



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 2012. This report covers the first fourteen 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%
YEAR 14 - May 2011 - April 2012	1093	3%

Table 1: Adjudications by all reporting ANBs

Number of Referrals

Since the last published Report there was a 3% increase in adjudication referrals from the previous year bringing the number from 1064 in year 13 to 1093 in year 14, in comparison with a 31% decrease the previous year. This is the second lowest number of annual referrals reported since the first year when 187 were reported following implementation of the HGCR Act in 1998. Although the continuous decline from year 11 has halted, the upturn is only marginal.

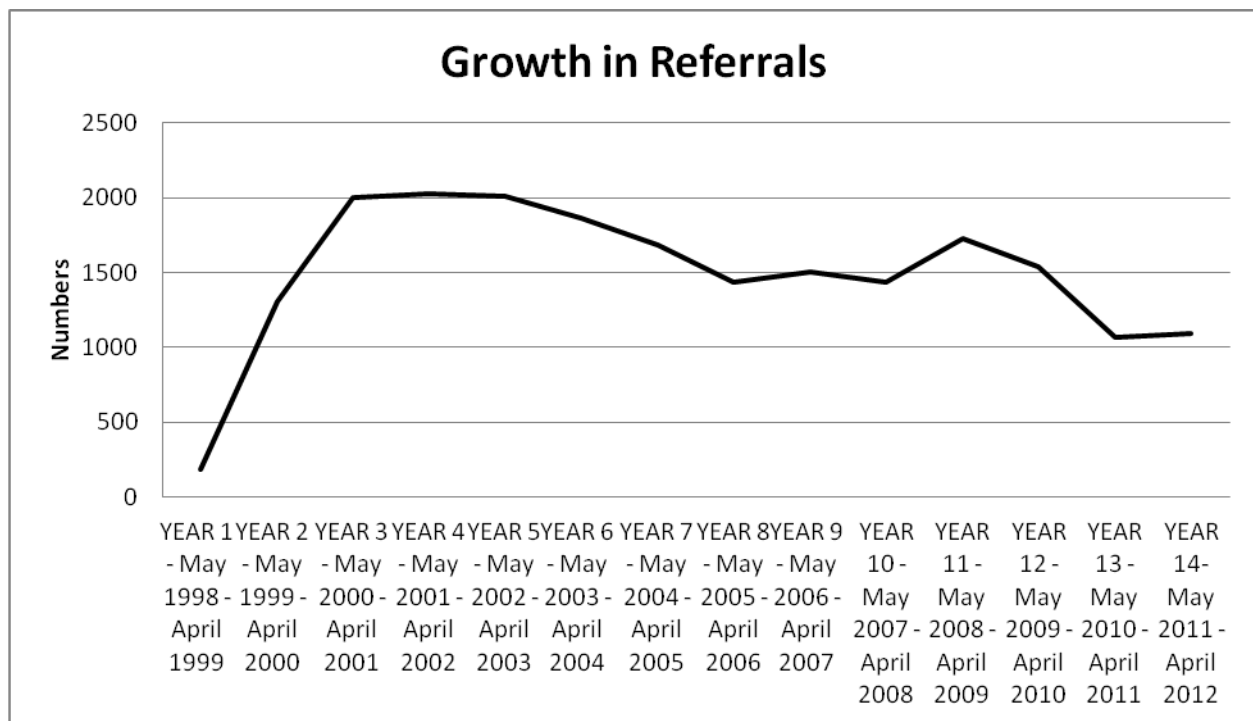


Figure 1: Growth rate in adjudication referrals in the UK

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. There was a small increase in year 14. The Research Group considers the pattern in years 11 to 14 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., Cattanach, 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.

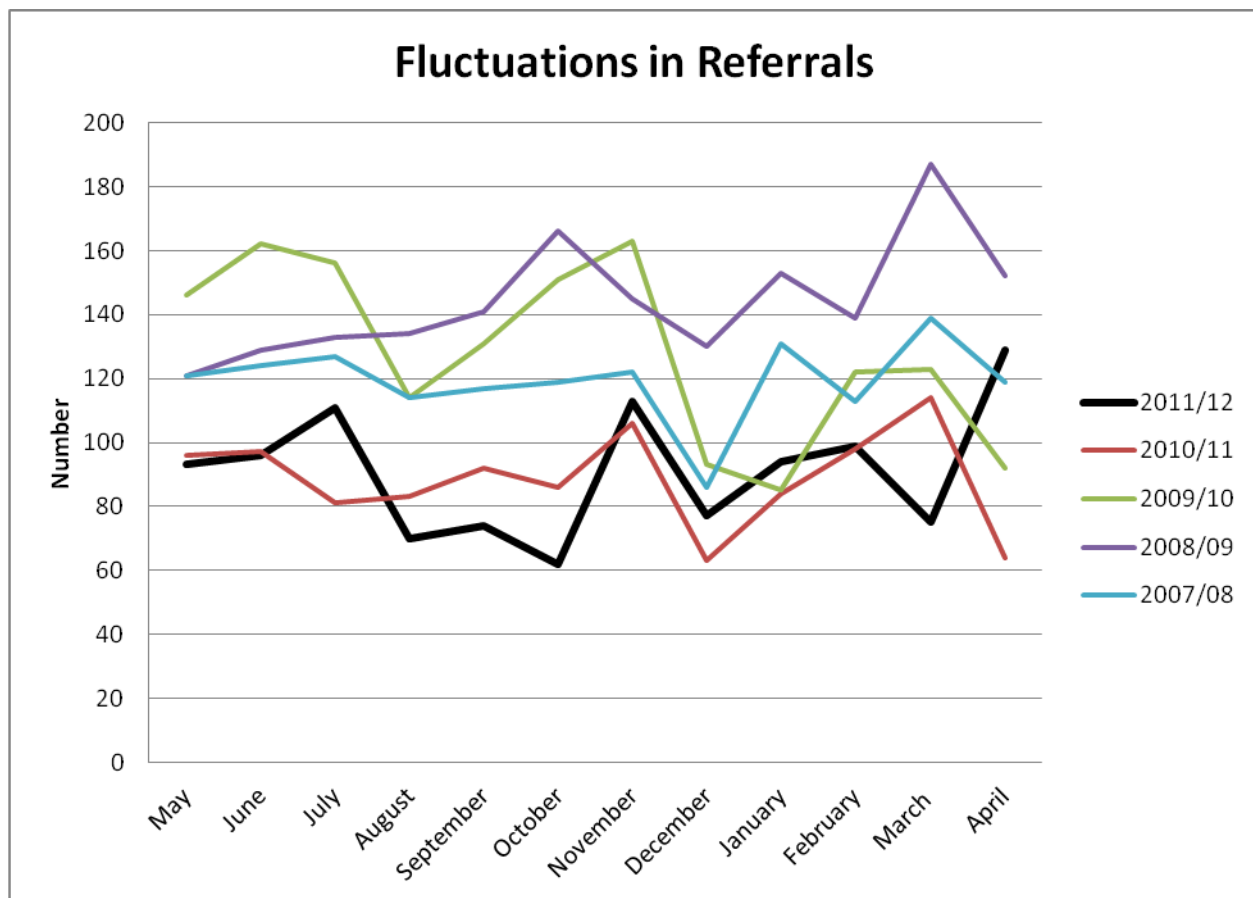


Figure 2: Fluctuations in referrals over the year

From the reporting period of May to April 2011/2012 it can be seen that the first six months showed a general decline with a sharp increase in July. The remaining 6 months were turbulent. November saw an increase in the number of referrals followed by a drop in December. The number of referrals increased steadily to a peak in February, followed by a decline in March which is contrary to the trends of previous years. There was then a substantial increase in referrals in April. The pattern indicated that for the last half of the year it was quite dissimilar to previous years as referrals historically increased in March and decreased in April. The first half of the year also showed a different pattern from previous years.

ADJUDICATOR NOMINATING BODY	April 2008	April 2010	October 2010	April 2011	April 2012
Association of Independent Construction Adjudicators	48	48	39	34	31
Chartered Institute of Arbitrators	164	164*	118	119	145
Confederation of Construction Specialist	43	15	15	15	15
Construction Industry Council	102	94	85	86	76
Institution of Chemical Engineers	15	15	20	15	16
Institution of Civil Engineers	81	72	75	75	63
Royal Institute of British Architects	67	50	74	74	68
Royal Institution of Chartered Surveyors	115	120	114	114	114
3A's Polycon AIMS Ltd	NR	NLO	NLO	NLO	NLO
Institution of Mechanical Engineers	NR	NR	NR	NR	NR
Chartered Institute of Building	43	43	40	40	38
Construction Confederation	27	NLO	NLO	NLO	NLO
Scottish Building	9	9	10	10	11
Royal Incorporation of Architects in Scotland	10	13	10	12	12
Royal Institution of Chartered Surveyors in Scotland	23	20	20	20	24
Centre for Effective Dispute Resolution	42	32	32	33	46
Institution of Electrical Engineers	NR	NR	NR	NR	NR
Technology and Construction Solicitors Association	133	128	138	138	136
Chartered Institute of Arbitrators (Scottish Branch)	16	17	17	17	15
The Law Society of Scotland	28	33	23	23	23
Technology and Construction Bar Association	NR	NR	NR	NR	82
Adjudication.co.uk	NR	NR	NR	NR	NR
TOTALS	966	873	830	825	915
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 increased from 825 in April 2011 to 915 in April 2012. The major contributors to this increase were CIARB (+26) and CEDR (+13). The return to reporting of the Technology and Construction Bar Association distorted the total number by +82. Disregarding that anomaly reduces the total number of adjudicators year-on-year to 833 (+8). Decreases in numbers were reported by Construction Industry Council (-10), the Institution of Civil Engineers (-12) and RIBA (-6). It should be noted that adjudicators can be registered with more than one ANB.

DISCIPLINE	April 2008	April 2010	Oct 2010	April 2011	April 2012
Quantity Surveyors	31.4%	33.5%	37.0%	37.0%	34.8%
Lawyers	28.4%	15.6%	27.5%	27.4%	34.5%
Civil Engineers	14.5%	14.1%	14.1%	14.2%	11.3%
Architects	9.6%	8.1%	6.6%	6.8%	6.5%
CIOB/Builders	7.5%	4.7%	6.0%	6.1%	4.3%
Building Surveyors	2.5%	0.2%	1.2%	1.2%	1.8%
Construction Consultants	1.9%	0.5%	2.0%	2.0%	2.2%
Structural Engineers	1.3%	1.6%	1.6%	1.4%	1.1%

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. Quantity Surveyors and Lawyers now each account for 35% of all adjudicators and Civil Engineers have fallen from 14.2% to 11.3%.

Source of Appointment	Oct 2005	Oct 2007	April 2008	April 2011	April 2012
Through and ANB	83.2%	85.0%	87.3%	90.7%	90.7%
By agreement of the parties	16.8%	12.0%	12.0%	8.1%	7.8%
Named in the contract	0.0%	3.0%	0.7%	1.2%	1.6%
Total adjudications in the samples	173	167	150	86	257

Table 4: Sources of appointment of adjudicators

The main source of appointment of adjudicators remains by ANBs at 90.7%. This figure is the same as the previous year. The other two means of appointment are by agreement of the parties and being named in the contract with those making up 7.8% and 1.6% respectively. The slight drop in the former from the previous year was matched by an equal rise in the latter. It should be noted that the sample number of adjudications for this reporting period is 257 compared to 86 for the previous report.

	July 2004	Oct 2005	Oct 2007	Apr 2008	Apr 2011	Apr 2012
Claimant	65%	72%	68%	60%	71%	68%
Respondent	25%	21%	20%	29%	17%	23%
Split Decision	10%	7%	13%	12%	12%	9%

Table 5: 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. There is a decrease for the Claimant from 71% to 68% from last year and a corresponding increase for the Respondent from 17% to 23%. Split decisions have fallen from 12% to 9%. The figures for 2012 have been based on the adjudicators' apportionment of fees between the parties which gives a better idea of which party 'won' the adjudication. There may, however, be several reasons why adjudicators apportion fees other than success.

Subject	April 2012
Value of work	18%
Final account value	17%
Interim payment	26%
Extension of time	7%
Variations	9%
Defective work	7%
Payment of professional fees	3%
Withholding monies	2%
Contract terms	3%
Other	8%

Table 6: Primary subject of the disputes

Disputes regarding interim payments constituted the largest proportion of adjudications at 26%, followed by value of work at 18% and final account value at 17%. Variations, defective work and extensions of time were also significant at 9%, 7% and 7% respectively. Sundry, minor causes each representing less than 1% of the total accumulated to 8% as 'Other'.

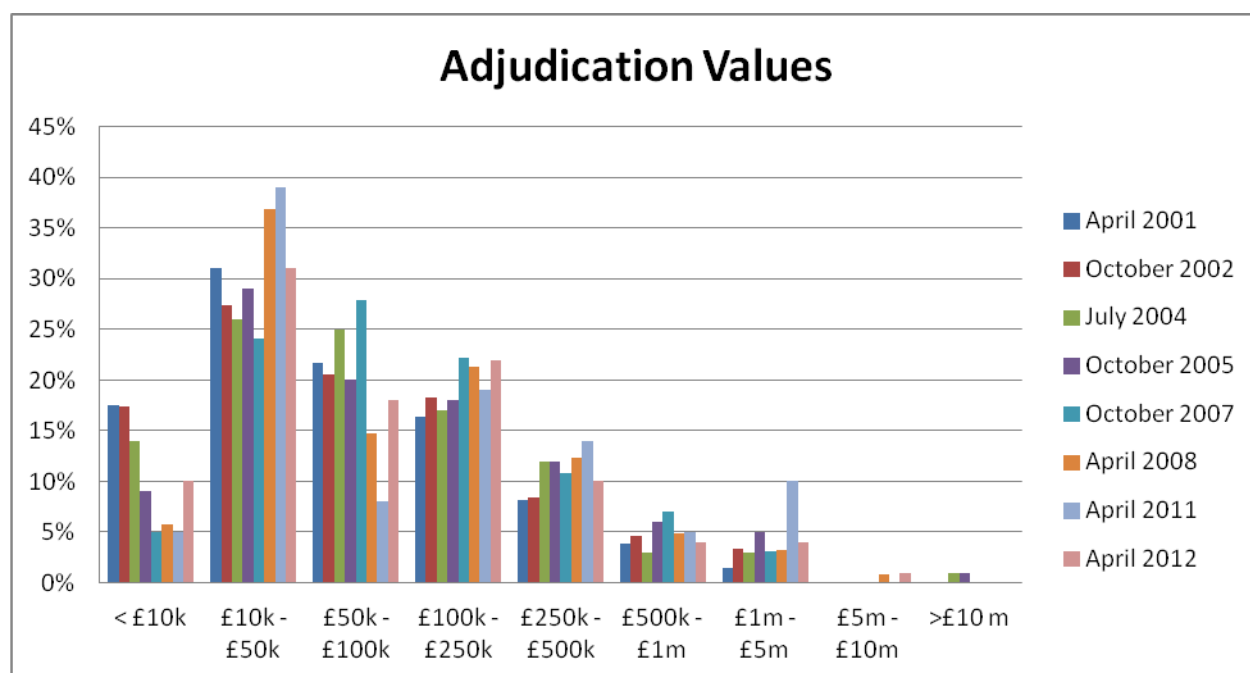


Figure 3: Proportion of adjudications in each value group

The majority of adjudications were in the value range £10,001 - £50,000. This remains comparable with previous reporting years. There was an increase from the previous year in the number of adjudications worth less than £10,000 and between the values of £50,001 - £100,000. There was a decrease of 8% in the value range £10,001 to £ 50,000 and of 6% in the value range £1 million to £5 million.

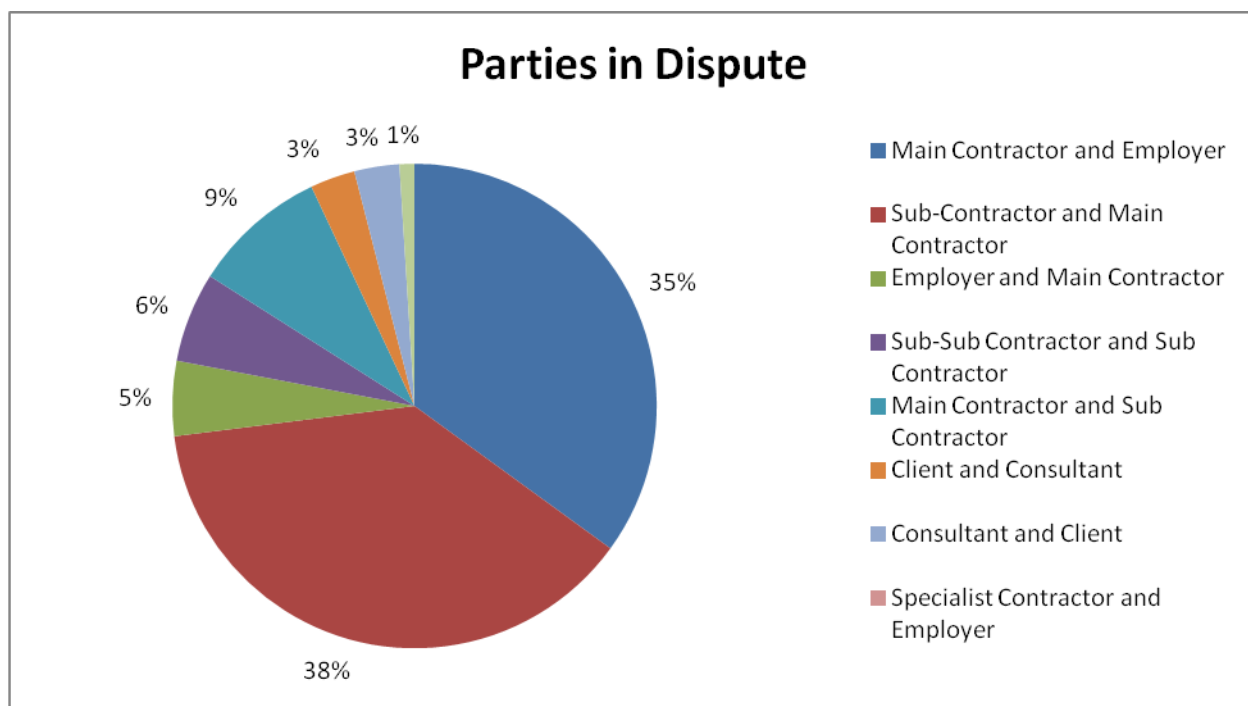


Figure 4: Parties in dispute

The parties most likely to enter into dispute remain sub-contractor and main contractor, and main contractor and employer. This is consistent with previous years. Disputes referred by a main contractor against a sub-contractor represent 9% of the total, whilst those referred by a sub-sub-contractor against a sub-contractor represent 6%.

Procedure Adopted	to October 2005	to October 2007	to April 2008	to April 2011	to April 2012
Employ a documents only procedure	46.8%	57.6%	77.9%	62.1%	69.0%
Employ an interview procedure with one party present	0%	0%	0%	0%	0%
Employ an interview procedure with both parties present	30.3%	15.2%	10.6%	28.8%	14.5%
Carry out a full hearing procedure	15.6%	14.1%	7.7%	3.1%	11.5%
Carry out a conference call	6.4%	10.9%	3.9%	3.0%	5.0%
Site Visit	0.9%	1.1%		3.0%	
Legal debates		1.1%			
Interview with contract administrator present					
Other					

Table 7: Procedures adopted by adjudicators

Employing a documents only procedure remains the most common and preferred procedure by adjudicators with 69% of adjudications sampled carried out this way. This is an increase from 62.1% for the previous year. Employing an interview procedure with both parties present has almost halved from 28.8% to 14.5%, and carrying out of a full hearing procedure has increased significantly from 3.1% to 11.5%. It is notable that there are no recorded instances of an interview procedure with one party present since 2004. There is a slight increase in conference calls which may reflect the need to employ cost effective procedures.

Timescale for adjudication	to Oct 2005	to Oct 2007	to April 2008	to April 2011	to April 2012
Decisions given within 28 days	58%	47%	56%	49%	44%
Between 28 and 42 days	32%	39%	36%	40%	37%
More than 42 days	10%	14%	8%	11%	19%

Table 8: Compliance with time limits

Only 44% of decisions are given within the 28 day time period and 37% per cent are given between 28 and 42 days. Nineteen per cent are given after 42 days of which about half are given within 56 days. These figures indicate a consistent trend towards longer adjudications. 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	October 2005	October 2007	April 2008	April 2011	April 2012
Decisions issued	66%	67%	56%	60%	69%
Adjudication settled by the Parties	20%	15%	23%	14%	19%
Adjudications abandoned	12%	14%	11%	20%	10%
Adjudications still ongoing	2%	4%	10%	6%	2%

Table 9: Adjudications proceeding to a decision

In 69% of the adjudications sampled a decision was issued, which is an increase from 60% for the previous year. Nineteen per cent of adjudications were settled by the parties, which is a increase from 14% for the previous year. Ten per cent were abandoned and only 2% of those sampled remained ongoing, down from 6% the previous year.

	to October 2005	to October 2007	to April 2008	to April 2009	to April 2011	to April 2012
Appointments in sample	173	178	154	154	86	194
Challenges	63	68	53	53	28	54
Appointments challenged	36%	38%	34%	34%	33%	28%

Table 10: Challenges to adjudicators' appointments

The adjudicators' appointment was challenged in 28% of the cases, down from 33% the previous year, with the main challenge being that there was no dispute/the dispute had not crystallised.

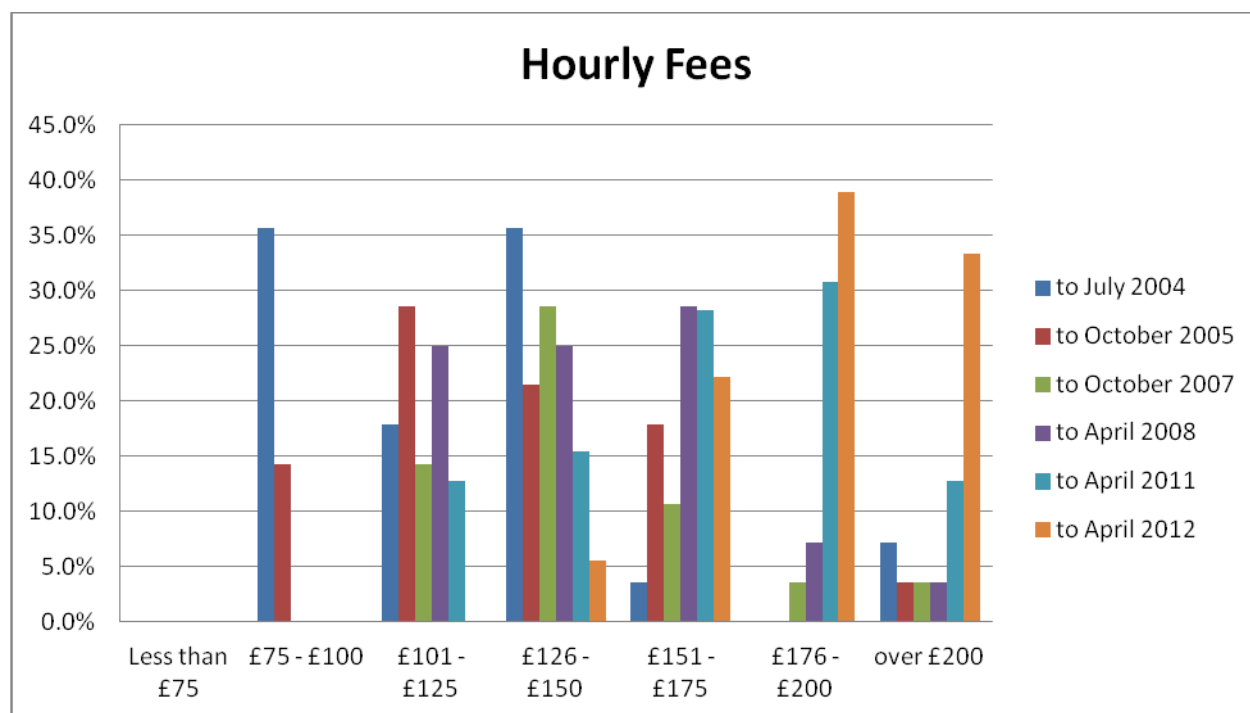


Figure 5: Hourly fees charged by adjudicators

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 over £200, but this had increased from 12.8% of the total sampled last year to 33.3% this year. In a separate sample of 240 adjudications, 70% of the total was charged at more than £175 per hour with half of those charged at over £200.

Conclusion

Since Report 11, which covered the period up to April 2011, there was a marginal recovery of 3% in the number of adjudication referrals. The number was, however, only 1093 referrals which was the second 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 July, November and April. In the main, the number of referrals remains fairly constant in the first six months of reporting and fluctuates in the second six months. This fluctuation is somewhat consistent with previous reporting years.

Quantity Surveyors and Lawyers now each represent 35% of the total number of adjudicators.

The Claimant or Referring Party remains the more successful party in adjudication, but the Responding Parties' success has shown an increase in this reporting period.

The primary subject of dispute was interim payment closely followed by value of work, and value of final account.

Almost one-third of adjudications were in the value range £10,001 to £50,000 and there was a noticeable decrease of adjudications in the value range £1 million to £5 million.

Disputes between Main Contractor and Employer, and Sub-Contractor and Main Contractor accounted for almost three-quarters of all adjudications in the sample.

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 almost halved since the last report, while the use of full hearings rose from 3.1% to 11.5% of the total.

There is a growing trend towards longer adjudications. Less than half of adjudication decisions were given within the 28 day period and more than a third were given between 28 and 42 days.

Adjudicators are charging more. The hourly fees charged by adjudicators moved upwards with almost 40% now charging £176-200 and one-third charging over £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.

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