



Adjudication
Society



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Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) and from a sample of Adjudicators.

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FOREWORD

Whilst this report is an extension of the research carried out by the authors in conjunction with the Adjudication Reporting Centre (ARC) at Glasgow Caledonian University (GCU), it is recorded that the authors (both Directors of Construction Dispute Resolution (CDR)) now work in conjunction with the Adjudication Society to publish this research. Therefore, this work, whilst building on the previous reports of ARC, is entirely separate from GCU. For clarity, statistics which relate to research carried out under this new partnership are highlighted in **blue** within the tables, and where appropriate the figures, in this report.

The years that will be focused on within this report in respect of the information received from ANB's are as follows: -

- Year 15 (May 2012 – April 2013);
- Year 16 (May 2013 – April 2014); and
- Year 17 (May 2014 – April 2015).

The survey information received from a sample of Adjudicators is a “snap shot” in time and as such does not always align with the same window or “Year” researched in respect of the ANBs. Accordingly, the Adjudicator information is considered in “Periods”, with the extent of each period described as appropriate.

1.0 INTRODUCTION

ARC considered both the trends in the number of Adjudication nominations, as well as data on various aspects of Adjudication from the perspective of Adjudicators up to the end of April 2012. This Report makes reference to ARC's findings, as well as building on them to reflect the more recent research of CDR supported by the Adjudication Society.

Reports 1-12 of this research up to April 2012, can be found on the GCU Adjudication Reporting Centre website (<http://www.gcu.ac.uk/ebe/businessservices/Adjudicationreports/>).

Report No 13 covering the period May 2012 to April 2014, and this Report, can be found at <http://www.cdr.uk.com/research.html>.

2.0 NUMBER OF REFERRALS

2.1 Adjudicator Nominating Body Appointments

As can be seen from Table 1 below, there has been an overall increase in Adjudication referrals from 1282 in Year 16 (May 2013 – April 2014) to 1439 in Year 17 (May 2014 – April 2015).

TIME PERIODS	ALL ANBs REPORTING	% GROWTH ON PREVIOUS YEAR
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 – April 2007	1506	5%
YEAR 10 - May 2007 – April 2008	1432	-5%
YEAR 11 - May 2008 – April 2009	1730	21%
YEAR 12 - May 2009 – April 2010	1538	-11%
YEAR 13 - May 2010 – April 2011	1064	-31%
YEAR 14 - May 2011 – April 2012	1093	3%
YEAR 15 – May 2012 – April 2013	1351	24%
YEAR 16 – May 2013 – April 2014	1282	-5%
YEAR 17 – May 2014 – April 2015	1439	+12%

TABLE 1: Adjudication appointments by Adjudicator Nominating Bodies (ANBs)

This may indicate that the slight dip in referrals experienced in Year 16 was a ‘one-off’ and that the industry is well on the way to recovery, with the increase in Adjudications arguably being reflective of general economic recovery in the construction sector.

However, it may also be the case that the significant increase in the number of referrals in Year 17 is largely attributable to the phenomenon of ‘smash and grab’ Adjudications, following the introduction of new payment procedures in the Local Democracy, Economic, Development and Construction Act 2009, which came into force in late 2011.

In this respect, there has been a flurry of controversial case law dealing with the payment provisions under the 2011 Act, namely *ISG Construction Ltd v Seevic College* [2014] EWHC 4007 (TCC); *Harding v Paice & Springall* [2014] EWHC 3824 (TCC); *Galliford Try Building v Estura* [2015] EWHC 412 (TCC); *Caledonian Modular Ltd v Mar City Developments Ltd* [2015] EWHC 1855 (TCC); *Leeds City Council v Waco UK Limited* [2015] EWHC 1400 (TCC); and *Henia Investments Inc v Beck Interiors Limited* [2015] EWHC 2433 (TCC).

These cases which predominately suggest that full payment of an application must be made to the payee in the absence of a valid payer notice, as a result they may have prompted contractors, sub-contractors and other payees under construction contracts to refer disputes on the basis that there has been no relevant payment or pay less notice. This has been borne out in practice, with several Adjudicators noting the increase in ‘smash and grab’ Adjudications in the course of discussions at industry events. It is also notable that a wealth of articles have been published, and seminars advertised, with ‘smash and grab’ Adjudications the topic of choice.

The significant increase in the number of referrals may largely be attributable to the phenomenon of ‘smash and grab’ Adjudications.

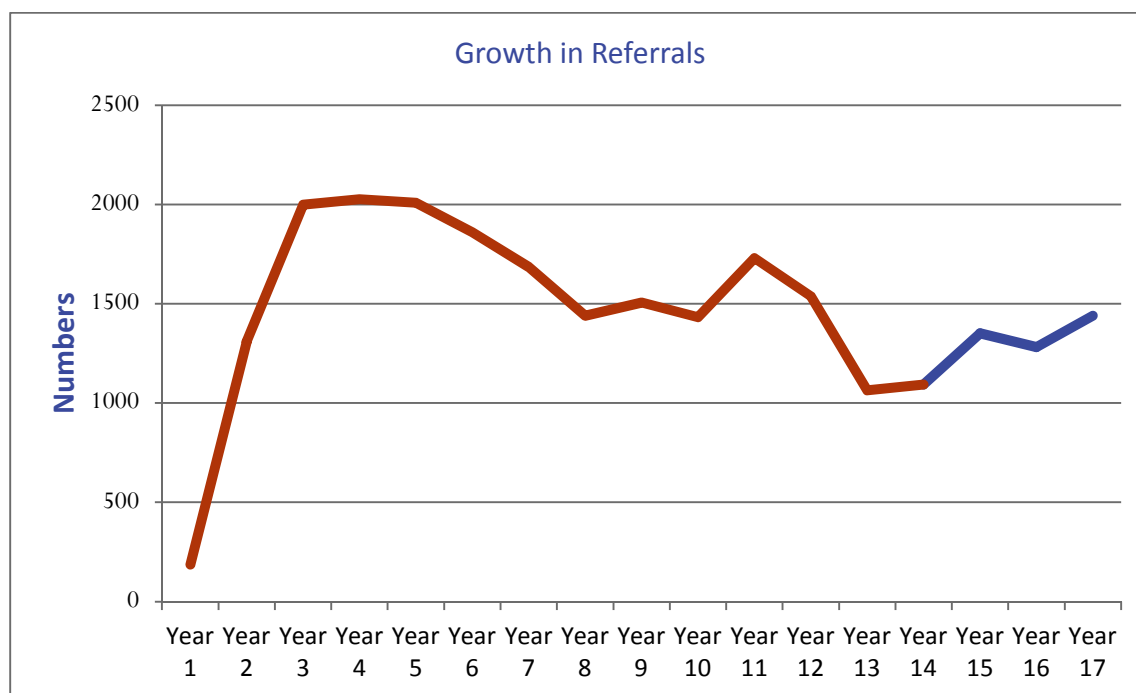


FIGURE 1: Growth Rate in Adjudication Referrals in the UK

In summary, there has been a significant increase in Referrals between Year 16 and Year 17, 1282 and 1439 respectively. The Year 17 figure is in line with the mean value of circa 1500 referrals per year, as experienced in the first 10 years of Adjudication up to the economic recession experienced in Years 11 to 14 (2008 -2012). The initial information gathered from ANBs for the period May 2015 to November 2015 indicates that the number of Referrals for this period is 717 and suggests that an overall prediction of around 1400 referrals for Year 18

is reasonable, and would be in line with Year 17. This is perhaps an indication that we will see a plateau in the number of referrals, rather than a continuing trend of growth.

2.2 Sources of Appointment

In Years 15 & 16 the nominations through an ANB were 96.0% and 93.5% respectively. Other means of appointment are by agreement of the parties or being named in the contract with those accounting for 2.9% and 1.1% respectively in Year 15; and 4.2% and 2.3% in Year 16.

Recent research associated with Year 17 confirms that, as expected, the main source of appointment of an Adjudicator remains by ANBs, accounting for 90.76% of a sample of 303 appointments. Appointments made by means of agreement of the parties and those named in the contract accounted for 7.59% and 1.65% respectively. It will be interesting to see how this statistic develops, as in Years 7 and 8 agreement by the parties peaked, accounting for around 16% of nominations, before going on to steadily decrease year on year until Years 16 and 17. Perhaps as the number of Adjudication referrals is again on the increase, we are returning to a position where parties are more likely to be aware of individual Adjudicators, their areas of expertise and their particular suitability for deciding their dispute. It could also be the case that parties are referring several different disputes under one project to the same Adjudicator which can generally create benefits in efficiency, time and costs.

2.3 Fluctuations in Referrals

In early reporting years, the discernible trend in the number of Adjudications throughout the year was a peak in November, followed by a sharp drop in December, as well as a further peak in March, again followed by a drop in April. However, it was recorded in Report 13 that this pattern changed in Year 15.

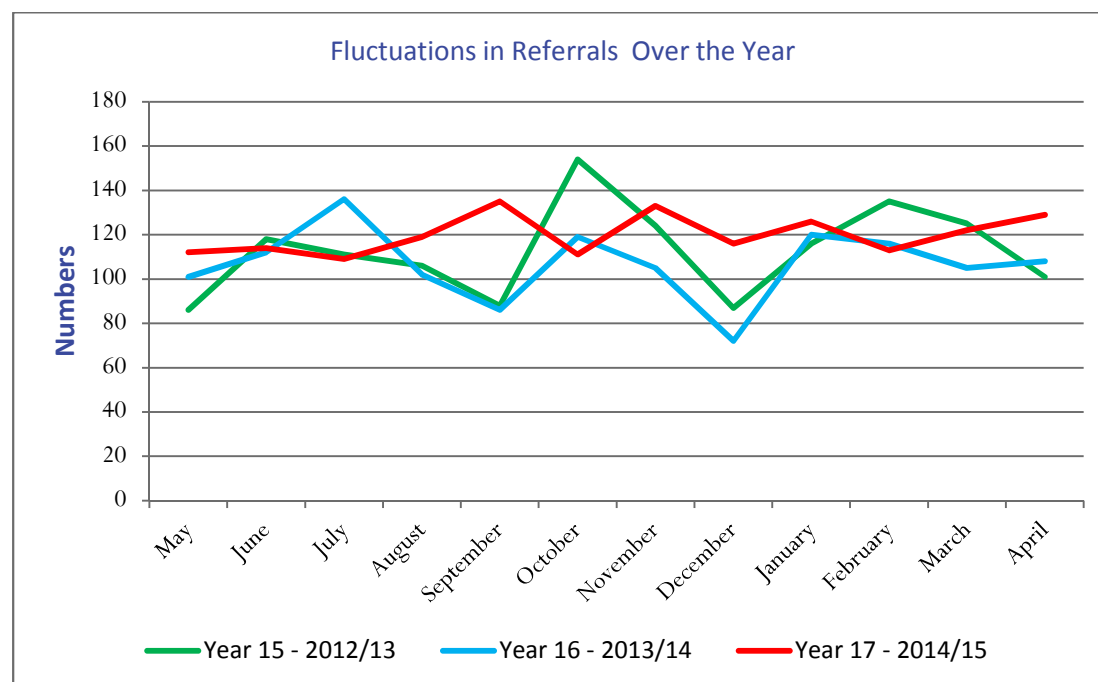


FIGURE 2: Fluctuations in Referrals over the Year

In previous reporting periods this data was collected in order to examine the ‘ambush’ theory which was thought to be seasonally related. Adjudicators have traditionally reported that they have experienced Adjudications which they would describe as ‘ambushes’ during holiday periods, however the evidence did not appear to support any significant relationship between the timing of referrals and the so called “Christmas Ambush Theory”.

The Christmas Ambush Theory is becoming a reality.

As shown in Figure 2 above, both Years 15 and 16 indicated a significant drop in Adjudications during the month of December. Although still a drop in Year 17, this was not as pronounced. In Year 17 a peak occurred in September (which had previously been a month which experienced decline) and, whilst dropping somewhat in October, climbed to a similar level in November. Generally the rise in the months of October and November suggested that the industry was perhaps more pragmatic about getting disputes resolved before the Christmas period. However, it is notable that whilst the peaks and troughs in Year 17 are not as sharp as previous years, indicating greater consistency throughout the year, there is an increase of 60% of the number Adjudication referrals in December for Year 17 against Year 16. This could mean that the Christmas Ambush Theory is becoming a reality, and something which parties should now be preparing themselves for.

3.0 ADJUDICATORS AND DISCIPLINES

3.1 Number of Adjudicators Registered with ANBs

From the table below, it can be seen that the number of Adjudicators registered with ANBs decreased from 873 in Year 16, to 797 in Year 17 (-76). This movement can be attributed to the decrease in CI Arb Adjudicators, falling from 145 to 80 (-65). Also, the Confederation of Construction Specialists is no longer an ANB, having previously accounted for an average of 13 Adjudicators. Some of this fall has been offset by an increase in numbers elsewhere, most notably TECBAR with numbers increasing by 20 in Year 17 by comparison to Year 16.

ADJUDICATOR NOMINATING BODY	Year 15 April 2013	Year 16 April 2014	Year 17 April 2015
Association of Independent Construction Adjudicators	28	26	25
Chartered Institute of Arbitrators	145	145	80
Confederation of Construction Specialists	14	12	NR
Construction Industry Council	80	75	80
Institution of Chemical Engineers	16	16	16
Institution of Civil Engineers	60	53	52
Royal Institute of British Architects	67	67	63
Royal Institution of Chartered Surveyors	114	110	112
Institution of Mechanical Engineers	NR	NR	NR
Chartered Institute of Building	38	34	34
Scottish Building	11	8	9
Royal Incorporation of Architects in Scotland	11	10	9
Royal Institution of Chartered Surveyors in Scotland	23	22	22
Centre for Effective Dispute Resolution	34	40	40
Institution of Electrical Engineers	NR	NR	NR
Technology and Construction Solicitors Association	88	93	71
Chartered Institute of Arbitrators (Scottish Branch)	14	13	16
The Law Society of Scotland	N/A	N/A	N/A
Technology and Construction Bar Association	82	123	143
Adjudication.co.uk	NR	26	25
TOTALS	825	873	797

NR - not reporting

TABLE 2: Number of Adjudicators

As always the research team recognises that Adjudicators can be registered with more than one ANB, so the actual number of practicing Adjudicators is likely to be far less than the figure of 797 shown.

3.2 Discipline of Adjudicators

The ANBs were asked to state the principal area of expertise of their Adjudicators. As can be seen from Table 3 below, and in line with previous results, the top three disciplines remain Quantity Surveyors, Lawyers and Civil Engineers, in that order.

DISCIPLINE	Year 15 April 2013	Year 16 April 2014	Year 17 April 2015
Quantity Surveyors	35.5%	35.1%	37.1%
Lawyers	29.8%	30.5%	32.5%
Civil Engineers	11%	11.1%	10.0%
Architects	7%	6.3%	5.8%
CIOB/Builders	4.9%	4.4%	3.7%
Construction Consultants	2.3%	2.3%	1.2%
Structural Engineers	1.4%	1.3%	0.6%
Building Surveyors	1.8%	1.7%	1.3%
Project Managers	1.3%	0.7%	0.5%
Mechanical Engineers	0.5%	4.2%	4.5%
Electrical Engineers	0.7%	0.2%	0.9%
Other	3.8%	2.2%	1.9%

TABLE 3: Primary discipline of Adjudicators

In respect of the remaining disciplines no significant changes were recorded between Years 16 and 17. Fluctuations in the discipline percentages has been relatively common throughout the previous reporting periods and it is suggested relates to members of ANB's retiring and new members joining the different ANBs.

4.0 DISPUTES – SUBJECT, VALUE & PARTIES IN DISPUTE

4.1 Subject of Dispute

Based on the information provided by Adjudicators, in the period May 2012 to April 2013 disputes regarding 'Payment' constituted the largest proportion of referrals to Adjudication at 25.8%. Whilst still a significant figure in the period May 2013 to April 2014 at 20.4%, this was overtaken by 'Final Account' disputes which took the lead at 23.5%.

Subject	Period May 2012 - April 2013	Period May 2013 - April 2014	Period Nov 2014 - Oct 2015
LAD's / Damages	7.4%	7.7%	3.9%
Value of work	13.0%	7.3%	8.2%
Final Account	11.1%	23.5%	6.9%
Payment	25.8%	20.4%	29.3%
Extension of time / Loss and Expense	20.3%	10.4%	9.9%
Variations	7.4%	5.0%	2.0%
Defective work	1.9%	7.3%	4.9%
Withholding / Pay Less	5.6%	3.8%	19.7%
Contract terms	1.9%	4.6%	1.6%
Repudiation / Termination	NR	NR	3.9%
Other	5.6%	10.0%	9.5%

TABLE 4: Primary subject of the disputes

In respect of the current period captured, November 2014 to October 2015, 'Payment' disputes constitute the largest proportion at 29.3%, an increase of 8.9% on the previous period. This is closely followed by 'With Holding / Pay Less' which has leaped from single figures up to 19.7%. The descriptions provided by Adjudicators in this respect related to either the failure to issue a valid or compliant payment notice or pay less notice.

This focus on disputes regarding the updated payment provisions introduced by the Local Democracy, Economic, Development and Construction Act 2009 is perhaps unsurprising given the level of recent case law which has put these terms under the spotlight, as discussed at paragraph 2.1 above. It is also possible that whilst an Adjudicator has referred to the subject of dispute as 'Payment' this could include issues related to payment notices or indeed the 'Final Account,' which has dropped from 23.5% to 6.9%, and therefore may explain the increase as discussed in the foregoing.

*Recent case law
has put the
updated payment
provisions under
the 2011 Act under
the spotlight.*

Within the period November 2014 to October 2015, other causes of dispute such as 'Professional Negligence'; 'Design'; and 'Identity of Contracting Party' were recorded in the returns, though are not individually identified above, due to each representing less than 1% of the total, and included under the heading of 'Other'.

4.2 Adjudication Values

The period November 2014 to October 2015 is in line with previous trends, with the majority of referrals in the value range £10,001 - £50,000 refer to Figure 3 below.

However, of particular significance is the steady increase of the value range £1 million - £5million which may be the result of disputes occurring on larger, high value projects or work packages. It could also be linked to the submission of inflated applications for payment which, further to the failure to issue a payment or pay less notice, are being sought in so called "smash and grab" Adjudications.

In respect of this increase, the statistics do not appear to align with the opinions of some industry professionals who do not feel that Adjudication is appropriate for high value disputes. The statistics instead indicate that parties are, in practice, seeing the benefits of referring high value disputes to Adjudication, as opposed to comparatively expensive litigation or Arbitration. This further adds weight to the argument advanced by some industry commentators that Adjudication provides access to justice in respect of a wide range of disputes, both in terms of value and complexity.

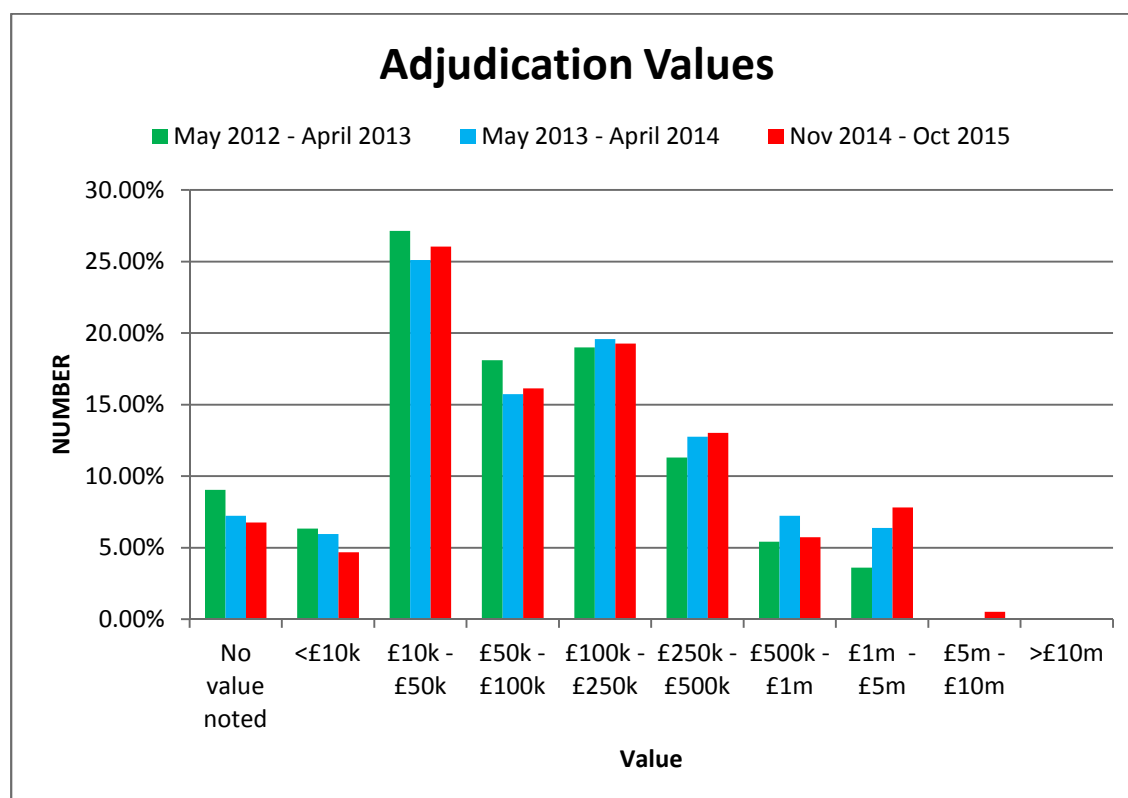


FIGURE 3: Proportion of Adjudication in each value group

Figure 3 demonstrates that continually a high proportion of disputes referred are within the value range of between £10,000 and £50,000. This indicates that parties are not put off by the rising cost of Adjudication, as discussed throughout the industry, and examined in further detail at 5.6 below.

4.3 Parties in Dispute

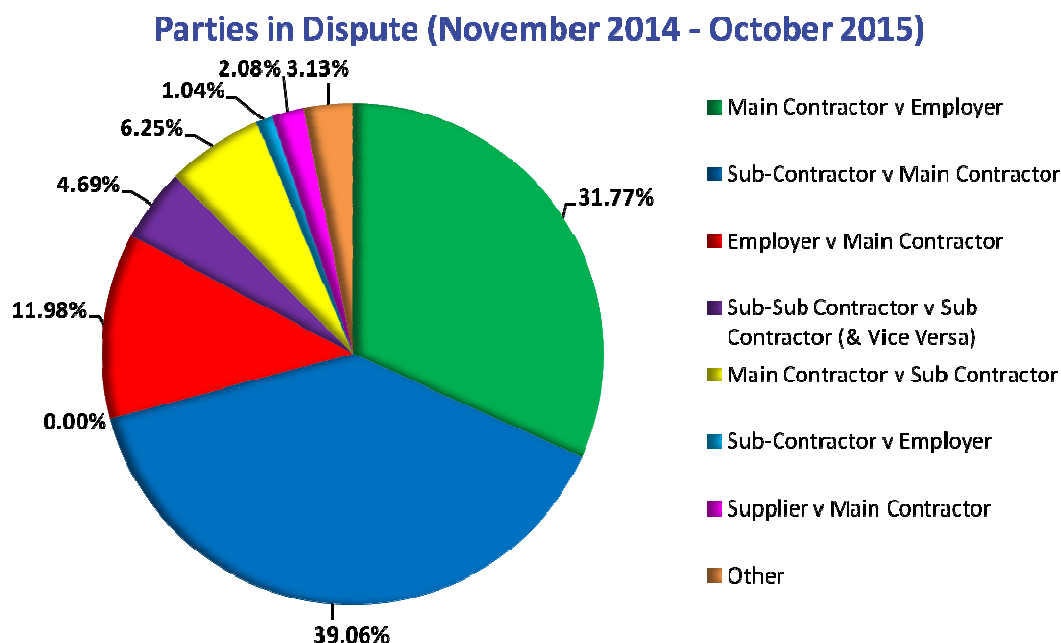


Figure 4: Parties in Dispute (NOVEMBER 2014 – OCTOBER 2015)

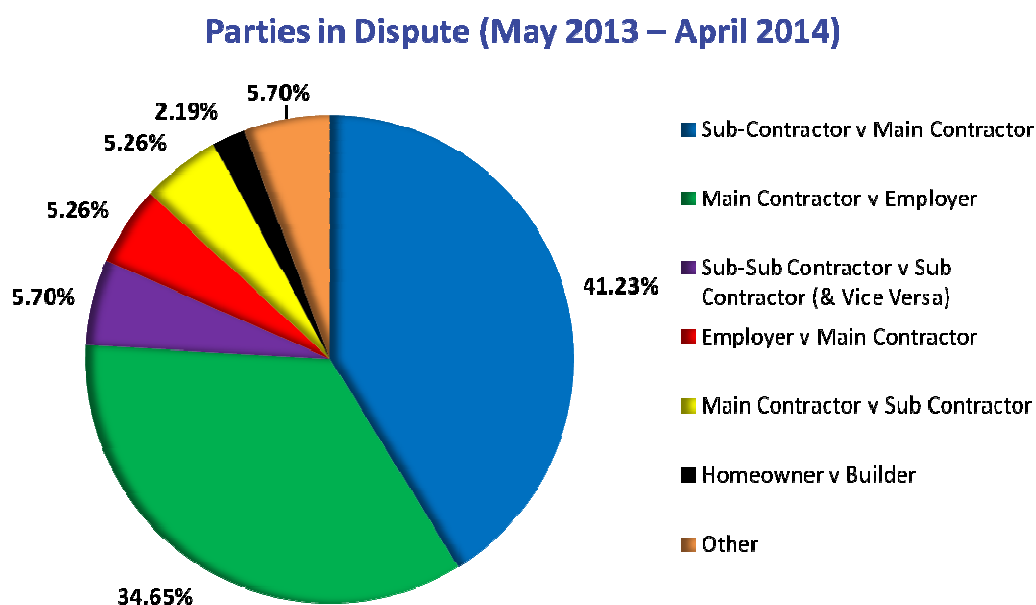


Figure 5: Parties in Dispute (MAY 2013 TO APRIL 2014)

In the period November 2014 to October 2015 the parties most likely to enter into dispute were Sub-Contractor v Main Contractor, refer to Figure 4. This is consistent with previous years, however the percentage has dropped slightly from the 41.23% recorded in period May 2013 to April 2014, refer to Figure 5.

Disputes referred by an Employer against a Main Contractor represent 11.98% of the total for the year to October 2015. This rise in Employer v Main Contractor disputes is also of interest, having more than doubled from 5.26% in the period May 2013 to April 2014, to 11.98% in the period to October 2015. This could be related to an Employer seeking to recover sums 'up the line' as a result of being the unsuccessful party in an Adjudication 'down the line'.

The most likely parties to be in dispute are Sub-Contractor v Main Contractor

By way of general comment, disputes referred by a Sub-Sub-Contractor against a Sub-Contractor represent 4.69%; a slight drop from the previous set of statistics; and those referred by a Main Contractor against a Sub-Contractor account for a further 6.25%, also have declined. 'Other' parties in dispute account for 3.13% and include, by way of example, Specialist Contractor v Employer, Architect v Client and Client v QS.

In addition, there were no Homeowner v Builder disputes recorded in the Adjudicator returns in the period November 2014 to October 2015, which had accounted for 2.19% of disputes in the period May 2013 to April 2014.

5.0 PROCEDURE, TIMETABLE, CHALLENGES, SUCCESS & FEES

5.1 Adjudication Procedure Adopted

The procedure adopted in Adjudication of “documents only” remains the most common method used by Adjudicators by a substantial margin, refer to Table 5 below.

Procedure Adopted	Period May 2012 - April 2013	Period May 2013 - April 2014	Period Nov 2014 - Oct 2015
Employ a documents only procedure	75.0%	76.8%	80.0%
Employ an interview procedure with one party present	0%	0.4%	0.0%
Employ an interview procedure with both parties present	0%	5.0 %	1.5%
Carry out a full hearing procedure	20.4%	12.0%	10.0%
Carry out a conference call	4.6%	2.5%	3.00%
Site Visit	0%	3.3%	4.5%
Other	-	-	1.0%

TABLE 5: Procedures adopted by Adjudicators

Employing an interview procedure with both parties has reduced from 5.0% to 1.5% and whilst carrying out of a full hearing procedure remains popular, there has been a continuing decline over the last 3 reporting periods.

Interestingly, the new designation for ‘other’ captures the response from one Adjudicator within which a distinction was drawn between a full hearing procedure and a less formal meeting, at which questions are raised with parties, rather than witnesses being cross examined as would generally be the case at a full hearing.

The foregoing perhaps indicates that Adjudicators continue to be aware of their obligation not to incur unnecessary costs, being particularly mindful of such duty in the face of other rising costs of referring and defending Adjudications.

5.2 Timescale for Issuing Decisions

Timescale for Adjudication	Period May 2012 - April 2013	Period May 2013 - April 2014	Period Nov 2014 - Oct 2015
Decisions given within 28 days	52%	49%	52%
Between 28 and 42 days	36%	31%	32%
More than 42 days	12%	20%	16%

TABLE 6: Compliance with time limits

In general the research indicates that, in line with earlier results, Decisions given within 28 days continues along a stable trend, accounting for an average of 50% of Adjudications, refer to Table 6. Decisions being published in more than 42 days have fallen slightly, though remain

relatively high at 16% and, as recorded in Report 13, may be the result of more complex issues, with voluminous submissions being referred to Adjudication.

Decisions being issued after the 28 day period may be in part attributable to the increase in high value disputes, as discussed above at 4.2. However, it is acknowledged that the period of time to decide a dispute is influenced by many factors, such as the complexity of the matters referred, and does not always directly correlate to the value in dispute.

5.3 Proportion of Appointments Leading to a Decision

The figures as set out below in Table 7 indicate that the number of appointments proceeding to a Decision has fallen from 71% to 63%. It can be seen that a proportion of this fall is aligned with an increase in Adjudications being settled by parties. This may indicate that parties are increasingly utilising Adjudication as a vehicle to bring a party to the table to negotiate a dispute, rather than intending to follow through with the Adjudication process in full. It may also indicate that 'smash and grab' appointments do not proceed when the Respondent recognises its failure to comply with notices is unlikely to be defensible.

Proportion of Adjudication appointments proceeding to Decision	Period May 2012 - April 2013	Period May 2013 - April 2014	Period Nov 2014 - Oct 2015
Decisions issued	71%	71%	63%
Adjudication settled by the parties	19%	17%	25%
Adjudications abandoned	10%	11%	6%
Adjudications still ongoing	0%	1%	6%

TABLE 7: Adjudications Proceeding to a Decision

5.4 Challenges to Adjudicator's Appointment

Challenges to the Adjudicators' appointment had increased to 42% in the periods covering May 2012 to April 2014, which represented an increase from the previously identified trend of around one third of all appointments.

	Period May 2012 - April 2013	Period May 2013 - April 2014	Period Nov 2014 - Oct 2015
Appointments in sample	201	226	303
Challenges	84	96	76
Appointments challenged	42%	42%	25%

TABLE 8: Challenges to Adjudicators Appointments

In the period November 2014 to October 2015, this figure has dropped to 25% which could suggest that Claimants are perhaps better prepared and have structured the matter in dispute and redress sought to mitigate against the possibility of a jurisdictional challenge.

The two main types of challenges recorded in the period November 2014 to October 2015 included 'no dispute' and 'Notice not properly served' which is consistent with previous research.

5.5 Which Party is the Most Successful?

The data collected demonstrates that the Claimant remains the more successful party in Adjudication. This, however, continues a downward trend from the period May 2010 to April 2011 in which the success of the Claimant was 71% which had reduced to 50% in the period May 2013 to April 2014.

Within Report 13 it had been recorded that there had been a decrease in success for the respondent between the period May 2011 to April 2012 and May 2013 to April 2014, from 23% to 13% respectively. However, as can be seen from Table 9 below, for the period November 2014 to October 2015 this has increased to 22%.

	Period May 2012 - April 2013	Period May 2013 - April 2014	Period Nov 2014 - Oct 2015
Claimant	54%	50%	48%
Respondent	18%	13%	22%
Split Decision	28%	37%	30%

TABLE 9: Comparison of successful parties in Adjudicators' decisions

The figures set out in Table 9 are based on the Adjudicators' apportionment of fees between the parties which the research team consider is a more objective measure of success. Previously we had invited Adjudicators to decide who was successful which was considered a subjective test. We do however understand that there may be several reasons why Adjudicators apportion fees other than success alone, and this should be borne in mind when considering these figures and their implications.

5.6 Adjudicator's Fees

The data collected for reporting period November 2014 to October 2015 demonstrates that the most common hourly rate of fees of Adjudicators are in excess of £200 (accounting for 65.78% of the sample).

The most common hourly rate of fees charged by Adjudicators are now in excess of £200.

The remainder of the hourly fees were concentrated in the following ranges:

- £176 - £200 (20.86%)
- £151 - £175 (5.34%)
- £125 –£150 (8.02%)

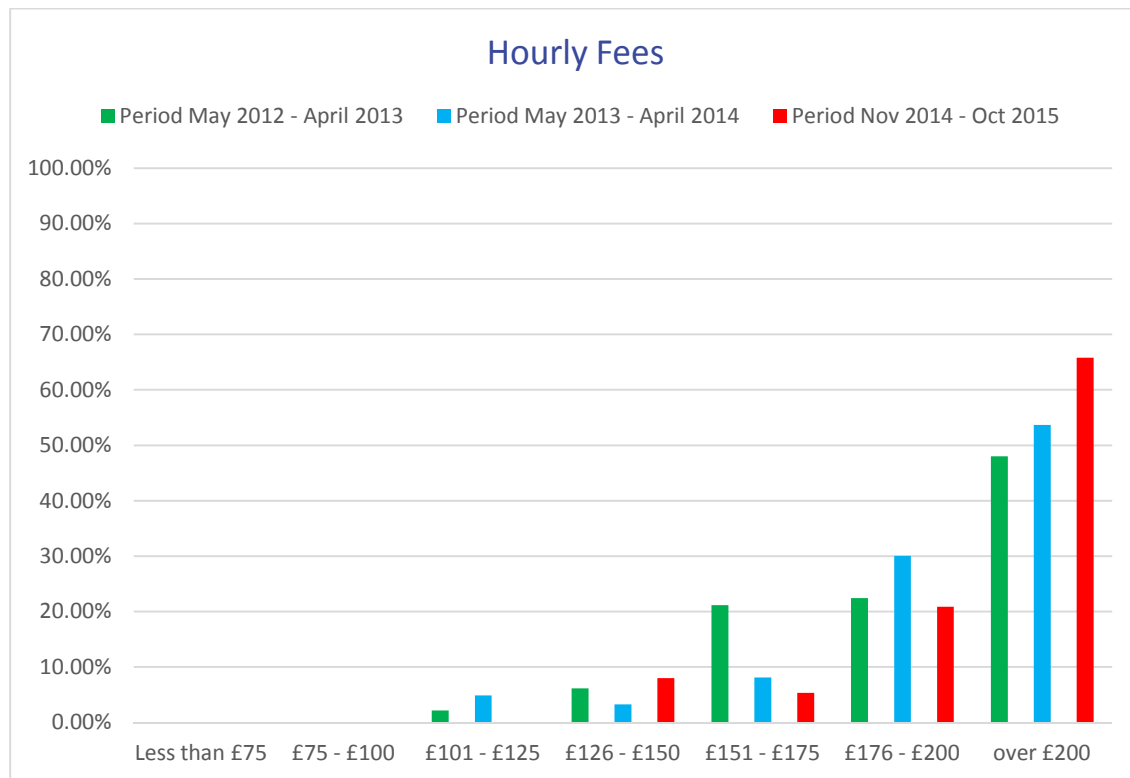


FIGURE 6: Hourly fees charged by Adjudicators

In general, it would appear that there continues to be a trend towards higher Adjudicators' rates/hour, with fees becoming increasingly concentrated in the range of £200 per hour and above. It is suggested that this could be attributed to the increasing complexity of the disputes referred to Adjudication and recognition of the expertise and up-to-date awareness of changing case law that is required to decide disputes, as well as improvements in the economy in general.

As stated above at 4.2, although the level of Adjudicator's fees continues to rise, the most common value of dispute referred remains in the range of £10,000 to £50,000. This indicates that although the cost of Adjudication may be increasing, this is not deterring parties referring comparatively small value disputes.

6.0 CONCLUSION

From the research we have carried out, there are a number of interesting observations to be made, with several trends and statistics developing and changing in recent years.

Firstly, in terms of referral growth, there has been significant recovery, increasing by 12% to 1439 in Year 17, and returning to a level which is comparable with the years preceding the economic downturn in 2008. The future also looks promising, with 717 appointments recorded in the first half of Year 18. However, this could also signal a plateau in referrals, rather than a continuing trend of steady growth. Only time will tell exactly what the future holds, but in any case it looks unlikely that we will experience a drop in referrals in Year 18.

A key consideration in predicting the level of referrals for Year 18 is that the data currently collected does not cover the month of December, with the increasing likelihood that parties may adopt 'ambush' tactics in the lead up to the festive period. Previous research suggested no evidence to support the widespread use of the 'ambush' tactic, and generally the peaks appeared in July/October and January/February. However, in Year 17, an increase of 60% on Year 16 in the number of Adjudication referrals in December was observed. This could suggest a move towards the use of the 'ambush' tactic and a move away from the potentially pragmatic approach to resolving disputes prior to the Christmas period. This could have a significant bearing on the overall number of referrals for Year 18.

However, of significance is that the number of referrals throughout Year 17 has generally evened out, indicating that parties are referring disputes consistently throughout the year. This signifies a move away from earlier analyses which revealed Adjudication referrals fluctuated throughout the year with significant peaks and troughs experienced.

Turning to the disputes themselves, the primary subject of dispute remains 'payment', which is in line with previous years' statistics. However unlike previous research, this is closely followed by 'With Holding/Pay Less' which has experienced a sharp rise from single figures up to 19.7%. It is acknowledged that a flurry in cases concerning payment provisions under the 2011 Act are likely to have been the key contributor to this change, leading to the birth of the 'smash and grab' Adjudication, with payees seeking potentially large sums on the grounds that no valid payment or pay less notice has been issued to counter their application.

There has also been a steady increase of the dispute value range £1 million - £5million which may be the result of disputes occurring on larger, high value projects or work packages. However, it is likely that other factors may be at play here, and it could be said that this increase in high value Adjudications is linked to the submission of inflated applications for payment in the aforementioned 'smash and grab' Adjudications.

Other than this, trends in dispute values remained relatively in line with previous years' research with the majority of disputes being in the banding £10,001 to £50,000. This indicates that parties are not deterred by the rising cost of Adjudication, a key talking point in the industry. In this respect, the statistics indicate that Adjudication remains a relevant means of providing access to justice for parties when faced with the comparatively expensive routes of litigation and Arbitration.

With regards to procedure, the majority of Adjudications were conducted on a 'documents only' basis accounting for 80% of Adjudications, an increase from 76.8% in the previous reporting period. The carrying out of a full hearing has continued to decline which could be linked to the obligation of the Adjudicator to avoid incurring unnecessary costs, and the continued awareness of the importance of such.

Just over half (52%) of Decisions are given within the 28 day period in Year 17. Decisions being issued beyond the 28 day period may be in part attributable to the increase in high value disputes, as discussed above. However, the period of time to decide a dispute is likely to be a product of several factors, including the complexity of the dispute referred, the intentions of the parties, and the volume of submissions. These considerations do not always directly correlate to the value in dispute.

Adjudicators' fees remain relatively consistent with previously observed trends, with results showing an increasing tendency towards charging higher hourly rates with an hourly fee of £200 and above steadily increasing over the last 3 reporting periods (May 2012 – November 2015). This may be attributed to a number of factors, including the increasing complexity of the disputes referred to Adjudication and recognition of the expertise and up-to-date awareness of changing case law that is required to decide disputes, as well as improvements in the economy in general. Perhaps it could also be said that as parties become increasingly aware of the benefits of Adjudication, they are willing to pay greater sums to resolve their disputes.

In all, the future of Adjudication as a method of dispute resolution remains promising with its use returning to levels experienced in more fruitful times within the construction industry. Despite the increasing complexity of disputes and rising Adjudicator fees, parties do not appear to have been deterred from opting for Adjudication to resolve their disputes, and it is hoped that this will continue to be the case.

As always, the authors are indebted to the Adjudicator Nominating Bodies and to our loyal group of 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.

J L Milligan and L H Cattnach
April 2016

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TABLE 9: Comparison of successful parties in Adjudicators' decisions

FIGURES

FIGURE 3: Growth Rate in Adjudication Referrals in the UK

FIGURE 4: Fluctuations in Referrals over the Year

FIGURE 3: Proportion of Adjudication in each value group

FIGURE 4: Parties in Dispute

Figure 5: Parties in Dispute (May 2013 to April 2014)

FIGURE 6: Hourly fees charged by Adjudicators