

ADJUDICATION REPORTING CENTRE



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

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INTRODUCTION

This Adjudication Reporting Centre (ARC) Report considers both the trends in the number of adjudicators and the number of adjudication nominations up to the end of April 2002 and secondly the results of the second survey of adjudicators which provides a detailed insight into the disputes and the adjudication process between May 2001 and October 2002.

FEEDBACK FROM THE ADJUDICATOR NOMINATING BODIES

Number of Adjudicators

ADJUDICATOR NOMINATING BODY	May 1999	August 1999	February 2000	August 2000	February 2001	April 2001	May 2002
Association of Independent Construction Adjudicators*	200	219	202	209	182	182	194
Chartered Institute of Arbitrators	105	105	120	130	147	147	147
Confederation of Construction Specialists	25	30	25	30	30	32	25
Construction Industry Council	95	95	83	138	142	146	170
Institution of Chemical Engineers	5	5	5	5	Not reported	Not reported	Not reported
Institution of Civil Engineers	79	79	84	84	84	81	80
Royal Institute of British Architects	59	61	75	73	71	69	70
Royal Institution of Chartered Surveyors	72	72	72	94	104	112	107
3A's Polycon AIMS Ltd	36	36	36	36	36	36	33
Institution of Mechanical Engineers	8	8	8	2	2	2	Not reported
Chartered Institute of Building	10	20	46	49	46	46	53
Construction Confederation	60	60	65	47	40	56	43
Scottish Building	8	8	11	11	11	11	12
Royal Incorporation of Architects in Scotland	19	19	21	22	22	22	14
Royal Institution Chartered Surveyors in Scotland	0	26	27	30	35	35	47
Centre for Dispute Resolution	Not reported	Not reported	40	40	48	48	48
Institution of Electrical Engineers	Not reported	Not reported	20	Not reported	Not reported	Not reported	Not reported
Technology and Construction Solicitors Association	Not reported	Not reported	60	114	117	117	128
Chartered Institute of Arbiters (Scottish Branch)	Not reported	Not reported	6	12	22	22	22
The Law Society of Scotland	Not reported	Not reported	6	6	5	6	10
Technology and Construction Bar Association	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported
TOTALS	781	843	1012	1132	1144	1170	1203

* formerly The Academy of Construction Adjudicators

Table 1 – Number of Adjudicators

As Table 1 shows there appears to have been a slight increase in the numbers of adjudicators registered with ANBs amounting to around 3%. This reflects the overall levelling out of the numbers since August 2000 although there is evidence of localised growth in some ANBs.

Skill Base of Adjudicators

DISCIPLINE	% as at May 2002
Quantity Surveyors	30.9
Lawyers	24.0
Civil Engineers	15.6
Architects	8.3
CIOB/Builders	3.6
Mechanical Engineers	2.8
Electrical Engineers	2.7
Construction Consultants	2.7
Structural Engineers	2.3
Building Surveyors	2.3
Project Managers	1.4
Planners	0.8
Project Engineers	0.7
Materials Testing/ Quality Inspectors	0.7
Engineers	0.6
Geotechnical Engineers	0.4
Chemical Engineers	0.1

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

The ANBs were asked to state the principal area of expertise of their adjudicators. The results mirror previous years with the top 5 rankings remaining unchanged, Quantity Surveyor, Lawyer, Civil Engineer, Architect then Chartered Builder. These results should still be treated with caution as there is some non-reporting by ANBs which might have influenced the weightings (although, given the ANBs in question, probably not the rank order).

Trends in Adjudication

The number of adjudications has continued to grow since Report No 3 but this growth is starting to level off. Table 3 shows the year on year growth since the start of statutory adjudication in May 1998. These figures represent all ANBs who have reported to the centre. It should be noted that the pattern of reporting by some ANBs has been patchy - some ANBs started reporting some time after the study commenced and a few have stopped reporting. Some have reported on only part of the questionnaire and the reporting pattern of some is sporadic. However the data shows that the year on year growth rate of all reported ANB adjudications has reduced considerably from 600% in year 2 to 50% in year 3 now down to 1% in year 4. These figures are based on raw data and have to be viewed in that light.

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%

Table 3 – Adjudications by all reporting ANBs

The figures shown in Table 4 show the adjudications handled by the same ANBs who have provided the centre with data consistently since the beginning of the study and therefore represent a more reliable indication of trends. This shows a levelling off in the growth of ANB nominations. From a steep rate of growth in year 2 of 518% the rate slowed to 62% in year 3 and now stands at 3% in year 4. This was higher than the raw figure of 1% but, as the consistently reporting ANBs were responsible for around 95% of all reported ANB adjudications in year 4, this may provide a more reliable measure.

TIME PERIODS	ANBs CONSISTENTLY REPORTING	% GROWTH
YEAR 1 - May 1998 - April 1999	187	-
YEAR 2 - May 1999 - April 2000	1156	518%
YEAR 3 - May 2000 - April 2001*	1869	62%
YEAR 4 - May 2001 - April 2002	1924	3%

* Corrected from incomplete data in ARC Report 4

Table 4 – Adjudications by consistently reporting ANBs

It is undoubtedly the case that the number of adjudications being dealt with by ANBs is beginning to reach a plateau. Some ANBs have experienced some fluctuation in demand for their services

but as Figure 1 shows, these have little impact on the global situation which is dominated by a few very large providers of adjudication services.

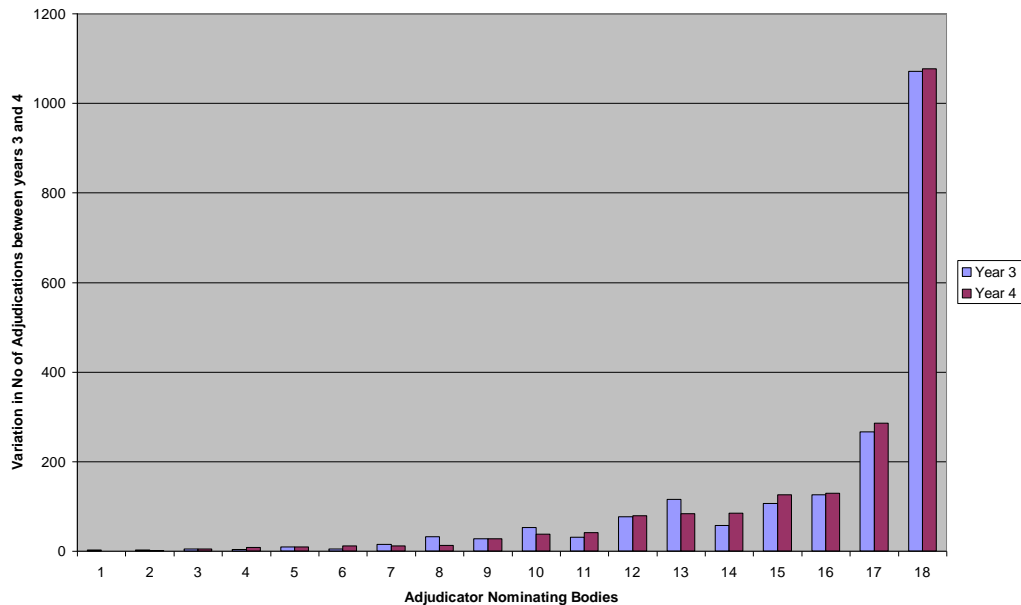


Figure 1 - Variations in adjudication referrals of the reporting ANBs between years 3 and 4

Seasonal Effects

The picture here is emerging. Due to the growth in annual numbers of adjudications in the early years it was difficult to discern any monthly effects as they tended to be masked by the growing numbers.

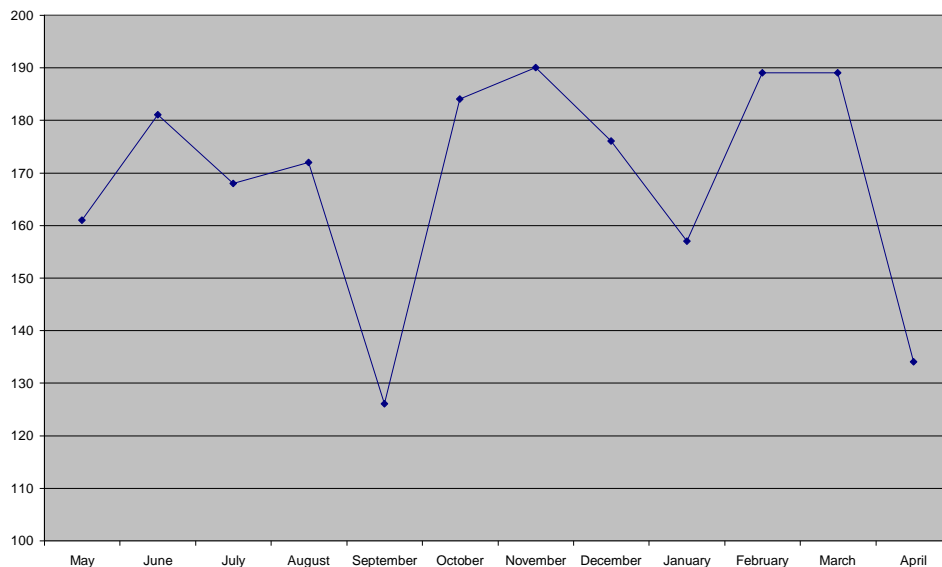


Figure 2 - Monthly referrals to adjudication in the period May 2001 to April 2002

However, as Figure 2 shows, there appear to be substantial variations from month to month with particular highs in November and in the February/March period and deep lows in September and April.

Geographical Distribution

The ANBs were asked to report on the incidence of appointments in the areas shown in table 5. The regional spread of adjudication over the period from March 2001 to April 2002 is shown in Table 5 below: -

AREA	March 2001 to April 2002
South England	51
North England	11
Midlands	10
Wales	3
Scotland	24
Northern Ireland	1

Table 5 - Geographical Distribution of Adjudications

These figures are very much in line with previous results but unfortunately due to lack of reporting by some of the large UK wide ANBs and consistent reporting by the Scottish ANBs the picture may well be somewhat skewed and may not truly reflect the UK-wide position.

Monitoring of Adjudicator's Performance

The number of complaints received by the Adjudicator Nominating Bodies during the period May 2001 to April 2002 amounted to 40. When compared with the total number of adjudications in this period this represents a dissatisfaction rate of just under 2% which is about the same as the last report. Only four ANBs reported complaints in their returns and this showed that whilst one major ANB had a complaint rate of 1.49% of adjudications another had a rate of 6.33% of adjudications.

Complaints Against Adjudicators	Mar 00 - Apr 01	May - Oct 01	Nov 01 - Apr 02
Complaints Made	9	16	24
Complaints Upheld	1	4	3

Table 6 - Number of complaints against adjudicators

Only seven of the complaints in the period May 2001 to April 2002 were upheld and the actions taken by the ANBs who responded are described below;

- *No action was taken*
- *Suspension from list*
- *Warning as to future conduct*
- *Removal from panel,*
- *Still subject to ongoing investigation*

Comments from Adjudicator Nominating Bodies

The Adjudicator Nominating Bodies were asked if there was any subject or trend that they had noticed in relation to the adjudication procedures which had not been addressed in the questionnaires. Their responses are summarised below: -

There appears to be an increase in the number of representatives being used I.e. Solicitors, contract consultants etc.

Costs - as usual some have complained of the actual process itself not the Adjudicator.

It is clear that many advisers and lawyers do not understand what the difference is between a "Natural" person and an ANB not being a natural person when dealing with the Scheme. The consequence is invariably a delay in the appointment. Increase in number of Adjudications that settle at early stage. Increase in number of challenges to jurisdiction of Adjudication at appointing stage.

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.

This part of the report presents information (both quantitative and qualitative) collected directly from adjudicators. This report covers the period May 2001 to October 2002. The adjudicators who reported for our earlier reports were asked to complete follow-up questionnaires. Thirty-six adjudicators responded, their experience covering 355 adjudications carried out during the period. The following sets out some of the principal findings.

How are Adjudicators Appointed?

The adjudicators were asked to indicate how they came to be appointed. They were appointed as shown in table 7.

How many adjudication appointments have been:-	
Through an ANB	89.58%
By agreement of the Parties	9.86%
Being named in the contract	0.56%

Table 7 – Appointment of Adjudicators

There has been some anecdotal evidence to indicate that contracting parties are opting to agree on an individual rather than leaving the choice of the adjudicator to an ANB. The level of dissatisfaction with ANBs has not been significant but it may be that parties gain some comfort in the reputation of the individual concerned. It is testament to the regard in which these adjudicators are held that, even when in dispute with each other, the parties can agree on the appointment.

Who are the winners and losers?

When asked for whom they found in their adjudications the adjudicators indicated that in 69% of the cases they found for the claimant, 22% for the respondent and in 9% of cases their decision was split (as shown in Figure 3).

Figure 3 below also shows the situation with regard to the relative success of each party at the time of the last reports and the present position. There has been a consistent rise in the success rate of the respondents which now stand at 22%.

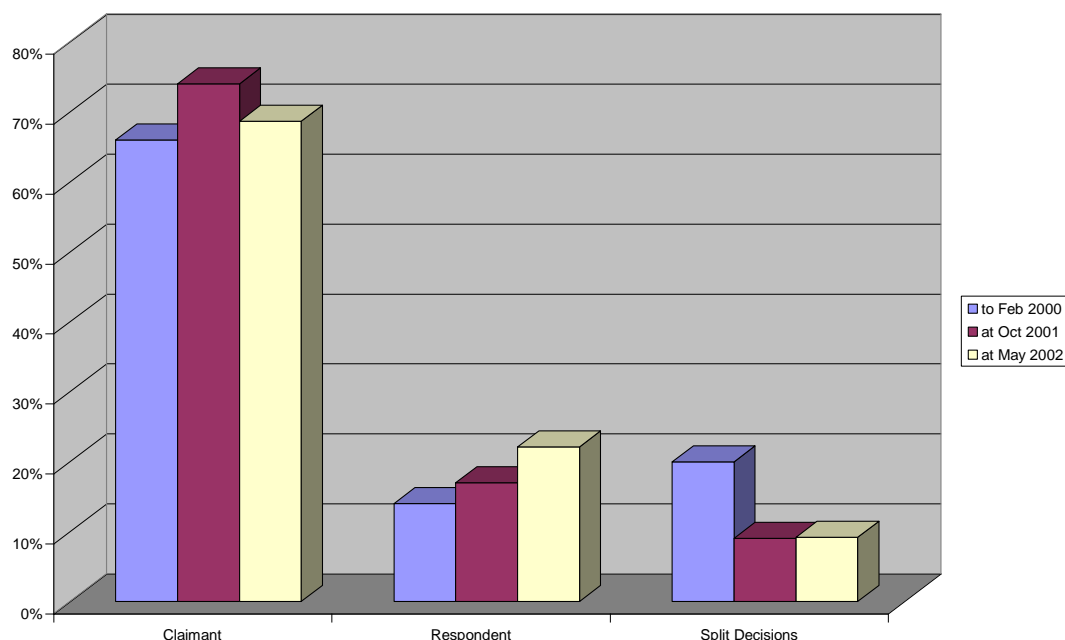


Figure 3 - Comparison of successful parties in adjudicators' decisions

Subjects of the disputes

The subjects of the disputes were found to be as shown in Table 8 and it is clear that payment remains the major culprit. At the time of the last report the rank order of importance was

- Failure to comply with payment provisions (26%)
- Valuations of variations (23%)
- Valuation of final account (17%)
- Extensions of time (10%)

As can be seen from Table 8 this appears to have shifted and that failure to comply with payment has now slipped to third place being overtaken by both valuation of variations which has risen dramatically and by valuation of final accounts which has also risen rapidly. These figures reinforce the view (as discussed in Report 4) that adjudication is now more concerned with post-contract activity than events occurring during the currency of the project.

MAIN SUBJECTS OF THE DISPUTES	%
Valuation of variations	36%
Valuation of final account	27%
Failure to comply with payment provisions	24%
Loss and Expense	7%
Extension of Time and Loss and Expense (combined)	3%
Defects	2%
Entitlement to interest	1%
L&A Damages	1%

Table 8 – Main subjects of disputes between parties

Amounts of Money Involved in Dispute

The amounts of money involved in the adjudications were found to be as Figure 4. This figure shows that, once again the most common disputes involved sums of money between £10,000 and £50,000 although they represent a lower proportion than previously. The band £50,000 to £100,000 also dropped proportionately but in all the categories above £100,000, growth was experienced. This would suggest that there is movement in that adjudications would appear to be increasingly involved with disputes involving larger sums of money.

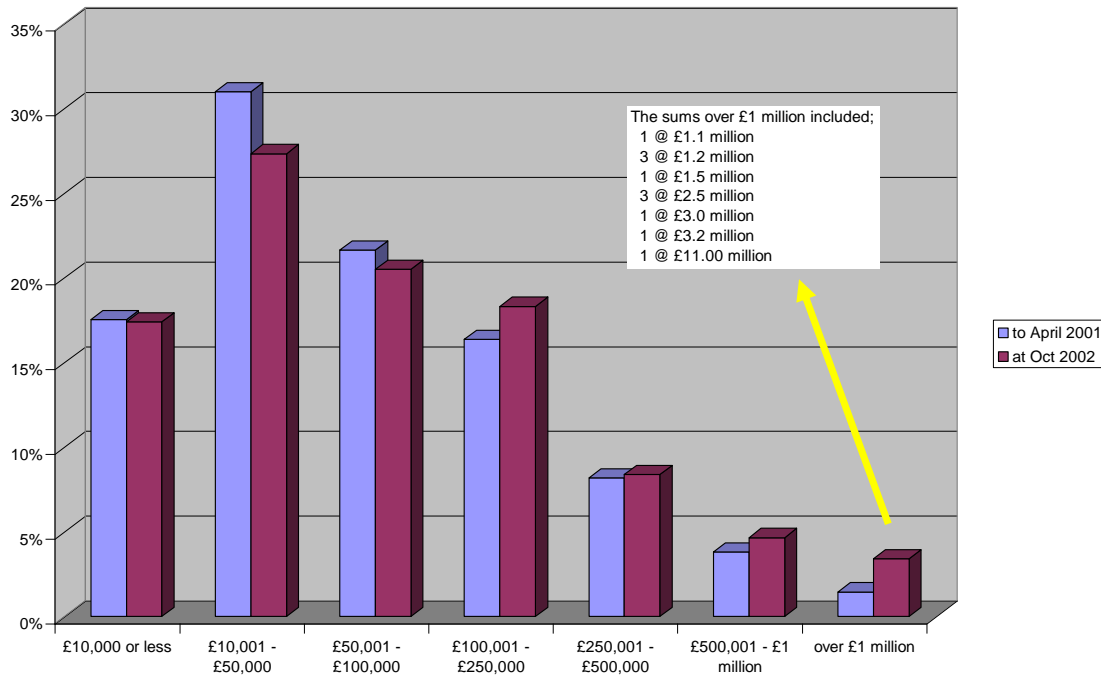


Figure 4 – Proportion of adjudications in each value group

Adjudications Not Proceeding

Some cases did not result in a win, lose or split decisions and those were the ones which were either settled by the parties or which were abandoned. In this study 21% of the adjudications were settled by the parties (compares with 20% in the last study) and 7% of the cases were abandoned.

In cases where the adjudications were abandoned the adjudicators' comments were as follows;

Claiming party not willing to submit whole dispute – withdrew

Lack of jurisdiction

2 resigned; 2 withdrawn; 1 insolvent; 1 inept notice; 1 Respondent insolvent; 1 Referring Party insolvent

The applicant decided to withdraw. I suspect he was under duress

Administrator appointed, so referring party withdrew; 2) Ditto; 3) Referring Party didn't proceed due to lack of funds

Both Parties sought my resignation for legal reasons

Parties decided to negotiate further

Incorrect reference to ANB

2 Incorrect procedures and 1 no jurisdiction

Jurisdictional Challenges

Jurisdictional Challenges	
How many appointments have been challenged during the Adjudication on the grounds of jurisdiction?	39%
How often have you not proceeded to make a Decision following the challenge?	4%
How often have you proceeded in the face of a challenge which has later been upheld by court/arbitration?	0%

Table 9 – Challenges to the Adjudicator’s Jurisdiction

Jurisdiction is the major challenge to an adjudicator and for the first time in this study the adjudicators were asked to enumerate the number of adjudication appointments in which this challenge was forthcoming. Table 9 indicates that 39% of adjudications met with this and decided in one tenth of these that they should not proceed. However, none of the adjudicators in the study had his/her decision to proceed subsequently overturned by a court decision.

Compliance with the 1996 Act

During the study the adjudicators were asked how many of their decisions have been made using compliant contract adjudication provisions (i.e. not the Scheme) and how many adjudication decisions have been made by defaulting to the procedures of the Scheme for Construction Contracts. The replies to this question indicated that in 51% of cases the former applied and in 49% of cases the latter applied. This is an improvement over the situation reported in the previous ARC report when only 43% of adjudications were based on compliant contracts. This is perhaps due to standard forms of contract coming on stream for projects.

Procedure Adopted by Adjudicators

The adjudicators taking part in the survey were asked to provide some insight into procedural matters. They were asked to state the procedures they had adopted on the adjudications they had carried out during the period of the study.

PROCEDURE ADOPTED BY ADJUDICATOR	
Adjudicator employed a documents-only procedure	52%
Adjudicator employed an interview procedure with one party present	0.3%
Adjudicator employed an interview procedure with both parties present	21%
Adjudicator carried out a full hearing procedure	6%
Adjudicator carried out a site visit	11%
Adjudicator employed other type of procedure	1%

Table 10 – Procedures adopted by adjudicators

Table 10 sets out the results of this question and this indicates that once again the most common procedure was the ‘documents only’ procedure. The ‘documents only’ procedure is down slightly on the previous report where it accounted for 56% of cases.

Cost of the Adjudication Process

The adjudicators are asked to say how much they charged per hour, how long each adjudication takes and how many experts they engage to help them to reach a decision. Figure 10 shows some variation in the fees charged by adjudicators – the most common grouping being £76 to £100 per hour followed by £101 to £125 per hour. A notable difference from the last report is the reduction in the percentage in the first of these bands and the growth of those in the second band. Clearly there is some increase in the price being charged for this service. The reason for this is unclear – there has been no great increase in demand – it may be that the increasing number of larger adjudications demand a higher skill level and hence ability to command a higher price through proven experience. Adjudicators are still having difficulty in getting paid - when asked if they had difficulty in receiving payment the adjudicators reported that they had experienced such problems in 11% of cases.

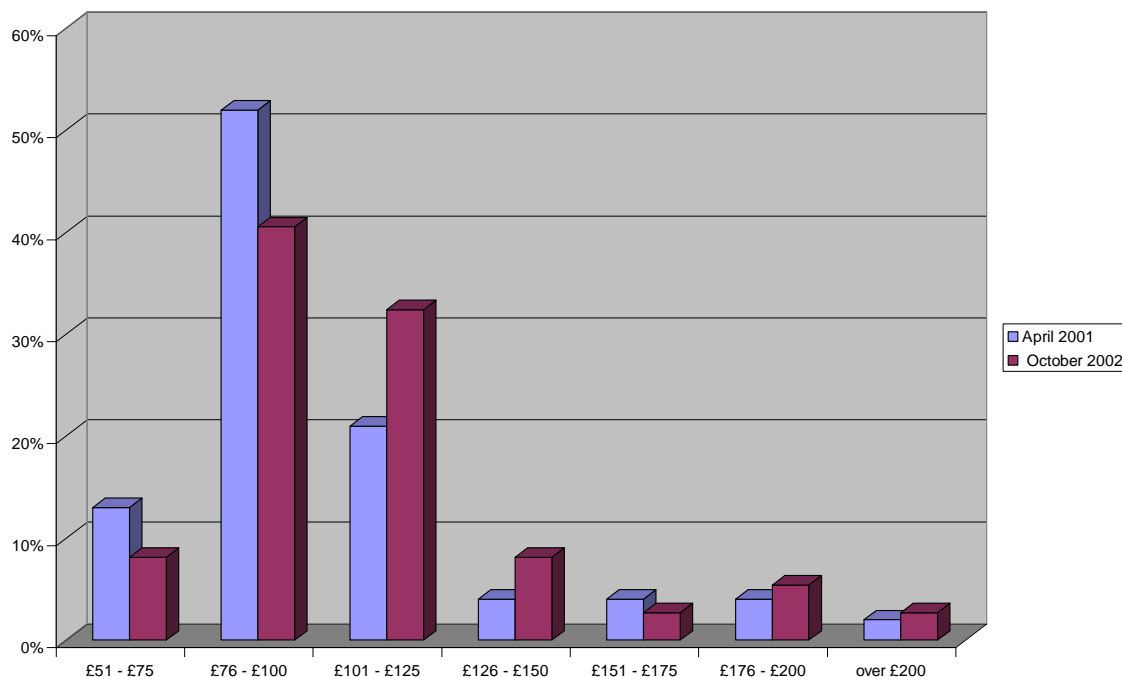


Figure 5 – Hourly fees charged by adjudicators

Time taken by adjudicators

The question of how long adjudications took to complete was also addressed by the study which found the distribution to be as shown in Figure 6. The numbers taking between 26 and 50 hours were again the most common (down from 52% to 43%), followed equally by those taking less than 25 hours and those taking 51 to 75 hours (18% each). What appears to be happening here is a shift from relatively simple adjudications to those which are more demanding and which require more time to complete. This continues the trend which was reported in Report No 4 where it had already been stated that there was a large reduction in the number of disputes taking less than 20 hours to reach a decision.

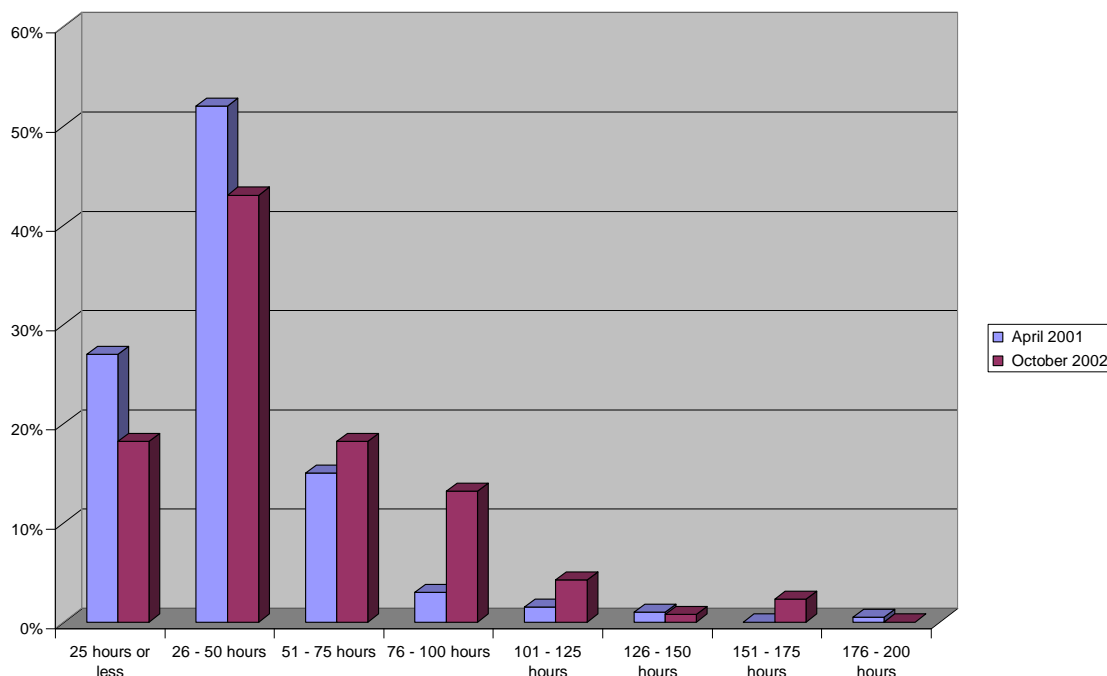


Figure 6 – Hours spent by adjudicators on each adjudication

Use of Experts

The number of experts appointed by adjudicators taking part in this study is shown in Table 11. The most common expert advisor was the lawyer (which is the same as in previous reports). Once again the use of planners/programmers is interesting and perhaps a measure of the increasing use of adjudication in extensions of time disputes. The number of adjudications in which experts, of all kinds, were appointed is still small at around 7% which is about the same (8%) as the last report.

USE OF EXPERTS	No
Lawyer/Solicitor	13
Programmer	3
Building Surveyor	2
Structural Engineer	2
Architect	1
Drilling Engineer	1
Fire Protection Engineer	1
M&E Engineer	1

Table 11 – Number of experts advisors employed in the sample of 355 adjudications

CONCLUSIONS

In conclusion there appears to be a levelling off in the numbers of adjudication referrals, or at least through ANBs. This report indicates that around 90% of adjudicators are appointed through ANBs and this may well change in the future.

When the evidence from the section on *'amounts of money involved in the dispute'* and the section on *'time taken by the adjudicators'* it would appear that there is a migration towards more complex disputes. Given that we have reached a plateau in terms of overall numbers of adjudications it must suggest an actual reduction in the numbers of 'simple cases'. There is also some evidence that the respondents are winning more cases. There has been a steady rise in their success rate. This may be due to the rising numbers of more complex disputes or to the skill of their representatives who probably work best in conditions of uncertainty. Payment remains the major concern of adjudication but it is noteworthy that the top two subjects of disputes, 'valuation of variations' and 'final accounts', together account for 63% of the disputes. These are clearly the domain of the quantity surveying profession.

Jurisdictional challenges are now common, amounting to about 39% of adjudications in the study. Considering that only 7% of the adjudications in the study were abandoned (only a few through lack of jurisdiction) it would appear that many of these challenges lack merit.

From a research point of view the data shows that despite the fact that the numbers of adjudications may have levelled off the really interesting feature is the way the disputes themselves are changing in the ways identified above.

The authors are indebted to the Adjudicator Nominating Bodies and to the individual 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.