

ADJUDICATION REPORTING CENTRE



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

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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 October 2006.

Number of Adjudicators

ADJUDICATOR NOMINATING BODY	May 2002	October 2002	April 2003	February 2004	October 2004	October 2005	April 2006	October 2006
Academy of Independent Construction Adjudicators	194	194	176	150	155	116	50	50
Chartered Institute of Arbitrators	147	Not reported	Not reported	164	158	169	180	172
Confederation of Construction Specialist	25	24	14	21	43	43	43	43
Construction Industry Council	170	144	149	154	152	132	136	136
Institution of Chemical Engineers	Not reported	6	13	13	13	14	18	15
Institution of Civil Engineers	80	82	87	84	84	82	84	81
Royal Institute of British Architects	70	69	69	68	63	68	68	68
Royal Institution of Chartered Surveyors	107	116	117	122	122	122	116	116
3A's Polycan AIMS Ltd	33	Not reported	54	Not reported	Not reported	Not reported	Not reported	Not reported
Institution of Mechanical Engineers	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported
Chartered Institute of Building	53	52	50	53	58	56	56	54
Construction Confederation	43	43	43	43	43	43	28	28
Scottish Building	12	12	12	12	12	9	11	11
Royal Incorporation of Architects in Scotland	14	14	14	14	14	14	10	10
Royal Institution of Chartered Surveyors in Scotland	47	45	35	38	38	38	25	23
Centre for Dispute Resolution	48	46	Not reported	40	Not reported	41	41	42
Institution of Electrical Engineers	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported
Technology and Construction Solicitors Association	128	128	128	149	142	142	142	142
Chartered Institute of Arbitrators (Scottish Branch)	22	17	17	17	20	21	21	17
The Law Society of Scotland	10	11	13	16	18	18	18	28
Technology and Construction Bar Association	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported	Not reported
Adjudication.co.uk	Not reported	7	7	Not reported	Not reported	Not reported	Not reported	Not reported
TOTALS	1203	1010	998	1158	1135	1128	1047	1036

Table 1 – Number of Adjudicators

As Table 1 shows there has been a slight decline in the overall number of adjudicators registered with ANBs. There is evidence of some consolidation in the sector with some ANBs reviewing their lists. This should not be taken to represent the number of individuals active as adjudicators as, on average, adjudicators will be registered with three or four ANBs – some are registered with as many as nine.

Skill Base of Adjudicators

The ANBs were asked to state the principal area of expertise of their adjudicators. The results over this time period are consistent with previous years with the top 5 rankings remaining unchanged, Quantity Surveyor, Lawyer, Civil Engineer, Architect then Chartered Builder. The presentation style has changed to indicate only those disciplines showing more than 1% of the total to avoid a long tail. Since February 2004 (which was the base date of the data used in the previous report) there has been a reduction in the proportion of quantity surveyors and a rise in the proportion of lawyers and civil engineers. The other ANBs experienced some turbulence and in particular Building Surveyors who seemed to have been on the rise during 2004 and 2005 but have since returned to their previous level.

DISCIPLINE	May 2002	Oct 2002	April 2003	Feb 2004	Oct 2004	Oct 2005	April 2006	Oct 2006
Quantity Surveying	28.9%	39.1%	43.8%	41.6%	38.0%	38.8%	35.7%	35.1%
Lawyers	22.1%	21.9%	22.1%	21.6%	26.1%	26.3%	25.6%	26.6%
Civil engineers	14.6%	17.3%	13.2%	11.1%	11.6%	11.0%	15.8%	15.1%
Architects	7.8%	8.9%	10.2%	9.3%	9.6%	9.6%	9.0%	8.8%
CIOB/Builders	3.4%	3.4%	2.6%	5.2%	5.0%	4.9%	4.7%	5.3%
Building Surveyors	2.5%	0.3%	0.9%	4.1%	5.3%	4.7%	1.2%	1.2%
Structural Engineers	2.1%	3.4%	0.8%	2.2%	1.3%	1.3%	1.2%	0.9%

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

Trends in Adjudication

In this table the Centre seeks to provide reliable information on the underlying trends. Initially we used only those ANBs which had provided us with data from the inception of adjudication in 1998; however this excludes those ANBs which entered the market at a later stage and those which started to return data to the centre after this point. The group reporting has now settled down to a consistent group which provides good year-on-year comparisons from which it is possible to deduce trends. The trend has been unrelentingly downward since 2002 until the beginning of year 9 (May 2006) when the trend seems to have reversed. This 'bounce back', taken over the first six months of year 9 is actually 6% up on the similar period the previous year¹ but taken on a *prorata* basis for the year (assuming a uniform distribution of adjudication referrals over the year) this figure is 10%.

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 - October 2006 (part year) *	795	10%

* 10% represents the *prorata* rate assuming that the adjudications were evenly distribution over time. In fact this represents a 6% rise over the equivalent period in Year 8

Table 3 – Adjudications by all reporting ANBs

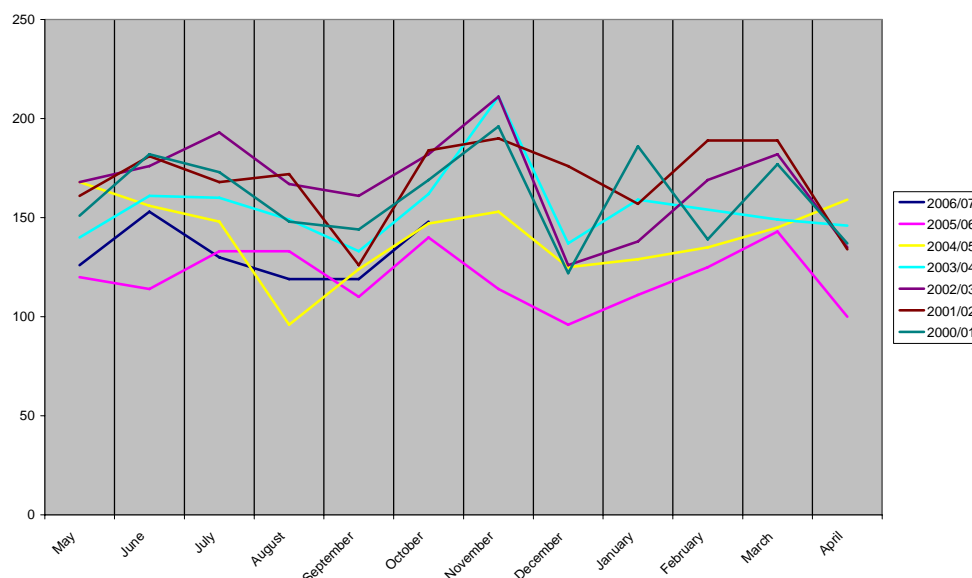


Figure 1 –Fluctuations in referrals over the year

¹ The reason for this apparent contradiction is that the May to October period in the previous year (year 8) experienced a much higher rate of adjudication referrals than in the latter part of that year.

This data was collected to seek evidence of the ‘ambush’ which was thought to be seasonably related. Adjudicators have reported that they have experienced adjudications which they would describe as ‘ambushes’, however the evidence does not seem to support any significant relationship to the vacation periods as is constantly speculated. It is interesting to note that trends have identified consistently that instead of the mythical Christmas ambush, there is a significant rise in Adjudications in November which leads one to suggest that the industry is perhaps more pragmatic about getting its disputes resolved before the Christmas holiday.

Experience of ANBs

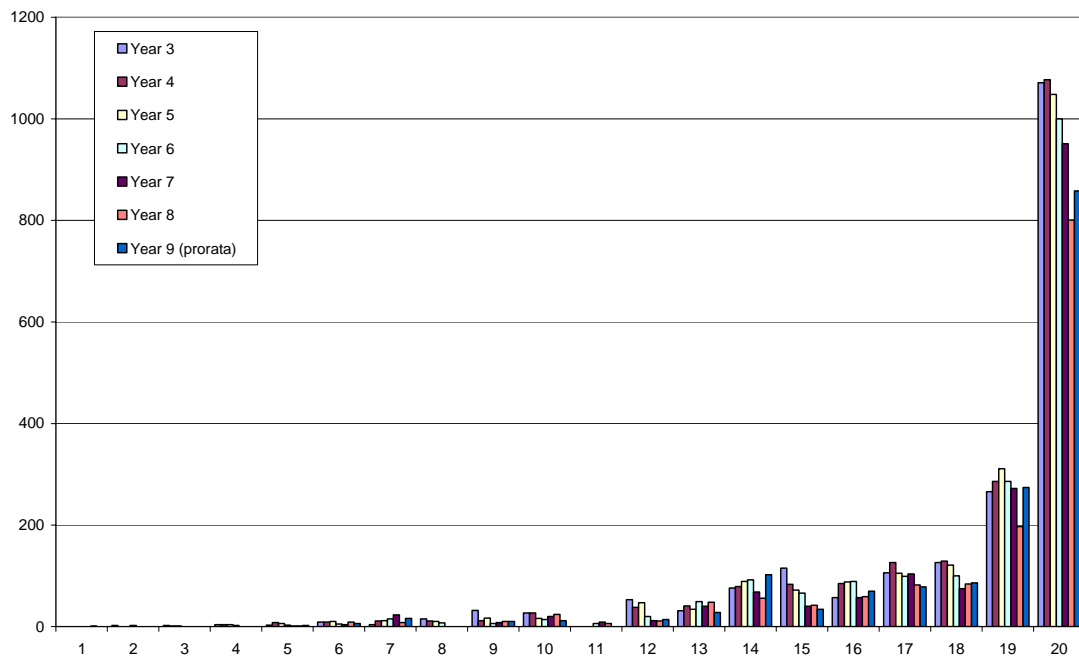


Figure 2 - Variations in adjudication referrals of the reporting ANBs

The upturn in adjudication referrals following a period of decline, indicated in Table 3, has been experienced by some ANBs as shown in Figure 2 above. It is too early to say whether this ‘bounce’ represents the bottom of the curve and whether this recovery can be sustained. It is however good news for those in the adjudication business – even though it may equally be described as a rise in the indicators of construction conflict after four years of improvement.

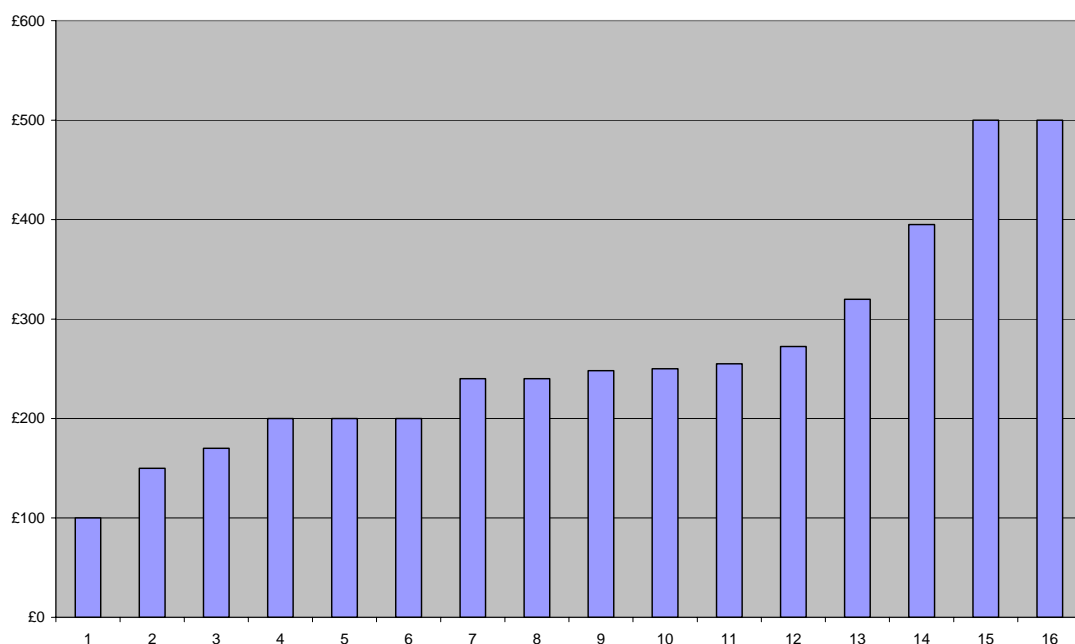


Figure 3 - Nomination Fees charged by reporting ANBs

The ANBs were asked to indicate the fee they charge Referring Parties per appointment. These are shown in Figure 3 as a means of benchmarking for the benefit of ANBs and others. There is no relationship between the numbering of figures 2 and 3. Some ANBs did not report on the fees they levied.

Monitoring of Adjudicator's Performance

The number of complaints received by the Adjudicator Nominating Bodies over the past few years has been very low – around 20 to 25 per year. The information shown in Table 4 indicates the percentage of adjudications which give rise to a complaint. This is not of course the same thing as an appeal to the courts against the Decision of the adjudicator but is more to do with conduct, during the process. ANBs have reported that these complaints are often from disgruntled parties unhappy with the findings and the costs. This represents a dissatisfaction rate of around 1.5%. It is worthy of note that very few are upheld when subject to scrutiny.

Complaints Against Adjudicators	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9 (part)
Complaints Made	0.45%	1.97%	0.90%	1.07%	1.48%	1.46%	1.55%
Complaints Upheld	0.05%	0.35%	0.00%	0.21%	0.00%	0.00%	0.00%

Table 4 - Number of complaints against adjudicators

CONCLUSIONS

At long last there appears to be some end to the slide in adjudication referrals. After four years of increasingly sharp decline the trend appears to have halted. The rise of the lawyer in adjudication is continuing with a slight reduction in quantity surveyors (who remain the most prominent discipline) and there is some recovery in the proportion of civil engineer.

The good news for the process is that there is still a very low level of complaints against adjudicators with virtually none being upheld by the ANB procedures in the past four years.

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 and where it may be going in the future.