

# ADJUDICATION REPORTING CENTRE



RESEARCH ANALYSIS OF THE PROGRESS OF ADJUDICATION BASED ON  
RETURNED QUESTIONNAIRES FROM ADJUDICATOR NOMINATING BODIES  
(ANBs) AND FROM A SAMPLE OF ADJUDICATORS

**REPORT No 10**

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## INTRODUCTION

The Adjudication Reporting Centre considers both the trends in the number of adjudication nominations and data on a number of aspects of adjudication from adjudicators up to end of April 2008. This report covers the first ten years of adjudication and it is a significant milestone in its progress.

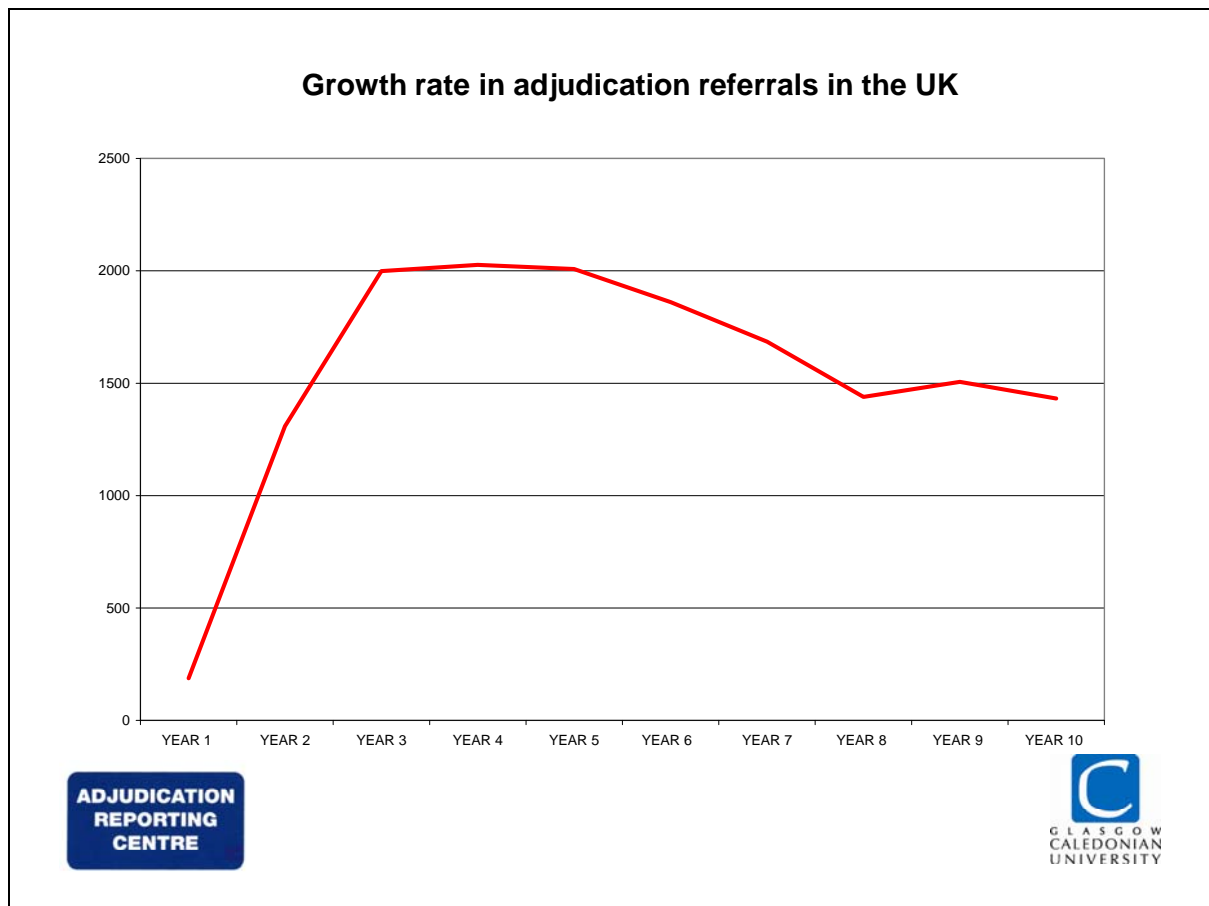
| Growth rate in adjudication referrals in the UK |                       |          |
|---|-----------------------|----------|
| TIME PERIODS                                    | ALL ANBs<br>REPORTING | % GROWTH |
| YEAR 1 - May 1998 - April 1999                  | 187                   |          |
| YEAR 2 - May 1999 - April 2000                  | 1309                  | 600%     |
| YEAR 3 - May 2000 - April 2001                  | 1999                  | 50%      |
| YEAR 4 - May 2001 - April 2002                  | 2027                  | 1%       |
| YEAR 5 - May 2002 - April 2003                  | 2008                  | -1%      |
| YEAR 6 - May 2003 - April 2004                  | 1861                  | -7%      |
| YEAR 7 - May 2004 - April 2005                  | 1685                  | -9%      |
| YEAR 8 - May 2005 - April 2006                  | 1439                  | -15%     |
| YEAR 9 - May 2006 - April 2007                  | 1506                  | 5%       |
| YEAR 10 - May 2007 - April 2008                 | 1432                  | -5%      |



**Table 1 – Adjudications by all reporting ANBs**

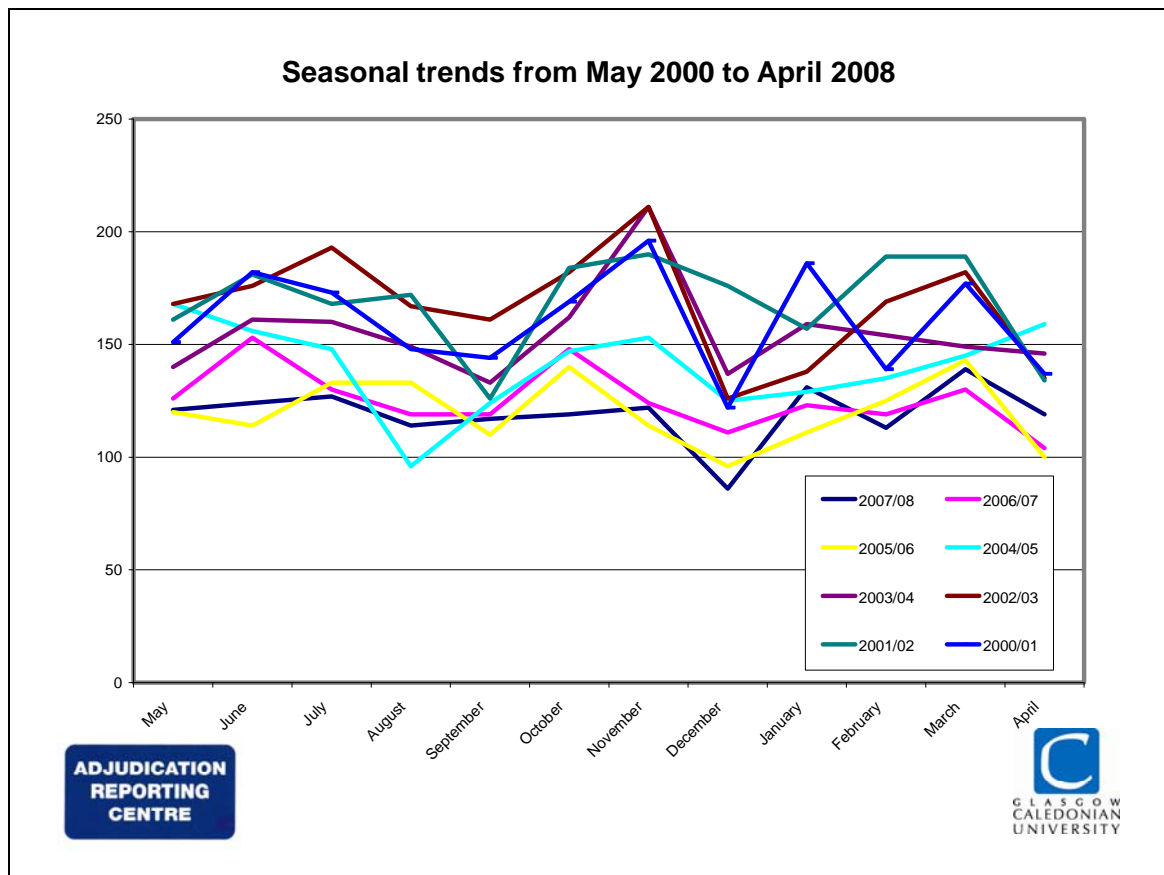
### Number of Referrals

There was a 5% reduction from the previous year in adjudication referrals bringing the number of referrals from 1506 to 1432. Whereas, the previous year saw an increase of 5%. From 2002 to 2008 there has been a steady decline in the number of referrals with 2006-2007 being an exception to that when the number of referrals increased by 5% from the previous year.



**Figure 1 - Growth rate in adjudication referrals in the UK**

The graph above highlights the sharp rise in year 1 to 3 and a plateau from year 3 to 5. Then a steady decline in referrals can be seen from years 6 to 8, an increase in referrals in year 9 and then the return to the decline in referrals again in year 10.



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

From the reporting period of May to April 2007/2008 it can be seen that, the first six months remained, in the main, stable with very little fluctuation. The remaining 6 months were turbulent. The month of December saw a sharp drop in the number of referrals, with the number increasing again sharply in January. This fluctuating trend continued for the remaining months. The pattern indicated that for the last half of the year it was not too dissimilar to previous years. The first half of the year showed a more steady number of referrals with very little variation from previous years.

## Numbers of adjudicators registered with Adjudicator Nominating Bodies

| ADJUDICATOR NOMINATING BODY                          | May 2002     | October 2002 | April 2003   | February 2004 | October 2004 | October 2005 | April 2006   | October 2006 | October 2007 | April 2008   |
|--|--------------|--------------|--------------|---------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Association of Independent Construction Adjudicators | 194          | 194          | 176          | 150           | 155          | 116          | 50           | 50           | 49           | 48           |
| Chartered Institute of Arbitrators                   | 147          | n            | n            | 164           | 158          | 169          | 180          | 172          | 171          | 164          |
| Confederation of Construction Specialist             | 25           | 24           | 14           | 21            | 43           | 43           | 43           | 43           | 43           | 43           |
| Construction Industry Council                        | 170          | 144          | 149          | 154           | 152          | 132          | 136          | 136          | 102          | 102          |
| Institution of Chemical Engineers                    | Not reported | 6            | 13           | 13            | 13           | 14           | 18           | 15           | 15           | 15           |
| Institution of Civil Engineers                       | 80           | 82           | 87           | 84            | 84           | 82           | 84           | 81           | 81           | 81           |
| Royal Institute of British Architects                | 70           | 69           | 69           | 68            | 63           | 68           | 68           | 68           | 67           | 67           |
| Royal Institution of Chartered Surveyors             | 107          | 116          | 117          | 122           | 122          | 122          | 116          | 116          | 104          | 115          |
| 3A's Polycon AIMS Ltd                                | 33           | Not reported | 54           | Not reported  | Not reported | Not reported | Not reported | Not reported | Not reported | Not reported |
| Institution of Mechanical Engineers                  | Not reported | Not reported | Not reported | Not reported  | Not reported | Not reported | Not reported | Not reported | Not reported | Not reported |
| Chartered Institute of Building                      | 53           | 52           | 50           | 53            | 58           | 56           | 56           | 54           | 46           | 43           |
| Construction Confederation                           | 43           | 43           | 43           | 43            | 43           | 43           | 28           | 28           | 28           | 27           |
| Scottish Building                                    | 12           | 12           | 12           | 12            | 12           | 9            | 11           | 11           | 9            | 9            |
| Royal Incorporation of Architects in Scotland        | 14           | 14           | 14           | 14            | 14           | 14           | 10           | 10           | 10           | 10           |
| Royal Institution of Chartered Surveyors in Scotland | 47           | 45           | 35           | 38            | 38           | 38           | 25           | 23           | 23           | 23           |
| Centre for Effective Dispute Resolution              | 48           | 46           | Not reported | 40            | Not reported | 41           | 41           | 42           | 42           | 42           |
| Institution of Electrical Engineers                  | Not reported | Not reported | Not reported | Not reported  | Not reported | Not reported | Not reported | Not reported | Not reported | Not reported |
| Technology and Construction Solicitors Association   | 128          | 128          | 128          | 149           | 142          | 142          | 142          | 142          | 133          | 133          |
| Chartered Institute of Arbitrators (Scottish Branch) | 22           | 17           | 17           | 17            | 20           | 21           | 21           | 17           | 16           | 16           |
| The Law Society of Scotland                          | 10           | 11           | 13           | 16            | 18           | 18           | 18           | 28           | 28           | 28           |
| Technology and Construction Bar Association          | Not reported | Not reported | Not reported | Not reported  | Not reported | Not reported | Not reported | Not reported | Not reported | Not reported |
| Adjudication.co.uk                                   | Not reported | 7            | 7            | Not reported  | Not reported | Not reported | Not reported | Not reported | Not reported | Not reported |
| <b>TOTALS</b>  | <b>1203</b>  | <b>1010</b>  | <b>998</b>   | <b>1158</b>   | <b>1135</b>  | <b>1128</b>  | <b>1047</b>  | <b>1036</b>  | <b>967</b>   | <b>966</b>   |

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**Table 2 - Number of adjudicators**

The above table shows the number of adjudicators registered with ANBs. The number of adjudicators registered dropped by one in this reporting year which suggests that there is no marked difference in the number of adjudicators. It should be noted that adjudicators can be registered with more than one ANB.

### Primary discipline of adjudicators

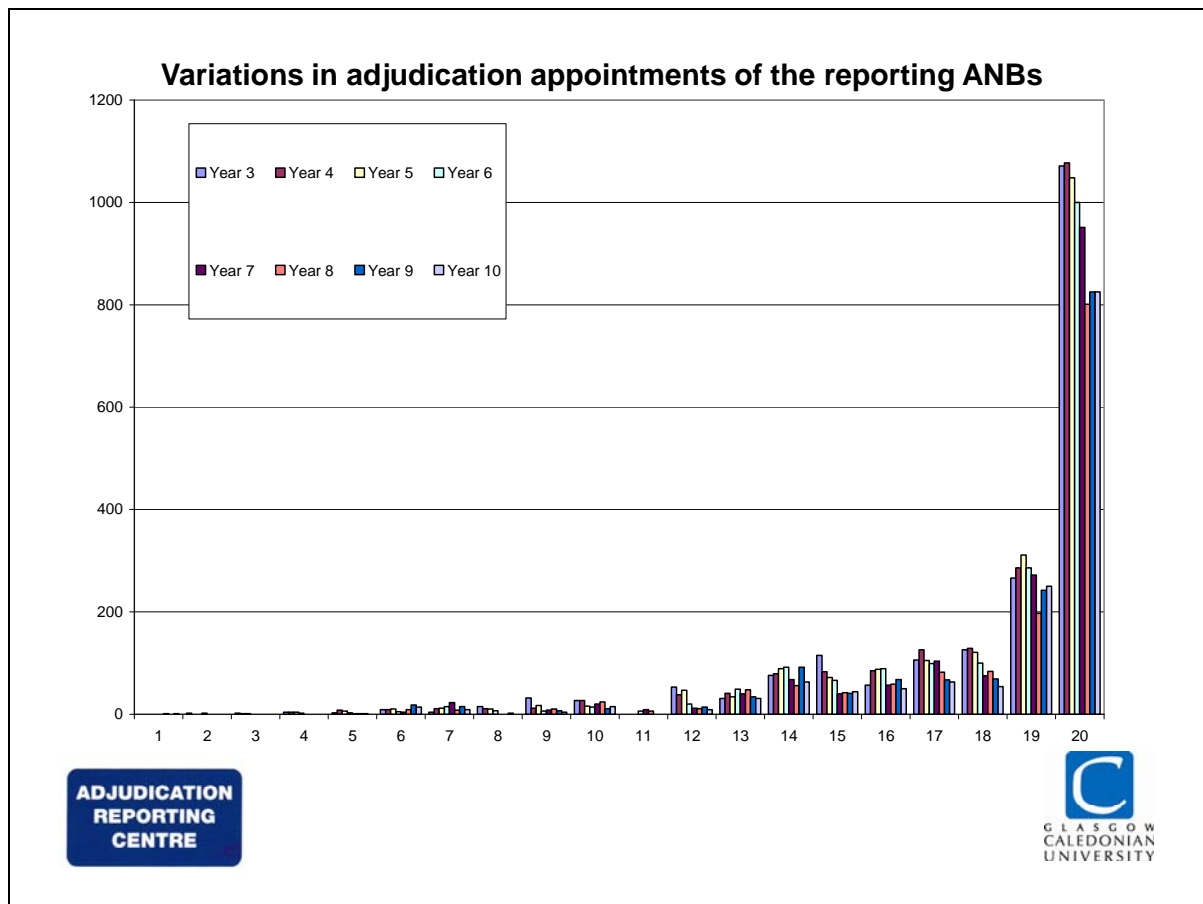
| DISCIPLINE               | May 2002 | Oct 2002 | April 2003 | Feb 2004 | Oct 2004 | Oct 2005 | April 2006 | Oct 2006 | Oct 2007 | April 2008 |
|--------------------------|----------|----------|------------|----------|----------|----------|------------|----------|----------|------------|
| Quantity Surveyors       | 28.9%    | 39.1%    | 43.8%      | 41.6%    | 38.0%    | 38.8%    | 35.7%      | 35.1%    | 34.5%    | 31.4%      |
| Lawyers                  | 22.1%    | 21.9%    | 22.1%      | 21.6%    | 26.1%    | 26.3%    | 25.6%      | 26.6%    | 26.6%    | 28.4%      |
| Civil engineers          | 14.6%    | 17.3%    | 13.2%      | 11.1%    | 11.6%    | 11.0%    | 15.8%      | 15.1%    | 15.0%    | 14.5%      |
| Architects               | 7.8%     | 8.9%     | 10.2%      | 9.3%     | 9.6%     | 9.6%     | 9.0%       | 8.8%     | 8.7%     | 9.6%       |
| CIOB/Builders            | 3.4%     | 3.4%     | 2.6%       | 5.2%     | 5.0%     | 4.9%     | 4.7%       | 5.3%     | 4.9%     | 7.5%       |
| Building Surveyors       | 2.1%     | 1.7%     | 1.4%       | 1.0%     | 1.3%     | 1.4%     | 1.2%       | 1.2%     | 1.3%     | 2.5%       |
| Construction Consultants | 2.5%     | 0.3%     | 0.9%       | 4.1%     | 5.3%     | 4.7%     | 4.6%       | 4.8%     | 5.6%     | 1.9%       |
| Structural Engineers     | 2.1%     | 3.4%     | 0.8%       | 2.2%     | 1.3%     | 1.3%     | 1.2%       | 0.9%     | 1.1%     | 1.3%       |

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**Table 3 - Primary discipline of adjudicators**

The ANBs were asked to state the principle area of expertise of their adjudicators. As with previous years the top three were Quantity Surveyors, Lawyers and Civil Engineers in that order. From the previous year the number of Quantity Surveyors decreased by 3.1% and the Lawyers increased by 1.8%. There was a 3.7% decrease in the number of Construction Consultants.



**Figure 3 - Variations in adjudication appointments of the reporting ANBs**

It can be seen from Figure 3 that, from all the responding ANBs the trend is that the number of adjudication appointments has decreased and that; all reporting ANBs have been largely consistent in their proportion of referrals.

### Number of complaints against adjudicators

| Complaints Against Adjudicators | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---------------------------------|--------|--------|--------|--------|--------|--------|--------|---------|
| Complaints Made                 | 0.45%  | 1.97%  | 0.90%  | 1.07%  | 1.48%  | 1.46%  | 1.20%  | 1.19%   |
| Complaints Upheld               | 0.05%  | 0.35%  | 0.00%  | 0.21%  | 0.00%  | 0.00%  | 0.07%  | 0.00%   |

**Table 4 - Number of complaints against adjudicators**

Table 4 shows that the number of complaints made against adjudicators is consistent with previous years and stands at 1.19% with 0% of those complaints being upheld.



### Sources of appointment of adjudicators

| Source of Appointment              | April 2002 | July 2004 | Oct 2005 | Oct 2007 | April 2008 |
|------------------------------------|------------|-----------|----------|----------|------------|
| Through and ANB                    | 89.6%      | 83.1%     | 83.2%    | 85.0%    | 87.3%      |
| By agreement of the parties        | 9.9%       | 16.6%     | 16.8%    | 12.0%    | 12.0%      |
| Named in the contract              | 0.6%       | 0.3%      | 0.0%     | 3.0%     | 0.7%       |
| Total adjudications in the samples | 355        | 326       | 173      | 167      | 150        |



**Table 5 - Sources of appointment of adjudicators**

The main source of appointment of adjudicators remains by ANBs at 87.3%. This figure is akin to the previous year with that being 85%. The other two means of appointment are by agreement of the parties and being named in the contract with those making up 12.0% and 0.7% respectively. There was a 2.3% drop from the previous year for adjudicators being appointed by being named in the contract. It should be noted that the sample number of adjudications for this reporting period are 150 compared to 167 for the previous year.

### Comparison of successful parties in adjudicators' decisions

|                | Feb 2000 | Oct 2001 | May 2002 | July 2004 | Oct 2005 | Oct 2007 | Apr 2008 |
|----------------|----------|----------|----------|-----------|----------|----------|----------|
| Claimant       | 66%      | 74%      | 69%      | 65%       | 72%      | 68%      | 60%      |
| Respondent     | 14%      | 17%      | 22%      | 25%       | 21%      | 20%      | 29%      |
| Split Decision | 20%      | 9%       | 9%       | 10%       | 7%       | 13%      | 12%      |



**Table 6 - Comparison of successful parties in adjudicators' decisions**

As with previous years the data collected shows that the Claimant remains the most successful party in adjudication. That being said there is an 8% reduction from the previous year for the claimant to 60% and an increase for the respondent of 9% to 29%. Split decisions has decreased by 1%. Adjudicators have reported that they often find this a difficult question to answer as many decisions have several aspects to them and while for example a valuation is in favour of a party it may not be of the value claimed – therefore the framework provided by the question may be too stark.

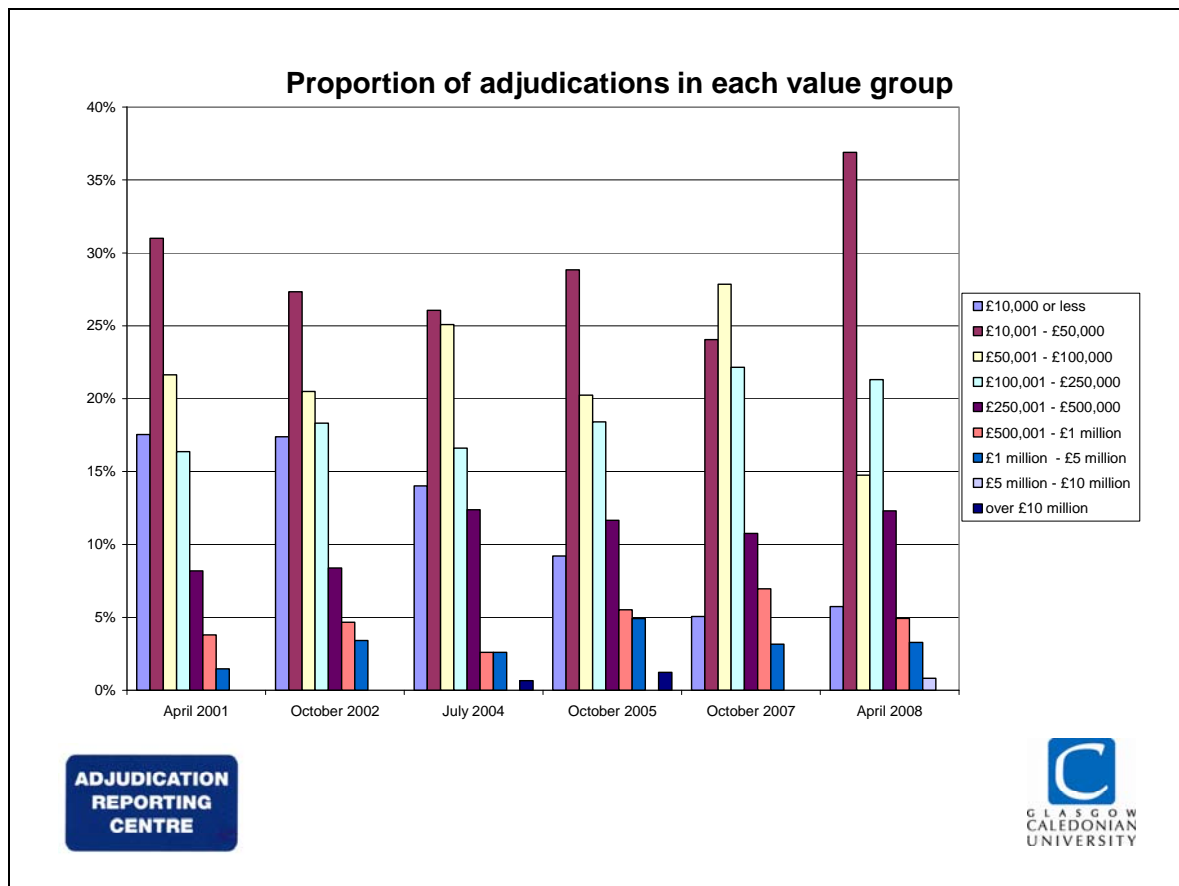
### Primary subjects of the disputes

| Subject                                   | July 2004 | October 2005 | October 2007 | April 2008 |
|---|-----------|--------------|--------------|------------|
| Valuation of Final Account                | 12%       | 14%          | 22%          | 22%        |
| Failure to comply with Payment Provisions | 19%       | 14%          | 8%           | 19%        |
| Valuation of interim payments             | 15%       | 13%          | 15%          | 16%        |
| Withholding monies                        | 10%       | 11%          | 10%          | 10%        |
| Extension of Time                         | 8%        | 8%           | 8%           | 9%         |
| Loss and Expense                          | 9%        | 10%          | 2%           | 7%         |
| Valuation of Variations                   | 15%       | 17%          | 11%          | 5%         |
| Defective Work                            | 4%        | 5%           | 7%           | 4%         |
| Determination                             | 2%        | 3%           | 4%           | 4%         |
| Non-payment of fees                       | 2%        | 1%           | 7%           | 2%         |



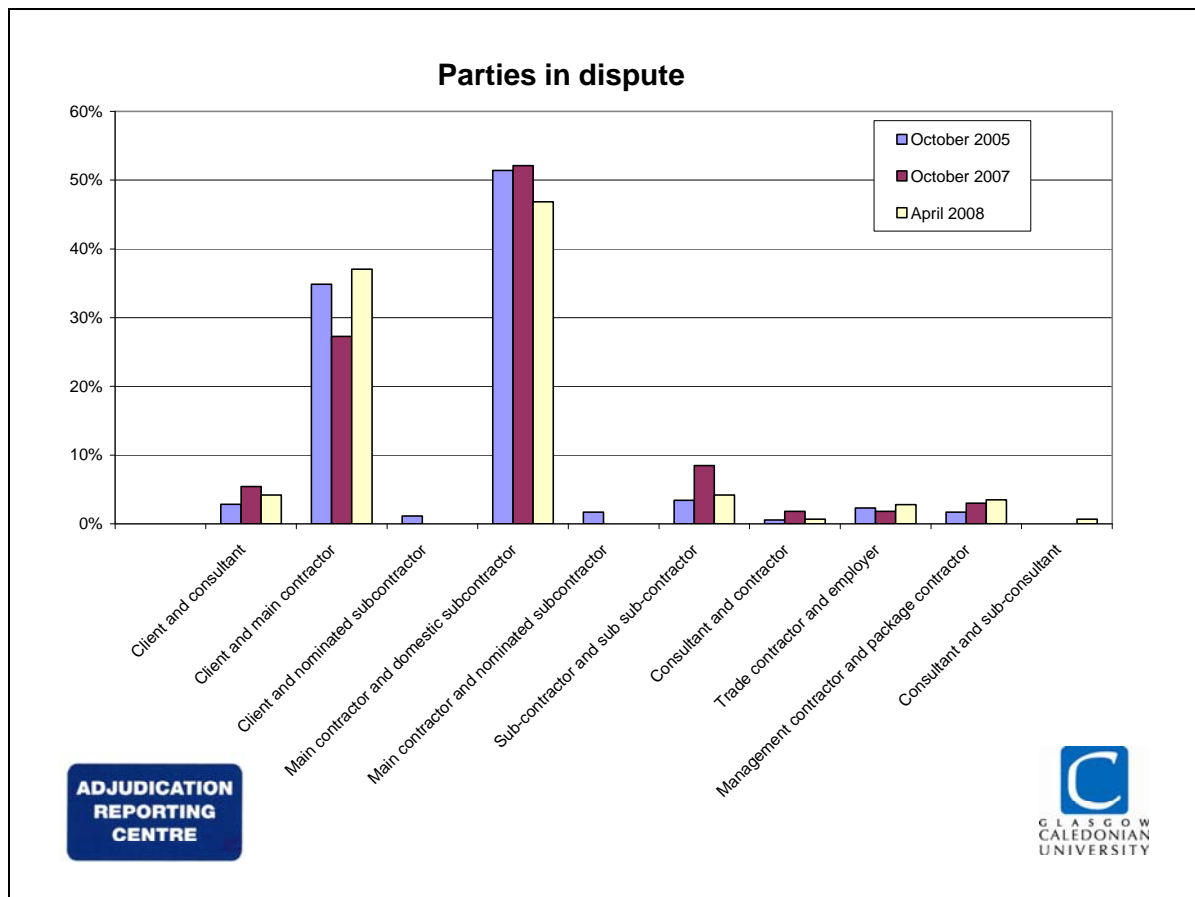
**Table 7- Primary subject of the disputes**

From previous years there has been a marked increase in disputes that concern ‘failure to comply with payment provisions’ and also ‘loss and expense’. There has been a decrease valuation of variations and non-payment of fees. Also of note is the reduction in the percentage of disputes relating to the ‘valuation of variations’. This may be an indicator that parties are less inclined to refer “bite size” disputes and prefer the “kitchen sink” approach. ‘Valuation of Final Account’ remains the main source of dispute.



**Figure 4 - Proportion of adjudications in each value group**

The majority of adjudications were in the value range between £10,000 - £50,000. This remains comparable with previous reporting years. There is a decrease from the previous year in the number of adjudications between the value of £50,001 - £100,000. The remaining value bands are mostly consistent with the previous reporting years.



**Figure 5 - Parties in dispute.**

The parties most likely to enter into dispute remain main contractor and domestic sub-contractor and, client and main contractor. This is consistent with previous years. There has been a decrease in the number of disputes between main contractor and domestic sub-contractor and an increase in the disputes between client and main contractor.

### Procedures adopted by adjudicators

| Procedure Adopted                                       | to October<br>2001 | to October<br>2002 | to July<br>2004 | to October<br>2005 | to October<br>2007 | to April<br>2008 |
|---|--------------------|--------------------|-----------------|--------------------|--------------------|------------------|
| Employ a documents only procedure                       | 56.0%              | 52.0%              | 56.9%           | 46.8%              | 57.6%              | 77.9%            |
| Employ an interview procedure with one party present    | 3.0%               | 0.3%               | 0.8%            |                    |                    |                  |
| Employ an interview procedure with both parties present | 35.0%              | 21.0%              | 24.6%           | 30.3%              | 15.2%              | 10.6%            |
| Carry out a full hearing procedure                      | 6.0%               | 6.0%               | 8.1%            | 15.6%              | 14.1%              | 7.7%             |
| Carry out a conference call                             |                    |                    | 5.8%            | 6.4%               | 10.9%              | 3.9%             |
| Site Visit  |                    | 11.0%              | 1.9%            | 0.9%               | 1.1%               |                  |
| Legal debates   |                    |                    | 1.5%            |                    | 1.1%               |                  |
| Interview with contract administrator present           |                    |                    | 0.4%            |                    |                    |                  |
| Other   |                    | 1.0%               |                 |                    |                    |                  |



**Table 8 - Procedures adopted by adjudicators**

Employing a documents only procedure remains the most common and preferred procedure by adjudicators with 77.9% of adjudications sampled carried out this way. There is an increase of 20.3% from the previous year. Carrying out of a full hearing procedure has decreased by 6.4% and carrying out a conference call has decreased by 7%.

### Compliance with time limits

| Timescale for adjudication     | to Oct 2001 | to July 2004 | to Oct 2005 | to Oct 2007 | to April 2008 |
|--------------------------------|-------------|--------------|-------------|-------------|---------------|
| Decisions given within 28 days | 69%         | 60%          | 58%         | 47%         | 56%           |
| Between 28 and 42 days         | 27%         | 30%          | 32%         | 39%         | 36%           |
| More than 42 days              | 4%          | 10%          | 10%         | 14%         | 8%            |



**Table 9 - Compliance with time limits**

56% of decisions are given within the 28 day time period. 36% of decisions are given within 28 and 42 days and 8 % are given after 42 days. These figures are comparable with previous reporting years with there being an increase of 9% of decisions being given within the 28 day period.

### Adjudications proceeding to a decision

| Proportion of adjudication appointments proceeding to decision | July 2004 | October 2005 | October 2007 | April 2008 |
|--|-----------|--------------|--------------|------------|
| Decisions issued   | 67%       | 66%          | 67%          | 56%        |
| Adjudication settled by the Parties                            | 21%       | 20%          | 15%          | 23%        |
| Adjudications abandoned  | 9%        | 12%          | 14%          | 11%        |
| Adjudications still ongoing                                    | 3%        | 2%           | 4%           | 10%        |



**Table 10 - Adjudications proceeding to a decision**

Of those adjudication sampled in 56% a decision was issued this is a decrease of 11% from the previous year. 23% of adjudications were settled by the parties this is an increase of 8% from the previous year. 11% were abandoned and of those sampled 10% remained ongoing.



### Challenges to adjudicators' appointments

|                         | to October<br>2005 | to October<br>2007 | to April<br>2008 |
|-------------------------|--------------------|--------------------|------------------|
| Appointments in sample  | 173                | 178                | 154              |
| Challenges              | 63                 | 68                 | 53               |
| Appointments challenged | 36%                | 38%                | 34%              |

#### Challenges over the period Nov 2004 to April 2008

|                              |     |
|------------------------------|-----|
| No dispute/not crystalised   | 28% |
| No contract in writing       | 17% |
| More than one dispute        | 8%  |
| Not a construction contract  | 8%  |
| Matter already decided       | 6%  |
| Wrong ANB                    | 5%  |
| Wrong party                  | 3%  |
| Validity of appointment      | 2%  |
| Wrong procedure              | 2%  |
| Notices inconsistent         | 2%  |
| Invalid appointment by ANB   | 2%  |
| Late referral                | 2%  |
| Defective notice of referral | 2%  |

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**Table 11 - Challenges to adjudicators' appointments**

The adjudicators' appointment was challenged in 34% of the cases with the main challenge being that, there was no dispute/the dispute had not crystallised. The challenges to adjudicators have been measured from November 2004 to April 2008. The second most popular challenge was that, there was no contract in writing. It can be seen from the table that adjudicators are receiving a wide variety of jurisdiction challenges.

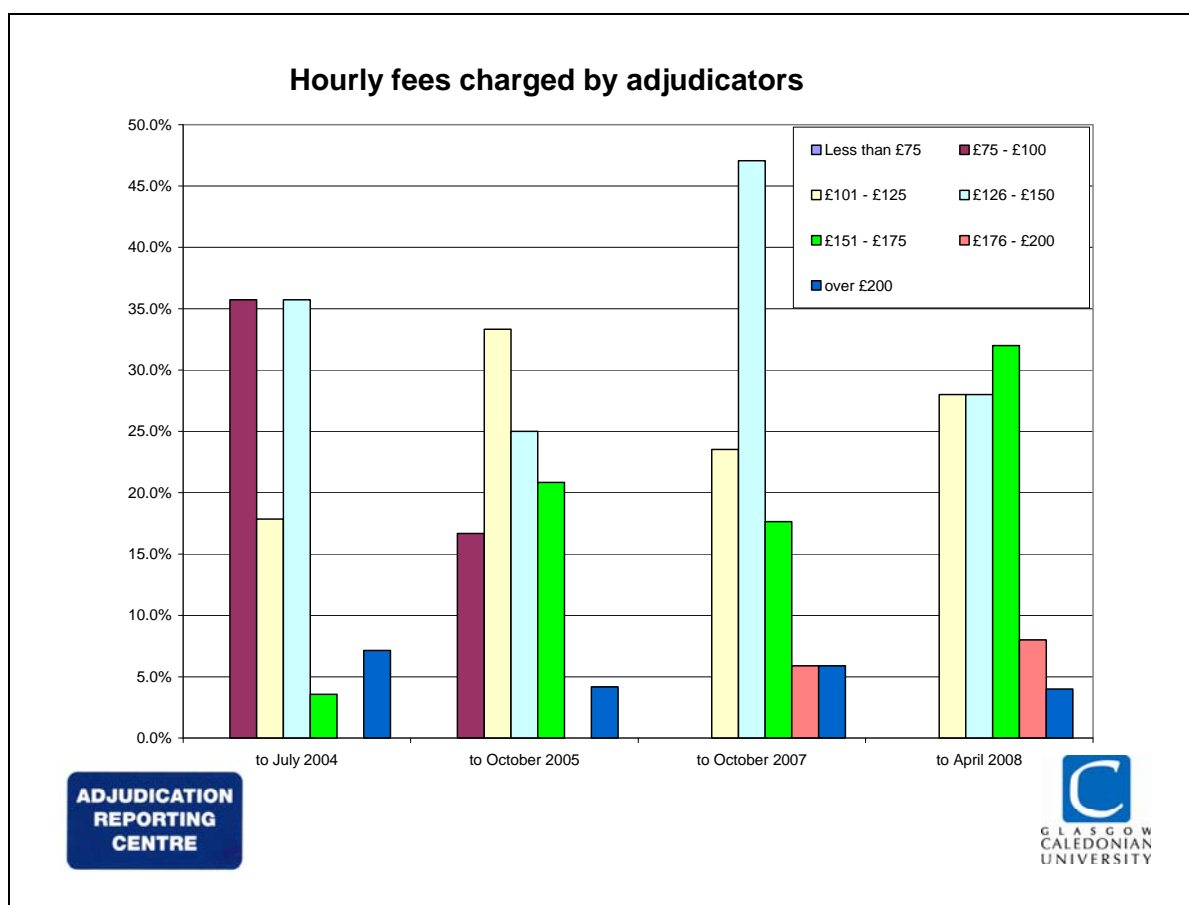
### When is the Adjudication process initiated?

| Initiation of Adjudication         | October 2007 | April 2008 |
|------------------------------------|--------------|------------|
| <b>Before</b> Practical Completion | 16%          | 17%        |
| <b>After</b> Pratical Completion   | 84%          | 83%        |



**Table 12 - When is the adjudication process initiated?**

Table 12 shows that 83% of adjudications are initiated after practical completion with the remainder during the currency of the main works, which is contrary to one of the intentions of the 'Act' to settle disputes when they arise. These figures are compatible with the previous reporting year.



**Table 13 - Hourly fees charged by adjudicators**

The data collected for this reporting period shows that the largest group of adjudicators were charging between £151 - £175 per hour. This was closely followed by two hourly charge-out rates of between £126 - £150 and £101 - £125. The data is different to the previous reporting year in that there is greater similarity between the aforementioned charge out rates. Previously the most commonly charged rate was £126 - £150.

## Conclusion

The trend had once again turned downwards for the number of adjudication referrals, albeit only a 5% decline. There appears to be no evidence in the data to support the widespread use of the 'ambush' tactic of initiating adjudication around popular holiday periods, with the peaks appearing to be in November and late January or early February. In the main, the number of referrals remains constant in the first 6 months of reporting and fluctuates in the second 6 months. This fluctuation is consistent with previous reporting years.

The claimant or referring party remains to be the most successful party in adjudication, although the responding parties' success has shown an increase in this reporting period. There is a legitimate concern over the extent to which this question sheds light upon the real success rate as an adjudication can have numerous outcomes regarding valuation, time etc and a 'winning' party may have won the right to payment but not at the level which was claimed. Adjudicators quite rightly have trouble deciding in this situation 'who won?' It is a worthy question of whether the responding parties' success rate increases the longer the adjudication runs?

There is still a very low level of complaints against adjudicators (this is distinguished from appeals against their decisions). This must reflect well on the professionalism of the adjudicators themselves and of the ANBs which manage the process on behalf of the industry.

The majority of adjudications were conducted on a 'documents only' basis. This might be due to speed and convenience, avoidance of claims of procedural error or bias or it could be due to the preference of the adjudicators to avoid hearings which are traditionally within the comfort zone of the lawyers. It may be worthy to consider the question of how many parties in adjudication requested a hearing and how many were granted that request?

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

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