



Adjudication
Society



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Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) for the year 1 May 2017 to 30 April 2018.

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FOREWORD

The period focused on within this report in respect of the information received from Adjudicator Nominating Bodies (ANBs) is as follows: -

- Year 20 (May 2017 – April 2018).

This report sets out findings based on returns from ANBs only, with full statistical returns from 17 ANBs being captured in the sample. It should be noted that the Law Society of Scotland; having previously contributed to our research; remains a recognised ANB, however has not provided a full statistical return in respect of Year 20. Accordingly, whilst reference is made to the Law Society of Scotland at various points of this report, this ANB is not included within the 17 ANBs noted as having been captured in the sample of full statistical returns.

In terms of how this sample size compares to the earlier research carried out, in February 2000 (Report 2) there were 21 ANBs operating in the UK – 20 of which provided statistical returns for that period (the Technology and Construction Bar Association being the only ANB not providing a statistical return in that year; and now contributing to the research consistently).

In recent years, a number of ANBs previously captured in the dataset are no longer included in the research, for various reasons, as follows:-

- The Institute of Electrical Engineers provided a return in 2000 only;
- The Institute of Mechanical Engineers have not provided returns since 2002;
- The Construction Confederation ceased trading in 2009;
- 3A's Polycon AIMS Ltd, ceased trading in 2009/2010;
- The Confederation of Construction Specialists, no longer an ANB from 2015/2016; and
- The Association of Independent Construction Adjudicators, ceased trading in 2017.

However, in recent years more ANBs have emerged on the market, which are now included in the dataset, namely the Contractors Legal Group (CLG)/ConstructionAdjudicators.com; the London Court of International Arbitration; and UK Adjudicators.

As the data set out in this report is based on results from ANBs only, the findings are purely statistical in nature, and 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.

All earlier reports (1 to 16), as well as our report on adjudicator's fees, and some other papers published by members of the research team which may be of interest 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>

1.0 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 remains a continuation of 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.

This report in particular marks an important point in the research, considering how adjudication has evolved and developed over its 20 year lifespan. Through this work, we aim to provide valuable insight into trends in adjudication and its use over these two decades; make meaningful comment; and discuss projections and predictions for its future.

Through further research currently being carried out, the research team seeks to supplement this insight from ANBs with qualitative, anecdotal insight from adjudicators themselves. The results of this further research will be published as soon as possible, but as always this is determined by the rate of returns to issued questionnaires. If you are interested in taking part in the research, please contact info@cdr.uk.com

2.0 NUMBER OF REFERRALS

2.1 Adjudicator Nominating Body Appointments

Table 1 below shows that there has been a 10% increase in adjudication referrals via Adjudicator Nominating Bodies (ANBs) from 1535 in Year 19 (May 2016 – April 2017) to 1685 in Year 20 (May 2017 to April 2018).

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%

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

These latest results indicate a significant increase in Year 20, and a continuing trend of increase for the fourth year in a row, although the degree of the annual increase lacks consistency.

In terms of longer term trends, as can be seen from Figure 1 below, the trend line produced by the results for Years 1 to 20 is a straight line at 1,500 referrals per year. This linear trend line indicates a continuous pattern of rising and falling referral numbers, predicted to steadily continue in the future, around the trend line level. This is in line with our conclusion in Report No. 16 that the number of referrals appeared to be steadying at around 1,500 per year.

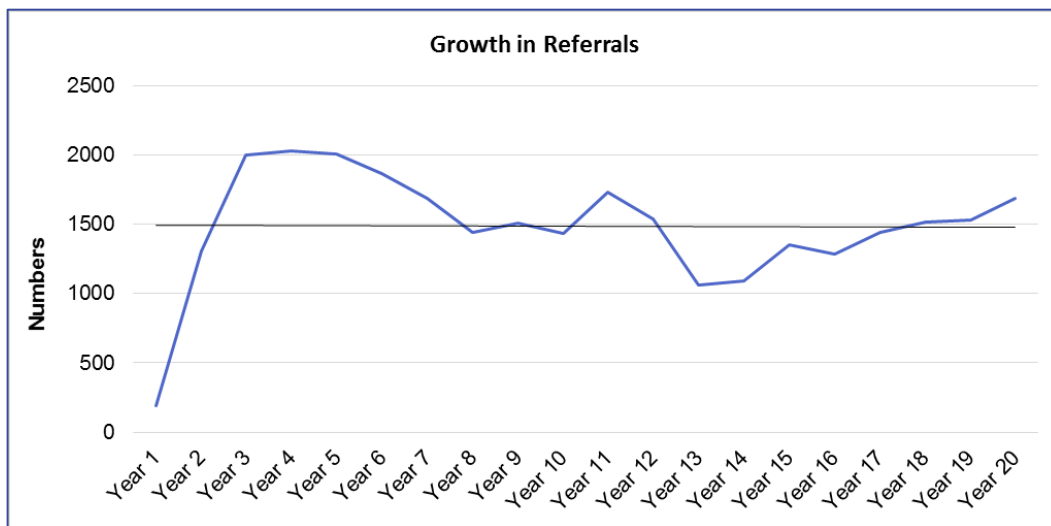


Figure 1: GROWTH RATE IN ADJUDICATION REFERRALS IN THE UK

In Report 16¹, we discussed the judgment of Mr Justice Coulson in *Grove Developments Ltd v S&T (UK) Ltd*² and its potential to impact on the number of referrals, noting our interest to see 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 has now been upheld by a majority at the appeal court in November 2018.

As both judgments were published in 2018 it is not possible to determine any potential relationship to the number of referrals covered in this body of research as this report only covers the period to 30 April 2018. The research team are currently seeking responses to questionnaires issued to practicing adjudicators on this point. The results of this study will be published in due course.

Reports 15 and 16 also discussed the potential for ‘Brexit’ related uncertainty in the construction industry to impact upon the level of construction adjudication referrals. This uncertainty remains, 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 shifts.

It is also worthy of note that new ANBs are emerging in the market. For example, UK Adjudicators set up a panel of adjudicators in late 2017 / early 2018. UK Adjudicators have made a number of appointments, which may be due to their own contacts, or could be due to parties opting to use UK Adjudicators instead of other ANBs as there is no charge for appointing

¹ Available at: <http://cdr.uk.com/index.php/training-research/>

² [2018] EWHC 123 (TCC)

an adjudicator (more on appointment fees below). In addition, the LCIA returned statistics to the research team for the first time in respect of Year 20.

In previous reports, the research team had identified the number of referrals made to ANBs in Scotland, whilst this has not been set out in more recent reports, it is felt that this information is likely to be of interest, especially to practitioners in Scotland. In Year 20, 89 referrals were made to Scottish ANBs, equivalent to 5% of all referrals to ANBs across the UK.

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. The most recent research in this respect indicates that between 90% and 96% of nominations are made via ANB appointment.³ Accordingly, around 4% to 10% of appointments are estimated to not be covered by the figures set out in Table 1 and Figure 1, and this will have an influence on the following analysis. Further research is to follow which will inform the statistics in regard to appointments by agreement and through being named in the contract.

2.2 Fluctuations in Referrals

In Report 15, we identified a return to the pattern of referral fluctuations throughout the year experienced in early reporting years; peaks in November and March, with a sharp 'dip' in December. In Report 16, we noted that this no longer appeared to be the case, and there were a number of significant fluctuations throughout Year 19. However, in Year 20, we have noticed a return to the pattern identified in Report 15, and in respect of earlier reporting years.

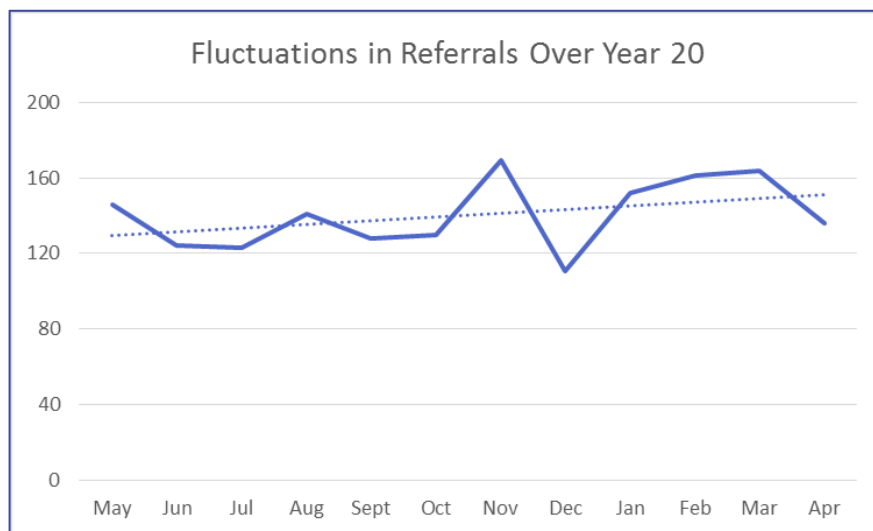


Figure 2: Fluctuations in Referrals over the Year

In Year 20, the greatest number of referrals was made in November (169), followed closely by March (164). The lowest number of referrals was experienced in December (111), adding further support to the growing consensus that 'Christmas ambush' tactics are generally no longer popular or a significant threat; however, given the number of referrals, it would appear that the month is treated as 'business as usual'.

³ See Report 14 available at <http://cdr.uk.com/index.php/training-research/>

In contrast to Year 19, it also appears that parties avoided referring disputes in prime summer holiday months of June and July in Year 20, these months experiencing the lowest numbers of referrals following December (124 and 123, respectively).

3.0 ADJUDICATORS AND DISCIPLINES

3.1 Number of Adjudicators Registered with ANBs

From the table below, it can be seen that the number of adjudicators registered with ANBs has increased by three, from 745 in Year 19, to 748 in Year 20. Whilst this does not represent any significant shift in overall numbers, this increase can be attributed to a number of movements across ANBs, as detailed in Table 2 below, which have generally cancelled each other out, resulting in the very minor overall movement.

Of particular note, there have been some significant decreases, with the number of adjudicators registered with the RICS having declined from 109 to 97 (-12), and those registered with the CIOB falling from 34 to 23 (-11). These are generally offset by the introduction of 'UK Adjudicators' to the data set, with 22 registered adjudicators, with a number of other small shifts across the ANBs resulting in the overall increase.

ADJUDICATOR NOMINATING BODY	Year 19 April 2017	Year 20 April 2018
Construction Industry Council (CIC)	61	66
Royal Institute of British Architects (RIBA)	66	71
Centre for Effective Dispute Resolution (CEDR)	36	30
Technology and Construction Solicitors Association (TECSA)	65	70
Royal Institution of Chartered Surveyors (RICS)	109	97
Chartered Institute of Arbitrators (Scottish Branch) (CI Arb Scot)	15	14
Scottish Building	9	8
Royal Incorporation of Architects in Scotland (RIAS)	12	12
Royal Institution of Chartered Surveyors in Scotland (RICS Scot)	25	24
Institution of Civil Engineers (ICE)	46	46
Chartered Institute of Building (CIOB)	34	23
Institution of Chemical Engineers (IChemE)	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	NR	22
CLG / ConstructionAdjudicators.com (CLG)	25	23
Law Society of Scotland	**	**
TOTALS	745	748

NR - not reporting

* 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. Previous research suggested that adjudicators were listed on an average of 3 panels which may give some indication. The research team is currently enquiring into this matter in separate research, the results of which will be published in due course.

3.2 Discipline of Adjudicators

The ANBs were asked to state the principal area of expertise of their adjudicators. 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, accounting for 86.1% of all adjudicators registered with ANBs in Year 20.

Of particular note is that lawyers account for around 42% of all adjudicators registered with ANBs in Year 20; consistent with our findings in Year 19. 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 18 April 2016	Year 19 April 2017	Year 20 April 2018
Lawyers	35.0%	41.9%	41.7%
Quantity Surveyors	33.2%	32.3%	34.2%
Civil Engineers	11.4%	9.5%	10.2%
Architects	6.3%	7.9%	7.6%
CIOB/Builders	4.1%	1.1%	1.4%
Construction Consultants	0.9%	2.6%	1.7%
Other	9.1%	4.7%	3.2%

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.

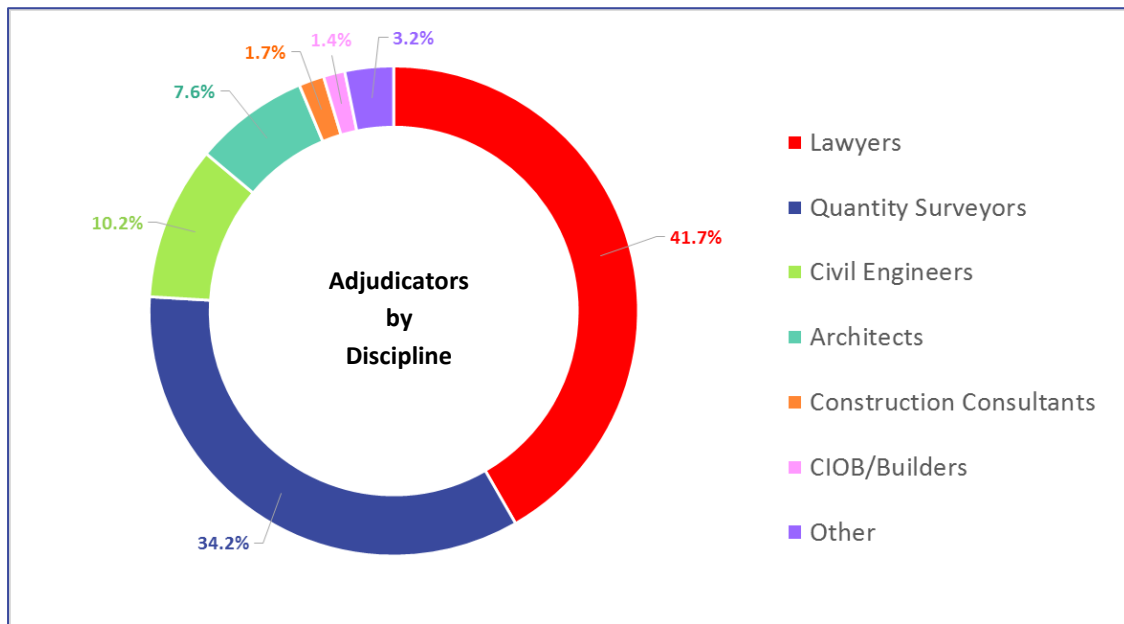


Figure 3: DISCIPLINE OF ADJUDICATORS

4.0 NOMINATING FEES & CPD

4.1 ANB Nominating Fees

In respect of Year 20, the range of nominating fees charged by ANBs is between £0 and £800 (excluding VAT), as set out in Figure 4 below, with a median nominating fee calculated at £300 (excluding VAT). There are only a handful of notable deviations, as illustrated in Figure 4 below. In terms of shifts in nominating fees from Year 19, set out in Report 16, it is of note that the Scottish Branch of the RICS has increased its nomination fee to be in line with the RICS in England and Wales. In addition, it is noted that the CIOB has reduced its nominating fee from £300 excluding VAT to £240 (£300 including VAT).

It should be noted that whilst not referred to in Figure 4, the Law Society of Scotland; having previously contributed to our research; remains a recognised ANB, however has not provided a full statistical return in respect of Year 20.

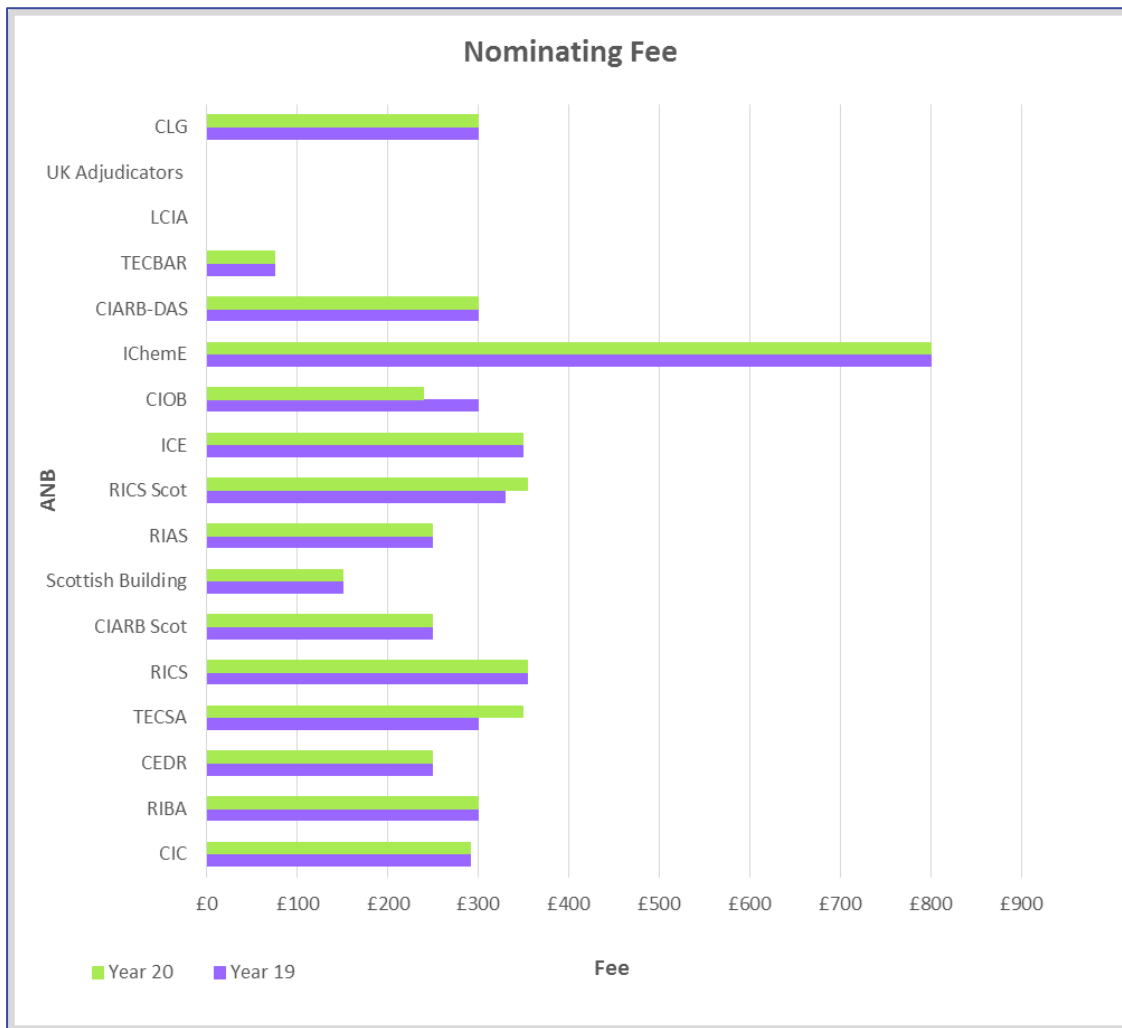


Figure 4: NOMINATING FEES

4.2 CPD Requirements

In Year 20, 71% of ANBs required their registered adjudicators to keep a formal record of CPD hours carried out. This represents a decrease from 80% in Year 19; however, as noted above, the number of ANBs captured by our research has increased by 2, and these ANBs currently do not require a formal record to be kept. Those ANBs which previously required a formal record all still do so.

Of those ANBs which require a formal record to be kept, there was a significant range of CPD requirements, between no specific criteria and 40 hours. Where a minimum number of CPD hours were stated, the minimum requirement was 20 hours, up from the Year 19 minimum of 14 hours. This previous minimum was required from RIBA who have since increased the requirement to 24 hours. RICS Scotland, CIArb-DAS and CIArb Scotland all require a minimum of 20 recorded CPD hours.

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

As above, it should be noted that whilst not referred to in Table 4, the Law Society of Scotland; having previously contributed to our research; remains a recognised ANB, however has not provided a full statistical return in respect of Year 20.

	CPD Log Required?	Minimum Hours
CIC	Yes	24
RIBA	Yes	14
CEDR	No	-
TECSA	Yes	24
RICS	Yes	40
CIARB Scot	Yes	20
Scottish Building	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	-
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).

4.3 Complaints to ANBs

As previously, the research for Year 20 indicates that more complaints are made than are upheld. In Year 20, there were 14 complaints made to ANBs, and none of these were upheld. This compares to Year 19 in which there were 11 complaints, of which 2 were upheld. Accordingly, whilst the number of complaints made has increased, the number being upheld has decreased. This could indicate that spurious complaints are being made by parties without sufficient justification – an intimidatory tactic used by parties which was discussed in previous research into intimidation in the adjudication process.⁴

Due to the confidential nature of the complaints procedure, none of the ANBs could provide even general details of the nature of the complaints made.

⁴ Please see CDR's report into the Extent and Impact of Intimidation in UK Statutory Adjudication, available at: <http://cdr.uk.com/wp-content/uploads/2016/09/TheExtentandImpactofIntimidationinUKStatutoryAdjudication.pdf>

5.0 CONCLUSION

From the research we have 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, we have seen a 10% increase in adjudication referrals to ANBs. Having produced a trend line in respect of the results for Years 1 through 20, inclusive, this shows a linear trend at around 1,500. This indicates that, despite recent increases in the number of referrals, there is a continuous trend for rising and falling referral numbers, predicted to steadily continue fluctuating, in spells, around the trend line level.

As always, it is difficult to determine with certainty any causality or correlation between any potentially contributory factors; such as important case law authority, or economic factors; and the actual number of referrals to adjudication. However, it is of note that 2 new ANBs have contributed to our research in the second half of Year 20.

In terms of fluctuations in the number of referrals throughout Year 20, there were 'peaks' in November 2017 and March 2018, with a sharp 'dip' being experienced in December 2017 to the lowest number of referrals. In summer months, there was also a decline in referrals, with June and July 2017 experiencing the lowest rate of referrals after December. This signifies a return to trends identified in previous years, however given the number of referrals made in holiday periods, it would indicate, to a degree, that it is 'business as usual' for adjudication in busy summer months and in the run up to the Christmas period.

Turning to the number of registered adjudicators, this has increased slightly in Year 20, with a number of bigger changes generally off-setting each other, raising the number of registered adjudicators from 745 to 748. Of note, the number of adjudicators registered with the RICS fell, and those registered with the CIOB decreased. Other smaller shifts of note are an increase in adjudicators registered with the CIC; those registered with RIBA; and those registered with TECSA; as well as a decrease in adjudicators registered with CEDR. The introduction of UK Adjudicators; with a panel of 22 adjudicators; to the dataset has had an impact on the figures. As the LCIA, the second new ANB to be included in the dataset, holds no formal register of adjudicators, this has had no impact on the results in this regard.

With regard to the discipline of adjudicators, the trend for more lawyer adjudicators continues, although this has steadied at around 42% in Years 19 and 20, compared to consistent increases in previous years. The number of quantity surveyor adjudicators has also remained relatively stable with only a slight increase of 1.9% in Year 20, to 34.2%. 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. It will be interesting to note if and how this impacts upon the use of adjudication going forward, particularly in respect of the costs of adjudication.

In terms of nominating fees, the median fee remains £300. However, the introduction of two new ANBs into the dataset, both charging no nomination fee, has resulted in a change to the minimum-maximum range – now £0 to £800. It is also of note that the RICS in Scotland has increased its nomination fee to be in line with the RICS in England and Wales; and the CIOB has

reduced its nominating fee from £300 excluding VAT to £240 excluding VAT (equivalent to £300 including VAT).

In respect of the CPD requirements of the various ANBs, 71% of ANBs in Year 20 required their adjudicators to produce a formal record of relevant CPD. This is a decline from 80% in Year 19, however this is due to the introduction of two new ANBs to the dataset, with all of those ANBs who previously required a record to be kept still doing so.

Finally, the research has indicated a slight increase in the number of complaints made to ANBs in Year 20 (14) as compared to Year 19 (11). Of particular note, none of these complaints were upheld – thus, whilst the number of complaints has increased, the number of those being upheld has actually decreased.

In all, and in line with the conclusion of Report 16, the future of adjudication as a method of dispute resolution remains promising with the number of referrals having increased by a substantial 10%. Adjudication remains a popular choice for resolving construction disputes, and increasingly parties are opting to refer legally complex disputes to adjudication – evidenced by the continuing prevalence of lawyer adjudicators. The research team hopes that adjudication can maintain its status within the construction industry, and continue to be thought of as a viable option for resolving a whole host of disputes. It is the intention of this body of research to contribute to the continued success of adjudication.

As set out in the foreword, this report provides analysis based on returns from ANBs only. These results are purely quantitative in nature, and thus the findings set out in this research are entirely objective, allowing 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 research team has historically supplemented this quantitative data with qualitative research based on anecdotal evidence provided by practicing adjudicators from across the industry. The research team are continuing in this endeavour, and further research is currently being carried out in this regard, seeking responses from adjudicators based on their personal experiences in the field. It is hoped that, together, the quantitative and qualitative results can paint a full picture of adjudication and its use as an effective means of dispute resolution in the UK construction industry.

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

J L Milligan and A L Jackson
January 2019

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