

ADJUDICATION REPORTING CENTRE



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

REPORT No 3
MARCH 2001

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ISBN No 1 903661 10 2

INTRODUCTION

This Adjudication Reporting Centre (ARC) report considers the trends in the number of adjudicators the number of adjudication referrals. This report principally provides intelligence on the activity during the period March to August 2000 and compares this to previous responses. We have also provided a summary of a paper by the ARC team on the costs of the adjudication process which shows that, on average, the adjudication process accounts for about 3% of the sums of money in dispute.

Adjudicators on our database, who have indicated their willingness to participate, will be asked to complete a new questionnaire shortly to allow us to track changes in the causes, costs, sums in dispute, parties, etc and this will form the heart of Report No 4.

We have established a web site for the Adjudication Reporting Centre. It can be found on www.adjudication.gcal.ac.uk

NUMBER OF ADJUDICATORS

ADJUDICATOR NOMINATING BODY	May 1999	August 1999	February 2000	August 2000
Academy of Construction Adjudicators	200	219	202	209
Chartered Institute of Arbitrators	105	105	120	130
Confederation of Construction Specialists	25	30	25	30
Construction Industry Council	95	95	83*	138
Institution of Chemical Engineers	5	5	5	5
Institution of Civil Engineers	79	79	84	84
Royal Institute of British Architects	59	61	75	73
Royal Institution of Chartered Surveyors	72	72	72	94
3A's Polycon AIMS Ltd	36	36	36	36
Institution of Mechanical Engineers	8	8	8	2
Chartered Institute of Building	10	20	46	49
Construction Confederation	60	60	65	47
Scottish Building	8	8	11	11
Royal Incorporation of Architects in Scotland	19	19	21	22
Royal Institution Chartered Surveyors in Scotland	0	26	27	30
Centre for Dispute Resolution	Not reported	Not reported	40	40
Institution of Electrical Engineers	Not reported	Not reported	20	Not reported
Technology and Construction Solicitors Association	Not reported	Not reported	60	114
Chartered Institute of Arbiters (Scottish Branch)	Not reported	Not reported	6	12
The Law Society of Scotland	Not reported	Not reported	6	6
Technology and Construction Bar Association	Not reported	Not reported	Not reported	Not reported
TOTALS	781	843	1012	1132

Notes

* CIC had 125 adjudicators on their register at the time Report 2 was issued but only 83 had subscribed at that time.

Table 1 – Number of Adjudicators

SKILL BASE OF ADJUDICATORS

DISCIPLINE	No. as at August 2000
Surveying	458
Lawyers	227
Civil Engineers	155
Architects	125
CIOB/Builders	38
Project Engineers	19
Construction Consultants	13
Structural Engineers	12
Mechanical Engineers	11
Specialist Constructors	9
Building Surveyors	9
Electrical Engineers	7
Chemical Engineers	6
Planners	3
Project Managers	3
Materials Testing Specialists	3
Contracts Consultants	2
PTPI	2
Geotechnical Engineers	1

Table 2 – Primary discipline of adjudicators (as stated by the ANBs)

The ANBs were invited to state the principal area of expertise of their adjudicators and how many had dual qualifications. In the following discussion the previous report's figures are shown in brackets to allow comparison. The findings show that adjudicators mainly came from the quantity surveying discipline - accounting for 458 (295). This was followed by lawyers with 227 (78), Civil Engineers down a little at 155 (184) and Architects about the same as last time at 125 (127). At first sight it looks as if there has been a sudden influx of lawyers, however this growth is largely a consequence of the Technology and Construction Solicitors Association now reporting to ARC.

The last report indicated that the most popular dual qualification was that of quantity surveyors holding a law qualification. Data from those ANBs who responded to this question this time have shown that this is matched by civil engineers with legal qualifications. There are also a number of adjudicators with both civil engineering and quantity surveying qualifications.

TRENDS IN ADJUDICATION

Adjudication has continued to grow since the last report although the growth appears to be starting to level off. Table 3 shows the growth since the start of statutory adjudication in May 1998. These figures represent all ANBs who have reported to the centre. It should be understood that some ANBs started reporting some time after the study commenced and that the reporting pattern of some is sporadic. The pattern is reflected in Table 1. The growth has been considerable but the figure of 600% is based on raw data and has to be treated with caution.

TIME PERIODS	ALL ANBs REPORTING	% GROWTH
YEAR 1 - May 1998 - April 1999 (12 months)	187	-
YEAR 2 - May 1999 - April 2000 (12 months)	1309	600%
YEAR 3 - May to August 2000 (4 months)	654	50%

Projections in italics

Table 3 – Adjudications by all reporting ANBs

The figures shown in Table 4 shows the adjudications handled by the same 15 ANBs who have provided the centre with data consistently since the beginning and therefore represent a more reliable indication of trends. Here the growth between year 1 and year 2 is more modest at 518% but this figure is based on consistent reporting and includes 91% of all adjudications reported by ANBs. Also worthy of note is the levelling off of the growth in adjudications. At 59% it is still high but clearly a 500% plus growth rate is unsustainable.

TIME PERIODS	15 ANBs CONSISTENTLY REPORTING	% GROWTH
YEAR 1 - May 1998 - April 1999 (12 months)	187	-
YEAR 2 - May 1999 - April 2000 (12 months)	1156	518%
YEAR 3 - May to August 2000 (4 months)	613	59%

Projections in italics

Table 4 – Adjudications by consistently reporting ANBs

SEASONAL TREND?

A snapshot of the number of adjudication referrals during the twelve months September 1999 to August 2000 (Figure 1) shows what appears to be a seasonal effect in referrals. This includes only those ANBs who have provided monthly figures throughout this period. Fourteen of the ANBs produced monthly figures for this period, covering 1379 adjudications or 88% of the total carried out by all reporting ANBs. It therefore presents a fairly reliable portrayal of the trend.

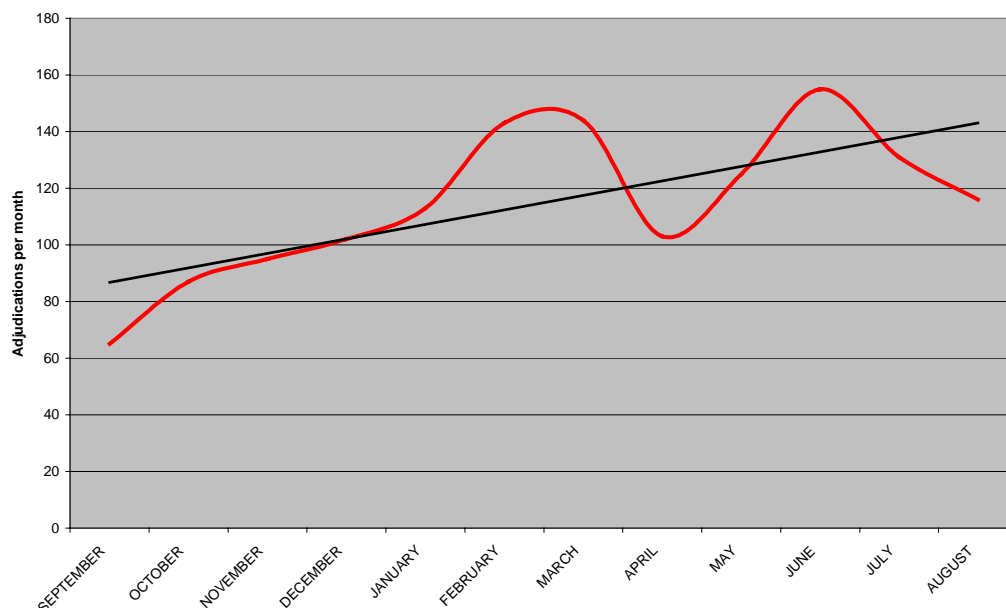


Figure 1 Adjudications in the twelve months up to August 2000

The interesting feature of this is that the peaks coincide with the spring and summer holiday seasons which might give some support to the anecdotal evidence of ambushes immediately prior to holiday periods but, surprisingly, does not provide any evidence of significant numbers of ambushes at Christmas time.

GEOGRAPHICAL DISTRIBUTION

The regional spread of adjudication over the period March 2000 to August 2000 is shown in Table 3 below: -

AREA	May 1998 - April 1999	May 1999 - February 2000	March 2000- August 2000
South England	54	58	53.6
North England	33	28	23.1
Wales	6	6	3.1
Scotland	4	9	19.7
Northern Ireland			0.5

Note - latest figures shown with one decimal place otherwise Northern Ireland would not register

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 increasing more rapidly in Scotland, while the North of England and Wales both appear to be growing more slowly. The South of England appears to have returned to the share of adjudications it had a year ago after a small rise. Northern Ireland has been included for the first time in the data. This is because in Northern Ireland the provision which mirrors the UK Housing Grants, Construction and Regeneration Act 1996 [The Construction Contracts (Northern Ireland) Order 1997] came into force on 1 June 1999 with the approval of the scheme which applies in Northern Ireland called 'The Scheme for Construction Contracts in Northern Ireland Regulations (Northern Ireland) 1999.'

The position in Scotland is worthy of note. Whilst Scotland accounts for only 10% of the UK construction workload (Project Scotland – Feb 2001) it accounts for 20% of the adjudications. The reason this is interesting is the relationship between the size of a community and the willingness of contracting parties who are well-known to each other within this community to utilise adjudication. In the first year of statutory adjudication Scotland had only 4% of the UK average level of adjudications but this grew to meet the UK average during the second year and has grown to twice the national average in year three. It would appear then that being a relatively close-knit community need not present a barrier to the take-up of adjudication.

AJUDICATOR NOMINATING BODY FEES LEVELS

ADJUDICATOR NOMINATING BODY	Fee at February 2000 incl VAT	Fee at August 2000 incl VAT
Academy of Construction Adjudicators	235	235
Chartered Institute of Arbitrators	264	264
Confederation of Construction Specialists	88	not answered
Construction Industry Council	176	176
Institution of Chemical Engineers	235	235
Institution of Civil Engineers	176	176
Royal Institute of British Architects	176	176
Royal Institution of Chartered Surveyors	235	275
3A's Polycon AIMS Ltd	117	117
Institution of Mechanical Engineers	not answered	not answered
Chartered Institute of Building	176	235
Construction Confederation	176	176
Scottish Building	117	176
Royal Incorporation of Architects in Scotland	176	176
Royal Institution Chartered Surveyors in Scotland	235	275
Centre for Dispute Resolution	235	235
Institution of Electrical Engineers	not answered	not answered
Technology and Construction Solicitors Association	not answered	not answered
Chartered Institute of Arbiters (Scottish Branch)	117	117
The Law Society of Scotland	not answered	not answered
Technology and Construction Bar Association	not answered	not answered

Table 4 – Fees charged by Adjudicator Nominating Bodies

Most of the ANBs have kept their fee levels constant over the six month period March 2000 to August 2000.

COST OF THE ADJUDICATION PROCESS

The ARC team prepared a paper¹, which is summarised here, on the cost of the adjudication process. This was based on data up to February 2000 and excludes the cost of management time and of specialist advisers in the preparation of the case. The cost of adjudication is identified in the paper as the 'procedural cost'.

Using the detailed database developed during the research, it was possible to match each adjudicator, with his/her fee rate to the numbers of adjudications he/she had carried out in the different time bands. From this data it was possible to establish adjudicators' fees with regard to the following;

<i>Mean</i>	£3,369
<i>Standard Deviation</i>	£3,246
<i>Median</i>	£3,124 (£51 - £75 fee band taking 21 – 50 hours)
<i>Mode</i>	£880 (£76 - £100 fee band taking less than 20 hours)

¹ Cost of the adjudication process in the UK since the introduction of the Housing Grants, Construction and Regeneration Act 1996 by P Kennedy and J. L. Milligan, Glasgow Caledonian University, Scotland UK in The Journal of Financial Management of Property and Construction, Volume 5 Number 3 December 2000 ISSN 1366-4387.

The fees charged by Adjudicator Nominating Bodies during the 22 month period of the study amounts to £231,249 (£38,914 + £55,719 + £136,616). The average charged per adjudication reference therefore was £216.

The procedural cost of the adjudication process covering all nominations by ANBs is calculated as follows;

(Average cost of adjudicator's fee + average ANB fee) x No of adjudications through ANBs

(£3,369 + £216) x 1069

£3,585 (Average procedural cost per adjudication) x 1069 = £3,832,365

The procedural costs which the UK construction industry (using the ANB system) had to meet over the 22 month period of the study was close to £4Million.

As stated, this figure represents those adjudications covered by the ANBs who participated in the study at the time. There are others who have participated since then by sending data to the Adjudication Reporting Centre. There are also adjudications which take place outwith the ANB system – the number is not yet estimated, however we hope to ascertain this in Report 4.

However, when the costs of adjudications within the study are compared with the amounts in dispute from the study, it can be concluded that, on average, the procedural cost of the adjudication process is 3.05% of the sums in dispute.

This does not include the costs of each party in preparing their cases, the costs of their advisors or indeed the opportunity costs of their managers' time spent on preparation. There is no reliable data available on these latter costs. They are excluded from this study for two reasons; firstly such costs, due to commercial confidentiality, are extremely difficult to determine reliably (particularly the opportunity costs of managers) and secondly because they will be incurred irrespective of the dispute resolution process.

The study did not attempt to compare this average cost with other forms of dispute resolution. There are several alternative dispute resolution methods, mediation, arbitration, conciliation, dispute review boards, dispute resolution advisor, etc. Further research may provide estimates of the average costs of these methods.

MONITORING OF ADJUDICATOR'S PERFORMANCE

The number of complaints received by the Adjudicator Nominating Bodies during the period March to August 2000 amounted to 13 of which two were upheld and four were still under investigation – the remainder were cleared by their ANBs. When compared with the total number of adjudications in this period of 961 this represents a dissatisfaction rate of only 1.35%. Some ANBs reported that some complaints appear to flow from a party's disappointment with the decision rather than the alleged misconduct of the adjudicator.

One of the complaints which was upheld resulted from an adjudicator using an assistant to do the 'leg work' without informing the parties. The adjudicator was given a warning as to future conduct.

In another case an ANB received a letter objecting to its jurisdiction to nominate the adjudicator. The ANB's legal advisors wrote to the complaining party who took no further action.

There were two complaints that the adjudicator's fees were excessive. One is still under investigation by the ANB and in the other case the complaint was not upheld by the ANB.

FEEDBACK FROM ADJUDICATOR NOMINATING BODIES

The Adjudicator Nominating Bodies were asked if there was any subject or trend they had noticed in relation to the adjudication procedures which were not covered within the questionnaires. Their responses, which are by their nature anecdotal and relatively uncontroversial, are summarised below: -

- *'Payment Provisions: Many parties noted that the payment provisions were unsatisfactory for a variety of reasons and this should be explored further.'*
- *'Settlement: many disputes settle before they actually get to the litigation/arbitration stage.'*
- *'More disputes seem to be settled prior to notice of adjudication or appointment of adjudicator. The availability of adjudication helps (especially?) sub contractors to resolve valuation and payments disputes.'*
- *'Would be interesting to know numbers of adjudications under the JCT Building Contract for Home Owner Occupier.'*
- *'The ANB does not keep all the requested information on file and often do not receive feedback from the adjudicators once the appointment has been made as it is not necessary.'*
- *'Parties often are not satisfied with the 'cost' side of things. There have not been complaints of adjudicators decisions, just comments concerning the fact of why costs are not provided for in the Act.'*
- *'The research has given them an insight into the fee scales charged by other ANBs which has been useful as this is a major concern of the disputing parties. The research helps to uncover the truth behind anecdotal comments.'*
- *'All our appointments are made against our own model forms which are designed not to be litigious. We are not a litigious community and most of the process industry is excluded from the HGCR Act, therefore there has been no need for adjudication within this industry.'*
- *'The nature of disputes being referred to adjudication are becoming more varied and in some instances, more complex'*

CONCLUSIONS

The evidence of this study so far is that the adjudication process is being used in significant numbers and that the trend is rising although the rate of increase appears to be levelling off. There is some support that the phenomenon of the 'ambush' does exist and appears at holiday periods – although this does not seem to occur significantly at Christmas. There has been speculation about the concept of the 'multiple ambush' where a number of subcontractors or trade contractors collectively initiate adjudication proceedings on the same day or within days of each other. There has been no report of this so far by the ANBs.

With regard to the cost of the adjudication procedure covered by research quoted earlier, this paper has estimated the procedural cost at about 3% of the disputed sums. This appears to meet Latham's aim of 'an inexpensive system' of resolving disputes.