

# **ADJUDICATION REPORTING CENTRE**



**RESEARCH ANALYSIS OF THE PROGRESS OF  
ADJUDICATION BASED ON ADJUDICATOR  
NOMINATING BODIES (ANBs) RETURNED  
QUESTIONNAIRES**

## **REPORT No 1**

**February 2000**

**P Kennedy and J Milligan  
Department of Building and Surveying  
Glasgow Caledonian University  
Cowcaddens Road  
GLASGOW G4 0BA**

**ISBN No 1 903661 08 0**

## INTRODUCTION

Following the introduction of the Housing Grants Construction and Regeneration Act of 1996, Glasgow Caledonian University set up a UK wide Adjudication Reporting Centre which could gather data on the progress of adjudication and disseminate this back to the construction and property industries. This has been supported by the Adjudication Nominating Bodies (ANBs) which are asked periodically to complete a detailed questionnaire and return it to the Centre. The first phase of the research (indicated here) was to consider who has carrying out the adjudications, how many there were and how the adjudication process was developing. The second phase has just started which seeks to provide more information about the adjudications themselves by collecting data from adjudicators who are invited to respond confidentially to the centre.- approximately 60 responses have been received so far.

The research looked at the actual number of adjudicators available for nomination. This is difficult to quantify as many adjudicators have joined several of the Adjudicator Nominating Bodies possibly to maximise their opportunities to be nominated. As a substantial minority of adjudicators are qualified in more than one area of expertise this also made it difficult to build up a profile of the professions from which most adjudicators are drawn. It is apparent however, that the number of adjudicators is increasing. The RICS in particular have stated their intention to appoint new adjudicators in the near future. Over 50% of all adjudications have taken place in the South of England; a possible correlation may exist here with overall building trends. In contrast Scotland and Wales together account for only 8%.

The most noteworthy statistic is the **400% rise in the number of adjudications** taking place between the first 12 months of the HGCR Act coming into force and the first four months of the following year. The main reason for this may be the support the Government has received from the courts in the well publicised decisions in February and March of 1999 in the cases of *Macob v. Morrison* and *Outwing v. Randell* respectively, showing the courts were willing to support statutory adjudication.

## ADJUDICATOR NOMINATING BODIES

There are (at the time of writing) 21 Adjudicator Nominating Bodies, 16 provide a service throughout the UK and 5 are based in Scotland. All were approached and sent two Questionnaires which were divided into two periods May 1998 to April 1999 and May to August 1999. The intention was to monitor the evolution of adjudication from its inception and to allow comparison between the two periods. Sixteen of the Adjudicator Nominating Bodies were willing to respond to the questionnaires, however the Institution of Electrical Engineers did not wish their answers to be published therefore the following statistical information is based on the remaining fifteen Adjudicator Nominating Bodies.

## NUMBER OF ADJUDICATORS

The total number of names held on the Adjudicator Nominating Bodies' databases as available for nomination in the first year of statutory adjudication was 781. However, it must be noted that the actual number of adjudicators is expected to be less than this as many adjudicators are members of more than one Adjudicator Nominating Body.

The CIC, RICS and IMechE were able to tell us that all their adjudicators were retained with other Adjudicator Nominating Bodies. While the CIARB believed that most of their adjudicators were in a similar position, 50% of the Construction Confederation adjudicators were listed elsewhere. Only 20 of the Academy of Construction Adjudicators and 10 of the Confederation of Construction Specialists' adjudicators had multi listings, 3A's indicated that other Adjudicator Nominating Bodies retained 13 of their members.

In the period May 1999 to August 1999 the number of adjudicators' names held on the Adjudicator Nominating Bodies' databases had risen by 62. This may not reflect a total increase in actual adjudicators but is probably a mix of new names and existing adjudicators joining more Adjudicator Nominating Bodies.

ADJUDICATOR NOMINATING BODY	May 1999	August 1999	Increase
Academy of Construction Adjudicators	200	219	19
Chartered Institute of Arbitrators	105	105	
Confederation of Construction Specialists	25	30	5
Construction Industry Council	95	95	
Institution of Chemical Engineers	5	5	
Institution of Civil Engineers	79	79	
Royal Institute of British Architects	59	61	2
Royal Institution of Chartered Surveyors	72	72	
3A's (Polycon AIMS Ltd)	36	36	
Institution of Mechanical Engineers	8	8	
Chartered Institute of Building	10	20	10
Construction Confederation	60	60	
Scottish Building Employers' Federation	8	8	
The Royal Incorporation of Architects in Scotland	19	19	
Royal Institution of Chartered Surveyors in Scotland	0	26	26
<b>TOTAL</b>	<b>781</b>	<b>843</b>	<b>62</b>

Notwithstanding this duplication factor the profile of construction experts available for nomination by the Adjudicator Nominating Bodies' was as follows: -

PROFESSIONAL BACKGROUND	April 1998 to May 1999	May 1999 to August 1999
Lawyers	75	78
Quantity Surveyors	247	295
Architects	122	127
Electrical Engineers	10	10
Mechanical Engineers	10	10
Civil Engineers	181	184
Chemical Engineers	8	9
Geotechnical Engineers	3	3
Structural Engineers	19	19
Chartered Builders	38	24
Project Managers	3	22
Building Surveyors	7	7
Chartered Surveyors (discipline unspecified)	32	32
Have Surveying Experience	66	55
Have Engineering Qualifications	25	25
Have Building Expertise/Members of NSCC	22	32
Materials Testing qualifications	3	3
Arbitrators	37	37
Town Planners	1	1
Contract Consultants	3	4

All but one of the Adjudicator Nominating Bodies retained adjudicators from several of the above listed areas of expertise. ACA and 3As can appoint adjudicators ranging over 12 of the 20 categories listed; these include lawyers, surveyors, architects, and all the engineering disciplines.

Again this list is not the entire picture. The RIBA were able to tell us that 43 of their adjudicators held more than one qualification, The RICS quoted 10 dual qualified adjudicators and 3A's quoted 14. While other Adjudicator Nominating Bodies could not be so precise, it is likely that a substantial minority of adjudicators hold more than one qualification.

## **NOMINATING BODIES' FEES**

All responding Adjudicator Nominating Bodies replied to our question regarding their fee for nomination of an adjudicator. All Adjudicator Nominating Bodies charge a flat rate fee for nomination of an adjudicator. The fee ranged from £59 to £264 with the most common fee charged being £176 including VAT.

## **TRENDS IN ADJUDICATION**

### ***Growing numbers of adjudications!***

The number of Adjudications taking place in the second period totalled 259 taking into account that this represents only a four month period as opposed to the 12 months examined in the first period this represents a rise in adjudications of over 400%. This may support the view that the attitude of the courts in the *Macob* and *Outwing* cases has instigated a major shift in the willingness of the construction industry to use the adjudication route for their disputes.

### ***Who is appointing the adjudicators?***

In the first period the total number of Adjudications carried out was 187. The RICS have carried out 44% of these. The RICS deny claims that this is because they are named in many standard forms of contract as the nominating body, highlighting that approximately 80% of requests to the RICS are made in accordance with the Scheme for Construction Contracts. The Scheme gives party the option to apply to any nominating body for their adjudicator. The RICS put the high number of nominations down to the nature of the disputes as most have been concerned with valuations of works carried out and entitlements to payment, matters which the RICS consider clearly fall within a quantity surveyor's normal sphere of practice. The RICS also point out that they have provided a third party appointment service for some years before the HGCR Act introduced adjudication into contracts.

While all Adjudicator Nominating Bodies saw a rise in the number of adjudication referrals again the RICS has led the field nominating 39% of the adjudicators.

### ***Which form of contract?***

Of the four Adjudicator Nominating Bodies able to respond to our questions on the type of contract involved in the disputes 77% in the first period and 76% in the second period involved the Scheme for Construction Contracts; 15% and 18% respectively used the JCT Adjudication rules. Other contracts involved included the ICE Adjudication rules, the ACA rules, the Scottish Minor works, DOM 1 and various ad hoc privately agreed rules. At this early stage it is not clear whether adjudication is simply being ignored in many contracts so that the Scheme has become a fall-back provision, or possibly that the Scheme is approved of as a well thought out provision and is positively being employed.

### ***What are the disputes about?***

While only five of the responding Adjudicator Nominating Bodies were able to answer our questions regarding the subject matter of the disputes, their responses appears to back up the RICS' claims that most adjudications centre around Payment Disputes with Valuations of Variations, Extensions of Time and Defective Work also being common areas of dispute. No

Adjudicator Nominating Body was able to shed any light on the payment disputes centring on the new payment provisions (as was widely believed would be the case). There is evidence of multi-point disputes taking place, where not only some of the above are in dispute but also, for example, Failure to Provide Information, Determination of the Contract and Interpretation of the Building Contracts. While the scheme envisaged that adjudications would be used in disputes where an expert decision was required to settle an argument without there necessarily being a monetary award, the responses have shown that very few adjudications of this nature have taken place. Almost all adjudications involved a monetary dispute and most of these were for sums less than £100,000.

### ***Where are they happening?***

A question regarding the regional spread of adjudication nominations by the UK wide Adjudicator Nominating Bodies revealed that most were taking place in S England; 54% in the first period and 59% in the second period. A total of 36% and 33% respectively took place in N England with 6% and 4% taking place in Wales and 4% in each period taking place in Scotland.

### ***Who are the parties in dispute?***

Only five responding Adjudicator Nominating Bodies could give any details as to who the parties to an adjudication most commonly were, however the figures showed disputes between the main contractor and domestic subcontractor to be the most common. Similarly, only six could give details of who the referring party tended to be, however from the statistics available it is clear that domestic sub contractors are making the most referrals.

### ***How long does an adjudication take?***

Only 3 Adjudicator Nominating Bodies could give an estimate of how long adjudicators were spending on each adjudication, but these figures showed the majority taking less than 50 hours to come to their decision. Correspondingly only 2 could complete the section on adjudicators' charges; these showed most adjudicators charging between £50 - £100 per hour.

### ***Any complaints?***

All responding Adjudicator Nominating Bodies answered our question asking if there had been any relevant complaints made against their adjudicators. While some commented that they had had complaints by parties unhappy with the decision and the fee charged or the length of time taken, only 5 relevant complaints had been upheld.

## **SCOTTISH ADJUDICATOR NOMINATING BODIES**

Of the five Scottish based Adjudicator Nominating Bodies three responded to our questionnaires, these were the Royal Incorporation of Architects in Scotland, the Royal Institution of Chartered Surveyors in Scotland and Scottish Building Employer's Federation. While in the first 12 months the Royal Incorporation of Architects in Scotland made only one referral and the Royal Institution of Chartered Surveyors and Scottish Building Employers Federation made none, within the next four months they reported making 4, 6 and 5 respectively.

© P Kennedy and J Milligan  
Department of Building and Surveying  
Glasgow Caledonian University

February 2000

### **Note to adjudicators!**

The University would like to increase its research statistical base and for this purpose a further questionnaire has been prepared aimed at the individual practising adjudicator. Any adjudicator interested in completing a questionnaire should E-mail Mrs J Milligan at [jmi3@gcal.ac.uk](mailto:jmi3@gcal.ac.uk) or telephone 0141 331 3627 and a questionnaire will be forwarded to them.