

The development of Statutory Adjudication in the UK and its relationship with construction workload

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Abstract:

This paper tracks the development of Statutory Adjudication in the UK since its inception in 1998. It presents data on numbers of referrals to adjudication in the UK, particularly those which were routed through Adjudicator Nominating Bodies (ANBs). The paper is based on data from the Adjudication Reporting Centre at Glasgow Caledonian University which draws its information from questionnaires received from ANBs and from samples of practicing adjudicators. Trends in the causes of disputes referred, parties in dispute, procedures adopted by adjudicators, etc are also included in this review. The paper considers how the nature of the disputes has changed over the course of 12 years as parties have grown familiar with the process; how it has been utilised during a period of recession in construction and the re-emergence of the criticality of cash flow as firms attempt to cope with increased competition and reduced margins. The study found that there appeared to be a relationship between the UK workload and the number of adjudication referrals. In the immediate aftermath of a downturn in workload adjudications rose, but one year later the ongoing reductions in workload were followed by a reduction in referrals. The views of a number of experts were sought and they confirmed that adjudication was still highly regarded and that they had not experienced any diminution in the use of adjudication.

Keywords:

Construction Disputes, Dispute Resolution, Statutory Adjudication.

1 Introduction

The data used in compiling this paper comes from the Adjudication Reporting Centre (ARC) which collects data from Adjudication Nominating Bodies (ANBs) in the UK and also from adjudicators. This study refers to data from ANBs, published government statistics and commentaries from leading authorities. Statutory Adjudication was introduced to the UK through the Housing Grants, Construction and Regeneration Act

1996¹ (HGCR Act) and enabled through The Scheme(s) for Construction Contracts² and their respective Exclusion Orders³. At the time of its introduction there were concerns about the willingness of weaker contracting parties (mostly subcontractors) to initiate adjudication proceedings against more powerful parties (Kennedy, Morrison and Milne 1997). The major concern expressed by subcontractors, albeit their experience was almost entirely limited to adjudications in respect of set-off claims in domestic subcontracts, was that if they referred a dispute to adjudication they might be denied future opportunities to tender for work. It was believed by many that weaker parties (usually further down the contracting chain) would be deterred by the threat of commercial power from utilising this new and powerful form of resolving disputes (in the interim) and allowing vital cash to flow through the subcontracting chain. This view is supported by Gaitskell (2007) who reported that during the pre-statutory adjudication era, resistance by main contractors and employers meant that contractual provisions which aided cash flow were not widely used. Gaitskell suggested that the inclusion of such provisions would depend on the 'negotiating strength' of the parties. If the objecting party was strong enough, the contractual provisions were removed. Mason (2010), reflecting on a report by Huxtable (1983) records the atmosphere between main contractors and subcontractors which prevailed at that time. The report by Huxtable was entitled 'The corruption of the commercial process' and it detailed a number of evolving practices, several involving bespoke contracts, which many would consider unfair.

Despite these concerns the statutory adjudication process was adopted actively. Until relatively recently (around 2007) the UK construction industry experienced growth in its workload. This coincided with the settling-in period of adjudication which was subject to various legal challenges and practices which have led to the need for review and proposed changes to improve the effectiveness of the process. Many of these challenges were the result of more powerful parties seeking to increase the barriers to the use of adjudication and to dissuade others from adjudicating⁴. Over this period, the adjudication process operated in a time of relatively stable workload in the construction industry. It is only within the last three years or so that it may be possible to see if and how the adjudication process may be impacted upon by the reduced financial circumstances in which the UK construction industry has found itself. This paper attempts to address this impact.

2 Data collection

The data for this paper was collected by the ARC which collects data through questionnaires from ANBs throughout the UK. ARC also collects data from participating adjudicators which provides insights into the operation of the adjudication process. The work of ARC started in 1998 when the 1996 HGCR Act came into force,

¹ Housing Grants, Construction and Regeneration Act 1996

² The Scheme for Construction Contracts (Scotland) Regulations 1998 and The Scheme for Construction Contracts (England & Wales) Regulations 1998

³ The Construction Contracts (Scotland) Exclusion Order 1998 and The Construction Contracts (England and Wales) Exclusion Order 1998

⁴ *Bridgeway Construction Ltd v Tolent Construction Ltd* (2000) CILL1662 also see *Yuanda (UK) Co Ltd v WW Gear Construction Ltd* [2010] EWHC 720 (TCC)

and it has collected data continuously from then to the present date. ANBs are asked to provide information on a wide array of areas of interest, only a few of which are referred to in this paper.

3 Development of statutory adjudication

3.1 Role of the Adjudicating Nominating Bodies (ANBs)

Adjudication referrals in the UK are mostly handled by ANBs. Disputes are usually referred to ANBs which then appoint the adjudicators. ANBs also administer the training and qualifications of adjudicators who are registered with them. There are a number of ANBs (as shown below) but there has been some consolidation in the provision.

Table 1 below indicates the responses of a number of ANBs over a period of years with regard the number of registered adjudicators. This indicates that some ANBs are no longer operating and in many cases the number of adjudicators registered with individual ANBs has reduced. This may be because they moved their registration to another body or have reduced the number of ANBs with which they register – some adjudicators are listed with several (typically 2 or 3) to maximise their opportunities for appointments. Each ANB has its own criteria that has to be met for an adjudicator to be listed.

Table 1. Numbers of adjudicators registered with ANBs

ADJUDICATOR NOMINATING BODY	May 2002	October 2002	April 2003	Feb 2004	October 2004	October 2005	April 2006	October 2006	October 2007	April 2008	April 2010
Association of Independent Construction Adjudicators	194	194	176	150	155	116	50	50	49	48	48
Chartered Institute of Arbitrators	147	n	n	164	158	169	180	172	171	164	164*
Confederation of Construction Specialist	25	24	14	21	43	43	43	43	43	43	15
Construction Industry Council	170	144	149	154	152	132	136	136	102	102	94
Institution of Chemical Engineers	NR	6	13	13	13	14	18	15	15	15	15
Institution of Civil Engineers	80	82	87	84	84	82	84	81	81	81	72
Royal Institute of British Architects	70	69	69	68	63	68	68	68	67	67	50
Royal Institution of Chartered Surveyors	107	116	117	122	122	122	116	116	104	115	120
3A's Polycor AIMS Ltd	33	NR	54	NR	NR	NR	NR	NR	NR	NR	NLO
Institution of Mechanical Engineers	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
Chartered Institute of Building	53	52	50	53	58	56	56	54	46	43	43
Construction Confederation	43	43	43	43	43	43	28	28	28	27	NLO
Scottish Building	12	12	12	12	12	9	11	11	9	9	9
Royal Incorporation of Architects in Scotland	14	14	14	14	14	14	10	10	10	10	13
Royal Institution of Chartered Surveyors in Scotland	47	45	35	38	38	38	25	23	23	23	20
Centre for Effective Dispute Resolution	48	46	NR	40	NR	41	41	42	42	42	32
Institution of Electrical Engineers	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
Technology and Construction Solicitors Association	128	128	128	149	142	142	142	142	133	133	128
Chartered Institute of Arbitrators (Scottish Branch)	22	17	17	17	20	21	21	17	16	16	17
The Law Society of Scotland	10	11	13	16	18	18	18	28	28	28	33
Technology and Construction Bar Association	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
Adjudication.co.uk	NR	7	7	NR	NR	NR	NR	NR	NR	NR	NR
TOTALS	1203	1010	998	1158	1135	1128	1047	1036	967	966	921

NR - not reporting

NLO - no longer operating

* provisional

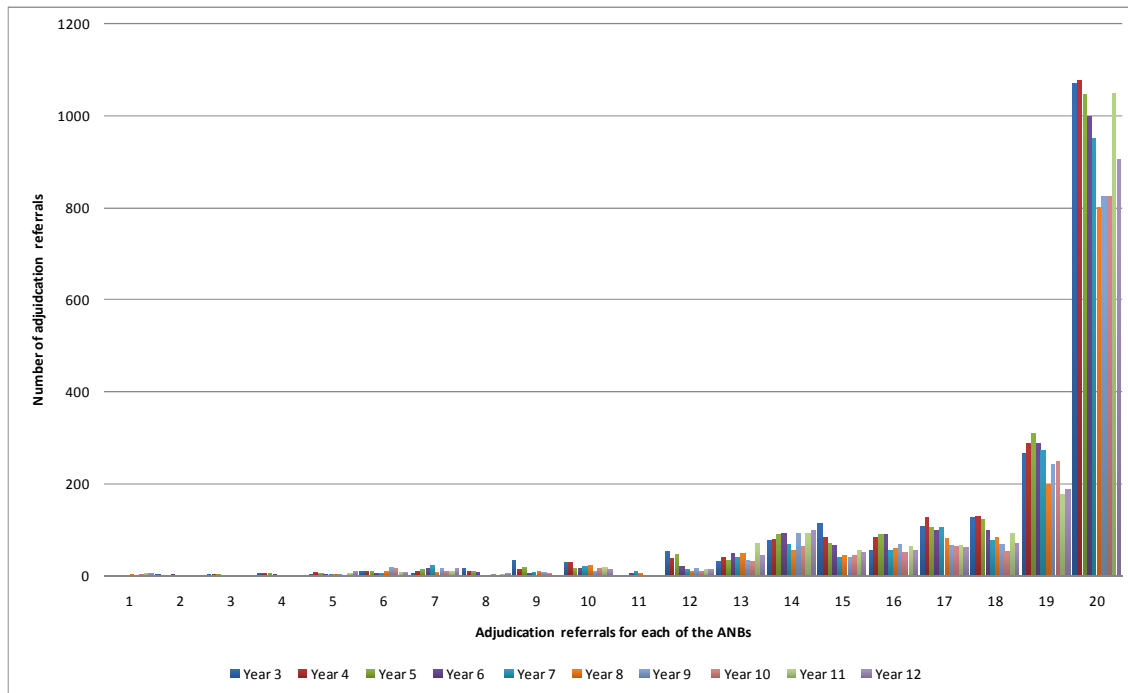


Figure 1. Numbers of adjudication referrals for each ANB

Some ANBs have more referrals coming to them than others as Figure 1 illustrates. In this histogram the identity of ANBs has been removed but it can be seen that there is one dominant body which accounts for approximately 60% of all adjudications in the UK.

Whilst the ANBs are involved in the appointment of the majority of adjudicators, they do not have a monopoly in the appointing process. The 1996 Act in the UK does not restrict appointments through an ANB. The sources of appointment of adjudicators are shown in Table 1 below.

Table 1. Sources of appointment of adjudicators

Source of appointment	April 2002	July 2004	Oct 2005	Oct 2007	April 2008
Through an ANB	89.6%	83.1%	83.2%	85.0%	87.3%
By agreement between the parties	9.9%	16.6%	16.8%	12.0%	12.0%
Named in the contract	0.6%	0.3%	0.0%	3.0%	0.7%

It will be observed here that, while being named in the contract is unusual, it is a fairly common practice for parties to agree on the adjudicator when the dispute has arisen.

3.2 The adjudication process

The professional skill base of adjudicators has fluctuated over time but the two principle groups are quantity surveyors and lawyers. The increasing proportion of lawyers reflects perhaps the matters referred in adjudications as they have evolved over time. These professionals are followed by a group comprising civil engineers, architects and professional builders.

Table 2. The primary professional disciples of the adjudicators

DISCIPLINE	May 2002	Oct 2002	April 2003	Feb 2004	Oct 2004	Oct 2005	April 2006	Oct 2006	Oct 2007	April 2008	April 2010
Quantity Surveyors	28.9%	39.1%	43.8%	41.6%	38.0%	38.8%	35.7%	35.1%	34.5%	31.4%	33.5%
Lawyers	22.1%	21.9%	22.1%	21.6%	26.1%	26.3%	25.6%	26.6%	26.6%	28.4%	15.6%
Civil Engineers	14.6%	17.3%	13.2%	11.1%	11.6%	11.0%	15.8%	15.1%	15.0%	14.5%	14.1%
Architects	7.8%	8.9%	10.2%	9.3%	9.6%	9.6%	9.0%	8.8%	8.7%	9.6%	8.1%
CIOB/Builders	3.4%	3.4%	2.6%	5.2%	5.0%	4.9%	4.7%	5.3%	4.9%	7.5%	4.7%
Building Surveyors	2.1%	1.7%	1.4%	1.0%	1.3%	1.4%	1.2%	1.2%	1.3%	2.5%	0.2%
Construction Consultants	2.5%	0.3%	0.9%	4.1%	5.3%	4.7%	4.6%	4.8%	5.6%	1.9%	0.5%
Structural Engineers	2.1%	3.4%	0.8%	2.2%	1.3%	1.3%	1.2%	0.9%	1.1%	1.3%	1.6%

Table 3. Procedure adopted by adjudicators

Procedure Adopted	to October 2001	to October 2002	to July 2004	to Oct 2005	to October 2007	to April 2008
Employ a documents only procedure	56.0%	52.0%	56.9%	46.8%	57.6%	77.9%
Employ an interview procedure with one party present	3.0%	0.3%	0.8%			
Employ an interview procedure with both parties present	35.0%	21.0%	24.6%	30.3%	15.2%	10.6%
Carry out a full hearing procedure	6.0%	6.0%	8.1%	15.6%	14.1%	7.7%
Carry out a conference call			5.8%	6.4%	10.9%	3.9%
Site Visit		11.0%	1.9%	0.9%	1.1%	
Legal debates			1.5%		1.1%	
Interview with contract administrator present			0.4%			
Other		1.0%				

The procedures adopted by the adjudicators have also evolved as can be seen from Table 3 above. The principal procedure adopted is that of a ‘documents only’ which gives the adjudicators greater protection from natural justice or procedural challenges. Statistically, site visits and legal debates are not favoured by adjudicators.

3.3 The Disputes

Table 4. Disputing parties

Contracting Parties	October 2005	October 2007	April 2008
Client and consultant	3%	5%	4%
Client and main contractor	35%	27%	37%
Client and nominated subcontractor	1%	0%	0%
Main contractor and domestic subcontractor	51%	52%	47%
Main contractor and nominated subcontractor	2%	0%	0%
Sub-contractor and sub sub-contractor	3%	8%	4%
Consultant and contractor	1%	2%	1%
Trade contractor and employer	2%	2%	3%
Management contractor and package contractor	2%	3%	4%
Consultant and sub-consultant	0%	0%	1%

The most common pair of parties in dispute remains main contractor and subcontractor but the client and main contractor account for a significant number. Others which have changed over time include nominated subcontractors who have disappeared from the scene and those involving package or trade contractors has increased, most likely due to the changing patterns of procurement choices made by clients.

Table 5. Subjects of the disputes

Subject	July 2004	October 2005	October 2007	April 2008
Valuation of Final Account	12%	14%	22%	22%
Failure to comply with payment provisions	19%	14%	8%	19%
Valuation of interim payments	15%	13%	15%	16%
Withholding monies	10%	11%	10%	10%
Extension of time	8%	8%	8%	9%
Loss and expense	9%	10%	2%	7%
Valuation of variations	15%	17%	11%	5%
Defective work	4%	5%	7%	4%
Determination	2%	3%	4%	4%
Non-payment of fees	2%	1%	7%	2%

Table 5 above includes adjudicators' reported views on the main causes of the disputes. This is clearly a matter of judgement as the issues to be decided may contain many elements. 'Final account' features prominently and has grown over the reporting periods to be the most common but that might simply be because the vast majority of adjudication referrals are initiated after Practical Completion and at that stage of projects any dispute is likely to impact in some way on the Final Account.

3.4 Growth trends of adjudications in UK

The rate of adoption of statutory adjudication since its introduction in 1998 is shown in Table 6 and Figure 2 below. This illustrates a rapid expansion over the first two years before it then levelled out for two years and then declined by around 25% to reach a new level.

Table 6 Adjudication referrals per year from 1998 to present

TIME PERIODS	ALL ANBs ADJUDICATIONS
YEAR 1 - May 1998 - April 1999	187
YEAR 2 - May 1999 - April 2000	1309
YEAR 3 - May 2000 - April 2001	1999
YEAR 4 - May 2001 - April 2002	2027
YEAR 5 - May 2002 - April 2003	2008
YEAR 6 - May 2003 - April 2004	1861
YEAR 7 - May 2004 - April 2005	1685
YEAR 8 - May 2005 - April 2006	1439
YEAR 9 - May 2006 - April 2007	1506
YEAR 10 - May 2007 - April 2008	1432
YEAR 11 - May 2008 - April 2009	1737
YEAR 12 - May 2009 - April 2010	1528

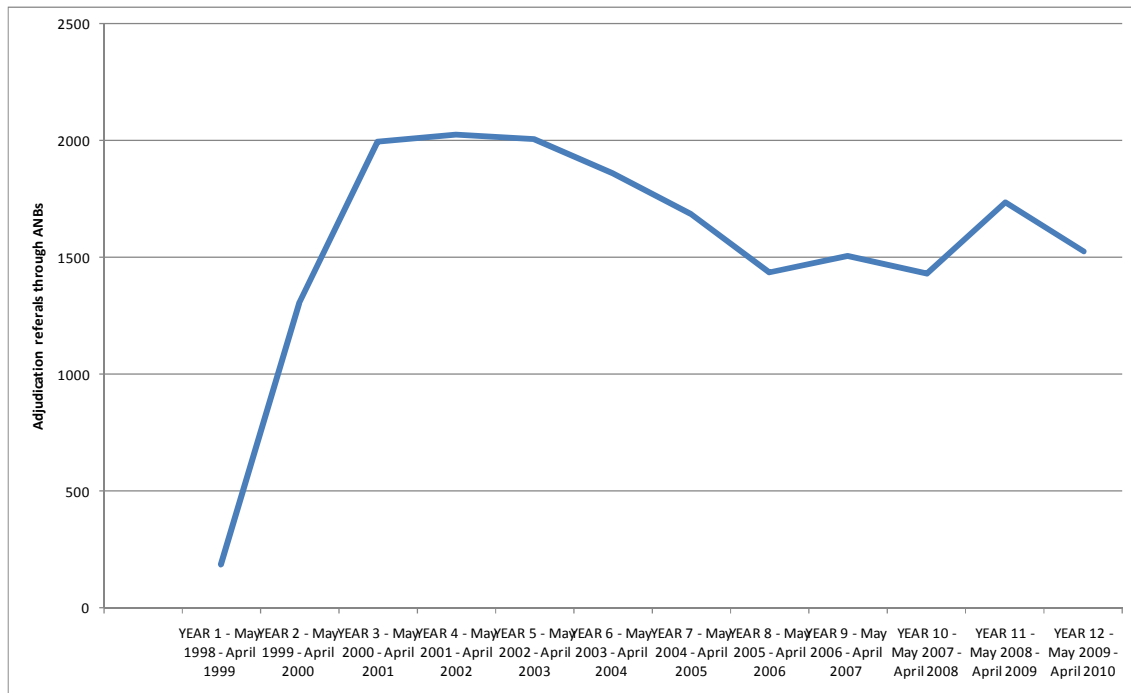


Figure 2. Graph of the number of adjudication referrals each year from 1998

This graph shows minor fluctuation between 2005 to 2007. However, there was a clear spike in demand during 2008/09 with this settling back down the following year. There has always been some fluctuation over the course of the years but since 1998 there has been some consistency in which months see peaks and others troughs. Figure 3 below illustrates this pattern.

The purpose of looking at the monthly variation in adjudication referrals was to see if there was any evidence of 'ambush' by parties. There are certainly peaks in November and March with troughs in September and December but the reasons may have more to do with financial year ends than 'ambush' which one might expect near holiday periods.

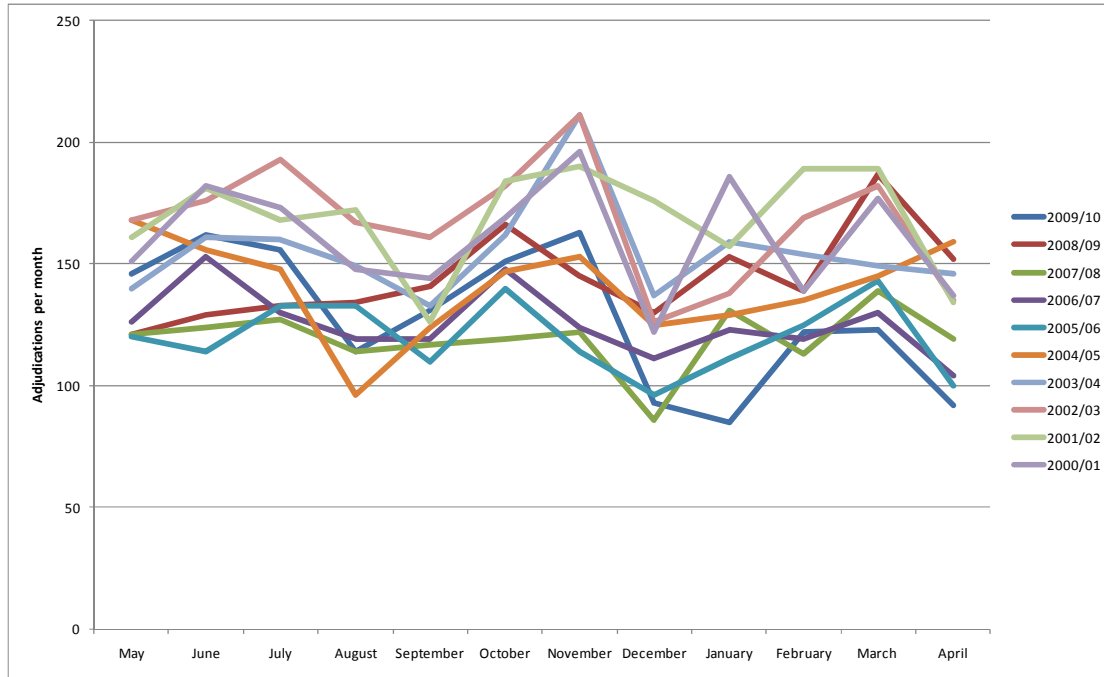


Figure 3. Monthly variations in adjudication referrals

4 Relationship with construction workload

From Figure 4 below, it can be seen that from year 1 to 3 there was a dramatic increase in the use of adjudication as might be expected from a novel form of dispute resolution following its introduction. From years 3 to 5, the number of referrals remained steady, which mirrored the UK construction workload over this period. However, it is interesting to note that - as the UK construction workload increased from years 5 – 7 the number of adjudication referrals started to decrease. From years 8 – 9, the UK workload decreased slightly and then started to increase whilst the number of referrals did the opposite on that occasion. From years 11- 12 the UK construction workload started to decline sharply as did the number of adjudication referrals. It appears from the graph - that when there was an increase in the UK construction workload, followed by a slight decrease - the number of adjudication referrals continues to increase. However, when the UK construction workload dropped more dramatically in 2010, the number of adjudication referrals also dropped noticeably.

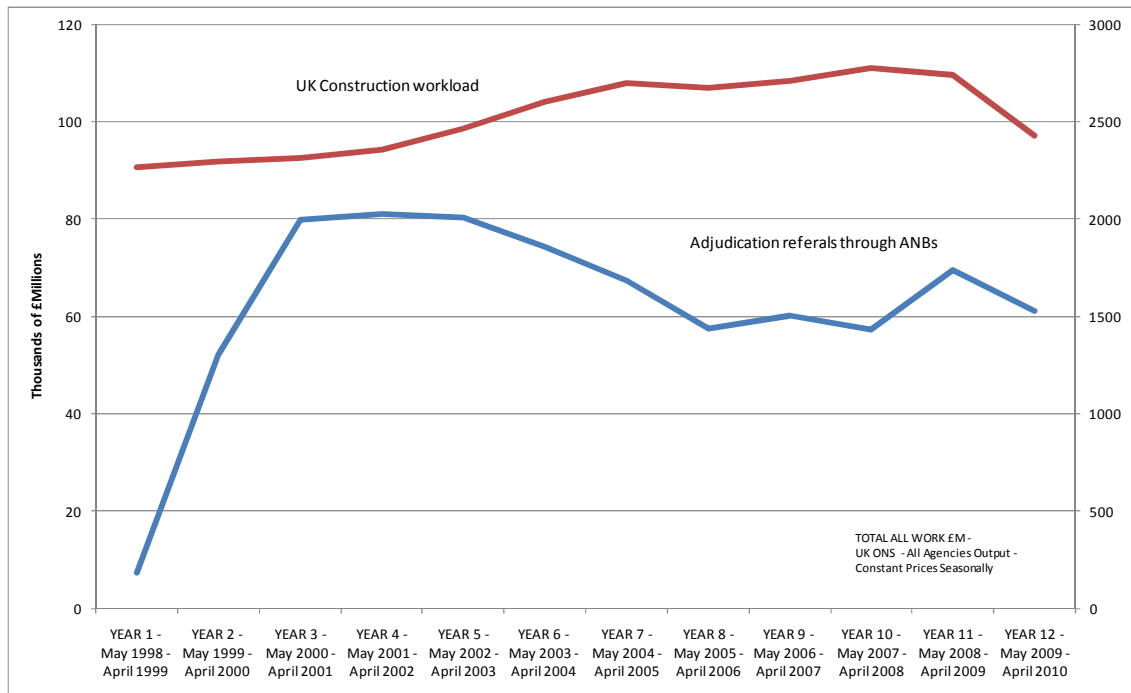


Figure 4. Adjudication referrals and UK construction workload

The last three years in this series are when the downturn in the UK construction workload begins to take effect. This coincided with a downturn in the economy as a whole and access to funding became more problematic. Figure 5 below shows the situation quarter by quarter. It has to be borne in mind that there may well be a time lag effect in that disputes may manifest themselves a year or more after the point at which

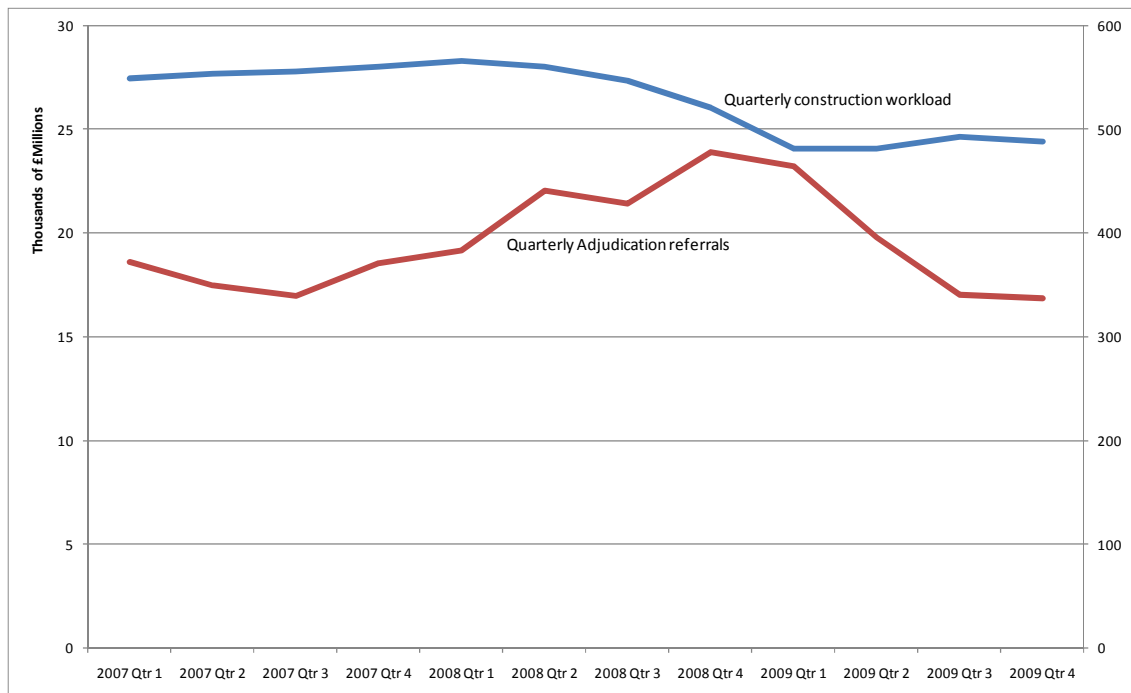


Figure 5. Quarterly profile of adjudication referrals and UK construction workload

the contract commenced when it would have been included as part of the workload statistics. It may also be the case that the motivation to pursue an adjudication may be influenced to a greater or lesser degree by the immediate requirements of cash flow and continuity of work.

The above graph shows a more detailed account of the UK construction workload and the number of adjudication referrals. The referrals have the normal peaks and troughs that occur throughout the year (see Figure 3); however, the trend follows that stated in the aforementioned paragraphs. It can be seen that Q1, 2008, shows a slight decrease in the UK construction workload with a correspondingly sharp increase in the number of adjudication referrals. This is interesting as it suggests that, at this point and even up to Q4 of 2008 with the workload declining and fewer opportunities to tender for subcontract work, subcontractors were increasingly pursuing adjudications: perhaps driven by the need for cash flow and having more time on their hands. However in Q4 of 2008, the decrease in workload becomes sharper and the corresponding number of referrals starts to decrease. This is likely to coincide with staff being paid off and money being tighter. Even when from Q1 to Q3, 2009, the UK construction workload increases slightly, there is a steep decline in the number of referrals. It is interesting to contrast the response here with that in 2008 when, despite a drop in workload, the referrals increased. In this case the referrals dropped when the same circumstances arose again. Perhaps this is down to the old adage of 'not biting the hand that feeds'. There would appear to have been a change in response pattern at the end of 2008. In Q4, 2009, the UK construction workload levels out and the number of referrals does likewise.

5. Expert commentary

A number of people with considerable experience in adjudication and who have extensive knowledge of the landscape of construction disputes were shown the initial findings of the research and asked to comment in an attempt to understand why these patterns were developing.

Geoff Brewer of FII Brewer Consultancy who provides Adjudication services, stated:-

'I'm not surprised by the research - I understand that the RICS has seen a 20% drop in adjudication nominations over this past year alone. There is little doubt that this is a consequence of the market, particularly the downturn in the private development sector. This is of course set to continue with further severe cuts to the public purse. Another factor however is the spiralling (and unrecoverable) cost of adjudication which has caused parties and their advisors to consider arbitration and/or litigation, both of which have responded well to the 'competition' provided by adjudication. There is also a steadily growing belief in mediation.

Finally I would add that many law firms now have a list of experienced and well regarded adjudicators from which they will try to appoint by agreement. This trend will continue to reduce the appointments recorded by the ANBs.'

On a positive note, Mark Entwistle Chair of the Association of Independent Construction Adjudicators, one of the ANBs stated:-

‘The use of adjudication is self-evidently linked to overall construction output, but the popularity of the process can now be said to be secure as the preferred formal dispute resolution mechanism for the construction industry. The relatively few adjudication cases that get referred to the courts also bears witness to its success. Though arbitration cases seem to be on the increase, especially for major disputes, there is little sign that the construction industry has any growing disaffection for adjudication and the Government’s plans to down-size the court service will likely serve to increase its use.’

John L Richies, Arbitrator & Adjudicator, Henry Cooper Consultants Ltd comments on trends and noted the increase of referrals in 2008 but questioned the quality:-

‘The trend has been that there have been more direct appointments. I think that is because particularly lawyers have become more sophisticated and have learnt to deal with the animal they get. I think that is the reason for direct appointments. Generally I think Adjudication is slower, that might sound like an odd thing, but it is because people are much more considered and we are getting more sensible submissions. There was a spell in 2008 where everybody jumped in and panicked because the bottom dropped out the housing market and submissions were very poor.

We moved away from any old thing and I do not think, based on my own experience, that there has been an actual real drop off for about 12 months. I think what we are dealing with at the moment is our workloads, live workloads, and until the government cuts bite we won’t know how small this market place can get. It is certainly my view at the moment that obviously if they reduce the amount of work there must be fewer disputes per se because there is less work. I think we are now moving into the area of silly pricing again and that will see a high level of disputes in the future. It is the same way that points make prizes “silly prices make disputes” inevitably. If you screw somebody down at the start, I do not care if it is the main contractor or the subcontractor, they will spend the whole job trying to get that money back.”

In summary, the trend is that in 2008 the increase in referrals was because the housing market dropped and everyone looked for their money and there were poor quality referrals at the peak. Now although the construction workload has gone down and referrals have gone down in line with that they have possibly gone further down because more people are agreeing adjudicators.’

Tony Bingham, Barrister stated:-

‘Attempting to pin down facts, draw conclusions, from workload data/dispute referrals requires caution at the best of times. In a recession (or whatever we call these times) requires an even broader brush. What I can say for sure is that I am very busy as Adjudicator (and arbitrator). Some folk are rummaging for the last penny and will fight for it. Some are fighting for work then in 2 years time will fight about it. The instant

referee, the adjudicator, is the most successful commercial answer and has been welcomed by industry...lawyers too."

With particular regard to the numbers of referrals the following points were made:-

Christopher Dancaster, Adjudicator and Arbitrator stated:-

'It has been suggested that the current downturn in activity in the construction industry might result in a major upsurge in adjudications. There would appear to be no immediate evidence of this. On a personal note the number of appointments as Adjudicator does not appear to be dropping dramatically but their complexity seems to be on the increase and there is a noticeable increase in the number of disputes referred that do not go through to a Decision.'

Ian Strathdee, Adjudicator and Arbitrator expressed a similar view:-

'The pattern and trend comparing the financial downturn of construction workload with the total ANBs adjudication referrals as indicated does not represent my experience from late 2008 through to 2010. I received far more adjudication referrals in that period than any other earlier period'.

Len Bunton of Bunton Consulting takes the consideration a step further to beyond the Adjudication being commenced. He stated

'There is no doubt that the desire to proceed to Adjudication is being influenced by the current downturn in the construction industry. Parties are keen to compromise to assist cash flow, and are reluctant to incur advisers and potentially adjudicators' fees. Two other issues are of concern. The immediate prospect of a jurisdictional challenge, and there is no doubt respondents are doing all they can to set the scene to contest enforcement, following the adjudication. Even if a successful Decision is received, there is no guarantee of payment, and there is also the strong prospect that the loser won't have the funds to pay, and the winner receives nothing, and has a costly bill from as I say the advisers and the adjudicator.

My message is tread carefully before you go down this route.

Concentration in the UK industry has to be on effective procurement, more care being given to contract terms, and efficiency on site to deliver a quality product.'

6. Discussion

These experts clearly believe that the adjudication process is still very well regarded by the construction industry, although it is suggested that more parties may be accessing adjudicators directly by agreement between the parties rather than through ANBs. This would partially explain the drop in ANB referrals. There is also the suggestion as discussed by Gould et al (2010) that other forms of dispute resolution may be being used more than previously and to some extent substituting for adjudication. This would

also result in some reduction in adjudications. Clearly however, these experts think that there is no noticeable reduction in the number of disputes in the industry and in the enduring popularity of Adjudication.

Gaitskell (2007) made the point that after the introduction of Adjudication in 1998 and the Civil Procedure Rules came into force on April 26 1999, there was an impact upon other forms of dispute resolution. Trials in the Technology and Construction Courts went down as did arbitrations. At the same time mediations and adjudications increased. There appears to be some dynamic relationship between the forms of dispute resolution in construction as well as some fluctuation in the overall number of disputes being submitted for resolution.

Salmond (2010) has shown the wide range of challenges being used by parties to resist the enforcement of adjudicators' decisions. These (almost routine it would appear) challenges to the adjudicator's decision raise the threshold of costs to the parties which may consequently render some smaller claims uneconomic to pursue. They also extend the period of time during which the referring party has to wait for payment, mitigating against speedy resolution advocated by Latham (1994).

One expert pointed to the actions taken by parties as a compromise to release cash. He also points to the difficulty of enforcement and to the possibility that the paying party may not have the funds. These latter concerns may help to explain some of the downturn in adjudications.

7. Conclusions

Over the past 12 years adjudication as a dispute resolution process has matured. It started slowly then accelerated to reach a peak after two years, fell away by about a quarter and then levelled out. The kind of disputes which are dealt with by adjudication has changed from being simple payment problems where the payment regime laid down in the Act was not being followed, to the present day when many disputes are concerned with large sums of money and complex legal questions. One possible explanation is that certain sectors of the disputes spectrum (ie smaller disputes) may be reducing disproportionately. Further research is required to determine if this is the case.

The adjudication process has been widely considered to have been successful but it is only in the past two to three years, when the industry has experienced a significant downturn in its workload and access to working capital has been restricted by banks, that it has been possible to witness this novel dispute resolution system working under stress. Whilst the adjudication process may reach a conclusion with the decision, that is not the end of the dispute as far as the parties are concerned. There is the issue of enforcement and if that becomes prohibitively expensive or protracted this, in itself, could impact on the attractiveness of adjudication as a means of resolving the dispute.

It is probably too early to discern a pattern of behaviours in response to the financial situation and restricted workload but it would be a retrograde step if the industry was to slip back into old (pre 1998) solutions to deal with its endemic problem of cash flow.

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