

ADJUDICATION REPORTING CENTRE



RESEARCH ANALYSIS OF THE TRENDS OF ADJUDICATION BASED ON
RETURNED QUESTIONNAIRES FROM ADJUDICATOR NOMINATING
BODIES (ANBs)

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P Kennedy and J L Milligan
School of the Built and Natural Environment
Glasgow Caledonian University
Cowcaddens Road
GLASGOW G4 0BA

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INTRODUCTION

This Adjudication Reporting Centre (ARC) Report considers the trends in the number of adjudicators and the number of adjudication nominations up to the end of April 2003. This represents the first five years of adjudication under the Housing Grants, Construction and Regeneration Act 1996. This report tracks the rapid development in the uptake of adjudication by the UK construction industry over these five years and has seen, as the data below will testify, the growth rate levels out as the practice matures. The data presented here represents only those adjudication appointments made through the Adjudicator Nominating Bodies and does not include instances where the parties have agreed an Adjudicator or where one has been named in the contract documents. Anecdotal evidence is mixed regarding the numbers of adjudicators appointed outwith the ANBs. The Adjudication Reporting Centre in late 2001 when collecting data for Report No 4 found that, of 384 adjudication appointments in the sample, around 90% (89.84%) were appointed through ANBs while just under 10% (9.9%) were agreed by the parties and a very small proportion (0.26%) were named in the contract. There are suggestions that extra-ANB appointments may be growing. There will be a questionnaire going out shortly to adjudicators which will address this question. However, we are currently looking to increase the number of adjudicators from whom we received regular data therefore if you would like to participate please e-mail your contact details to lhc@cdr.uk.com.

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	October 2002	April 2003
Academy of Independent Construction Adjudicators	200	219	202	209	182	182	194	194	176
Chartered Institute of Arbitrators	105	105	120	130	147	147	147	Not Reported	Not Reported
Confederation of Construction Specialist	25	30	25	30	30	32	25	24	14
Construction Industry Council	95	95	83	138	142	146	170	144	149
Institution of Chemical Engineers	5	5	5	5	Not Reported	Not Reported	Not Reported	6	13
Institution of Civil Engineers	79	79	84	84	84	81	80	82	87
Royal Institute of British Architects	59	61	75	73	71	69	70	69	69
Royal Institution of Chartered Surveyors	72	72	72	94	104	112	107	116	117
3A's Polygon AIMS Ltd	36	36	36	36	36	36	33	Not Reported	54
Institution of Mechanical Engineers	8	8	8	2	2	2	Not Reported	Not Reported	Not Reported
Chartered Institute of Building	10	20	46	49	46	46	53	52	50
Construction Confederation	60	60	65	47	40	56	43	43	43
Scottish Building	8	8	11	11	11	11	12	12	12
Royal Incorporation of Architects in Scotland	19	19	21	22	22	22	14	14	14
Royal Institution of Chartered Surveyors in Scotland	0	26	27	30	35	35	47	45	35
Centre for Effective Dispute Resolution	Not Reported	Not Reported	40	40	48	48	48	46	Not Reported
Institution of Electrical Engineers	Not Reported	Not Reported	20	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported
Technology and Construction Solicitors Association	Not Reported	Not Reported	60	114	117	117	128	128	128
Chartered Institute of Arbitrators (Scottish Branch)	Not Reported	Not Reported	6	12	22	22	22	17	17
The Law Society of Scotland	Not Reported	Not Reported	6	6	5	6	10	11	13
Technology and Construction Bar Association	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported
Adjudication.co.uk	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	7	7
TOTALS	781	843	1012	1132	1144	1170	1203	1010	998

Table 1 – Number of Adjudicators

Table 1 shows a relatively static position in the numbers of adjudicators registered with ANBs. It is also evident that some ANBs are unable, due to a variety of reasons, to respond to this part of the questionnaire. There is no evidence of any substantial change in the numbers over the past two years and mirrors the pattern of demand for adjudicators over this period.

Skill Base of Adjudicators

Once again the ANBs were asked to state the principal area of expertise of their adjudicators. The results, shown on Table 2 indicate the situation since May 2002 and as with the previous report, shows that the top 5 rankings remain unchanged; quantity surveyor, lawyer, civil engineer, architect then chartered builder. There appears to be a little consolidation of the position of quantity surveyors at the expense of lawyers and civil engineers but this may have more to do with the fact that certain ANBs were unable to make a detailed response than any real change in the balance of skills.

DISCIPLINE	%age as at May 2002	%age as at Oct 2002	%age as at April 2003
Quantity Surveying	30.9	39.1	42.4
Lawyers	24.0	21.9	21.3
Civil engineers	15.6	17.3	13.9
Architects	8.3	8.9	10.2
CIOB/Builders	3.6	3.4	2.9
Project Engineers	0.7	0.2	0.1
Construction Consultants	2.7	0.3	0.9
Structural Engineers	0.7	3.4	0.9
Mechanical Engineers	2.8	0.8	0.7
Specialist Constructors	0.0	0.0	0.0
Building Surveyors	2.3	1.7	1.5
Electrical Engineers	2.7	0.3	0.3
Chemical Engineers	0.1	0.5	1.2
Planners	0.8	0.0	0.0
Projects managers	1.4	0.3	0.4
Materials Testing Specialists	0.7	0.0	0.3
Contracts Consultants	0.0	0.0	0.0
RTPI	0.0	0.0	0.0
Geotechnical Engineers	0.4	1.1	2.3
Human Relations/Industrial Psychologists	0.0	0.7	0.0
Chartered Surveyors	0.0	0.0	0.1
QC	0.0	0.1	0.1
Gas Engineers	0.0	0.0	0.1
Engineers	0.6	0.1	0.0
Water Engineers	0.0	0.0	0.1
Management Consultant	0.0	0.0	0.3
Independent mediator	0.0	0.0	0.0

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

Trends in Adjudication

The number of adjudications has levelled off by the end of the fifth year of statutory adjudication. If the figures for all ANBs reporting is considered (Table 3), there appears to be a decline by 1% from year 4. However when all ANBs who have been reporting consistently are considered (Table 4) this reflects an increase of 3%. Clearly this difference is subject to the variation in workload amongst ANBs but is evidence that a plateau in the demand for adjudication has been reached.

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%

Table 3 – Adjudications by all reporting ANBs

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%
YEAR 5 - May 2002 - April 2003	1990	3%

Table 4 – Adjudications by consistently reporting ANBs

The demand for the services of ANBs continues to fluctuate. Some ANBs continue to experience growth in demand for their services whilst others experience some decline (Figure 1). It may be that this reflects changes in the types of dispute for which adjudicators are required or a preference of the parties who initiate the referrals. Despite the fact that, as previous reports have shown, most disputes are about payments, valuations and other financially-related issues, the ANB identified as No 17 on Figure 1 does not espouse financial skill as its main strength and yet it has experienced the greatest growth over the past three years. It continues to be the case that the market for the provision of adjudicators is dominated by one large provider and six smaller but significant providers.

New ANBs are starting to emerge e.g. Adjudication.co.uk, the Major Projects Adjudication Group etc. and this may be one of the reasons why some are experiencing a decline in their nominations. Currently Adjudication.co.uk contributes to our report and it is hoped that in the next report we will have received data from some of the other emerging ANBs.

Whilst the demand of adjudications has remained fairly steady, the demand experienced by individual ANBs can fluctuate widely, for example one significant ANB made the comment;

'Apart from a gradual reduction of about 14% in applications over the last 2yrs I'm not convinced there are any year on year trends. e.g. Dec 2002 - 6 appointments, Dec 2003 15 appointments.'

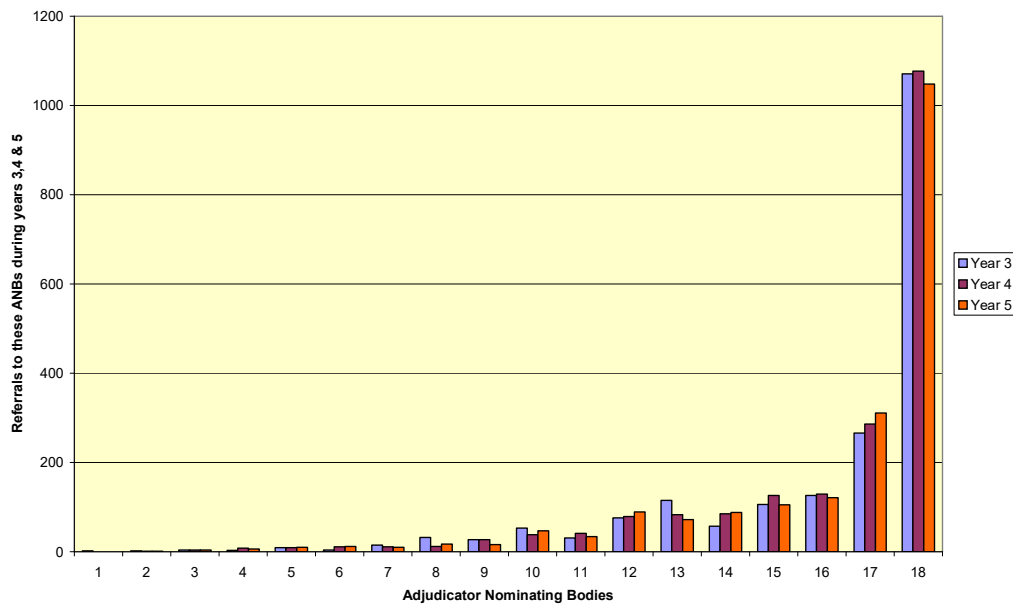


Figure 1 - Variations in adjudication referrals of the reporting ANBs years 3, 4 and 5

Seasonal Effects

The relative stability in demand over the past two years has allowed seasonal trends to appear. It was reported previously that in year May 2001 to April 2002 the peaks in demand occurred in June, November, February and March (equal numbers in February and March). In the period considered by this report (see Figure 2) the peaks occurred in July, November and March. There is no information on what point in the month these referrals were made but there is a suggestion of evidence of ‘ambushes’ at summer, Christmas and the spring holiday periods which occur in the months following these peaks in demand.

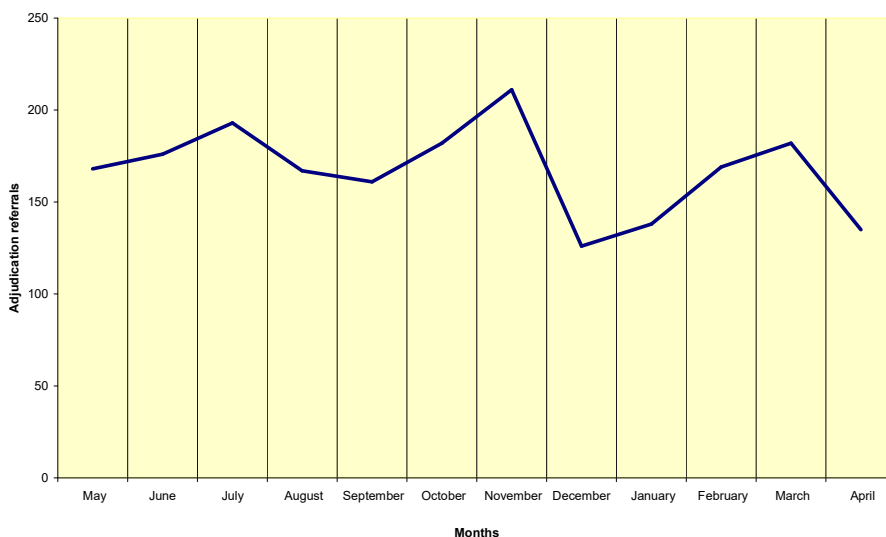


Figure 2 - Monthly referrals to adjudication in the period May 2002 to April 2003

Geographical Distribution

The ANBs were asked to report on the incidence of appointments in the regional areas shown in Table 5. These figures suffer from a lack of reporting by some of the largest providers of adjudication services and without their input the data is misleading. The Centre will cease reporting on this distribution in future. However, the reported regional spread of adjudication over years 4 and 5 is shown in Table 5 below: -

AREA	Year 4	Year 5
South England	51%	52%
North England	11%	10%
Midlands	10%	7%
Wales	3%	4%
Scotland	24%	26%
Northern Ireland	1%	2%

Table 5 - Geographical Distribution of Adjudications

Monitoring of Adjudicator's Performance

The number of complaints received by the Adjudicator Nominating Bodies (as shown in Table 6) in year 4 was 40 but this has fallen in year 5 to 18, less than half of the previous year. The number of complaints upheld by these bodies has fallen from 7 in year 4 to zero in year 5. Since the numbers of adjudication referrals has remained fairly static over this period there would appear to be some significance in the reduction.

Complaints Against Adjudicators	Year 4	Year 5
Complaints made	40	18
Complaints upheld	7	0

Table 6 - Number of complaints against adjudicators

There may be some significance in the reduction in the numbers of parties making complaints about the conduct of the adjudicators (rather than their decisions which would be challenged in court) but these numbers have always been such a small proportion of the total numbers of adjudications that its significance should not be over-stated.

When questioned about monitoring of CPD and other development activities of adjudicators it was surprising to find that only nine of the ANBs actively monitor this activity. Most of the ANBs who received the most nominations (except one) are organised in this respect, some have particularly well developed systems of training and record appointments, pupillage and other activities, such as workshops, seminars, reading case law, etc.

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 process which had not been addressed in the questionnaires. Their responses are summarised below: -

- *Referring Parties who use non-legal consultants are becoming increasingly demanding and difficult.*
- *There is still a large number of people who do not understand what adjudication is.*

CONCLUSIONS

In conclusion this report confirms the report of the previous year that there has been a levelling off in the numbers of adjudication appointments through ANBs to around 2000 per year. There are suggestions from the demand for particular ANBs that there may be movement in the kinds of disputes. In order to properly answer this question it needs to be confirmed by a survey of the adjudicators themselves, and we will be issuing our questionnaires in the next couple of months.

The spread of demand of a wide range of ANBs is being maintained and, despite a patchy record of monitoring adjudicators' personal development, the low incidence of complaints suggests that the adjudicators are performing their tasks in a professional manner.

Shortly we will be issuing our 10th questionnaire to the ANBs, therefore if you are a member of an ANB that does not currently contribute to our research and would like to do so please e-mail your contact details to lhc@cdr.uk.com.

The authors are indebted to the Adjudicator Nominating Bodies who have provided a wealth of data to allow an insight into how adjudication is being utilised at present.