



Adjudication
Society



ADJUDICATORS' FEES

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Paper summarising research analysis of fees associated with adjudication based on returned questionnaires from Adjudicators.

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FOREWORD

This paper sets out findings based on surveys issued to Adjudicators focusing solely on fees in adjudication.

The period focused on within this paper is 1 October 2015 to 30 September 2016. This research presents a 'snapshot' for the period of enquiry, rather than identifying trends in hourly rates, which is a regular feature in our full research Reports.

All other Reports (1 to 15), which review the development and use of adjudication as a whole, are available on the Adjudication Society's website at:

<https://www.adjudication.org/resources/research>

And Construction Dispute Resolution (CDR)'s website at:

<http://cdr.uk.com/research.html>

1.0 INTRODUCTION

This paper sets out our findings based on responses from Adjudicators to a series of questions focused on fees in adjudication.

The research methodology was by questionnaire, comprising 2Nr. forms – ‘Form A’ to be answered in relation to appointments as Adjudicator; and ‘Form B’ to be answered in relation to instructions as party representative.

‘Form A’ generated 109 completed responses, which is considered to be sufficient to allow the research team to take a view and present insights. However, an insufficient number of ‘Form B’ have been returned at the date of this paper in order to be considered representative. Accordingly, this paper does not address the fees charged by party representatives. This would undoubtedly be an area of research which would be of interest to the industry in gaining further insight into the cost of adjudication.

In analysing and presenting the data collated from the Adjudicators’ responses, this paper provides a number of useful insights into the following areas of analysis:

- **Section 2:**
- The fee charged by Adjudicators (both hourly and total);
- The apportionment of the Adjudicator’s fee between the Parties;
- The monetary value of disputes referred;
- The sums awarded by Adjudicators;
- **Section 3:**
- The relationship between the value of the dispute and the sum awarded;
- The relationship between the Adjudicator’s fee and the value of the dispute referred;
- The relationship between the Adjudicator’s fee and the complexity of the dispute;
- The relationship between the Adjudicator’s fee and the nature of the dispute;
- The relationship between the value and complexity of the dispute; and
- The relationship between the nature and complexity of disputes.

As there were a number of ‘outliers’ in the statistical returns, this paper provides details of both straight averages (the mean) and the midpoint of the data (the median), in order to account for the effect of these outliers.

2.0 FEES, VALUE, AND AWARDS

2.1 Adjudicators' Fees

The range of hourly fees charged by Adjudicators is between **£95** and **£330**, however it is worth noting that the hourly fee of £95 was charged on an adjudication referred under the JCT Homeowner Contract which stipulates set hourly fees, and is therefore probably not reflective of a fee ordinarily set by the Adjudicator.

The average hourly fee charged by those Adjudicators who participated in our research was **£210**. This is generally in line with the findings set out in our Report 14 which concluded that the most common hourly fees charged by Adjudicators in the period November 2014 to October 2015 were in excess of £200.

The average hourly fee charged by Adjudicators in the period was £210

Figure 1 below provides more detail of the hourly fees charged by Adjudicators:

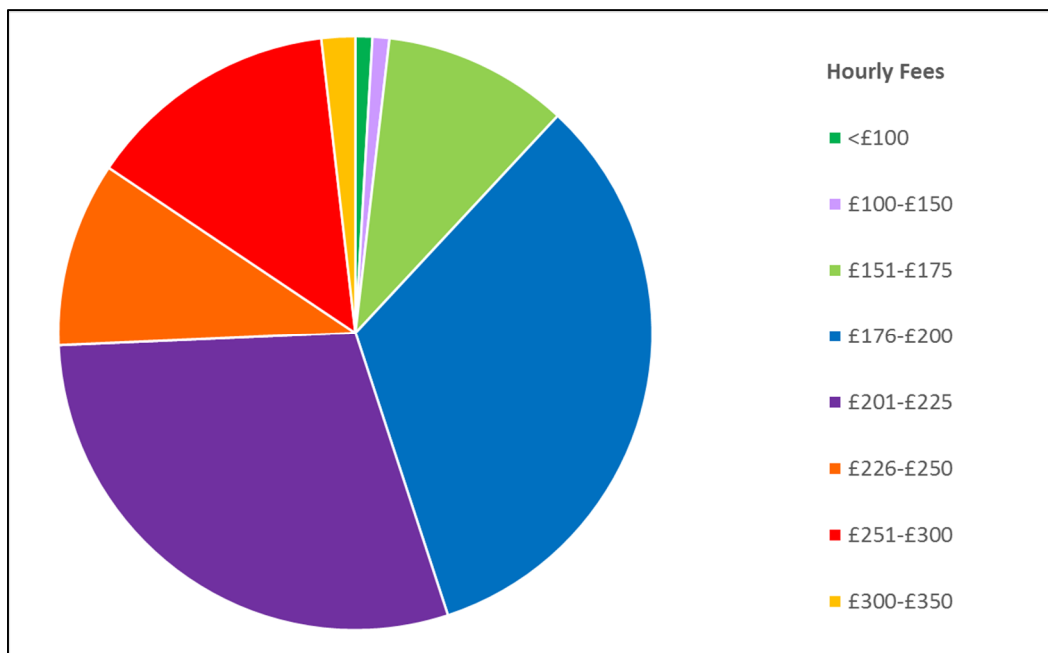


Figure 1 – Distribution of hourly fees charged by Adjudicators

The average total fee charged by Adjudicators responding was **£8,878** per adjudication, and the median was **£7,000**.

The average number of hours charged by Adjudicators is **43** per adjudication. However, it should be noted that the number of hours charged by Adjudicators will not necessarily be entirely reflective of the actual hours worked in considering submissions and reaching the Decision. Although this is an anecdotal point, Adjudicators frequently advise the research team that they take a view when issuing their fee notes with regard to proportionality and the level of chargeable hours.

The average total fee charged by Adjudicators was £8,878

The highest total fee recorded in the period was **£46,000**, representative of **263** hours at the applicable hourly rate of **£175**. It is however acknowledged that this particular adjudication exceeded the standard statutory period of 28 days by approximately 8 weeks.

Figure 2 below shows the spread of total fees across a range of bands, indicating that **almost three-quarters** of adjudications attract a total fee of less than £10,000.

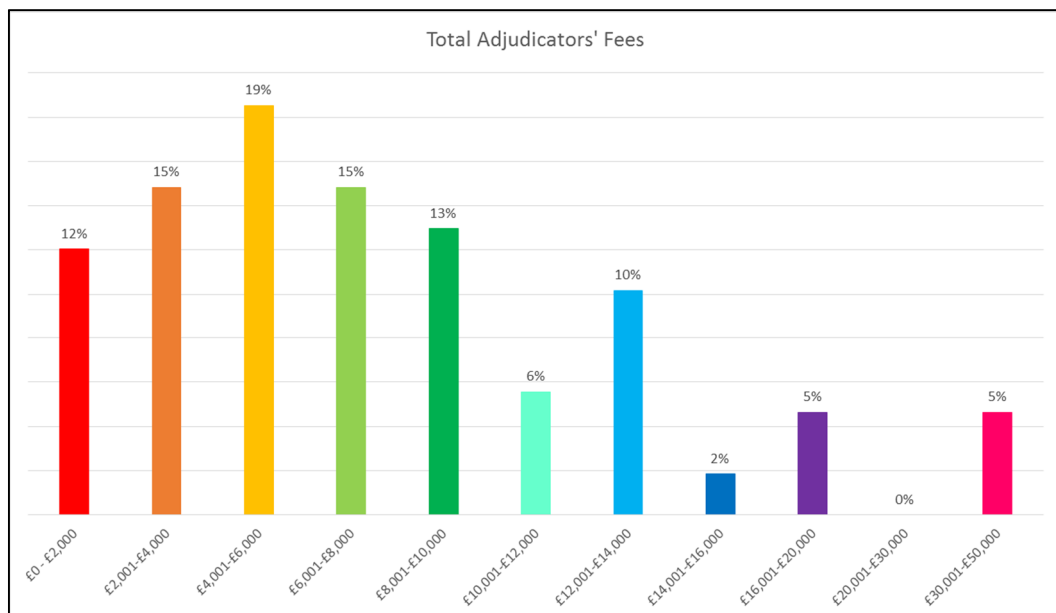


Figure 2 – Distribution of total fees charged by Adjudicators

2.2 Apportionment of Adjudicators' Fees between the Parties

On the usual basis of *'costs follow the event'*, our research indicates that the Referring Party is statistically more likely to be successful at adjudication.

The Referring Party is, statistically, more likely to succeed

Our research shows that in **52%** of adjudications, the Respondent was ordered to cover 100% of the Adjudicator's fee. This compares to **20%** of adjudications in which the Referring Party was ordered to cover 100% of the fee.

In **25%** of the adjudications captured by our research, the fee was apportioned between the Parties – in **37%** of these adjudications, the apportionment was greater against the Respondent than the Referring Party. In only **15%** was the apportionment greater against the Referring Party. In the remaining **48%** of these adjudications, the Adjudicator's fee was split equally between the Parties – equivalent to **12%** of all adjudications captured in our sample.

2.3 Value of Disputes Referred to Adjudication

Our research captured disputes of **£Nil** values (i.e. principle only disputes) up to a value of almost **£6million**. The average value of disputes in our sample was **£344,160** with a median of **£139,500**.

Around **one quarter** of disputes referred to adjudication are in the range of £10,000 to £50,000, and an aggregate of **83%** of disputes referred have a value of £500,000 or less.

It is also of note that around **6%** of disputes referred have a value of over £1million. The referral of such disputes may be indicative of a growing confidence in the ability of adjudication to resolve high value disputes quickly and cost effectively; or, conversely, it may simply be as a result of inflated claims. We are unable to comment conclusively on this matter, however it is most likely to be some combination of both.

The average value of disputes referred to adjudication is £344,160

Figure 3 below provides further detail with regard to the value of disputes referred:

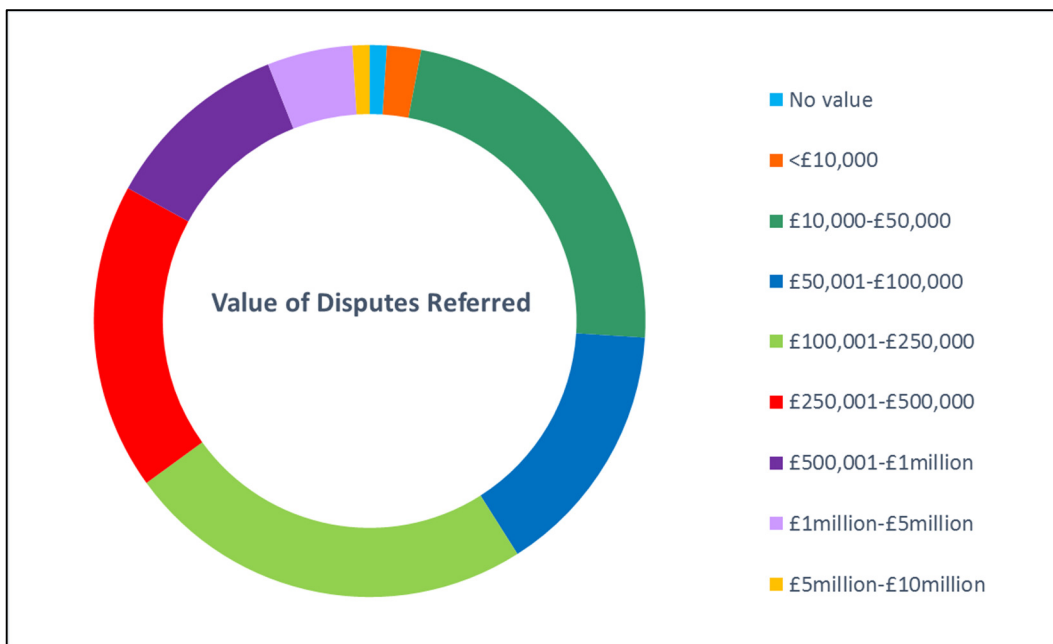


Figure 3 – Distribution of value of disputes referred to adjudication

2.4 Sums awarded by Adjudicators

The average sum awarded by Adjudicators in their Decisions was **£124,145**, with a median of **£36,000** – in comparison to average and median values referred of £344,160 and £139,500, respectively.

In around **21%** of the adjudications in our research, the Referring Party was awarded the entire value referred. Of this total, **4%** were actually awarded in excess of 100% of the value referred, typically as a result of interest applied to the late payment of sums.

In around 21% of adjudications, the total sum claimed was awarded

Of the remaining 79% of adjudications in our sample, **23%** awarded between 50 and 99% of the value referred. This is equivalent to **18%** of all disputes in our sample. Accordingly, in all, at least half of the value referred was awarded in **39%** of adjudications.

It is also of note that **18%** of Decisions made no award of money, whilst only **1%** of disputes referred were 'nil value' disputes (i.e. 'point of principle' referrals). This would therefore indicate that **17%** of referrals in which a monetary award was sought were not successful in achieving any financial recovery.

3.0 RELATIONSHIPS BETWEEN FEES, VALUE, AWARDS, NATURE, AND COMPLEXITY

3.1 Relationship between Adjudicators' fees and value/complexity/nature of disputes

In terms of any relationship between Adjudicators' fees and the value of disputes referred; whilst in some instances a higher value dispute lends itself to a larger number of hours being expended by the Adjudicator, and a correspondingly higher fee; there is no direct or obvious relationship between fee and value referred.

There is no direct relationship between the value of the dispute and the Adjudicator's total fee

Turning to the perceived complexity of the dispute, Adjudicators were asked to rate each adjudication on a scale of 1 to 5, with 1 being 'not complex' and 5 being 'very complex'. The responses have allowed us to test if there is any relationship between the complexity of the dispute and the total fee charged by the Adjudicator.

The research indicates only a weak link between the two. However, it is of note that Adjudicators' perceptions of complexity differ. In particular, it has recently been indicated to the research team that a number of Adjudicators equate 'complexity' of the adjudication to the 'volume' of submissions, highlighting the potentially differing definitions assigned to the term 'complex' by the Adjudicators in our sample.

Further, there does not appear to be any discernible pattern with regard to the relationship between the Adjudicators' fees and the nature of the dispute referred.

However, it is of note that **86%** of payment disputes referred incurred a fee of £10,000 or less. In terms of those adjudications in our sample which attracted the highest fees, these related to final account disputes (**£20,000** and **£30,500**), valuation disputes (**£35,000** and **£42,000**), and delay disputes (**£43,000** and **£46,000**).

This is generally reflective of the view that final account disputes lead to "kitchen sink" adjudications, often requiring determinations on a range of issues, including the value of measured works; the validity and value of variations and contra charges; and an assessment of delay, together with any associated extension of time and loss and/or

expense. It is also in line with the general perception of delay analyses as complex and specialist, thus attracting a higher fee.

3.2 Relationship between the value and complexity of disputes

There does not appear to be any direct link between the complexity of disputes and their value. For instance, 7 adjudications captured in our sample were deemed to have a complexity rating of 5 (being 'very complex'). The financial recovery sought in each of these adjudications was across a large range, as follows: **£90,000; £107,000; £330,000; £366,000; £501,000; £551,000; £687,000.**

Those adjudications in our sample which were rated '1' on the scale of complexity (being 'not complex'); of which there were also 7; had a similar range of values, although these were generally slightly lower: **£6,000; £55,000; £60,000; £180,000; £257,000; £458,000.**

3.3 Relationship between nature and complexity of disputes

There is no particularly strong relationship between the nature of a dispute and its perceived complexity. However, there are some points of note, as follows:-

- **55%** of payment disputes are ranked as '1' or '2' on the scale of complexity, compared to only **10%** ranked as '4' or '5' on the scale of complexity;
- Final account disputes are more likely to be considered complex: **82%** of disputes of this nature were classified as a '3' or above on a scale of 1 to 5, with **12%** of these rankings being at a '5'; and
- **50%** of delay disputes are deemed 'very complex', having been ranked as a '4' or '5' on the scale of complexity.

The comments and further insight set out above, with regard to payment, final account, and delay disputes, relate equally to these conclusions.

82% of final account disputes perceived as 'complex' or 'very complex'

4.0 CONCLUSIONS

Firstly, with regard to Adjudicators' fees, our research indicates a range of £95 to £330 per hour, although this is a somewhat 'artificial' statistic, in that the minimum value is based on a rate stipulated under the JCT Homeowner standard form of contract, as opposed to having been set by the Adjudicator based on 'free market' considerations. The average hourly fee was £210, in line with previous research which concluded the most common hourly fees charged by Adjudicators were in excess of £200.

The highest total fee recorded in our returns was £46,000 – representative of 263 hours charged by the Adjudicator over a period of 3 months. The average total fee charged was in the sum of £8,878. The average number of hours charged per adjudication was 43 – equivalent to around one working week in total, over the 28 day statutory period.

Statistically, the Referring Party is more likely to be successful at adjudication, based on a finding that the Respondent is, on average, ordered to pay 100% of the Adjudicator's fee in over half of adjudications, and ordered to pay a higher proportion of the fee where this is apportioned.

The average value of disputes in our sample was £344,160, with a range of £0 ('point of principle' disputes) to almost £6million. Almost one quarter of the disputes were in the range of £10,000 to £50,000, and overall 83% of disputes were of a value of £500,000 or less.

The average sum awarded by Adjudicators was £124,145. Our findings indicate that the entire sum claimed was awarded in 21% of adjudications. Overall, in 39% of the adjudications captured in our sample, at least half of the value referred was awarded. However, 17% of decisions captured by our research awarded £Nil against a claim for financial recovery.

Our research does not indicate any clear or strong link between the level of fee charged and the value, nature, or complexity of the dispute referred. This would therefore indicate that the level of fee charged by Adjudicators is determined by a range of factors specific to each dispute, including conduct.

This matter will require further examination and it is recommended that more in-depth research is carried out by way of personal interviews, to provide greater insight. Qualitative research interviews could capture a wider spread of Adjudicators' views on matters specific to individual adjudications. This would address some of the limitations of a purely quantitative study and provide useful data and insight.

List of Figures:

Figure 1 – Distribution of hourly fees charged by Adjudicators

Figure 2 – Distribution of total fees charged by Adjudicators

Figure 3 – Distribution of value of disputes referred to adjudication

As always, the authors are indebted to the Adjudicators who have contributed to this research and trust that readers will appreciate the time period required in collating, analysing and presenting this data for a 'snapshot' in time.

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