

# **ADJUDICATION REPORTING CENTRE**



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

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## 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 was to consider who were instigating the adjudications, how many there were and how the adjudication process was developing. The second phase, which is included in this report, seeks to provide more information about the adjudications themselves by collecting data from adjudicators who are invited to respond confidentially to the centre.- responses from 102 adjudicators have been received so far from a total number of 880 enquiries.

This report provides updated information on the 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 – on average adjudicators are approved by just over two ANBs.

The most noteworthy statistic is the **462% rise in the number of adjudications** taking place between the first 12 months of the HGCR Act coming into force and the first ten months of the following year.

## ADJUDICATOR NOMINATING BODIES

There are 21 Adjudicator Nominating Bodies, 16 provide a service throughout the UK and 5 are based in Scotland. All were approached and have been sent during the period questionnaires covering the periods May 1998 to April 1999, May to August 1999 and September 1999 until February 2000. Initially only sixteen ANBs responded but as the research has continued an increased willingness to be included has been noticed (see Table 1).

## 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. By February 2000 this figure had increased to 1012 (see Table 1). However, it must be noted that the actual number of adjudicators is less than this as many adjudicators are members of more than one Adjudicator Nominating Body.

The Construction Industry Council and Royal Institution of Chartered Surveyors both advised that all their adjudicators were retained with other Adjudicator Nominating Bodies. The Chartered Institute of Arbitrators intimated that most of their adjudicators were in a similar position, with the Centre for Dispute Resolution reporting approximately 80% duplication. 77% of the Construction Confederation Adjudicators were listed elsewhere. The Chartered Institute of Building stated that 65% of their adjudicators were retained on other ANB lists. 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. The second stage of the research targeted at adjudicators themselves shows that, on average, each adjudicator is listed on 2.23 ANB lists.

ADJUDICATOR NOMINATING BODY	May 1999	August 1999	February 2000
Academy of Construction Adjudicators	200	219	202
Chartered Institute of Arbitrators	105	105	120
Confederation of Construction Specialists	25	30	25
Construction Industry Council	95	95	83
Institution of Chemical Engineers	5	5	5
Institution of Civil Engineers	79	79	84
Royal Institute of British Architects	59	61	75
Royal Institution of Chartered Surveyors (England)	72	72	72
3A's Polycon AIMS Ltd	36	36	36
Institution of Mechanical Engineers	8	8	8
Chartered Institute of Building	10	20	46
Construction Confederation	60	60	65
Scottish Building	8	8	11
Royal Incorporation of Architects in Scotland	19	19	21
Royal Institution of Chartered Surveyors in Scotland	0	26	27
Centre for Dispute Resolution	Not reported	Not reported	40
Institution of Electrical Engineers	Not reported	Not reported	20
Technology and Construction Solicitors Association	Not reported	Not reported	60
Chartered Institute of Arbiters (Scottish Branch)	Not reported	Not reported	6
The Law Society of Scotland	Not reported	Not reported	6
Technology and Construction Bar Association	Not reported	Not reported	Not reported
<b>TOTALS</b>	<b>781</b>	<b>843</b>	<b>1012</b>

**Table 1 – Number of Adjudicators**

## SKILL BASE OF ADJUDICATORS

The ANBs were invited to state the principal area of expertise of their adjudicators and how many had dual qualifications. The findings revealed that adjudicators mainly came from the quantity surveying discipline - accounting for 295 on the current numbers. This was followed by Civil Engineers (184), Architects (127) and then Lawyers at 78.

The most popular dual qualification was quantity surveyors also holding a law qualification. This amounted for 40 listed quantity surveyors.

## TRENDS IN ADJUDICATION

TIME PERIODS	RAW FIGURES
May 1998 - April 1999 (12 months)	187
May 1999 - August 1999 (4 months)	259
September 1999 - February 2000 (6 months)	743
<b>TOTAL FOR 22 months</b>	<b>1188</b>

**Table 2 - Adjudication Referrals**

Since the introduction of the Act, twenty of the twenty one listed ANBs have reported a total number of appointments of 1188 (excl TecBAR). This reveals an increasing amount of referrals to adjudication. It should be noted that this figure is the 'raw' total. In order to establish any real trend in adjudication, only the data obtained from the first sixteen ANBs who responded should be compared.

Of the 1188 total, 125 are from ANBs who have only recently commenced reporting. The total of those ANBs who have consistently reported is therefore 1063. Of these 187 took place in the first 12 months. In the following 10 months there were 876. Assuming an average of 87.6 per month the projected total for

these ANBs for the second year would be 1051 adjudication appointments. ***This amounts to an annual increase of 462% in the second year.***

## GEOGRAPHICAL DISTRIBUTION

The regional spread of adjudication over the 22 month period is as shown: -

AREA	May 1998 - April 1999	May 1999- February 2000
South England	54%	58%
North England	33%	28%
Wales	6%	6%
Scotland	4%	9%

**Table 3 Geographical Distribution of Adjudications**

These figures indicate the spread of adjudication activity in the country. The absolute numbers are rising all over but it seems that adjudications are growing more rapidly in both Scotland and the South of England and conversely they are rising less rapidly in the North of England.

All but one of the Adjudicator Nominating Bodies retained adjudicators from several of the above noted areas of expertise. Appendix 1 contains the questionnaire sent to the ANBs and Appendix 2 shows the questionnaire sent to the adjudicators. ACA and 3As can appoint adjudicators ranging over 12 of the 20 categories listed; these include lawyers, surveyors, architects, and all the engineering disciplines.

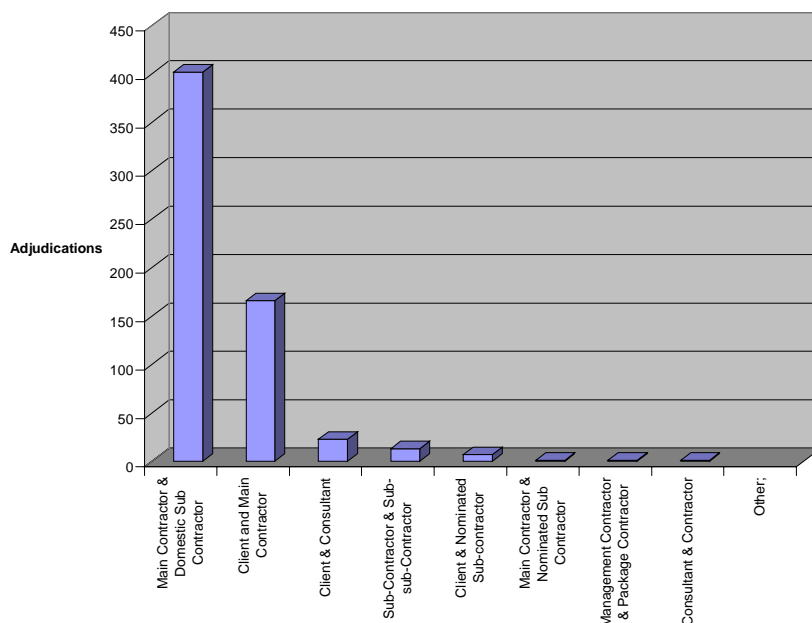
## FEEDBACK FROM ADJUDICATORS

The first part of this report is largely drawn from the returns from the ANBs and provides valuable and reliable data from which trends may be discerned. The purpose of this part of the project was to gather data on the number of referrals to adjudication, the number and associated qualifications of adjudicators, procedural matters surrounding the process of adjudications and to monitor trends in the use of adjudication.

The second part of the research is to gather information (both quantitative and qualitative) from the adjudicators themselves. Since the introduction of the statutory right to adjudication, adjudicators appointed through Adjudicator Nominating Bodies (ANBs), have been asked by the research team to complete questionnaires which are designed to elicit information on various aspects of the adjudications taking place in the construction industry. The research team is indebted to the ANBs for passing questionnaires to their adjudicators and indeed the team acknowledges the support of adjudicators who have responded directly to them. The following sets out some of the principal findings. The study included (at the time of writing) some 102 adjudicators who had completed collectively 591 adjudications with 71 still in process). It is worth pointing out that in the first twelve months since the introduction of the Act they had dealt with 143 adjudications and in the first ten months of the next year they had dealt with 541 adjudications. The sample therefore comprises a substantial proportion of the total population of active adjudicators.

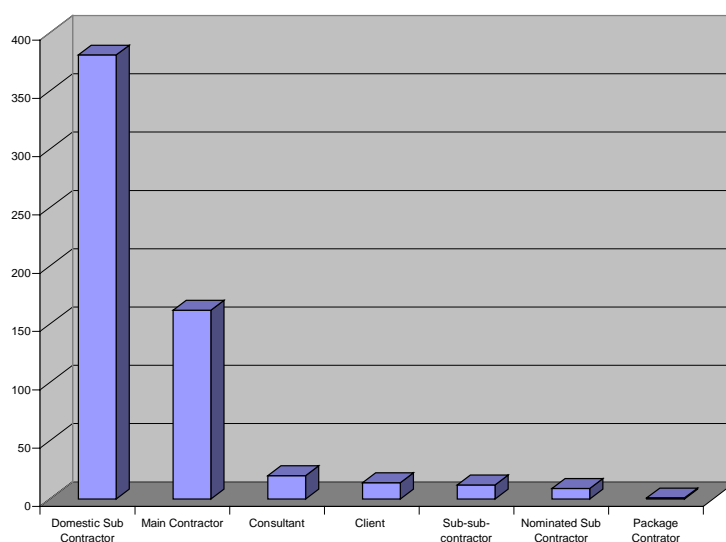
## The Disputing Parties

In answer to the question 'who are the disputing parties?' the results were as shown in Figure 1.



**Figure 1 - Parties engaged in adjudications**

The results are clear – main contractors and their domestic subcontractors are the main protagonists, followed by main contractors and their clients. With regard to who initiated the proceedings the answers were as shown in Figure 2.



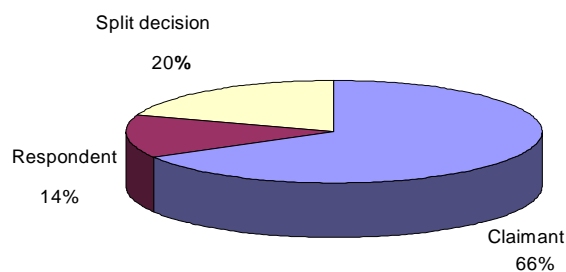
**Figure 2 – Parties initiating adjudication proceedings**

It seems evident from figures 1 and 2 that the pattern of parties involved in adjudications is replicated in the parties initiating proceedings. Generally the party which is further down the supply chain is the one which is aggrieved and exercising his right to adjudication. It is perhaps

not surprising that those in a subservient position should be aggrieved but it is a departure from previous studies which indicated a fear (particularly by subcontractors) of reprisals by those in a position to deny them the opportunity to tender.

### Who are the winners and losers?

When asked for whom they found in their adjudications the adjudicators indicated that in 66% of the cases they found for the claimant, 14% for the respondent and in 20% of cases their decision was split (as shown in Figure 3). It would appear that the one who initiates proceedings is most likely to win. This may seem self-evident as it is he who feels aggrieved and believes he has a case before embarking upon such action. It is also the case however that the claimant has the opportunity to define the boundaries of the dispute to exclude other, perhaps parallel issues, which he may be less likely to win.



**Figure 3 – Successful parties in adjudicators decisions**

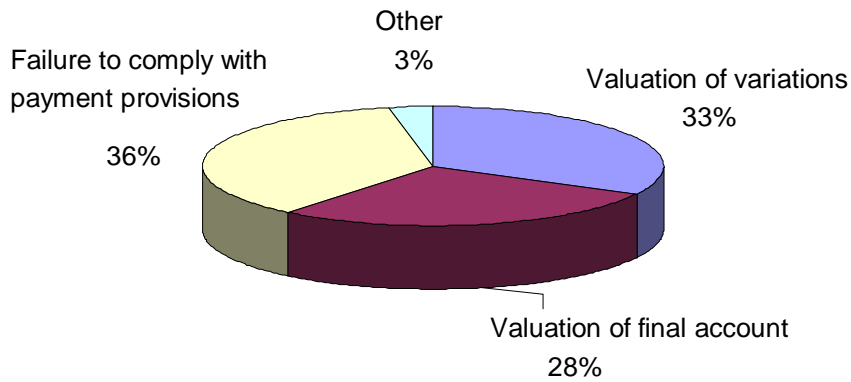
### Subjects of the disputes

The subjects of the disputes were found to be as shown in Table 4 and it is clear that the overwhelming subject in dispute is payment. The other issues, whilst important, pale into insignificance alongside the issue of payment.

MAIN SUBJECT OF THE DISPUTE	No
Payment	503
Loss and expense	62
Defective work	59
Extensions of time	40
Final account value	32
Determination	26
Mixture	23
Complex no main cause but rather the effect	11

**Table 4 – Main subjects of disputes between parties**

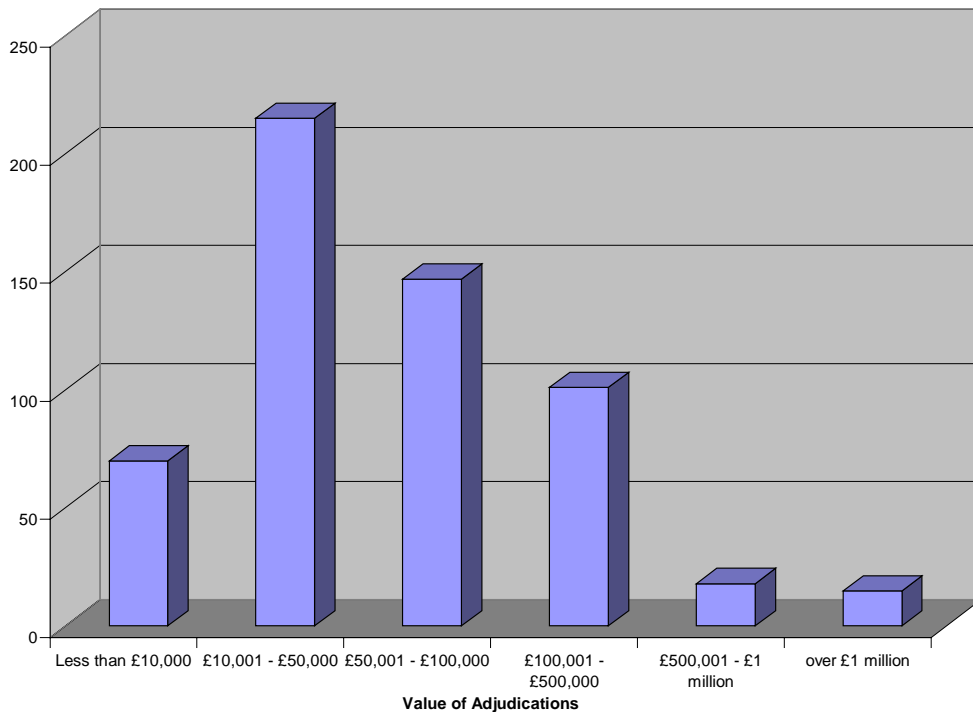
When payment as a subject of adjudication was further analysed the causes were found to be as shown in Figure 4. Here the disputes revolved around the, failure to comply with the payment provisions, now underpinned by the 1996 Act, the valuation of variations and the valuation of the final account. It is worth noting that these areas of dispute lie comfortably within the professional area of competence of the quantity surveyor.



**Figure 4 – Causes of payment disputes**

#### Amounts of money involved in dispute

The amounts of money involved in the adjudications were found to be as Figure 5. This figure shows that the most common disputes involved sums of money between £10,000 and £50,000 but that there were substantial numbers of adjudications dealing with sums of up to £500,000.



**Figure 5 – Number of adjudications in each value group**

### Adjudications not proceeding

In several cases adjudication proceedings were initiated but not completed. The adjudicators were asked to give an account of their experience in this regard. This is set out in Table 5 which shows that the most common reason for adjudication proceedings not referrals was 'settlement by the parties themselves'.

REASONS FOR ADJUDICATION NOT PROCEEDING	No
Settlement by the parties	116
Lack of jurisdiction	15
Referral notice withdrawn	6
Party went into receivership	3
Abandoned by parties, reason not known	1
Resignation of adjudicator	1
Insolvency	1
Went to mediation	1

**Table 5 – Reasons for adjudications not proceeding**

It has been suggested that adjudication proceedings have been used as a means of bringing the other party to the negotiating table. The next most common reason, although some way behind, is lack of jurisdiction. Many of the challenges to the adjudication process in the courts have been on the grounds of lack of jurisdiction. It is interesting to note that it is a serious consideration of the adjudicators themselves.

### Lack of compliance with the 1996 Act

During the study the adjudicators were asked whether the adjudications they had dealt with had shown areas where the provisions of the 1996 Act were not being fully put into effect. The principal replies are given in Table 6 and they clearly show that payment provisions are not being observed and that those awaiting receipt of payments were able to point out these inadequacies when pursuing payment through adjudication. There is a feeling amongst adjudicators that these instances may diminish as contractors (particularly main contractors) adjust their payment systems and cultures to comply with the 1996 Act.

LACK OF COMPLIANCE WITH THE 1996 ACT	No
Instances of failure to comply with the payment	205
Instances of failure to issue withholding notices	204
Instances of failure to comply with the timescales	118
Instances of failure to comply with the adjudication	39

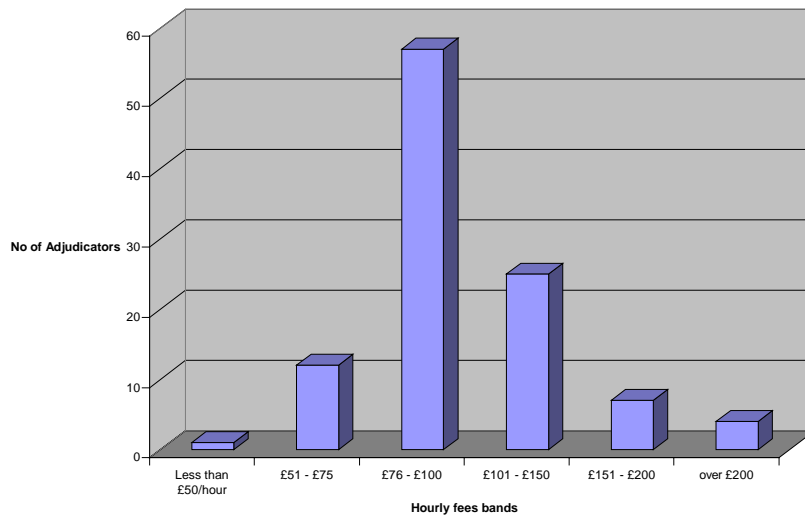
**Table 6 – Common instances on non-compliance with the 1996 Act**

### Cost of the adjudication process

The adjudicators are asked to say how much they charge per hour, how long each adjudication takes and how many experts they engage to help them to reach a decision.

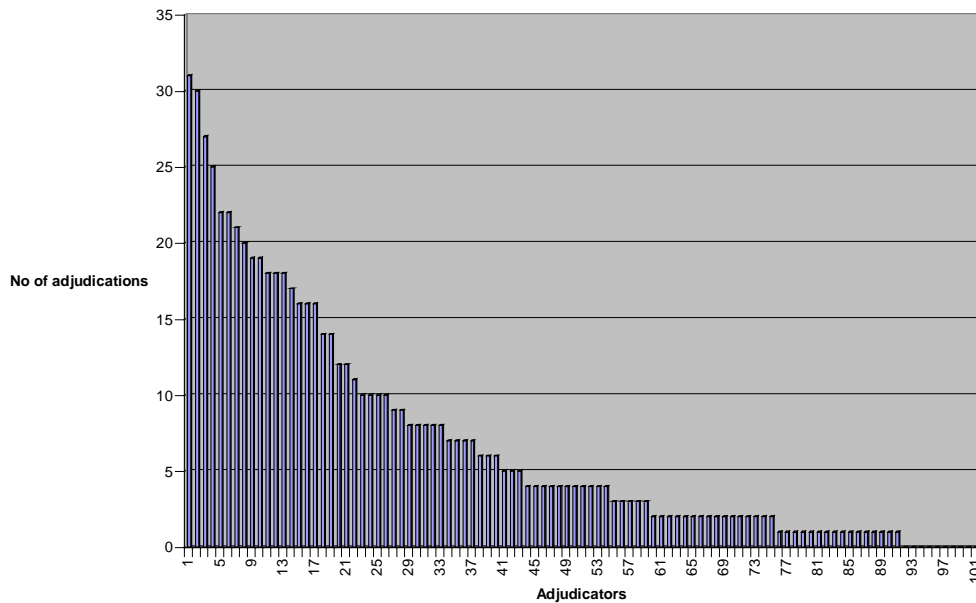
Firstly, how much? Figure 6 shows some variation in the fees charged by adjudicators – the most common grouping being £76 to £100 per hour followed by £101 to £150 per hour.





**Figure 6 – Hourly fees charged by adjudicators**

An interesting aside is the uneven distribution of the work amongst adjudicators. Figure 7 shows that whilst some have experienced over 30 adjudications – some have barely started. It appears that 30% of the adjudicators are doing 70% of the work.



**Figure 7 – Distribution of adjudications amongst adjudicators**

How long? The question of how long adjudications took to complete was also addressed by the study which found the distribution to be as shown in Table 7. The numbers taking less than 20 hours and taking between 21 and 50 hours was the same (226 in each category), thereafter the number taking longer diminished and there were few taking more that 100 hours.

ADJUDICATORS' TIME PER ADJUDICATION	No
Less than 20 hours	226
21 - 50 hours	226
51 - 100 hours	60
101 - 150 hours	8
151 - 200 hours	7
over 200 hours	1

**Table 7 – Hours spent by adjudicators on each adjudication**

Experts to help? It has often been suggested that adjudicators might overuse their powers to appoint independent experts to advise them in areas which require special skills and thereby escalate the costs of the process. The results of the study did not support this fear. The number of experts appointed by adjudicators taking part in this study is shown in Table 8. The most common expert advisor was the lawyer, but even so these appointments amounted to a very small proportion of the total number of adjudications. The number of adjudications in which experts, of all kinds, were appointed was less than 4% of the total.

EXPERT ADVISORS	No
Lawyer	17
Quantity surveyor	5
Consulting Engineer	2
Accountant	1
Geophysical/Geology surveyor	1

**Table 8 – Number of experts advisors employed**

## COMMENTS FROM THE ADJUDICATORS

In response to a request for comments on the effect adjudication had had on the industry, the feedback from the adjudicators was extremely positive. Comments included: -

*'Excellent.....Good.....Immense influence enabling small sub-contractors to obtain quick resolution of disputes.....reduced arbitrations.....overall beneficial effect which should result in fewer long running disputes and an improved climate and culture...forced parties to reach an agreement...a positive effect.....an effective dispute resolution tool....cheap, quick positive.....satisfaction is developing and culture change is possibly starting.....'*

## Problems?

Adjudicators were invited to comment on any particular problems they had encountered with The Scheme. The responses to this fell under the following headings: -

### *Jurisdiction*

*'determining jurisdiction.....how far to stretch what is necessarily connected with the dispute.....challenges to jurisdiction and reserving rights.....efforts of parties to enlarge the scope of dispute.....deciding if a defence is a counterclaim....'*

### **Timing**

*'only seven days from notice to referral is too short...ambush problems.....28 days insufficient for complex disputes.....adjudicator unable to extend period without referring party's consent'*

### **Parties costs**

*'do not agree with the facilities for awarding costs.....basically unfair that winning party does not recover costs..... The question of costs and their recoverability..'*

### **Slips**

*' no slip rule...inability for mistakes to be corrected....once and for all decision....no draft decision.....'*

### **Adjudicator's fees**

*'Security for payment of fees.....no lien on decision.....difficulties in getting paid.....'*

### **Lawyers**

*'Lawyers.....lawyers attempts to pressure adjudicators into formal procedures of hearings, evidence.....solicitors dictating course of events....'*

### **Dissatisfaction?**

Adjudicators were invited to comment on any particular features of adjudication with which they were dissatisfied. The responses re-iterated the comments made about the scheme above and included the following others

- Lack of experience of adjudicators
- Conflicting procedures in ANB rules, the scheme and deciding if contract are compliant – a view expressed was that the scheme should be mandatory.
- Enforcement provisions
- The courts willingness to support adjudicators even when they are clearly wrong

### **CONCLUSIONS**

The evidence of this study so far is that the adjudication process is being used in significant numbers and that the trend is upwards – about 462% increase on the first year of statutory adjudication. The other overwhelmingly obvious conclusion is that the process is most used to address disputes over payment – which was as Latham had anticipated. This has implications for the recruitment and training of adjudicators. When the vast majority of the demand in adjudications is for skill in the valuation of variations, final accounts and interim payments it would appear that those with quantity surveying skills are perhaps best placed to serve this market.

The main parties involved in disputes are the main contractors in disputes with both their domestic subcontractors and with their clients. Many of these disputes arise from their failure to observe the payment provisions of the 1996 Act. Despite the previous reluctance of subcontractors to engage in adjudication it appears that the combination of three forces may have resulted in this surge in adjudication. Firstly the huge interest raised by the publicity given to the topic through the media, secondly the detailed setting out of payment provisions which took away the rights of

contractors to impose 'unfair' conditions and foster a climate of uncertainty regarding the timing of payments and thirdly the statutory nature of the right to adjudication.

The tactical way in which adjudication is being used to bring the other party to the table to resolve problems seems to show a new determination on the part of subcontractors and there can be little doubt that it is viewed as a weapon in the armoury of the subcontractor. As to the future it may be that referrals may decline as contractors seek more consensual forms of working together in the supply chain.

Whilst adjudicators are reporting some minor problems with the Scheme and its' provisions, and the alternative rules available, clearly their overall view is that statutory adjudication is a positive step in the future direction of the industry.

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**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 L Milligan at [jmi3@gcal.ac.uk](mailto:jmi3@gcal.ac.uk) or telephone 0141 331 3627 and a questionnaire will be forwarded to them.