be that the adjudicators responding to this body of research self-identify in a different manner to that collated by the ANBs.

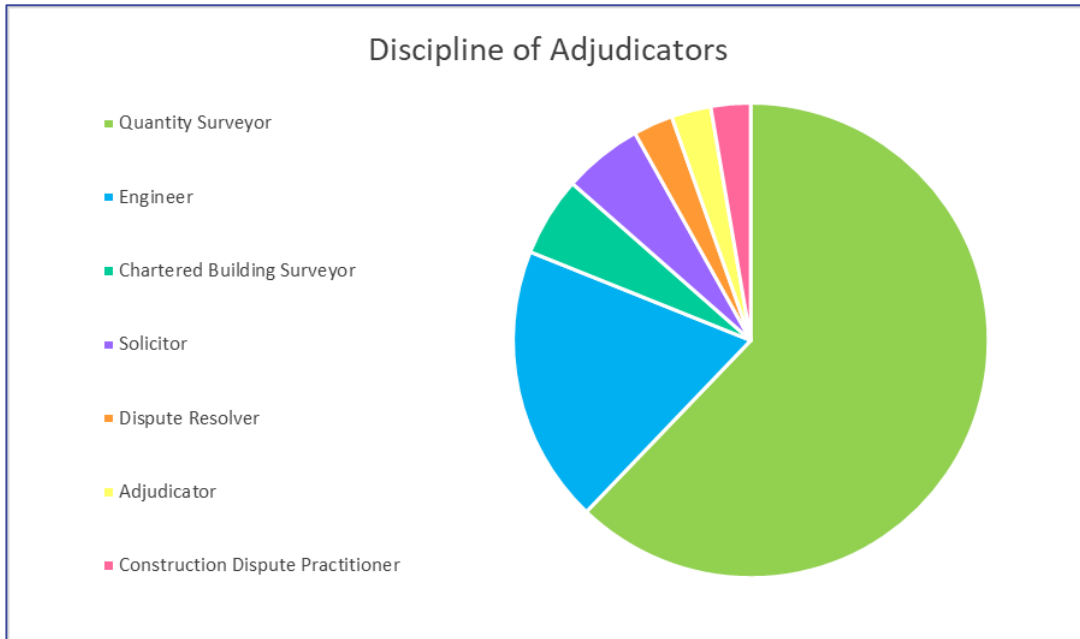


Figure 1 – Adjudicators’ Principle Discipline

This leads on to the second point of note – almost **10%** of the sample identified themselves principally as ‘adjudicator’, ‘dispute resolver’, or ‘construction dispute practitioner’, as opposed to identifying with their professional background. For example, an adjudicator or construction dispute practitioner will normally be qualified and experienced in a particular field before specialising in dispute consulting. They may be a quantity surveyor, engineer, architect, or lawyer by profession; however, have elected instead to identify themselves in this study by their specialism as ‘adjudicator’, ‘dispute resolver’ or ‘construction dispute practitioner’. This identification may speak to the status now afforded to the title of ‘adjudicator’ as the construction industry increasingly sees adjudication as a valid and useful means of resolving disputes.

Again with reference to Part 1 of this report, the responses are much more concentrated in the ‘traditional’ professional identifiers – lawyers, quantity surveyors, engineers, architects, chartered builders, etc. Less than **2%** of adjudicators in Part 1 of this report principally identified themselves as construction consultants, and only **0.4%** were identified principally as ‘dispute resolution consultant’.

As above, Part 1 of this report was based on returns from ANBs rather than adjudicators themselves, which may explain the discrepancy – it is possible that ANBs ask for the adjudicator’s professional background in order to identify them, for the benefit of referring

parties, as opposed to how they would describe their current role and area of specialism or focus. By way of example, a referring party may request an adjudicator with a quantity surveying, architectural, or engineering background and ANBs will require to identify this information readily in selecting an appropriate adjudicator.

Participants were also asked to advise what proportion of their overall workload related to appointments as adjudicator. On average, the participants reported that around **60-70%** of their workload comprises adjudication appointments.

The responses ranged from **5%** to **100%**, with almost **three-quarters** of respondents advising that **at least half** of their workload relates to appointments as adjudicator. This indicates that adjudicators generally dedicate a large proportion of their working time to adjudication. This also indicates a buoyant adjudication market.

1.2 Registration with ANBs

On average, participants to this study were registered with **four** ANBs. The adjudicators represented in the sample were registered with the following ANBs:-

- Centre for Effective Dispute Resolution (CEDR)
- Chartered Institute of Arbitrators (CIArb)
- Chartered Institute of Arbitrators Scottish Branch (CIArb Scotland)
- Chartered Institute of Building (CIOB)
- Construction Industry Council (CIC)
- Contractors' Legal Group (CLG) / ConstructionAdjudicators.com
- International Federation of Consulting Engineers (FIDIC)
- Institution of Chemical Engineers (IChemE)
- Institute of Civil Engineers (ICE)
- Irish Government Panel of Adjudicators
- Royal Incorporation of Architects in Scotland (RIAS)
- Royal Institute of British Architects (RIBA)
- Royal Institution of Chartered Surveyors (RICS)
- Royal Institution of Chartered Surveyors in Scotland (RICS Scotland)
- Scottish Building Federation (SBF)
- Technology and Construction Bar Association (TECBAR)

- Technology and Construction Solicitors' Association (TeCSA)
- UK Adjudicators

Those ANBs listed above generally correspond to those covered in Part 1 to this report, with the following exceptions:

- The London Court of International Arbitration (LCIA) and the Law Society of Scotland are both captured in the data at Part 1 to this report;
- The International Federation of Consulting Engineers (FIDIC) and the Irish Government Panel of Adjudicators are not captured in the data at Part 1 to this report.

1.3 Appointments & Decisions issued

The research shows that, on average, adjudicators are appointed to **12 adjudications** per year, or one per month. The results of the study also indicate that **79%** of all adjudications proceed to a decision, meaning that, on average, adjudicators are publishing **10 decisions** in a year.

In terms of the source of adjudicator appointments, the research indicates that almost **90%** of appointments are through an ANB; **7%** are by agreement of the parties; and **3%** are due to being named in the contract.

Of those adjudications which had not proceeded to a decision, the research indicates that **15%** are settled by the Parties during the process, **5%** are abandoned, and **1%** were still ongoing at the time the research was carried out.

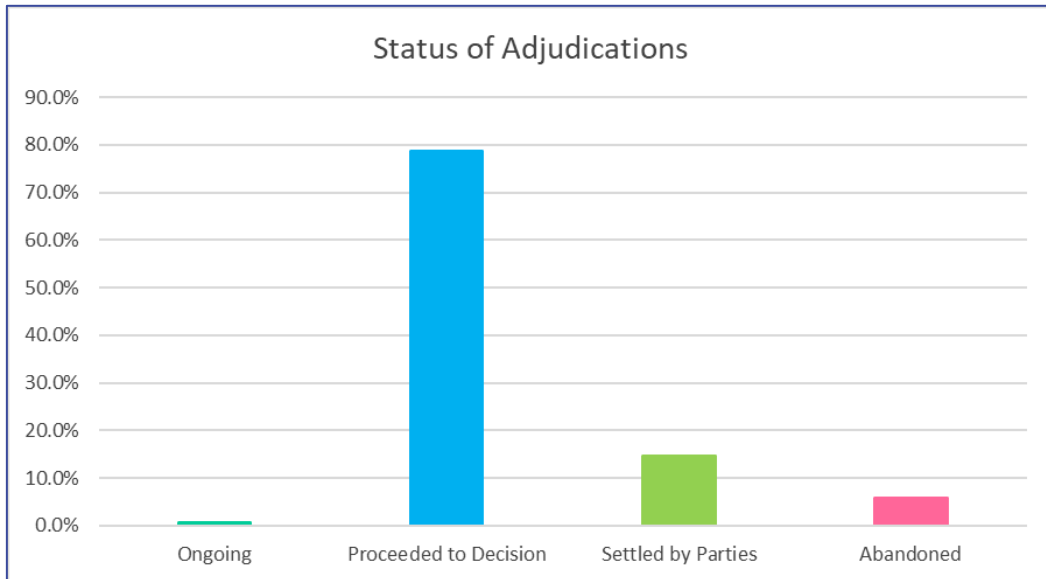


Figure 2 – Status of Adjudications

Decisions were abandoned for a range of reasons, including successful jurisdiction challenges; failures of the referring party to issue the referral on time or correctly; the withdrawal of the dispute by the referring party following receipt of the response; insolvency of a party; and resignation of the adjudicator.

2.0 PROCEDURE

2.1 Timetabling

Participants were also questioned regarding methods of controlling the adjudication process.

One such way would be to set an initial timetable at the outset of proceedings. When asked if, as a matter of practice, this was a tool that was employed by them, **39%** of the adjudicators polled answered ‘yes’.

Participants also commented on the success or otherwise of this method. Generally, the adjudicators in the sample who employ this practice considered it to be effective, being of benefit to the procedure, noting (by way of example):

“It is generally very effective. It prompts the parties to comment on it if they feel they need more time.”

“I ask the Parties at the outset to agree the timetable. The timetable is generally realistic and is achieved. Also there are no arguments about refusing to allow additional time.”

“The initial timescale is set up to and including the Reply. Usually, the Parties comply but an extension for service is granted if required.”

Another identified method of controlling the procedure was to direct the parties themselves to agree a timetable at the outset. With particular regard to those adjudicators who did so, the research indicates that this allows parties to maintain some sense of control over the proceedings. Ultimately it is the parties’ dispute, and so if they feel they have a direct role to play in the process of its resolution (some ‘buy-in’ to the process), they may be more likely to comply with deadlines and generally approach the process from a more positive perspective.

Other benefits of the adjudicator or the parties themselves setting an initial timetable at the outset of the adjudication, as referenced in the comments from adjudicators, is the ability for parties to plan their required levels of commitment at an early stage and for representatives to accordingly organise key individuals within the parties’ own organisations to be available for preparation of the submissions, answering questions from the adjudicator, or attendance at any meeting which may be proposed and ‘pencilled in’ for a possible future date if deemed necessary following the submissions.

2.2 Evidence Gathering

Having considered the ‘when’ (timetabling considerations), adjudicators were then asked about the ‘how’: what procedure did they adopt in their decision making?

The vast majority of decisions (**83%**) were reached on a ‘documents only’ basis, i.e. with no meeting or conference call held, and no site visit conducted. In **12%** of adjudications in which a decision was issued the adjudicator held a meeting, with a conference call or video call much less common, occurring in **less than 1%** of instances, and a site visit in only **3%**.

In the remaining adjudications, some form of ‘other’ procedure was adopted, for example asking the parties directed questions. It was noted that this could save the cost involved in a meeting,

which aligns with the adjudicator’s obligation to avoid unnecessary expense in the proceedings.¹¹

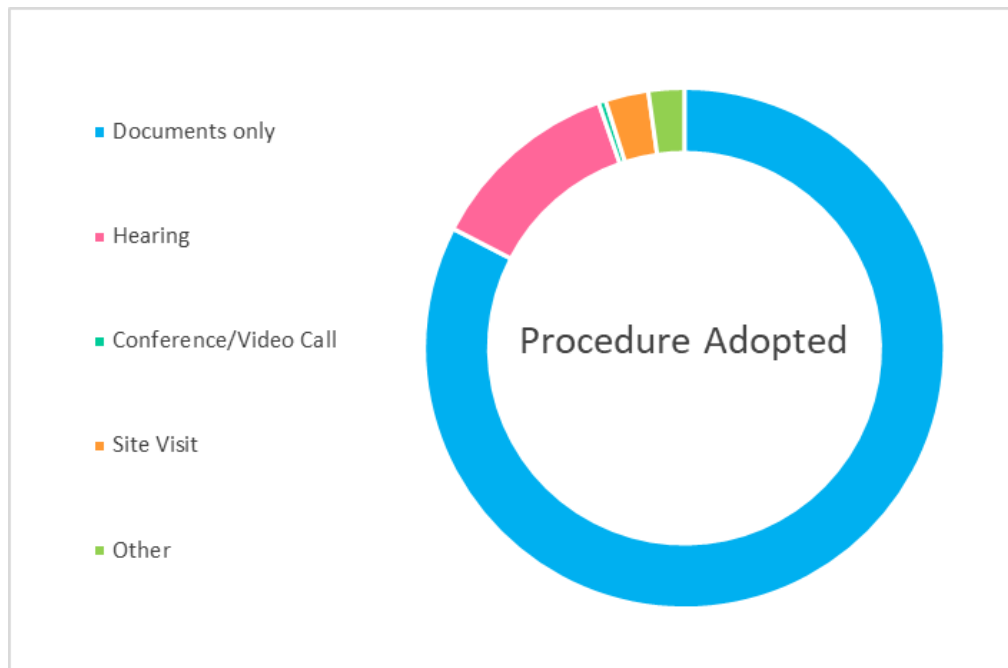


Figure 3 – Procedure Adopted

In terms of submissions directed from the parties, on average adjudicators receive **2 submissions** from each party. However, it should be noted that the actual calculated average, prior to rounding, for the number of submissions from the referring party is slightly higher than that from the respondent – being **2.5** and **2.0**, respectively. Accordingly, the referring party makes, marginally, more submissions than the respondent in the average adjudication.

2.3 Expert or Legal Advice

Participants were also asked to advise in how many of the adjudications they had been appointed they sought expert or legal advice. The results indicate that this was only happened in respect of **0.5%** of decisions issued.

¹¹ See paragraph 12(b) of the Scheme for Construction Contracts (Scotland) Regulations 1998

In contrast, when asked in how many adjudications to which they had been appointed had the parties included technical expert opinion, the responses indicated this was the case in around **15%** of adjudications.

When asked if this expert evidence assisted in the decision making process, adjudicators overwhelmingly answered in the positive, advising this evidence had been helpful in over **93%** of adjudications in which it had been provided – albeit in **5%** of these instances it was noted as being of assistance to only a limited extent.

2.4 Jurisdiction Challenges

The topic of jurisdiction challenges remains one of interest to adjudicators, party representatives, and parties alike. Anecdotally, there is often discussion of spurious challenges being raised as part of an increasingly tactical approach to adjudication. However, this is not to presume that there are not valid and justified grounds of jurisdiction challenge, and where this is the case it is of course in the party's best interests to raise the challenge at the earliest opportunity or risk waiving its rights to do so at a later date.

As the topic of jurisdiction remains a key talking point, adjudicators were asked to provide some insight into their experience of such.

Around **70%** of the adjudicators had had their appointment challenged during an adjudication to which they were appointed within the relevant period.

In terms of the grounds of challenge, some examples provided are as follows:

- Purely procedural matters, such as:
 - Adjudicator appointed by the wrong ANB;
 - Application made to the ANB before the respondent received the notice of adjudication;
 - Adjudication referred under the wrong rules; and
 - Referral issued late;
- Inconsistencies in the notice and referral;

- Lack of a crystallised dispute;
- Referral of the same dispute as has previously been decided at adjudication; and
- No statutory or contractual right to refer disputes to adjudication

In terms of the success or otherwise of these challenges, the research data captured in this study surprisingly indicates that in only **around half** of instances the adjudicator proceeded to make a decision following a challenge. The research team considers this contrary to anecdotal discussions, but it does reflect this sample for the snapshot period.

2.5 Complexity of Disputes

Whilst highly subjective, it is considered to be of interest to invite adjudicators to assign a level of perceived complexity to each of the disputes to which they had been appointed. The scale of complexity was identified as 1 to 5, with 1 being not at all complex, and 5 being extremely complex. The responses were fairly **evenly distributed** across the range, as shown in **Figure 4** below, although adjudicators appear to consider most adjudications are in the ‘middle ground’ of complexity, with this accounting for **36%** of adjudications.

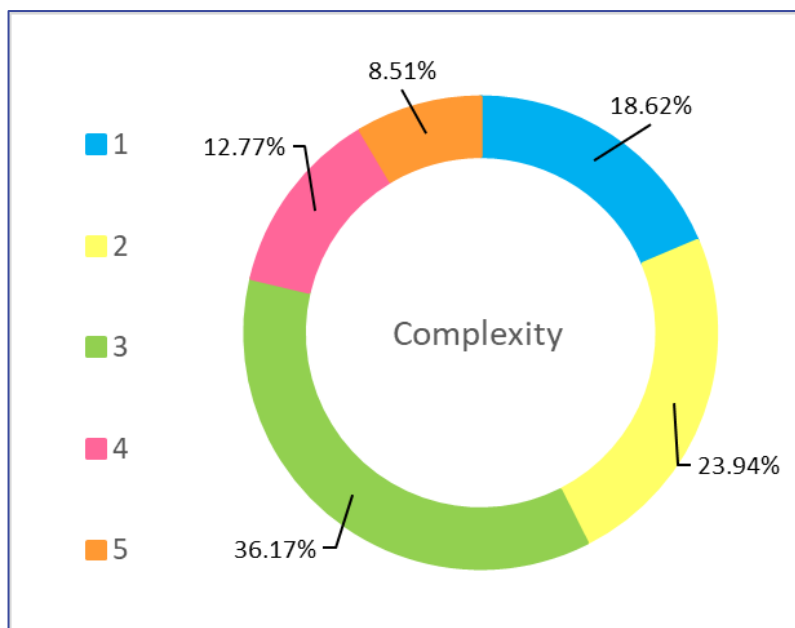


Figure 4 – Complexity of Disputes

2.6 Timeframe for Decisions

The adjudicators contributing to the research were asked to advise of how long it took to issue Decisions. The returns indicate that **53%** of decisions were issued within the 28 day statutory period; and **33%** were issued within 42 days, being the period of extension within the referring party's 'gift'.

The remaining **14%** of decisions that were issued in excess of 42 days from the referral were issued over a range of periods, from **7 to 20 weeks** in total (i.e. an extension of 3 to 16 weeks). On average, those decisions that were issued beyond the 42 day period were issued within **10.5 weeks** of the referral.

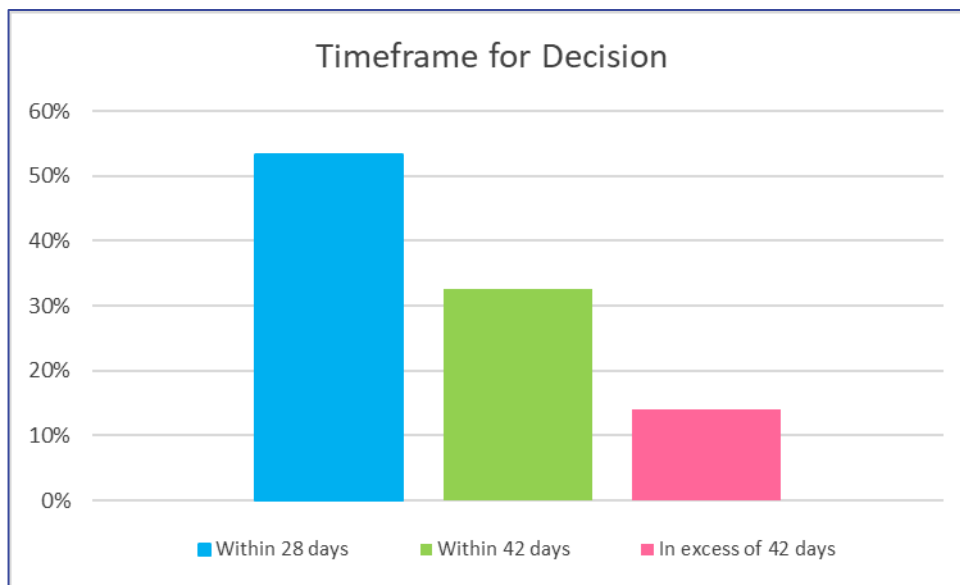


Figure 5 – Timeframe for Decision

On questioning adjudicators to advise of any refusals to a request to extend the decision date was rejected by the parties, only one adjudicator in the sample had experienced this, and only in respect of one adjudication. The adjudicator in question recorded that the extension was rejected by the referring party and opined that they believed this was due to financial constraints.

Given the infrequency of such rejections, and the fact that **47%** of decisions were issued beyond the statutory 4 week period, the research indicates that generally parties are content to agree

to extensions to the decision date to accommodate ongoing procedure, or indeed for other reasons, such as availability of the adjudicator or the parties themselves.

3.0 PARTIES & DISPUTES

3.1 Parties' to Disputes

Adjudicators were also asked to categorise the parties to disputes, for example employer, main contractor, sub-contractor, supplier, homeowner. The responses are shown below in **Figure 6**, with the party stated first (i.e. before the 'v') being the referring party, and the second party being the respondent.

The most common parties to disputes referred to adjudication are sub-contractor (referring party) v main contractor (respondent) at **48%**, following by main contractor (referring party) v employer (respondent) at **34%**.

Indeed, the study indicates that in the vast majority of cases (almost **90%**) it is payee parties referring disputes against payer parties.

This is reflective of trends identified in previous research, indicating a consistency in those parties who are opting to refer their disputes to adjudication.

The prevalence of sub-contractor v main contractor disputes being referred is also indicative of statutory adjudication fulfilling one of its key aims – to put an end to 'subbie bashing' by introducing a quicker and more cost effective means of dispute resolution, thus opening the door to sub-contractors looking to pursue claims against main contractors.

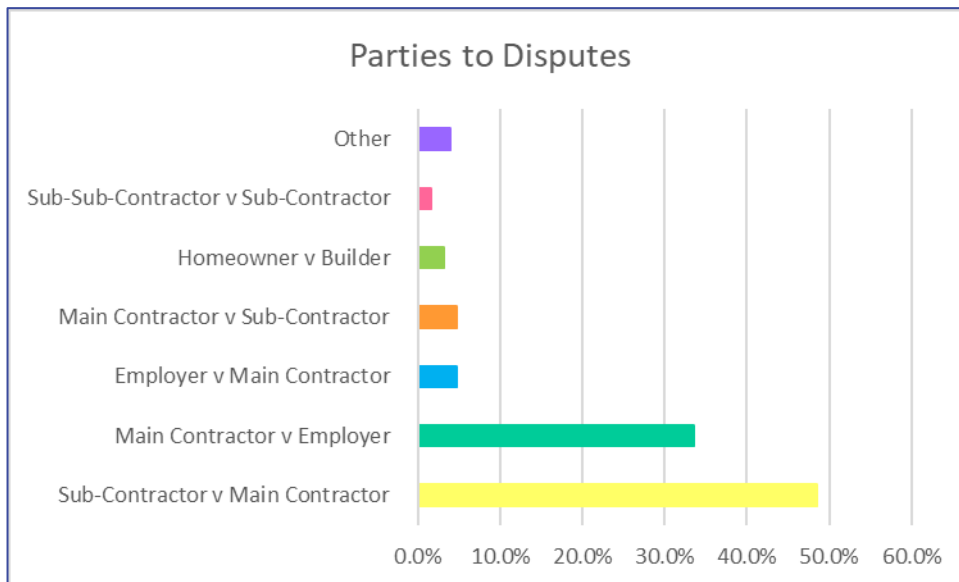


Figure 6 – Parties to Disputes

The ‘others’ captured in the sample (4%) include, by example, consultant v client (1.6%) and builder v homeowner (0.8%).

3.2 Characterisation of Disputes

Another key area of interest remains the nature of the disputes being referred to adjudication, with there being an understanding across the industry that the majority of disputes being referred to adjudication are in some way related to money. This would align with the ethos of statutory adjudication at its introduction, being to improve cash flow throughout the industry.

The study indicates that this does indeed remain the case, with 39% of disputes categorised as relating to payment / pay less notices; a further 18% of disputes relating to interim value of work; 16% relating to the final account; and an additional 2% relating to damages / liquidated damages – in total accounting for three-quarters of the disputes in the sample.

Figure 7 below provides full details of the nature of disputes included in the study, including the remaining 25% of disputes.

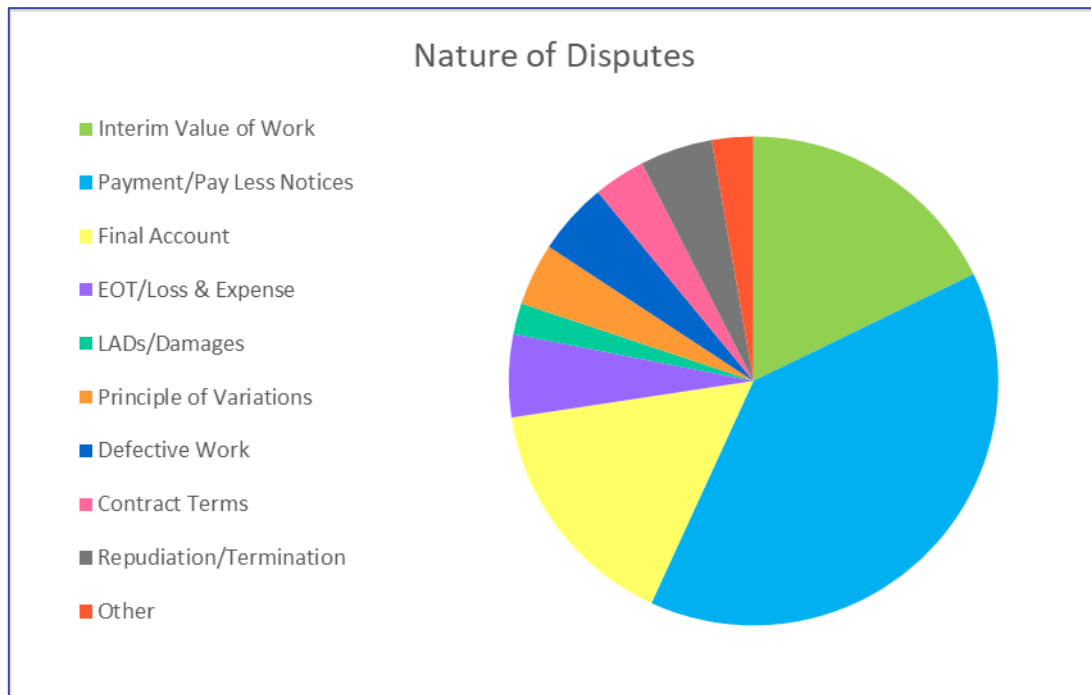


Figure 7 – Nature of Disputes

In recent years, the discussion regarding payment disputes has been dominated by so called ‘smash and grab’ adjudications; or, in simple terms, disputes which relate entirely to the failure of the payer to issue valid payment or pay less notices entitling the payee automatically to payment of the notified sum claimed. Anecdotally within the industry, the prevalence of these referrals is reducing. This was largely reflective of the perception of an increasingly high barrier to success in a ‘smash and grab’ adjudication following publication of key case law, in particular [Grove Developments Ltd v S&T \(UK\) Ltd \[2018\] EWHC 123 TCC](#).¹²

To test this theory, the adjudicators were asked to advise how many adjudications they had been appointed to in calendar year 1 January 2017 to 31 December 2017 and calendar year 1 January 2018 to 31 December 2018 which they would characterise as ‘smash and grab’ disputes. Rather than support the anecdotal evidence of a decline, the results indicate a slight increase in number from **51** referrals in 2017 to **55** in 2018. It should, however, be noted that this increase in number may not be reflected in an increase in proportion as compared to total number of referrals. For example, this represents an **8%** increase in ‘smash and grab’ adjudications, however there could have been a greater increase in the total number of referrals. As this report

¹² See further discussion of this case in our Report 17 at: <http://cdr.uk.com/wp-content/uploads/2019/02/Report-No.-17-1.pdf>

provides a 'snapshot' of the data for one period only, it cannot be directly compared to the total number of referrals in Year 20/21.

In terms of the other areas of dispute being referred to adjudication, **5%** relate to extension of time and loss and expense; **5%** relate to repudiation / termination; **5%** relate to defective work; **4%** relate to variations in principle; and **3%** relate to interpretation of contract terms. A further **3%** relate to disputes including those relating to PI insurance claims; suspension of works; and partial possession.

Finally, in respect of the nature of disputes referred, adjudicators were asked to advise how many adjudications to which they had been appointed were related to serial adjudications. The results indicated that **30%** of adjudications captured by the sample were related to serial adjudications, indicating that there is a trend for disputes being referred on a compartmentalised basis, as opposed to 'kitchen sink' disputes.

For example, a referring party may elect to refer an extension of time dispute separately from the related loss and expense dispute, and the dispute on the applicability of liquidated damages or other damages arising out of the delay. This may allow a referring party to manage risks of weaknesses in its case; however, it is likely also to lead to greater costs incurred by the parties in further adjudications.

4.0 VALUE, FEES & COSTS

4.1 Value in Dispute

In terms of the value of disputes referred, the study indicates that the most common bracket is £10,000 to £50,000 (**25%**), followed closely by the £50,001 to £100,000 range (**19%**). A further **3%** of disputes referred had a value of less than £10,000, and **10%** were disputes of principle (i.e. £nil value referrals). Accordingly, almost **60%** of all referrals were seeking payment of a sum of £100,000 or less.

Further, only **5%** of disputes in the sample had a value in excess of £1million, and **12%** had a value of between £500,001 and £1million. It is clear, therefore, that adjudication remains most popular with lower value disputes. These findings are consistent with earlier findings in respect

of the value of disputes being referred to adjudication.¹³ **Figure 8** below provides full details of the values in dispute.

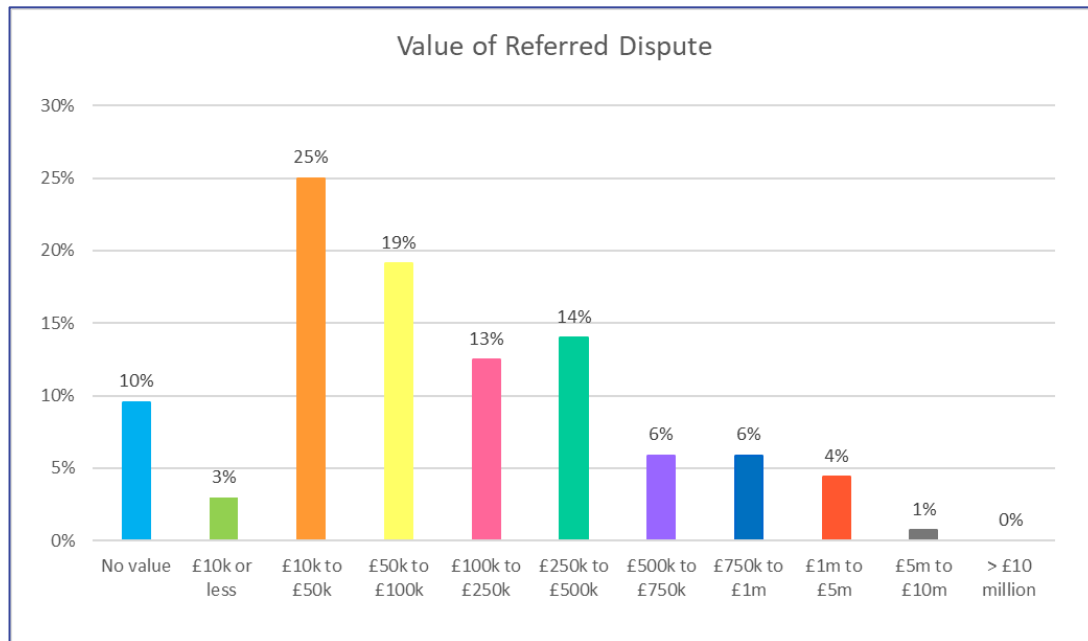


Figure 8 – Value of Disputes

4.2 Value of Awards

Turning to the values awarded, the adjudicators were asked to advise of the principle sum awarded, to the nearest £1,000. From this, the values have been grouped together into the same brackets as the value referred to provide a graphical representation of these results in direct comparison to those presented above at **Figure 8** – these are set out in **Figure 9** below.

The average value of awards was around **£330,000**, with the highest value awarded being circa **£9.2million**. Clearly, given the high proportion of lower value disputes referred, the average (mean) calculation is skewed by some very large awards. As a better indicator of the typical value of the set, the median is calculated at **£40,000** – this stripping out the effects of the high value ‘outlier’ awards.

¹³ See our report on Adjudicator’s fees at:

<https://www.adjudication.org/sites/default/files/Report%20on%20Adjudication%20Fees.pdf>

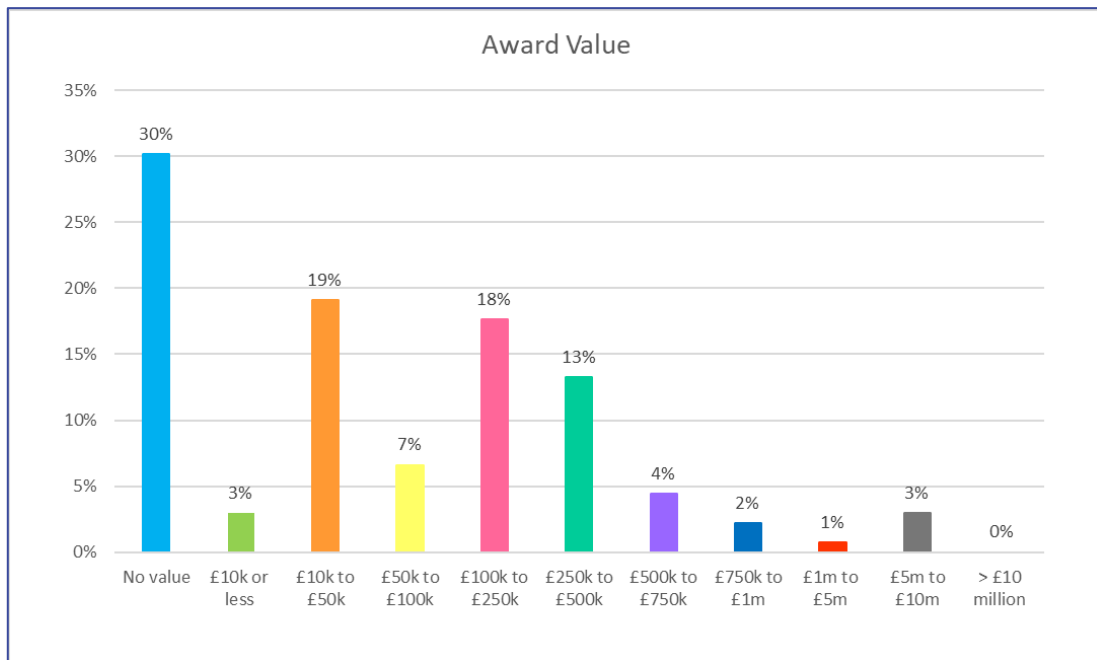


Figure 9 – Award Values

The most common value awarded was **£nil**, accounting for **30%** of all award values. This indicates that **20%** of all referrals seeking an award of payment were wholly unsuccessful (based on **10%** of referrals being in respect of a ‘no value’ dispute, as above).

In total, **90%** of all awards were of a value of £500,000 or less. This is generally reflective of the fact that **83%** of all referrals sought a sum of £500,000 or less. Accordingly, the remaining **7%** sought more than £500,000 but were awarded less than this, and so were at least partially unsuccessful.

4.3 Adjudicators’ Fees – Amount & Payment

A particular area of interest for adjudicators, party representatives, and parties alike is the fees being charged by adjudicators. Given that this is likely to account for a significant proportion of the costs of the adjudication, it is clear to see why there is such a desire for insight into this particular area.

Adjudicators were asked to advise of the hourly fee charged for adjudication work – the results are set out graphically in **Figure 10** below.

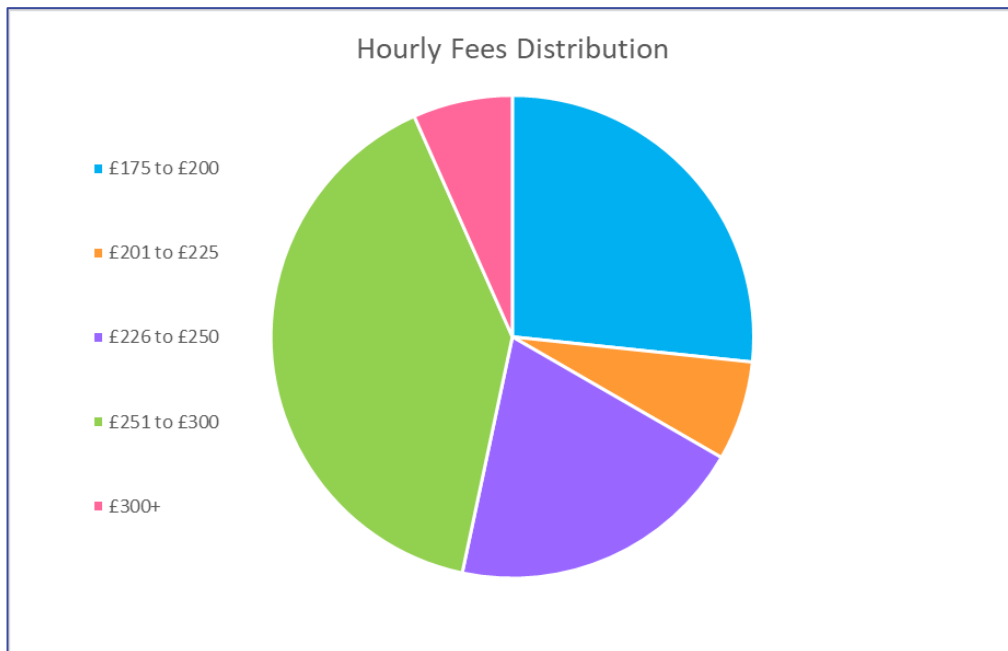


Figure 10 – Adjudicators’ Hourly Fees

In particular, the following is noted:

- The range of hourly fees charged by adjudicators in the sample is £175 to £305
- The average hourly fee charged by adjudicators in the sample is circa £250
- The most common hourly fees charged are £200 and £300

In terms of the total fee charged in each adjudication, the adjudicators were asked to advise of their total fee to the nearest £1,000, and from this the responses were collated into a range of categories (see **Figure 11** below).

Of particular note, the maximum fee charged was approximately £52,000; the lowest total fee charged was circa £1,000; and the average total fee was almost £9,000. This average total fee aligns with the report on adjudicators’ fees published in November 2017 which found an average total fee of £8,878 (and a median of £7,000),¹⁴ indicating there has been little movement, which is somewhat unexpected, based purely on economic factors such as inflation.

¹⁴ See our report on Adjudicator’s fees at: <https://www.adjudication.org/sites/default/files/Report%20on%20Adjudication%20Fees.pdf>

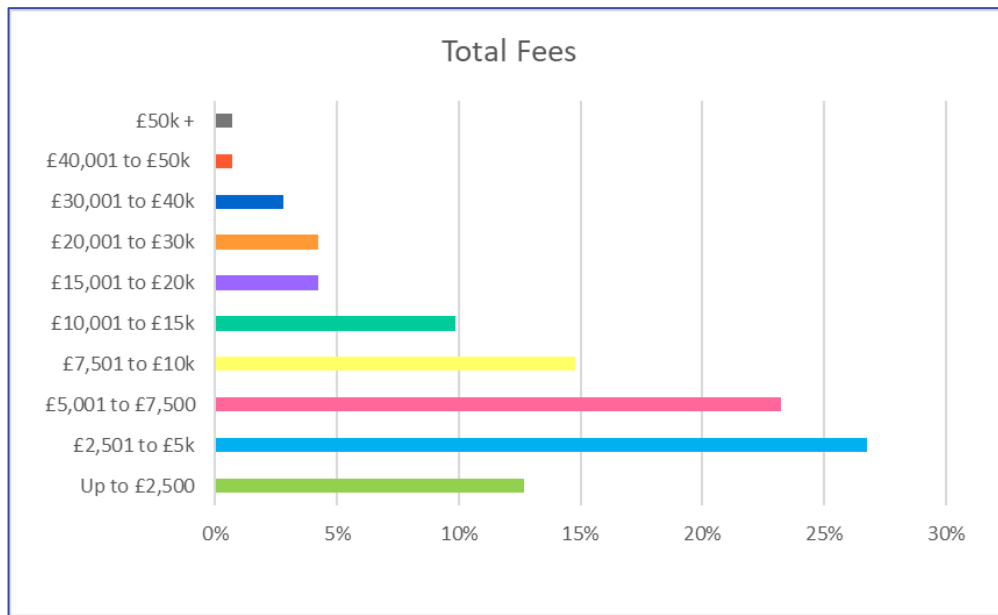


Figure 11 – Total Adjudicators’ Fees

In terms of how adjudicators’ fees are split, the study indicates that in **54%** of cases the respondent is held liable for the fee; in **29%** of adjudications the referring party is held liable for the fee; and in **17%** of cases the fee is split between the parties in some form. On the normal basis of ‘expenses follow success’, this would indicate that the referring party is wholly successful at adjudication in just over **half** of cases, and at least in part successful in a further **one-sixth**.

In terms of the split of fees, this ranged across the sample, for example **50/50; 60/40; 67/33; 70/30; 75/25; 80/20**.

Finally, adjudicators were asked to provide some insight into issues recovering their fees from parties. Our 2015 paper on intimidation in adjudication¹⁵ identified non-payment of fees as a form of intimidation of the adjudicator, and so this is a particularly important issue when it comes to the success and longevity of adjudication as an effective means of resolving disputes.

¹⁵ Available at: <http://cdr.uk.com/wp-content/uploads/2016/09/TheExtentandImpactofIntimidationinUKStatutoryAdjudication.pdf>

From the sample, **47%** of adjudicators had experienced problems with payment, in around **one-quarter** of the adjudications captured by the study.¹⁶ These issues included delayed payments and refusal to pay at all.

In respect of those adjudications in which the adjudicators experienced difficulty, the adjudicators were then asked how this was eventually resolved. In **82%** of instances the fee was eventually paid, albeit late; in **13%** of cases the fee was recovered from the other side; and in **5%** of cases the adjudicator had to sue for payment of their fee. In **no cases** did the adjudicator reach a compromise on the fee. This is encouraging to see, indicating that adjudicators are not deterred by intimidatory tactics regarding non-payment of their fees.

¹⁶ The relevant questionnaire captured 184 adjudications. The other questionnaire (in respect of procedure) captured 274 adjudications. There is significant cross-over between these two figures.

5.0 CONCLUSIONS

Firstly, with regard to the principal disciplines of those adjudicators within the sample in this Part 2, it is noted that almost two-thirds are quantity surveyors; one-fifth are engineers; 5% are chartered building surveyors; 5% are solicitors; 3% identified themselves as dispute resolvers; 3% as adjudicators' and 3% as construction dispute practitioners.

As noted above, these results are interesting for 2 key reasons: (i) the relatively small proportion of lawyer / solicitor adjudicators captured in this study; and (ii) the number of individuals in the study who principally identify themselves as 'adjudicator', 'dispute resolver', and 'construction dispute practitioner'.

In previous reports, based on ANB returns, there has been a marked increase in lawyer adjudicators, having now overtaken quantity surveyors as the most common discipline for adjudicators. It is likely that this difference is due to the fact that this research is based on a limited number of adjudicators' returns, which are dominated by surveyors, whereas the other reports are based on returns from ANBs representing a much greater (and more representative) cross-section of the industry, rather than any other particular point of note.

With regard to those adjudicators who primarily self-identify as 'adjudicator', 'dispute resolver', and 'construction dispute practitioner', again this is of note as it is out of line with results based on returns from ANBs. This may speak to the status now afforded to the title of 'adjudicator' as the construction industry increasingly sees adjudication as a valid and useful means of resolving disputes.

In respect of registration with ANBs, the research found that on average adjudicators are registered with 4 ANBs, with those adjudicators who contributed to the research being registered across a total of 18 ANBs.

Turning to adjudicators' workload, respondents to this study advised that, on average, around 60 to 70% of their workload comprises appointments as adjudicator, with almost three-quarters of the adjudicators in the sample advising that 50% or more of their workload relates to adjudication appointments. This could indicate a buoyant adjudication market, capable of sustaining a large proportion of adjudicator's individual workloads. Indeed, the results of t

study indicate that, on average, an adjudicator is appointed to one referral each month of the year, and will issue 10 decisions per year, with 79% of adjudications proceeding to a decision.

In respect of those adjudications which had not proceeded to a decision, the research indicates that 15% of all disputes referred are settled by the parties during the process, 5% are abandoned, and 1% were still ongoing at the time the research was carried out. Decisions were abandoned for a range of reasons, including successful jurisdiction challenges; failures of the referring party to issue the referral on time or correctly; the withdrawal of the dispute by the referring party; insolvency of a party; and resignation of the adjudicator.

With regard to control of the process and particularly timetabling, the research has found that 39% of adjudicators set an initial timetable at the outset of proceedings. Generally adjudicators considered this an effective and successful practice to employ, being of benefit to the procedure and perhaps allowing parties some 'buy-in' to the proceedings.

In terms of the procedure adopted, the vast majority of decisions were reached on a 'documents only' basis, with 83% of decisions being reached on this basis. In 12% of cases, the adjudicator opted to hold a meeting, and in a further 3% of adjudications a site visit was held. Conference and video calling were not popular approaches, however, with less than 1% of decisions being reached following a procedure which utilised either approach. Other procedure adopted (accounting for the balance in the statistics) included raising direct questions with the parties following receipt of submissions, which was considered to be of benefit by saving the cost involved in a meeting.

Of those written submissions directed from the parties, on average adjudicators received 2 from each party – albeit the actual calculated average of submissions from referring parties is closer to 2.5 as compared to an exact 2.0 from the respondent, indicating that referring parties make marginally more submissions than the respondent.

Turning now to the reliance on expert or legal advice – very rarely did adjudicators themselves seek such advice, with this being the case for only 0.5% of adjudications in the sample. It was much more common for parties to rely upon expert technical opinion, such opinion being produced in around 15% of adjudications. Generally, adjudicators considered this opinion to be of benefit to the process, with 93% of adjudicators being of the view that this was of assistance in their decision making process.

With regard to jurisdiction challenges, almost 70% of the adjudicators in the sample had had their appointment challenged during an adjudication within the period. In around half of the instances where there was a challenge, the adjudicator proceeded to reach a decision. This indicates that, at best some are groundless, and at worst, at least to some degree, some may be spurious.

In respect of the complexity of disputes, adjudicators were asked to assign a grading to the disputes to which they had been appointed as adjudicator – with 1 being not at all complex and 5 being extremely complex. Whilst highly subjective this allowed some insight into adjudicators' perceptions of the disputes to which they were appointed. Perhaps unsurprisingly the greatest concentration of responses was in the 'middle of the road' at 3.

In terms of the timeframe for decisions, 53% were issued within the statutory 4 week (28 day) period, and 33% were issued within 42 days (i.e. within the 14 day extension period that is within the referring party's 'gift'). Of the remaining 14% of decisions issued in excess of 42 days from the referral, these were issued over a range of periods, from 7 to 20 weeks from the referral, with the average of these being 10.5 weeks from the referral.

Turning now to the parties in dispute, in line with earlier research, the most common parties to disputes referred to adjudication are sub-contractor v main contractor at 48%, and main contractor v employer at 34%. Overall almost 90% of adjudications are referred by payee parties against payer parties.

With regard to the nature of disputes, three-quarters of those encompassed in the sample relate in some way to money – for example, payment / pay less notice disputes (39%); disputes regarding the interim valuation of work (18%); final account disputes (16%); and disputes regarding damages or liquidated damages (2%). In a similar vein, the research indicates an increase in the number of 'smash and grab' adjudications in 2018 as compared to 2017.

Further, in respect of the nature of disputes, the adjudicators in the study advised that 30% of adjudications to which they had been appointed in the relevant period were related to serial disputes. This indicates that a relatively significant proportion of disputes are being referred on a compartmentalised basis, as opposed to parties risking the referral of a 'kitchen sink' dispute.

Turning to the value of disputes, the research indicates that the most common value sought in adjudications is between £10,000 and £50,000, accounting for one-quarter of adjudications. This is followed closely by disputes in the value region of £50,001 to £100,000 (19%). In all, almost 60% of all referrals were seeking payment of £100,000 or less. At the other end of the scale, only 5% of disputes had a value in excess of £1million, and only 12% had a value of between £500,001 and £1million.

The average value awarded by adjudicators was circa £330,000, and the highest value awarded was around £9.2million. However a better indicator of the typical value of the set, the median is calculated at £40,000 – this stripping out the effects of the high value ‘outlier’ awards.

The most common value awarded was £nil, accounting for 30% of all award values, meaning that one-fifth of referrals seeking an award of payment were wholly unsuccessful (based on 10% of referrals being in respect of a ‘nil’ value). Overall, 90% of all awards were of a value of £500,000 or less. This is generally reflective of the fact that 83% of adjudications sought a sum of £500,000 or less, although does indicate that some proportion of referrals seeking a value in excess of £500,000 were at least partially unsuccessful.

Finally, turning to adjudicator’s fees, the hourly fees charged ranged from £175 to £305, with the average fee charged by adjudicators being circa £250 per hour. The most common hourly fees charged were £200 and £300. In terms of the total fee charged, this averaged at almost £9,000, with the highest fee charged being around £52,000.

With regard to the split of adjudicators’ fees, in the majority of instances (54%) the respondent was held liable for the fee. In 29% of adjudications the referring party was held liable, and in the remaining 17% of adjudications the fee was split in some way between the parties. On the normal basis of ‘expenses follow success’, this would indicate that the referring party is wholly successful at adjudication in just over half of adjudications.

Of particular note, 47% of adjudicators had experienced problems with recovering payment of their fees. In 82% of these cases, the fee was eventually paid, albeit late. In a small number of cases the adjudicator was required to sue for payment of their fee. What is encouraging to see is that no adjudicators reached a compromise on their fee, indicating that adjudicators are not deterred by intimidatory tactics regarding non-payment of their fees.

In all, and aligned and combined with our conclusions at Part 1 above, the research team considers this study suggests a positive future for adjudication, indicating a buoyant market able to support a substantial workload for a significant number of adjudicators, and a high esteem afforded to the role of adjudicator in the industry.

As always, the authors are indebted to the Adjudicator Nominating Bodies and 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 A L Jackson

December 2019

APPENDIX 1 – LIST OF TABLES AND FIGURES

PART 1

TABLES

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

TABLE 2: Number of Adjudicators

TABLE 3: Primary discipline of Adjudicators

TABLE 4: CPD Requirements

FIGURES

FIGURE 1: Growth Rate in Adjudication Referrals in the UK

FIGURE 2: Fluctuations in Referrals over the Year

FIGURE 3: Discipline of Adjudicators

FIGURE 4: Nominating Fees

PART 2

FIGURES

FIGURE 1 – Adjudicators’ Principle Discipline

FIGURE 2 – Status of Adjudications

FIGURE 3 – Procedure Adopted

FIGURE 4 – Complexity of Disputes

FIGURE 5 – Timeframe for Decision

FIGURE 6 – Parties to Disputes

FIGURE 7 – Nature of Disputes

FIGURE 8 – Value of Disputes

FIGURE 9 – Award Values

FIGURE 10 – Adjudicators’ Hourly Fees

FIGURE 11 – Total Adjudicators’ Fees