



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

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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 the end of April 2011. This report covers the first thirteen years of adjudication.

TIME PERIODS	ALL ANBs 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%
YEAR 11 - May 2008 - April 2009	1730	21%
YEAR 12 - May 2009 - April 2010	1538	-11%
YEAR 13 - May 2010 - April 2011	1064	-31%

Table 1: Adjudications by all reporting ANBs

Number of Referrals

Since the last published Report there was a 21% increase from the previous year in adjudication referrals bringing the number from 1432 in year 10 to 1730 in year 11, in comparison with a 5% decrease the previous year. The following year saw an 11% decline to 1538 referrals in year 12 followed by a substantial 31% decline to 1064 referrals in year 13. This is the lowest number of annual referrals reported since the first year when 187 were reported following implementation of the HGCR Act in 1998.

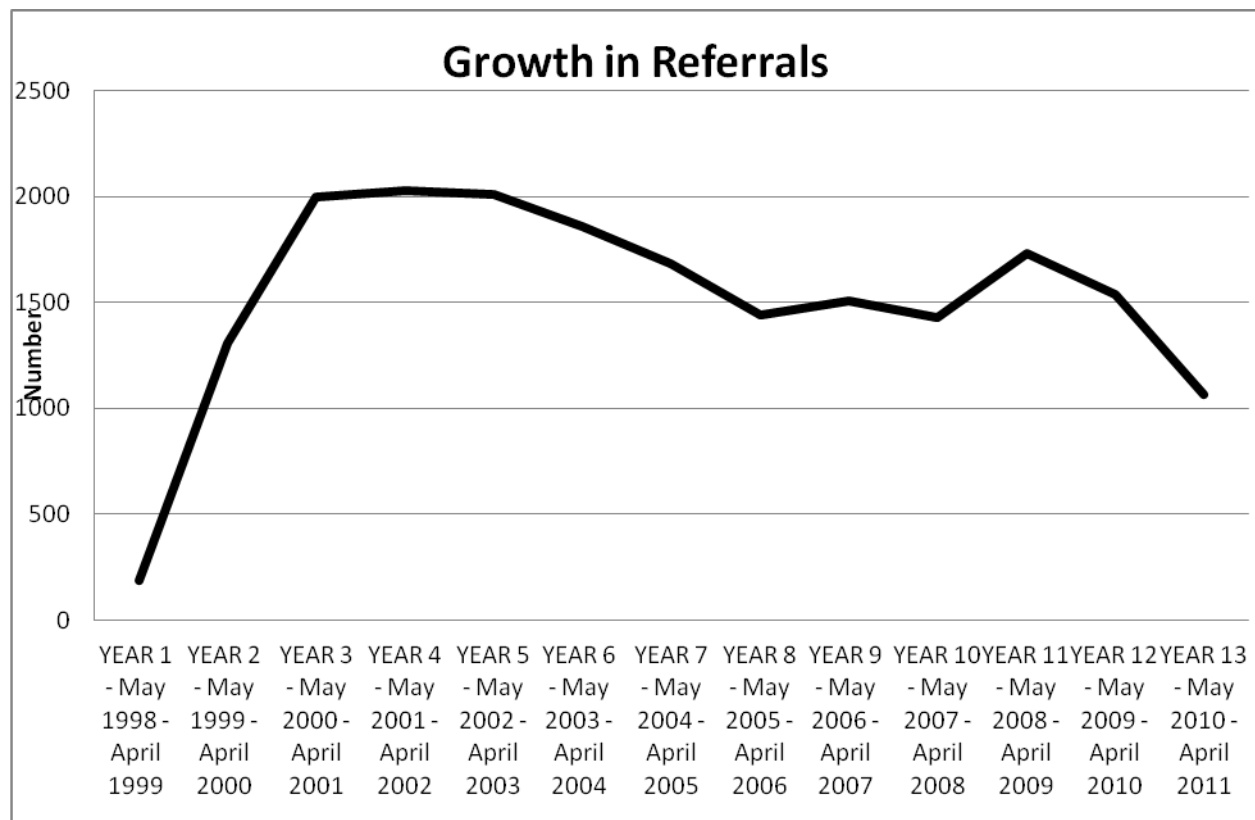


Figure 1: Growth rate in adjudication referrals in the UK

The graph above highlights the sharp rise in the number of adjudication appointments 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. A sharp increase in referrals in year 11 was followed by a reversal in year 12 and a substantial decline in year 13. The Research Group considers the pattern in years 11 to 13 may be due to the economic recession causing resource constraints within the industry and a willingness to settle disputes rather than resort to adjudication. See COBRA Report published on the Adjudication Reporting Centre website.¹

¹ Kennedy, P., Milligan, J. L., Cattanaach, L., McCluskey, E., 'The development of Statutory Adjudication in the UK and its relationship with construction workload', COBRA, Proceedings of RICS Construction and Property Conference, September 12 – 13, 2011.

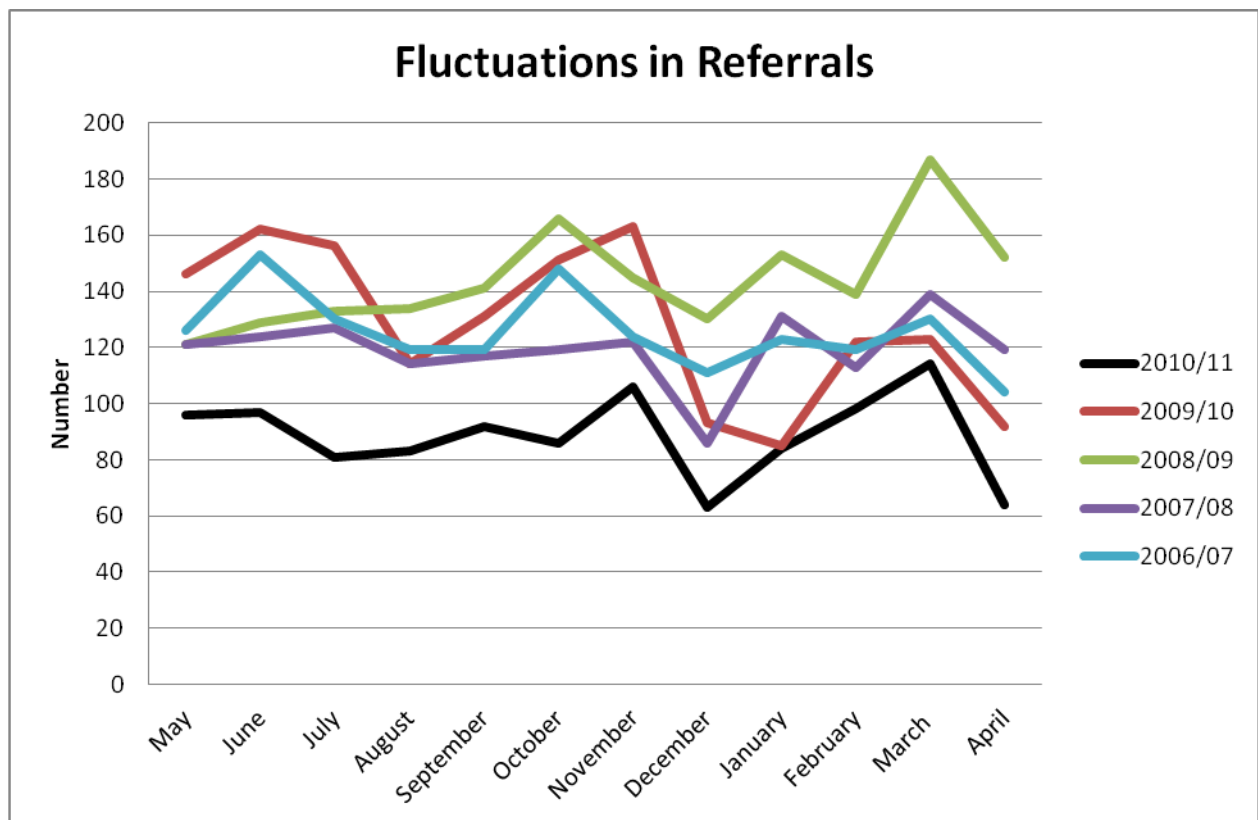


Figure 2: Fluctuations in referrals over the year

From the reporting period of May to April 2010/2011 it can be seen that the first six months remained, in the main, stable with little fluctuation. The remaining 6 months were turbulent. November saw an increase in the number of referrals followed by a sharp drop in December. The number of referrals increased steadily to a peak in March, followed by a sharp decline in April. 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 little variation from previous years in the peaks and troughs.

ADJUDICATOR NOMINATING BODY	October 2007	April 2008	April 2010	October 2010	April 2011
Assoc of Independent Construction Adjs.	49	48	48	39	34
Chartered Institute of Arbitrators	171	164	164*	118	119
Confederation of Construction Specialist	43	43	15	15	15
Construction Industry Council	102	102	94	85	86
Institution of Chemical Engineers	15	15	15	20	15
Institution of Civil Engineers	81	81	72	75	75
Royal Institute of British Architects	67	67	50	74	74
Royal Institution of Chartered Surveyors	104	115	120	114	114
3A's Polycon AIMS Ltd	NR	NR	NLO	NLO	NLO
Institution of Mechanical Engineers	NR	NR	NR	NR	NR
Chartered Institute of Building	46	43	43	40	40
Construction Confederation	28	27	NLO	NLO	NLO
Scottish Building	9	9	9	10	10
Royal Incorporation of Architects in Scotland	10	10	13	10	12
RICS in Scotland	23	23	20	20	20
Centre for Effective Dispute Resolution	42	42	32	32	33
Institution of Electrical Engineers	NR	NR	NR	NR	NR
Tech and Construction Solicitors Association	133	133	128	138	138
CI Arb (Scottish Branch)	16	16	17	17	17
The Law Society of Scotland	28	28	33	23	23
Tech and Construction Bar Association	NR	NR	NR	NR	NR
Adjudication.co.uk	NR	NR	NR	NR	NR
TOTALS	967	966	873	830	825
NR - not reporting NLO - no longer operating					

Table 2: Number of Adjudicators

The above table shows the number of adjudicators registered with ANBs. The number of adjudicators registered dropped from 966 in April 2008 to 825 in April 2011. The major contributors to this fall were CIARB (-45), Confederation of Construction Specialists (-28), Construction Industry Council (-16) and Construction Confederation (-27) which is no longer operating. In contrast, RIBA increased by 7 and TECSA increased by 5. The number of adjudicators fell as the number of adjudications also fell which may suggest a causal link. It should be noted that adjudicators can be registered with more than one ANB.

DISCIPLINE	Oct 2007	April 2008	April 2010	Oct 2010	April 2011
Quantity Surveyors	34.5%	31.4%	33.5%	37.0%	37.0%
Lawyers	26.6%	28.4%	15.6%	27.5%	27.4%
Civil Engineers	15.0%	14.5%	14.1%	14.1%	14.2%
Architects	8.7%	9.6%	8.1%	6.6%	6.8%
CIOB/Builders	4.9%	7.5%	4.7%	6.0%	6.1%
Building Surveyors	1.3%	2.5%	0.2%	1.2%	1.2%
Construction Consultants	5.6%	1.9%	0.5%	2.0%	2.0%
Structural Engineers	1.1%	1.3%	1.6%	1.6%	1.4%

Table 3: Primary discipline of adjudicators

The ANBs were asked to state the principal area of expertise of their adjudicators. As with previous years the top three were Quantity Surveyors, Lawyers and Civil Engineers in that order. From April 2008 to April 2011 the number of Quantity Surveyors increased from 31.4% to 37.0% and Architects decreased from 9.6% to 6.8%.

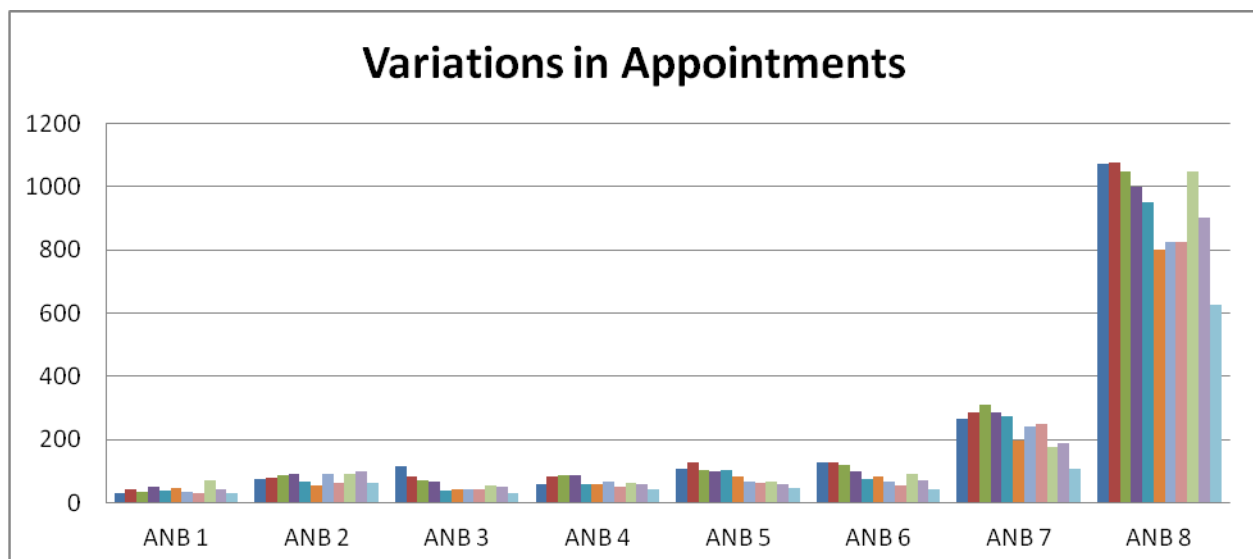


Figure 3: Variations in adjudication appointments of the reporting ANBs

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. Figure 3 demonstrates the trend by showing the 8 ANBs with the largest appointments.

Complaints Against Adjudicators	Year 9	Year 10	Year 11	Year 12	Year 13
Complaints Made	1.20%	1.19%	0.23%	0.26%	2.44%
Complaints Upheld	0.07%	0.00%	0.06%	0.00%	0.00%

Table 4: Number of complaints against adjudicators

Table 4 shows that the number of complaints made against adjudicators has more than doubled from year 10 and stands at 2.44% in year 13 with 0% of those complaints being upheld. It is encouraging to note that, despite the increase in complaints, in all instances the Adjudicators have been found not at fault.

Source of Appointment	July 2004	Oct 2005	Oct 2007	April 2008	April 2011
Through an ANB	83.1%	83.2%	85.0%	87.3%	90.7%
By agreement of the parties	16.6%	16.8%	12.0%	12.0%	8.1%
Named in the contract	0.3%	0.0%	3.0%	0.7%	1.2%
Total adjudications in the samples	326	173	167	150	86

Table 5: Sources of appointment of adjudicators

The main source of appointment of adjudicators remains by ANBs at 90.7%. This figure is akin to the previous year with that being 87.3%. The other two means of appointment are by agreement of the parties and being named in the contract with those making up 8.1% and 1.2% respectively. There was a drop from 12.0% the previous reporting year to 8.1% this year for adjudicators appointed by agreement of the parties and an increase from 0.7% to 1.2% for adjudicators being named in the contract. It should be noted that the sample number of adjudications for this reporting period is 86 compared to 150 for the previous report.

	July 2004	Oct 2005	Oct 2007	Apr 2008	Apr 2011
Claimant	65%	72%	68%	60%	71%
Respondent	25%	21%	20%	29%	17%
Split Decision	10%	7%	13%	12%	12%

Table 6: Comparison of successful parties in adjudicators' decisions

As with previous years the data collected shows that the Claimant remains the more successful party in adjudication. That being said, there is an increase for the Claimant from 60% to 71% from years 10 to 13, and a corresponding decrease for the Respondent from 29% to 17%. Split decisions have remained the same. 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.

Subject	July 2004	Oct 2005	Oct 2007	Apr 2008	Apr 2011
Valuation of Final Account	12%	14%	22%	22%	29%
Failure to comply with Payment Provisions	19%	14%	8%	19%	17%
Valuation of interim payments	15%	13%	15%	16%	19%
Withholding monies	10%	11%	10%	10%	3%
Extension of time	8%	8%	8%	9%	5%
Loss and Expense	9%	10%	2%	7%	0%
Valuation of Variations	15%	17%	11%	5%	17%
Defective Work	4%	5%	7%	4%	8%
determination	2%	3%	4%	4%	2%
Non-payment of fees	2%	1%	7%	2%	0%

Table 7: Primary subject of the disputes

From previous years there has been a marked increase in disputes that concern Valuation of Final Account, Interim Payments and Variations. There has been a decrease in withholding monies which may be due to the parties now having the necessary systems in place to issue the relevant notices when appropriate. Valuation of Final Account remains the main source of dispute. It is noted that Loss and Expense is now at 0%. This is most likely due to it being included in other subject matters, as opposed to it no longer being prevalent.

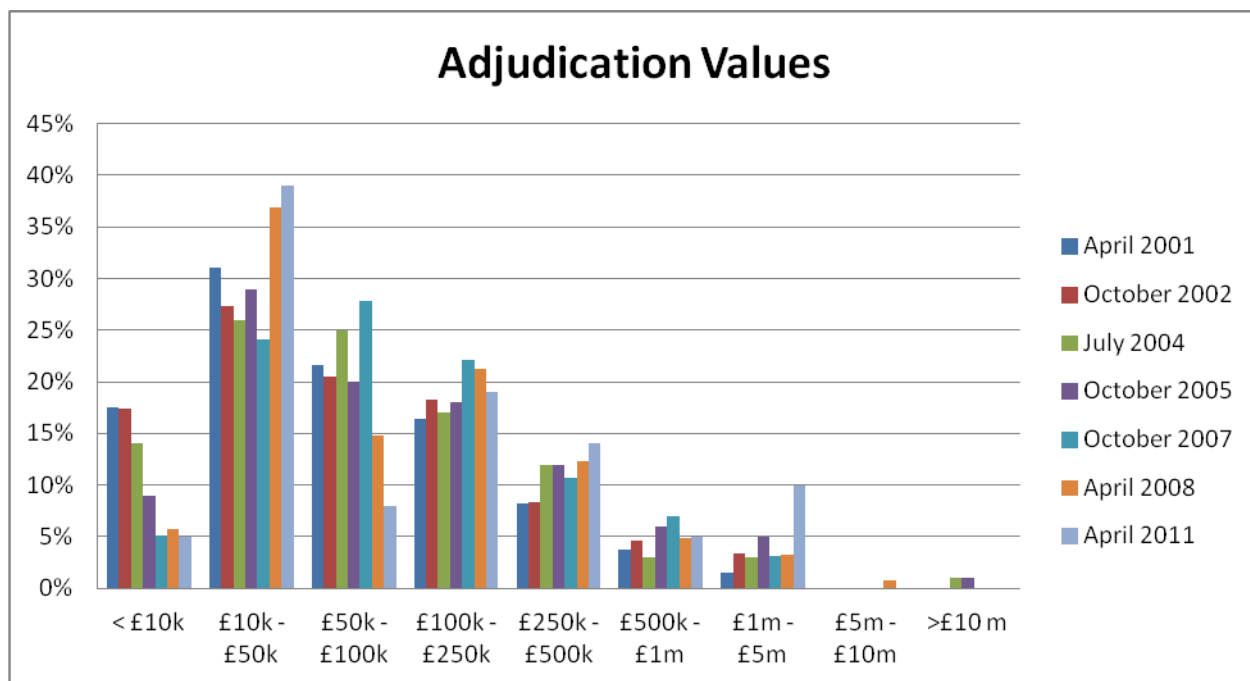


Figure 4: Proportion of adjudications in each value group

The majority of adjudications were in the value range £10,001 - £50,000. This remains comparable with previous reporting years. There is a decrease from the previous year in the number of adjudications between the values of £50,001 - £100,000. There was an increase from 3% to 10% in the value range £1 million to £5 million. The remaining value bands are mostly consistent with the previous reporting years.

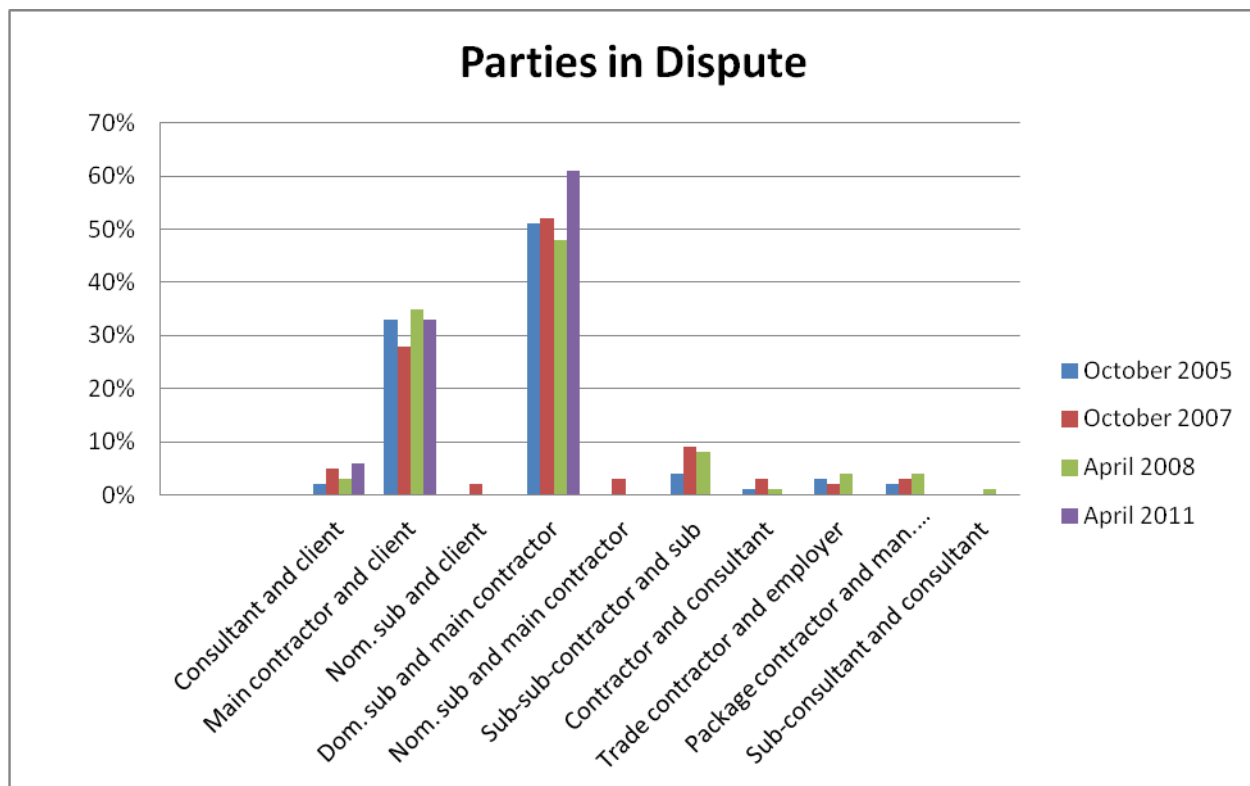


Figure 5: Parties in dispute

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

Procedure Adopted	to July 2004	to October 2005	to October 2007	to April 2008	to April 2011
Employ a documents only procedure	56.9%	46.8%	57.6%	77.9%	62.1%
Employ an interview procedure with one party present	0.8%	0%	0%	0%	0%
Employ an interview procedure with both parties present	24.6%	30.3%	15.2%	10.6%	28.8%
Carry out a full hearing procedure	8.1%	15.6%	14.1%	7.7%	3.1%
Carry out a conference call	5.8%	6.4%	10.9%	3.9%	3.0%
Site Visit	1.9%	0.9%	1.1%		3.0%
Legal debates	1.5%		1.1%		
Interview with contract administrator present	0.4%				
Other					

Table 8: Procedures adopted by adjudicators

Employing a documents only procedure remains the most common and preferred procedure by adjudicators with 62.1% of adjudications sampled carried out this way. This is a decrease from 77.9% for the previous year. Employing an interview procedure with both parties present has increased from 10.6% to 28.8% and carrying out of a full hearing procedure has decreased from 7.7% to 3.1%. It is notable that there are no recorded instances of an interview procedure with one party present since 2004.

Timescale for adjudication	to July 2004	to Oct 2005	to Oct 2007	to April 2008	to April 2011
Decisions given within 28 days	60%	58%	47%	56%	49%
Between 28 and 42 days	30%	32%	39%	36%	40%
More than 42 days	10%	10%	14%	8%	11%

Table 9: Compliance with time limits

Only 49% of decisions are given within the 28 day time period. Forty per cent of decisions are given between 28 and 42 days and 11 % are given after 42 days. These figures are roughly comparable with previous reporting years with there being a decrease from 56% to 49% of decisions being given within the 28 day period. This may be comparable with the increase in the complexity of the subject matters being referred to Adjudication.

Proportion of adjudication appointments proceeding to decision	July 2004	October 2005	October 2007	April 2008	April 2011
Decisions issued	67%	66%	67%	56%	60%
Adjudication settled by the Parties	21%	20%	15%	23%	14%
Adjudications abandoned	9%	12%	14%	11%	20%
Adjudications still ongoing	3%	2%	4%	10%	6%

Table 10: Adjudications proceeding to a decision

In 60% of the adjudication sampled a decision was issued, which is an increase from 56% for the previous reporting year. Only 14% of adjudications were settled by the parties, which is a decrease from 23% for the previous reporting year. Twenty per cent were abandoned and 6% of those sampled remained ongoing, down from 10% the previous reporting year.

	to October 2005	to October 2007	to April 2008	to April 2009	to April 2011
Appointments in sample	173	178	154	154	86
Challenges	63	68	53	53	28
Appointments challenged	36%	38%	34%	34%	33%

Challenges over the period Nov 2004 to April 2008	
No dispute/not crystallised	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%

Table 11: Challenges to adjudicators' appointments

The adjudicators' appointment was challenged in 33% 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 only from November 2004 to April 2008 as detailed figures were not available for April 2011. 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 jurisdictional challenges.

Initiation of Adjudication	October 2007	April 2008	April 2011
Before Practical Completion	16%	17%	10%
After Practical Completion	84%	83%	90%

Table 12: When is the adjudication process initiated?

Table 12 shows that 90% of adjudications are initiated after practical completion with the remainder during the currency of the main works, contrary to one of the intentions of the 'Act' to settle disputes when they arise. These figures show an increase from 83% to 90% in post-practical completion initiations from the previous reporting year.

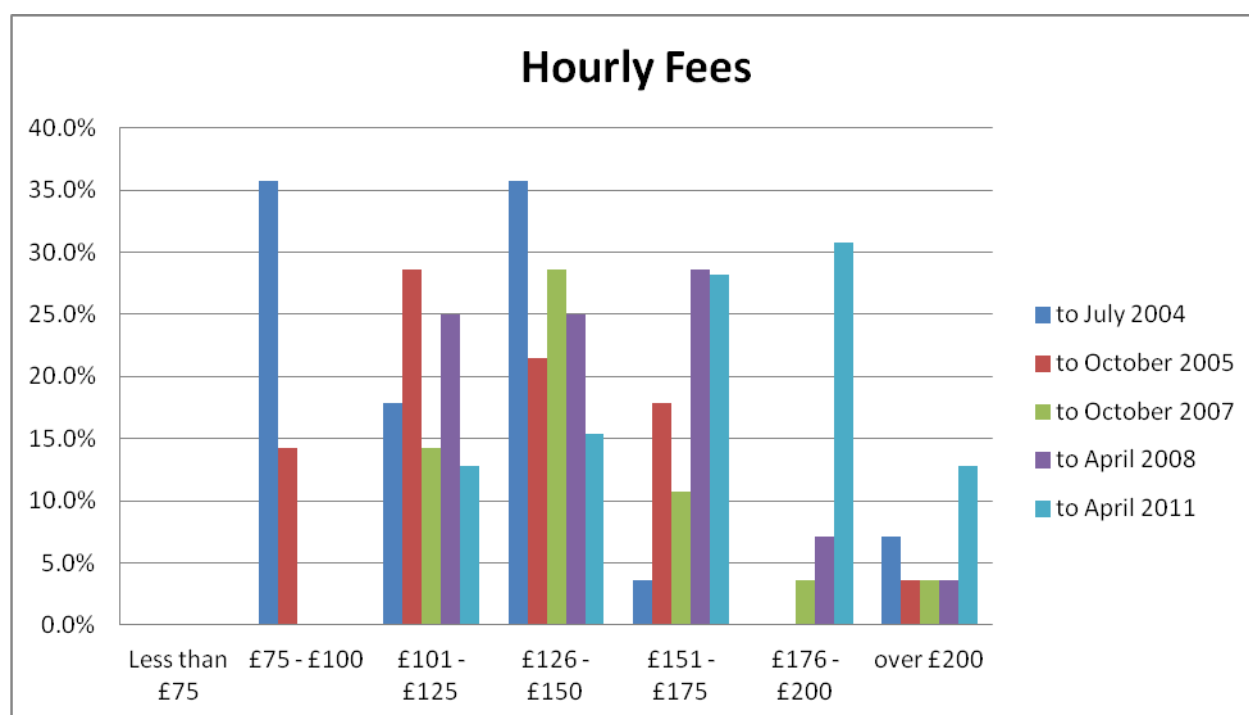


Figure 6: Hourly fees charged by adjudicators

The data collected for this reporting period shows that the largest group of adjudicators was charging £176 - £200 per hour. This was closely followed by an hourly charge-out rate of £151 - £175. Previously, the most commonly charged rate was £151 - £175.

Conclusion

Since Report 10 which covered the period up to April 2008 there was a sharp increase of 21% in the number of adjudication referrals which then slumped by 11% the following year. The numbers declined again by a very substantial 31% to only 1064 referrals in the year ending April 2011 which was the lowest annual rate since 1999. This may be due to the recession, resource constraints and a willingness to settle disputes. 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 six months of reporting and fluctuates in the second six months. This fluctuation is consistent with previous reporting years.

The Claimant or Referring Party remains the more successful party in adjudication, but the Responding Parties' success has shown a marked decrease in this reporting period. This could be attributed in part to Referring Parties becoming more restrictive in the question they refer to Adjudication. There is a legitimate concern over the extent to which this question sheds light upon the real success rate as 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 important to read this data with this in mind.

There is still a very low level of complaints against adjudicators (this is distinguished from appeals against their decisions), although the percentage doubled from the last reporting period. 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. The use of an interview procedure with both parties present more than doubled since the last report, while the use of full hearings more than halved.

The vast majority of adjudications were initiated after Practical Completion which is both surprising and disappointing given the stated aims of the Act.

The hourly fees charged by adjudicators crept upwards with almost one-third now charging £176-200.

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.