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**CENTRE OF
CONSTRUCTION
LAW & DISPUTE
RESOLUTION**

KING'S
College
LONDON

2024 Construction Adjudication in the United Kingdom: Tracing trends and guiding reform

Professor Renato Nazzini & Aleksander Godhe



**Adjudication
Society**

2024 Construction Adjudication in the United Kingdom: Tracing trends and guiding reform

Professor Renato Nazzini & Aleksander Godhe

Published by the Centre of Construction Law & Dispute Resolution, King's College London
In collaboration with The Adjudication Society

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Foreword

by The Hon Mr Justice David Waksman

In only two years, this annual report has become required reading for anyone practising or interested in the field of construction adjudication. The third volume follows the previous formula of obtaining information through questions directed not only to ANBs but also to individuals involved in the field; statistics obtained and the detailed commentary on them make fascinating and important reading.

This report demonstrates that adjudication has become even more popular than previously. A record number of referrals -2264- were made. It is a tribute to the remarkable success of this form of dispute resolution that only a small proportion of the decisions are challenged in the TCC and of those, the vast majority are fully enforced.

The views about numerous aspects of adjudication collected in the report are of value not only to those directly engaged in it, but also, for example, to the judges of the TCC because they allow us to gain real insights into how adjudication works in practice. It is a tribute to the adjudicators that according to a significant number of respondents, the average time between referral and the giving of the decision is 29-42 days. The longer periods are, of course, caused principally by the more complex disputes, but it is a pity that party behaviour is a factor in 24% of such cases. The section on the leading causes of disputes in adjudication in the last year is another important part of the report because the causes are not described by legal terminology but by reference to the underlying causes such as inadequate contract administration or lack of competence, adversarial culture or exaggerated claims. This clearly has lessons for both the employers and contractors.

The theme of diversity within the adjudicators' profession is again a subject of the report. It is gratifying to see that more ANBs than previously keep track of the diversity of their panels and now, 7 out of the 10 participating ANBs have signed the The Equal Representation in Adjudication Pledge published by the Adjudication Society. But as the figures show, there is still much work to be done, since women account for only 8.9% of adjudicators on the panels of those ANBs which keep records. TECBAR had the highest proportion of women on its panels at 20%. It is invaluable to have these statistics on a regular basis so that progress towards much greater diversity can be monitored and encouraged. I was also pleased to see how many ANBs had procedures for low value or fast track adjudications which now make up 20% of all referrals.

The very fact that ANBs and individuals involved in adjudication have now been so willing to take the time to answer these important questions is itself of benefit because it should lead to this type of survey being regarded as part and parcel of awareness in the adjudication world, leading towards greater transparency. Although this might be the final report within the three-year project conducted by Kings College in collaboration with the Adjudication Society, I very much hope that the benefits shown by all three reports will lead to a situation where it remains possible to send out questionnaires on an annual basis which can then be the subject of analysis and comment in a similar publication.

I therefore commend the authors of this report for their hard work and insights, which will be appreciated by many.

Mr Justice David Waksman

Judge in charge of the Technology and Construction Court

Foreword

by the Committee Chair of The Adjudication Society

Professor Nazzini and Aleksander Godhe at King's College London deserve recognition once again for their invaluable contribution in providing a comprehensive overview of UK adjudication practices. The 2024 report is particularly noteworthy, as it highlights key trends observed over the past three years.

This year's report further reinforces the crucial role that adjudicators play within the UK construction industry. Their work, often carried out under immense pressure and within stringent deadlines, enables the resolution of disputes efficiently and at a reasonable cost.

One notable finding from the report is that the annual number of adjudications has reached an all-time high. A significant contributing factor to this increase appears to be the growth of what are termed 'low-value adjudications' – those involving claims below £125,000. While the 2022 report referenced concerns about the costs of adjudication and the complexity of procedures being ill-suited for such disputes, subsequent reports have documented growing interest and participation by ANBs (Adjudicator Nominating Bodies) offering low-value processes. Given that 51% of CI Arb referrals and 35% of ICE referrals now fall under this category, it is evident that adjudication has adapted to meet market demands.

I also note with interest a hint of scepticism among survey participants concerning diversity and inclusion efforts. I am pleased to reaffirm the report authors' clarification that the diversity pledge does not enforce quotas favouring women over men, nor does it aim to be discriminatory. Moreover, the Women in Adjudication group is open to all, with an equal split of male and female participants currently engaged in the mentoring scheme. There is certainly room to consider expanding the scope of the diversity pledge beyond gender, but achieving this would require greater disclosure of personal data from panel members, which they are entitled to withhold.

A recurring issue throughout the reports has been the inadequacy of contract administration, identified as a major cause of disputes in adjudication. This is backed by the data in the 2023 and 2024 reports, which show that 'smash and grab' or technical payment claims account for 63% of all claims. What is not clear is whether this is the result of a lack of knowledge of contract procedures, or as suggested in the report, commercial decisions to delay relevant notices.

Looking ahead, several pertinent questions remain regarding the future of adjudication. Will the anticipated rise in mediation, following the *James Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416 decision, lead to a decrease in the popularity of adjudication? Or, as some suggest, could adjudication evolve into a form of court-mandated alternative dispute resolution (ADR)? Additionally, how might the rapid development of artificial intelligence impact the way adjudicators assess evidence and reach decisions?

Adjudication will continue to be a dynamic and evolving field for some time to come.

Susan Francombe
Chair, The Adjudication Society
Independent Consultant and Adjudicator

Foreword

by the Director of the Centre of Construction Law & Dispute Resolution

This is the third report on construction adjudication that King's College London has published in cooperation with The Adjudication Society. This report, and the previous ones, are typical of the work we do at the Centre of Construction Law and Dispute Resolution, which is to think about the law critically but in a way that is informed by practice and has an impact on the real world. I am grateful to all participating adjudicator nominating bodies (ANBs) and individual respondents for providing invaluable information and not sparing time or resources to contribute to our endeavour. I am also grateful to my co-author and colleague, Aleksander Godhe, all members of the Steering Committee, The Adjudication Society and its current Committee Chair Susan Francombe and Mr Justice Waksman for his insights and support and for writing a foreword to this edition.

The number of adjudication referrals reported by the participating ANBs has continued to grow to 2264 in the past year. Considering that only one dispute at the time may be referred to adjudication, the numbers are, nevertheless, not worryingly high, given the size of the UK construction industry. I have the impression that this may be because adjudication operates not only as an effective means of dispute resolution but, possibly, also as a deterrent mechanism that, at least in some cases, prevents a dispute from arising in the first place.

One area in which our previous reports have made a real impact is diversity, spurring initiatives such as the Equal Representation in Adjudication Pledge and Women in Adjudication. Most ANBs have signed the Pledge and promote it among members. Most individual respondents have also signed the Pledge. Most ANBs keep track of the diversity of their adjudicator panels and their appointments. The comments provided by ANBs also show that there is a high awareness of the need to ensure that panels and appointments represent the diversity of available professionals. This is encouraging and I hope that ANBs as well as firms, companies and other stakeholders continue to recognise the need for our industry to become more inclusive.

I do note that in our reports, and often more generally, the focus is on gender diversity only whilst equally serious and damaging barriers may limit the diversity of the construction professions. We attempted, this year, to gather an insight into participation of other – by no means all – potentially unrepresented groups (focusing on age, disability and minority ethnic background) but there was quite simply lack of available data to be able to reach any meaningful conclusions. This does not mean, of course, that our efforts with respect to any form of under-representation should be any less persistent. Quite the contrary.

The overall picture that emerges from this year's report confirms the findings of the previous two reports: adjudication is and continues to be in good shape, within a clear and robust legal framework, strongly supported by the courts. Adjudication benefits, in particular, from well-established and reputable ANBs that, despite not being regulated, have served and are serving the industry well by keeping panels of adjudicators, making appointments, providing training, and applying and enforcing professional standards. It is perhaps a key feature of the UK regime that this remarkable state of affairs has been brought about by the market, without the Government intervention or regulations that apply elsewhere. Even more remarkably, there are now talks of adopting adjudication not only in other jurisdictions (a phenomenon we are already accustomed with) but in industry sectors other than construction. Further internationalisation of construction adjudication and a spread of adjudication beyond construction may well be the next significant trends to monitor, together with the increasing digitalisation of the process (including the use of AI). I hope that this report, as well as the previous ones, may be useful for those who practise adjudication in the United Kingdom and elsewhere in the world.

Professor Renato Nazzini PhD FCIArb

Director of the Centre of Construction Law & Dispute Resolution
King's College London



Executive summary

This report analyses two empirical surveys:

1. a questionnaire addressed to Adjudicator Nominating Bodies ('ANBs'), to which 10 ANBs replied ('participating ANBs')
2. a questionnaire addressed to individuals involved in UK statutory adjudication, to which 166 individuals replied (the 'individual respondents' or 'questionnaire respondents').

Referral trends. The number of adjudication referrals received by the participating ANBs has remained on an upward trend since the introduction of statutory adjudication in 1998. The number of referrals received by participating ANBs reached the highest number on record in the past year (between May 2023 and April 2024) at 2,264, representing a 9% increase on the previous year. The second-highest number was recorded in the May 2020 to April 2021 period at 2,171 referrals.

Seven of the ten participating ANBs – CI Arb, CIC, ICE, RIBA, RICS, TECSA and UK Adjudicators – also offer a low value or fast-track adjudication procedure (or equivalent). A considerable number of referrals received by these ANBs in the past year were adjudicated using this procedure, namely 425 out of the total 2,243, accounting for almost 20% of adjudication referrals received by these ANBs. For CI Arb, 51% of received referrals were adjudicated using a low value or fast-track adjudication procedure (or equivalent), while the proportion stood at 35% for ICE, followed by UK Adjudicators at 23%.

Number and background of adjudicators. The total number of adjudicators registered on ANB panels has increased in the past year to the highest figure in eight years at 791 in April 2024. UK Adjudicators account for almost a third of all registrations and CIC, RIBA and TECBAR have seen a slight increase in membership compared to April 2023. However, it should be noted that adjudicators tend to be registered with several ANBs. Consequently, the number of registrations does not equate to the number of adjudicators.

Value, causes and categories of claim. The most common value of an adjudication claim in the past year was between £125,000 and £500,000 – a response selected by 42% of individual respondents. Only 4% selected claim values of less than £25,000. 28% stated that the most frequent value of claims in the past year was between £500,000 and £1 million.

The two leading causes of disputes in construction adjudication in the past year are inadequate contract administration, at 50%; and lack of competence of contract participants, at 42%. These are followed by exaggerated claims and changes by client, at 30% each; and adversarial industry culture at 25%.

By a wide margin, 'smash-and-grab' adjudications were the most common category of claim in the past year, identified by 63% of individual respondents. They were followed by 'true value' (final account) adjudications at 38%, 'true value' (interim payments) at 35%, and loss and expense and/or damages for delay and/or disruption at 35%.

Duration of proceedings. 48% of questionnaire respondents stated that adjudications in the past year were typically completed within 29 and 42 days from the date of the referral notice. 16% of questionnaire respondents stated that the default 28-day period under the Construction Act was the typical length of proceedings. 32% stated that the duration of proceedings exceeded 42 days, with such extensions being subject to agreement of both parties. The main factor affecting the length of proceedings was the complexity of the case, identified by 60% of respondents, followed by party behaviour at 24%.

Costs. The most common hourly rates of adjudicators in the past year were between £301 and £350 – a response selected by 39% of individual respondents. This was followed by hourly fees in the £251 to £300 range – a response selected by 25% of individual respondents. The median hourly fees fall within the £301 to £350 range. It is difficult to identify overall typical fees charged by adjudicators. This varies, depending most likely on the nature of the dispute, the length of the proceedings and the hourly fees of the adjudicator. However, most individual respondents at 26% stated that the total adjudicators' fees charged were between £20,001 and £30,000. The median answer placed the typical total fees at between £12,001 and £14,000.

Enforcement of adjudicators' decisions and subsequent litigation or arbitration. The level of party compliance with adjudication decisions is high. 52% of questionnaire respondents stated that, in the past year, not a single adjudicated dispute was referred to litigation or arbitration. A further 18% stated that less than 5% of cases were subject to such referral.

Since October 2011, the Technology and Construction Court ('TCC') rendered 219 reported judgments relating to the enforcement of adjudicators' decisions. The TCC declined to enforce the adjudicators' decision in full in 43 cases (20%), and partially enforced the adjudicators' decision in a further seven cases (3%), out of 219. In other words, the TCC fully enforced 77% of adjudication decisions if the case resulted in a reported judgment.

In almost 23% of cases enforcement was denied in whole or in part. Jurisdictional objections were successful in defeating 15% of adjudication decisions at the enforcement stage out of the 219 reported judgments, followed by natural justice at 10%, and other grounds (such as fraud) at 7%.

Adjudication and insolvency. 18% of individual questionnaire respondents stated that they had taken part in an adjudication commenced by an insolvent party in the past year. In the same period, 10% had taken part in an adjudication commenced against an insolvent party. However, only 1% had taken part in adjudication enforcement proceedings brought by an insolvent party.

Diversity in adjudication. Eight participating ANBs state that they keep track of the diversity of their adjudicator panels. Out of those, women account for only 8.9% of adjudicators on their panels/lists on average as of April 2024. TECBAR had the highest proportion of women on its adjudicator panel/list at 20%, followed by TECSA at 12%.

Individuals above the age of 60 were the most represented group on ANB adjudicator panels/lists for four ANBs. This is not surprising considering that age tends to be commensurate with experience. The 50- to 60-year-old group was the largest group for two ANBs (ICE and TECSA). One outlier was the UK Adjudicators, which had the youngest cohort of adjudicators, with their most represented group being individuals between the ages of 40 and 50.

Seven participating ANBs keep track of the diversity of their adjudicator appointments. Out of those, women accounted for only 8.3% of adjudicator appointments on average in the past year. TECBAR had the highest proportion of women in their adjudicator appointments at 25%.

Few ANBs keep track of the age of individuals who receive adjudication appointments. Individuals older than 60 years received the highest proportion of appointments from CIArb and RIBA. For ICE, the bulk of appointments was received by 50- to 60-year-olds, while UK Adjudicators typically appointed younger adjudicators: those between the ages of 30 and 40.

Only four out of the 10 participating ANBs publish the up-to-date composition of their adjudicator panel/list online, which was identified as a considerable obstacle to diversity monitoring in adjudication in the 2022 and 2023 Adjudication Reports.

Seven participating ANBs signed The Equal Representation in Adjudication Pledge published by The Adjudication Society, and the same number promote it among their members. Turning to individual questionnaire respondents, 80% are aware of The Pledge, and 54% have signed it.

Introduction

This is the third output of a three-year project conducted by the Centre of Construction Law & Dispute Resolution at King's College London in collaboration with The Adjudication Society.¹ The objective is to publish robust and comprehensive empirical analyses of construction adjudication in the United Kingdom in order to take stock of how it is currently functioning as well as to inform adjudication practice going forward and guide possible reform.

This report focuses on the analysis of most recent data covering the period from 1 May 2023 to 30 April 2024, but it also expands upon the findings of '2022 Construction Adjudication in the United Kingdom: Tracing trends and guiding reform' (the '**2022 Adjudication Report**')² and '2023 Construction Adjudication in the United Kingdom: Tracing trends and guiding reform' (the '**2023 Adjudication Report**').³ The project also continues The Adjudication Society's long-term work in studying the practice of construction adjudication which, under the authorship of Janey L Milligan and others of Construction Dispute Resolution, collected statistical data spanning a period of 22 years from 1 May 1998 to 30 April 2020.⁴

The 2022 Adjudication Report represented the first exhaustive empirical account of the effectiveness and attractiveness of construction adjudication in the UK from the perspective of its users and stakeholders. In his foreword, Lord Justice Coulson wrote that its publication '*will come to be seen as a seminal moment in the story of this unique dispute resolution process.*' In fact, the 2022 Adjudication Report has already had visible impact on the practice of adjudication. Its findings, particularly in the area of gender diversity, led to the launch of The Equal Representation in Adjudication Pledge and Women in Adjudication under the auspices of The Adjudication Society – two initiatives aimed at increasing the representation of women in construction adjudication.⁵

The 2023 Adjudication Report focused on reform of the UK statutory adjudication system. It considered the exceptions and exclusions found in sections 105 and 106 of the Housing Grants, Construction and Regeneration Act 1996 ('**HGCRA**' or the '**Construction Act**'), leading Mrs Justice O'Farrell DBE to comment in her foreword that '*[t]here is a strong argument for extending adjudication to all forms of construction operations and, indeed, other areas.*' The report also expanded on the issue of diversity discussed in the 2022 Adjudication Report.

The two earlier reports have also stimulated debate among construction practitioners in the UK and abroad, resulting in numerous conference panels, seminars, articles and other commentaries, for which the authors of this report wish to express their sincere gratitude.

The authors of this report are Professor Renato Nazzini and Aleksander Godhe of the Centre of Construction Law & Dispute Resolution at King's College London. The authors also received support and advice from the Project Steering Committee comprised of:

Jonathan Cope, Adjudicator and Arbitrator at MCMS
Susan Francombe, Committee Chair of The Adjudication Society
Kathy Gal, Director and Architect at gal.com
Claire King, Partner at Fenwick Elliott
Hamish Lal, Partner at Hamish Lal Partners
Lynne McCafferty KC, Barrister at 4 Pump Court
James Pickavance, Partner at Jones Day

The authors and The Adjudication Society extend their sincere gratitude to the various ANBs, organisations and practitioners who have shared evidence and views and thus contributed to the success of this Project. This report also benefited greatly from the research assistance of Oscar Heaney Brufal and Hubert Sitnik of King's College London.

The views expressed in this report are the authors' only and do not reflect the views of The Adjudication Society, any ANB, or any other institution or individual mentioned in this report unless stated otherwise.

Centre of Construction Law & Dispute Resolution

The Centre of Construction Law & Dispute Resolution was founded in 1987 by Professor John Uff KC CBE, who was its first Director and Nash Professor of Engineering Law. The current Director is Professor Renato Nazzini. The main activities of the Centre are:

- The MSc programme in Construction Law & Dispute Resolution taught since 1988
- Conferences and public lectures
- Research and publications on all aspects of construction law, including both its domestic and international dimensions.

The Centre is part of The Dickson Poon School of Law at King's College London, which is consistently ranked among the top law schools internationally.

1 The Centre of Construction Law & Dispute Resolution gratefully acknowledges partial funding from The Adjudication Society.

2 Professor Renato Nazzini and Aleksander Kalisz, '2022 Construction Adjudication in the United Kingdom: Tracing trends and guiding reform' (*Centre of Construction Law & Dispute Resolution, October 2022*) <https://kclpure.kcl.ac.uk/ws/portafiles/portal/232199994/KCL_DPSL_CONSTRUCTION_ADJUDICATION_REPORT_A4_AW_JUNE_2023_UPDATE.pdf> accessed 30 July 2024.

3 Professor Renato Nazzini and Aleksander Kalisz, '2023 Construction Adjudication in the United Kingdom: Tracing trends and guiding reform' (*Centre of Construction Law & Dispute Resolution, November 2023*) <https://kclpure.kcl.ac.uk/ws/portafiles/portal/239951018/2023_KCL_Adjudication_Report.pdf> accessed 30 July 2024.

4 Reports 13 to 19 can be accessed at <<https://www.adjudication.org/resources/research/>> and Reports 1 to 12 can be accessed at <<https://cdr.uk.com/training-research/>> ('**Adjudication Society Reports**').

5 See: <<https://www.adjudication.org/diversity/diversity-in-adjudication-initiative>>.

The Adjudication Society

The Adjudication Society is a not-for-profit association promoting the resolution of construction disputes by means of adjudication.

It was formed so that the construction industry might benefit from the body of experience and case law associated with the introduction of the Housing Grants, Construction and Regeneration Act 1996, the growth in adjudication by means of Expert Determination and Dispute Boards and the popularity of the New Engineering Contract.

The Society's purpose is to encourage and develop adjudication as a method of resolving construction disputes (without denouncing other procedures, such as arbitration, litigation and conciliation) and to provide a regular and informal forum at which adjudication problems and practices may be discussed. The Society actively encourages learning and training at many levels for all its members and other stakeholders in statutory adjudication.

Methodology

The bedrock of this project consists of responses to two questionnaires that were open between May and July 2024. The software used was Microsoft Forms and the data was imported into a Microsoft Excel spreadsheet.

The first questionnaire was sent to ANBs and was mainly quantitative in nature, aimed at obtaining statistical data on construction adjudication. This questionnaire was not anonymised, allowing the research team to compare statistics from different ANBs. The questions themselves followed those asked in the 2022 Adjudication Report, 2023 Adjudication Report, and the earlier Adjudication Society Reports,⁶ although with considerable modifications and additions, for instance in the area of reform, gender diversity, and equal representation. In total, 10 ANBs took part in the study.⁷

The second questionnaire was addressed to individuals and was entirely anonymised and aggregated upon submission. The authors drew from several pools of potential individual respondents.⁸ First, the authors and the Steering Committee members contacted their professional networks. Secondly, the questionnaire was sent to the alumni of the Centre of Construction Law & Dispute Resolution at King's College London. Thirdly, the questionnaire was shared with the members and networks of The Adjudication Society and The Society of Construction Law. Some ANBs have also shared the questionnaire with their members. Finally, the questionnaire was shared publicly on social media channels and through various newsletters and announcements. In total, the questionnaire was completed by 166 individual respondents.

The questionnaires covered the period from May 2023 to April 2024 (inclusive),⁹ making the data compatible with the 2023 Adjudication Report that ended in April 2023. Respondents to both questionnaires had the option of declining to answer any question. Therefore, the sample of respondents might differ for each question. Figures illustrate most empirical findings of this report, and some of the numbers presented were rounded to the nearest percentage. As a result, it is possible that, with respect to certain figures, the sum of all percentages may differ from 100%.

The objective of the individual participant questionnaire was to reach a broad range of adjudication users. Over 45% of all questionnaire respondents were primarily quantity surveyors, followed by private practice solicitors at almost 24%, and claims consultants at around 22%. Many professionals had more than one qualification.¹⁰

It was also important that this questionnaire would cover all the UK regions. Almost half of the questionnaire respondents were based in the London/South-East region. The second most represented region was the North-East region at slightly over 10%, followed by the Midlands region at almost 8%. A small number of respondents, at 4.2%, were based abroad.¹¹ This category was included in the report since practitioners who used to practice construction adjudication in the UK may have moved abroad or some practitioners may have their main office or place of practice abroad while also practising in the UK. Overall, the questionnaire reached practitioners based in all regions of the UK as well as some other jurisdictions, such as Australia and Hong Kong.

All questionnaire respondents were asked to specify the number of adjudications that they had taken part in throughout their careers to gauge their experience. Almost 26% of questionnaire respondents were highly experienced, having taken part in at least 100 adjudications, with 3% having taken part in more than 500 adjudications. This suggests that the sample of individual questionnaire respondents included a significant number of very experienced practitioners. In fact, 77% of questionnaire respondents took part in at least 11 adjudications throughout their careers.¹² The questionnaire also asked the respondents how many adjudications they had taken part in in the past year. The most common answer, selected by 52.1% of questionnaire respondents, was between 1 and 5 adjudications. 17% of respondents had taken part in between 11 and 20 adjudications, and 6.7% had taken part in between 21 and 30 adjudications.¹³

Of course, many practitioners practise in other areas of construction dispute resolution such as arbitration, litigation or mediation. Therefore, the number of adjudications that the respondents took part in does not necessarily reflect that person's knowledge of adjudication and construction law.

6 Adjudication Society Reports (n 4).

7 Institution of Civil Engineers, UK Adjudicators, Technology and Construction Bar Association, The Chartered Institute of Arbitrators, Royal Institution of Chartered Surveyors, London Court of International Arbitration, Construction Industry Council, Technology and Construction Solicitors' Association, Royal Institute of British Architects, Royal Incorporation of Architects in Scotland, together the 'participating ANBs'.

8 Those individuals who responded to this questionnaire are referred to in this report as 'respondents', not to be confused with the responding parties in adjudication cases.

9 Therefore, a reference to the 'past year' in the report and its empirical findings refers to the period 1 May 2023 to 30 April 2024.

10 See Annex A, Figure A.

11 See Annex A, Figure B.

12 See Annex A, Figure C.

13 See Annex A, Figure D.

A year in review

The past year saw several legal developments and clarifications in the area of adjudication. These include:

- Collateral warranties will typically not be construction contracts for the purposes of the HGCRA
- ‘Smash-and-grab’ and true value claims can, in the right circumstances, be considered as a single dispute and resolved through the same adjudication as they both relate to the same sum owed
- The territory of ‘England’ for the purposes of the scope of the HGCRA ends on the baseline as defined in United Nations Convention on the Law of the Sea and the Territorial Sea (Baselines) Order 2014
- Clarification of the principle from *S&T (UK) Ltd v Grove* to the effect that no true value adjudication may be commenced until the payee has discharged its payment obligation in the relevant payment cycle, even if there is a genuine dispute as to the validity of the pay less notice in question.

In *Abbey Healthcare (Mill Hill) Ltd v Augusta 2008 LLP (formerly Simply Construct UK) LLP*,¹⁴ the Supreme Court examined whether a collateral warranty could be considered an agreement ‘for (...) the carrying out of construction operations’ as per section 104(1) of the HGCRA, thereby giving parties the statutory right to adjudication under section 108.

The Court started by considering the interpretation given to the provision by Coulson LJ in the Court of Appeal, which had treated ‘for’ in the above provision as being synonymous with ‘in respect of’.¹⁵ The Supreme Court rejected that interpretation, holding that the phrase ‘for (...) the carrying out of construction operations’ must be understood to mean that the primary object or purpose of the agreement is the performance of construction operations.¹⁶ Lord Hamblen, giving the leading judgment, said:

Whether or not the carrying out of construction operations has to be the main object or purpose of the agreement, it must surely be necessary for the agreement to give rise to the carrying out of such operations. A collateral warranty that merely promises to the beneficiary that the construction operations undertaken under the building contract will be performed does not do so. In such a case, it is the building contract that gives rise to the carrying out of the construction operations; not the ‘collateral’ warranty. Any obligation undertaken to the beneficiary to carry out construction operations derives from and mirrors the obligations already undertaken under the building contract. Everything is referable to the building contract and replicates duties owed thereunder.¹⁷

Therefore, a collateral warranty will not typically constitute an agreement for the carrying out of construction operations where it merely warrants the performance of obligations owed to another party under a building contract. However, Lord Hamblen also indicated that where an agreement contains a ‘separate or distinct obligation to carry out construction operations for the beneficiary; not one which is merely derivative and reflective of obligations owed under the building contract’, then it may be considered a construction contract under the HGCRA.¹⁸

The Technology and Construction Court (‘TCC’) has also given several important judgments in the past year. In *Bellway Homes Limited v Surgo Construction Limited*,¹⁹ the Court clarified that an adjudicator may consider a ‘smash-and-grab’ and a ‘true value’ claim as a single dispute for a sum due.²⁰ On the facts, the referring party in its the notice of adjudication had requested payment of the notified sum or, in the alternative, that the adjudicator ascertain the true value of the sum due. Surgo Construction argued that multiple disputes had been referred to the adjudicator and, in consequence, the adjudicator lacked jurisdiction.²¹ However, in line with previous authorities, District Judge Baldwin adopted a wide definition of ‘dispute’ to include matters where ‘two routes [are] advanced to the same goal of determining a sum owed’.²² The case hence decides that parties can use a properly worded adjudication notice to advance both claim types as alternatives.

In *Van Elle Ltd v Keynvor Morlift Ltd*,²³ the TCC was asked to determine what constituted ‘England’ for the purpose of determining the territorial scope of the HGCRA. The case concerned an adjudicated dispute under a contract for the installation of piles in River Fowey – a tidal river – beyond the low water line. The defendant, resisting enforcement of the adjudication decision, argued that the location of the works excluded the application of the HGCRA, which was limited to ‘construction operations in England, Wales or Scotland’ as per section 104(6)(b). Nor did the piles form part of the ‘land’ as per section 105(1).²⁴ The issue was whether the installation of piles in the River Fowey meets the two requirements. In granting the enforcement application, the judge held that, on a true construction, ‘England’ ended on the baseline as established by the United Nations Convention on the Law of the Sea and the Territorial Sea (Baselines) Order 2014. It followed that ‘the land’ included land covered by water up to the baseline.²⁵

¹⁴ [2024] UKSC 23.

¹⁵ *Ibid* [62] – [64].

¹⁶ *Ibid* [64].

¹⁷ *Ibid* [66].

¹⁸ *Ibid* [70].

¹⁹ [2024] EWHC 10 (TCC).

²⁰ *Ibid* [32].

²¹ *Ibid* [5].

²² *Ibid* [32].

²³ [2023] EWHC 3137 (TCC).

²⁴ *Ibid* [35].

²⁵ *Ibid* [76]; Article 2(1) of the Territorial Sea (Baselines) Order 2014 provides that the ‘the baselines from which the breadth of the territorial sea adjacent to the United Kingdom, the Channel Islands and the Isle of Man shall be established in accordance with the relevant provisions of the United Nations Convention on the Law of the Sea’.

Two further decisions clarified the extent of the principle from *S&T (UK) Ltd v Grove*,²⁶ which provides that a party cannot commence a true value adjudication without first having complied with any immediate payment obligations of notified sums under section 111 of the HGCRA.

The question in *Henry Construction Projects Ltd v Alu-Fix (UK) Ltd*²⁷ was whether that principle extended to circumstances where the claimant commenced a true value adjudication while the ‘smash-and-grab’ adjudication is still ongoing and in which there is a genuine dispute as to the validity of a pay less notice.

District Judge Baldwin, whilst acknowledging the prima facie attraction of such an exception to the general principle in *Grove*, rejected it for two reasons. Firstly, he considered it would ‘risk tipping the balance unfairly towards the disputing party and prejudicing the ultimately vindicated right of the payee to be paid, thereby undermining the ‘cashflow’ policy underlying the procedure in the Act’.²⁸ Secondly, the approach might require the Court to determine whether any issue or dispute was ‘genuine’ or not in cases where a notified sum existed all along.²⁹ The Judge hence upheld the *Grove* principle and decided that, whenever a true value adjudication is commenced after the final date for payment of the notified sum, the adjudicator lacks jurisdiction unless the notified sum has been paid. However, the Judge added, *obiter*, that should the adjudicator in the ‘smash-and-grab’ adjudication find that there was no payment obligation, then a true value adjudication commenced after the final date for payment would be valid and the adjudicator would have jurisdiction because there was, in retrospect, no obligation to pay. However, the Judge went on to remark:

*[T]he outcome in this case, whilst not closing the door on commencing a [true value adjudication] prior to the outcome of an [smash-and-grab adjudication] and later relying upon the outcome, ought to discourage such a course in areas of spurious [smash-and-grab adjudication] dispute, but not deter those who have a sufficient level of confidence that any dispute raised should result in a finding of no immediate payment obligation having been established.*³⁰

Finally, in *Lidl Great Britain Ltd v Closed Circuit Cooling Ltd*,³¹ HHJ Davies considered three alternative constructions of the principle from *Grove*. Firstly, that the principle precludes an employer from commencing any adjudication until it has complied with its payment obligation under section 111 of HGCRA.³² Secondly, that the principle is limited to true value adjudications from any payment cycle.³³ Thirdly, that the principle only applies to true value adjudications relating to the same immediate payment cycle as the notified sum.³⁴

The Judge stated that ‘[t]here is no rationale for a construction of the Act which has the effect of prohibiting any adjudication whilst that notified sum remains unpaid, even where the subject matter of the adjudication has no relation to the notified sum’.³⁵ In doing so, he rejected the broad interpretation of *Grove* and its preconditions to adjudication. The Judge distinguished between claims that could have been subject to a payless notice, and those that could not, with the *Grove* principle extending to the latter but not the former.³⁶ He went on to conclude that the obligation to pay the notified sum before commencing adjudication only applies to what was due under the payment cycle in question.³⁷

26 [2018] EWCA Civ 2448.

27 [2023] EWHC 2010 (TCC).

28 *Ibid* [37].

29 *Ibid* [39].

30 *Ibid* [43].

31 [2023] EWHC 3051 (TCC).

32 *Ibid* [36].

33 *Ibid* [37] – [43].

34 *Ibid*.

35 *Ibid* [36].

36 *Ibid* [39].

37 *Ibid* [38].



Chapter 1:

Adjudicator nominating bodies' statistics and data

The following ten ANBs took part in the questionnaire, including some of the largest:

1. Chartered Institute of Arbitrators ('**CI Arb**')
2. Construction Industry Council ('**CIC**')
3. Institution of Civil Engineers ('**ICE**')
4. London Court of International Arbitration ('**LCIA**')
5. Royal Incorporation of Architects in Scotland ('**RIAS**')
6. Royal Institute of British Architects ('**RIBA**')
7. Royal Institution of Chartered Surveyors ('**RICS**')
8. Technology and Construction Bar Association ('**TEC BAR**')
9. Technology and Construction Solicitors' Association ('**TECSA**')
10. UK Adjudicators.

ANBs are organisations involved in the process of administering adjudication in the United Kingdom. The Scheme for Construction Contracts (England and Wales) Regulations 1998 ('**The Scheme**'), which supplements the HGCRA and contains adjudication and payment provisions applicable unless the parties have included contractual clauses to the contrary, provides the following definition:

[A]n 'adjudicator nominating body' shall mean a body (not being a natural person and not being a party to the dispute) which holds itself out publicly as a body which will select an adjudicator when requested to do so by a referring party.³⁸

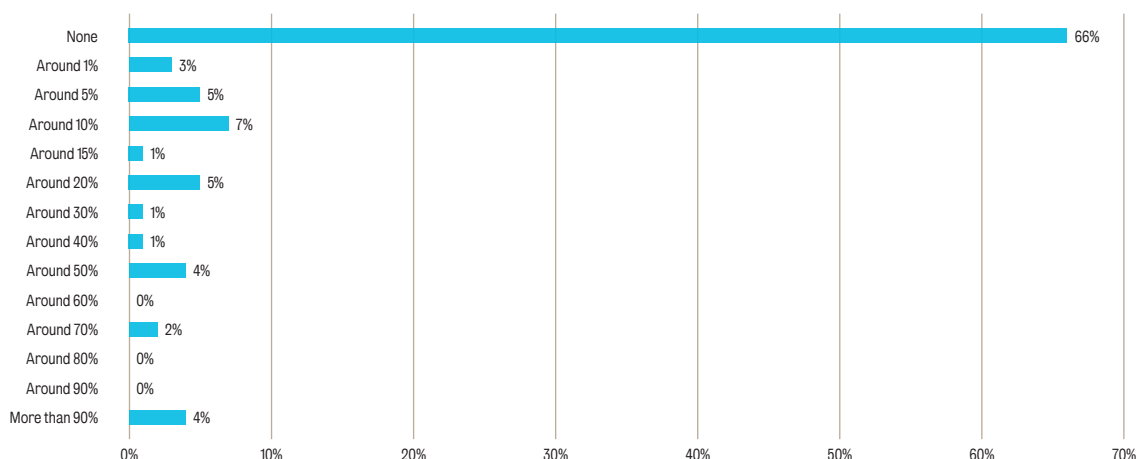
Other than for the definition above, ANBs are not subject to any regulation. ANBs hence play an important function in UK construction adjudication. They nominate an adjudicator following a request – a referral notice – from the referring party. ANBs also maintain a panel of adjudicators, act as professional membership bodies, and have a formal process for hearing complaints against adjudicators. In response to complaints, ANBs can issue reprimands, suspend memberships, or remove individuals from their adjudicator panel/list. As will be discussed below, ANBs usually nominate an adjudicator for a fee.

1. Referral trends of adjudicator nominating bodies

ANBs are essential institutions in the practice of construction adjudication in the UK. Although adjudication without their involvement is possible, for instance by way of party agreement, parties would typically name a specific ANB in their contract. That ANB would then make an adjudicator nomination following a referral.³⁹ Figure 1 shows that, in the past year, 66% of questionnaire respondents have never experienced an adjudication that did not involve an ANB. In total, 81% of questionnaire respondents stated that they have experienced adjudications without the involvement of ANBs never or rarely – in around 10% of cases or less.

Figure 1: Approximate number of adjudicator appointments made without the involvement of an ANB in the past year

Based on 164 received responses



The statistics above are consistent with the findings in the 2023 Adjudication Report, where 64% of questionnaire respondents had never experienced an adjudication without the involvement of an ANB in the 2022 to 2023 time period.

³⁸ The Scheme, Sched, Pt 1, para 2(3).

³⁹ The number of referrals does not necessarily reflect either the number of adjudicator appointments (one referral may result in several) or the number of adjudication decisions.

Figure 2 sets out the number of referrals received by the ten ANBs that took part in the questionnaire. Between May 2023 and April 2024, those ANBs received 2,264 referrals. This is the highest number of adjudication referrals ever recorded since the introduction of statutory adjudication in 1998.

Figure 2: Total annual number of received referrals per ANB between May 2023 and April 2024

Adjudicator nominating body	Total number of referrals May 2023 - April 2024
CIArb	98
CIC	20
ICE	101
LCIA	2
RIAS	3
RIBA	75
RICS	1,340
TECBAR	16
TECSA	148
UK Adjudicators	461
Total	2,264

RICS received the most referrals at 1,340, which is a record for this ANB, building upon the 1,249 and 1,295 referrals it received in the previous two years. In fact, in comparison with the data in the 2022 and 2023 Adjudication Reports that traced referral numbers from May 2020 to April 2023, several ANBs saw a notable increase in the numbers of received referrals over the past years, reaching a record level this year.

Figure 3 compares the total number of referrals received by the participating ANBs with the statistics reported in the 2022 and 2023 Adjudication Reports and earlier by The Adjudication Society Reports, since the entry into force of the HGCR in 1998 (hence 'Year 1'). Figure 3 shows that the reported total number of received referrals, at 2,264, is the highest number in history, followed by 2,171 reported referrals in Year 23 (May 2020 to April 2021), representing a 9% growth on the previous year. This is so despite the number of participating ANBs differing between reports.⁴⁰

Figure 3: Adjudication referrals per year since the entry into force of the HGCR on 1 May 1998

Time period	Total number of referrals	Percent growth on previous year
Year 1 (May 1998 – April 1999)	187	–
Year 2 (May 1999 – April 2000)	1,309	600%
Year 3 (May 2000 – April 2001)	1,999	50%
Year 4 (May 2001 – April 2002)	2,027	1%
Year 5 (May 2002 – April 2003)	2,008	-1%
Year 6 (May 2003 – April 2004)	1,861	-7%
Year 7 (May 2004 – April 2005)	1,685	-9%
Year 8 (May 2005 – April 2006)	1,439	-15%
Year 9 (May 2006 – April 2007)	1,506	5%
Year 10 (May 2007 – April 2008)	1,432	-5%
Year 11 (May 2008 – April 2009)	1,730	21%
Year 12 (May 2009 – April 2010)	1,538	-11%
Year 13 (May 2010 – April 2011)	1,064	-31%
Year 14 (May 2011 – April 2012)	1,093	3%
Year 15 (May 2012 – April 2013)	1,351	24%
Year 16 (May 2013 – April 2014)	1,282	-5%
Year 17 (May 2014 – April 2015)	1,439	12%
Year 18 (May 2015 – April 2016)	1,511	5%
Year 19 (May 2016 – April 2017)	1,533	1%

⁴⁰ RIAS did not participate in the 2023 Adjudication Report. CIArb statistics were not included in the 2022 Adjudication Report. However, the report this year does not include referral statistics from the Scottish Institute of Building, that did take part in the 2022 Adjudication Report.

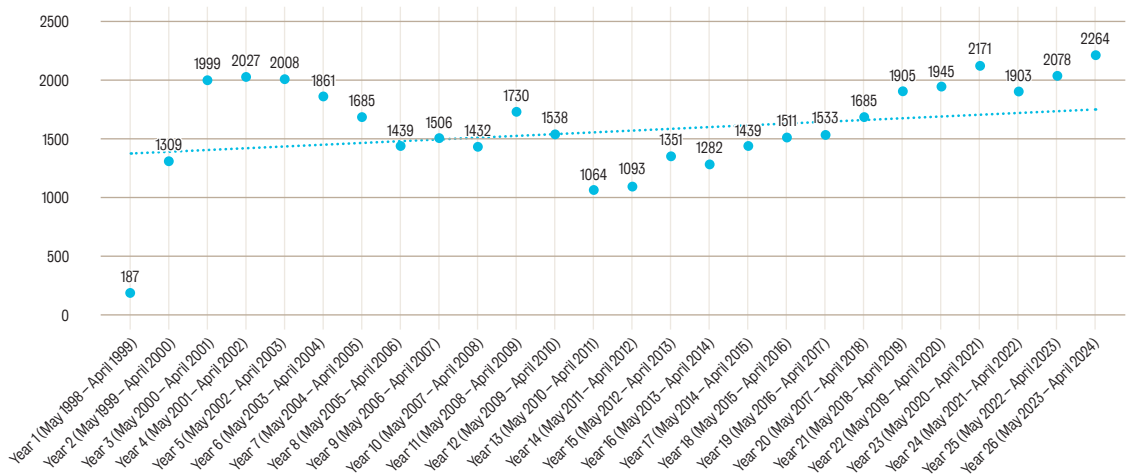
Time period	Total number of referrals	Percent growth on previous year
Year 20 (May 2017 – April 2018)	1,685	10%
Year 21 (May 2018 – April 2019)	1,905	13%
Year 22 (May 2019 – April 2020)	1,945	2%
Year 23 (May 2020 – April 2021)	2,171	12%
Year 24 (May 2021 – April 2022)	1,903	-14%
Year 25 (May 2022 – April 2023)	2,078	9%
Year 26 (May 2023 – April 2024)	2,264	9%

Therefore, almost 42,000 referrals have been reported by ANBs since May 1998. While the following are not apposite comparisons, it may be interesting to note that this number is considerably higher than the over 28,000 arbitrations administered by the International Chamber of Commerce, the most popular arbitral institution, in its entire history since 1923.⁴¹ The annual referral numbers are also impressive. With 2,264 adjudication referrals received in Year 26, this is considerably more than the 1,352 claims received across all sub-divisions of the Commercial Court between 2022 and 2023,⁴² and almost quadruple of the 467 claims received by the TCC between October 2022 and September 2023.⁴³

Figure 4 visualises the trend of referrals since 1998. It shows that the number of adjudications has been on an upward trend for more than a decade with the highest number ever recorded in the past year. In fact, the number of referrals received by ANBs in the past five years has oscillated around 2,000 per year, but the upward trend since the 2010 to 2011 period is clear.

Figure 4: Adjudication referrals per year since the entry into force of the HGCR on 1 May 1998

Based on 10 received responses



41 See: <<https://iccwbo.org/news-publications/news/icc-reaches-arbitration-milestone-with-case-28000/>>.

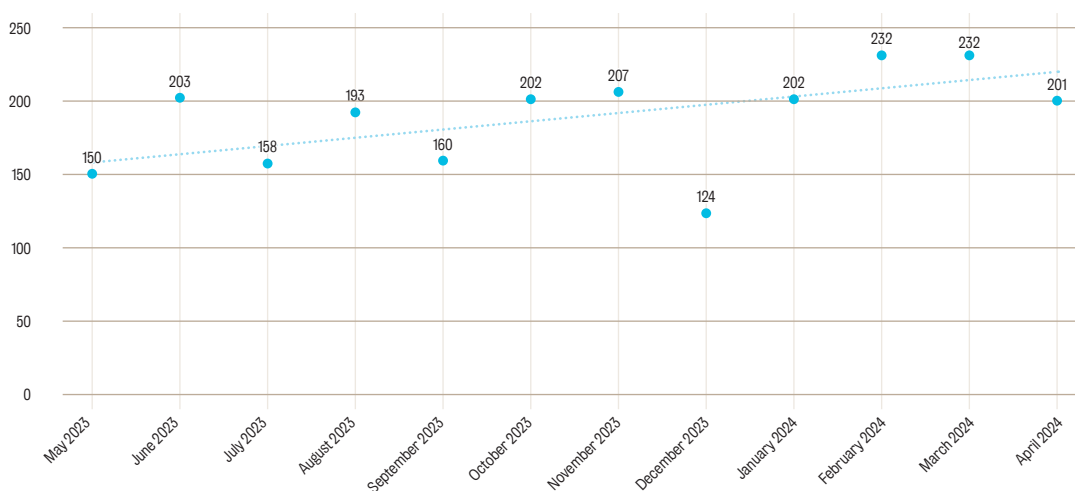
42 See: <https://www.judiciary.uk/wp-content/uploads/2024/03/14.448_JO_Commercial_Court_Report_2223_WEB.pdf>.

43 See: <https://www.judiciary.uk/wp-content/uploads/2024/05/24.12_Annual_Report_of_the_TCC_2022-2023_Final_WEB1.pdf>.

Figure 5 below shows a month-by-month breakdown of the received referral statistics in the past year. The highest number of referrals was received by ANBs in February and March 2024 at 232 each, followed by November 2023 at 207, and June 2023 at 203 referrals.

Figure 5: Adjudication referrals per month in the period May 2023 – April 2024

Based on 10 received responses



In comparison with the 2022 and 2023 Adjudication Reports, the February and March 2024 statistics are particularly impressive and represent the highest number of received referrals in any single month on record. In the 2023 Adjudication Report, for example, the highest number of referrals has been recorded in March 2023 at 229, followed by November 2022 at 200. In the 2022 Adjudication Report, the highest number of referrals received in a month has been recorded in May and July 2020 at 172 each. The past year also saw considerable fluctuation in the number of referrals, with the number being as low as 124 in December 2023 – possibly due to the unpopularity of a ‘Christmas ambush’ – while the statistics in the 2023 Adjudication Report were more stable throughout the year. The 2022 Adjudication Report confirms the unpopularity of December as a month for commencing adjudication.

Seven of the ten participating ANBs – CI Arb, CIC, ICE, RIBA, RICS, TECSA and UK Adjudicators – also offer a low value or fast-track adjudication procedure (or equivalent). As Figure 6 below shows, many received referrals resulted in an adjudication conducted under the low value or fast-track procedure. In fact, such procedures accounted for almost 20% of the total received adjudication referrals by these ANBs.

Figure 6: Number of referrals that resulted in an adjudication conducted pursuant to the low value or fast-track adjudication procedure (or equivalent) in the period May 2023 – April 2024

Adjudicator nominating body	Total number of referrals	Number of low value or fast-track procedures
CI Arb	98	50
CIC	20	7
ICE	101	11
RIBA	75	12
RICS	1,340	214
TECSA	148	25
UK Adjudicators	461	106
Total	2,243	425

It should be also noted that some ANBs offer both a low value and a fast-track adjudication procedure. For example, RICS offers (i) a Low Value Dispute Model Adjudication Procedure (‘LVD MAP’) developed with CIC applicable typically where the sum claimed is less than £100,000 and do not involve multiple or complex issues; and (ii) a Summary Adjudication procedure for claims under £20,000.

Key features of LVD MAP include:

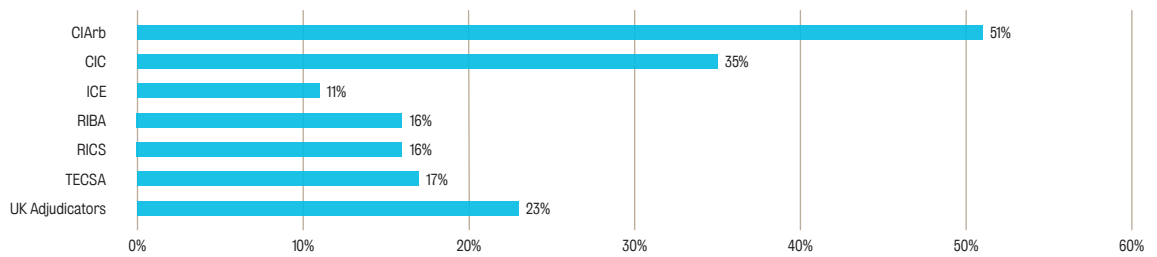
- Adjudicators limit the timeframe for submitting statements, responses, or arguments
- Parties must condense their documentation to a single A4 lever arch file (or electronic equivalent) per submission
- RICS appoints an adjudicator with subject matter expertise to make a well-informed decision within 28 days.

On the other hand, the RICS Summary Adjudication procedure was designed for smaller contractors who find dispute resolution unaffordable, even under LVD MAP. It provides:

- A qualified adjudicator who delivers a brief decision and reasons within 14 days
- A process without site visits
- A cost cap of £1000 (excluding VAT).

The share of referrals that resulted in a low value or fast-track adjudication procedure (or equivalent) for each ANB is represented in Figure 7 below. More than half of CIArb's 98 adjudication referrals resulted in such a procedure, followed by CIC at 35%. RICS added that 14% of its referrals resulted in LVD MAP adjudications, and the remaining 2% under the Summary Adjudication procedure.

Figure 7: Proportion of adjudication referrals that resulted in low value or fast-track procedures (or equivalent) in the period May 2023 – April 2024
 Based on seven received responses



2. Nomination fees of adjudicator nominating bodies

Another distinguishing factor among ANBs are the fees charged for making an adjudicator nomination. Figure 8 below outlines the different fees charged by participating ANBs. LCIA charged the highest fee at £1,950. This is a flat rate that applies to all LCIA nominations including arbitration, mediation, expert determination, and other forms of ADR.⁴⁴ UK Adjudicators do not have a nomination fee. TECBAR has the second lowest fee at £75. Apart from these outliers, the remaining ANBs charge a nomination fee between £291.67 and £375, excluding VAT.⁴⁵

Figure 8: Adjudicator nomination fee in 2024 (excluding VAT)
 Based on 10 received responses



The above amounts relate to nomination in the case of a regular adjudication procedure. Many ANBs provide different nomination fees in relation to low value, fast-track or equivalent procedures. CIArb, CIC and RICS, for example, have a low value adjudication nomination fee of £250. Similarly, while RIBA's regular nomination fee is at £300, it is £250 for low value disputes and only £120 under its JCT Homeowner/Occupier contract or RIBA Domestic contract (ie outside of the statutory adjudication regime of the HGCR). UK Adjudicators have no nomination fee for ordinary adjudications.

44 See: <https://www.lcia.org/Dispute_Resolution_Services/schedule-of-costs-appointing-only.aspx>.

45 In the 2023 Adjudication Report, TECSA stated that its nomination fee is £450, but this referred to the amount including VAT. The correct amount is £375.

3. Numbers of adjudicators registered with adjudicator nominating bodies

ANBs maintain panels from which they nominate adjudications following a referral. These numbers change over time and adjudicators tend to be members of more than one panel.

Figure 9 below shows the number of adjudicators registered with ANBs in April 2024. UK Adjudicators leads with 249 members on its panel, followed by RICS at 116, and TECBAR at 95. RIAS has the fewest adjudicators on its panel at 11 individuals. The LCIA clarified that it has no set panel at all and that its database holds thousands of names including mediators, arbitrators and adjudicators, some of whom act in more than one capacity.

Figure 9: Number of adjudicators registered in April 2024

Based on nine received responses

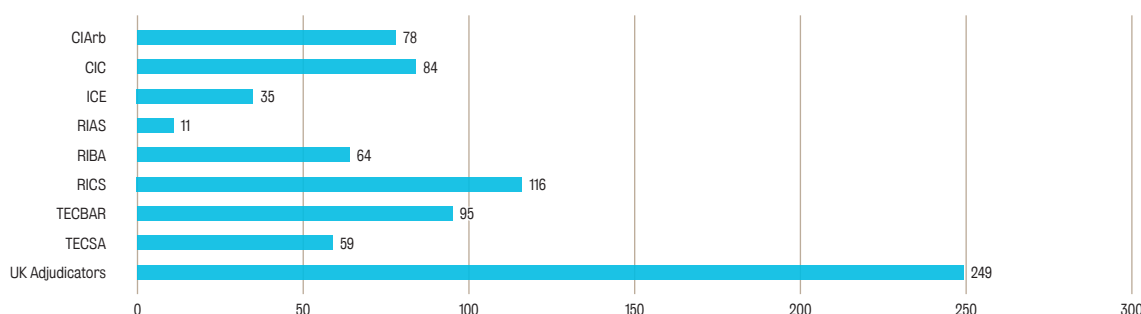


Figure 10 below compares statistics on the number of registered adjudicators reported by ANBs in April 2023 with statistics reported in the 2023 and 2022 Adjudication Reports, as well as the earlier Adjudication Society Reports, stretching back to April 2016. The statistics suggest that in April 2024, ANBs had the highest overall number of adjudicators registered on their panels at a total of 791. This, however, appears mainly attributable to the growth in panel numbers of UK Adjudicators and the fact that CIARB did not participate in the 2022 Adjudication Report and hence did not provide its statistics for April 2021 and April 2022. Additionally, RIAS did not participate in the 2023 Adjudication Report. Nonetheless, adjudicators are often members of several ANB panels, so the numbers reflect registrations only, and not the overall number of adjudicators.

Figure 10: Number of adjudicators registered with ANBs between April 2016 and April 2024

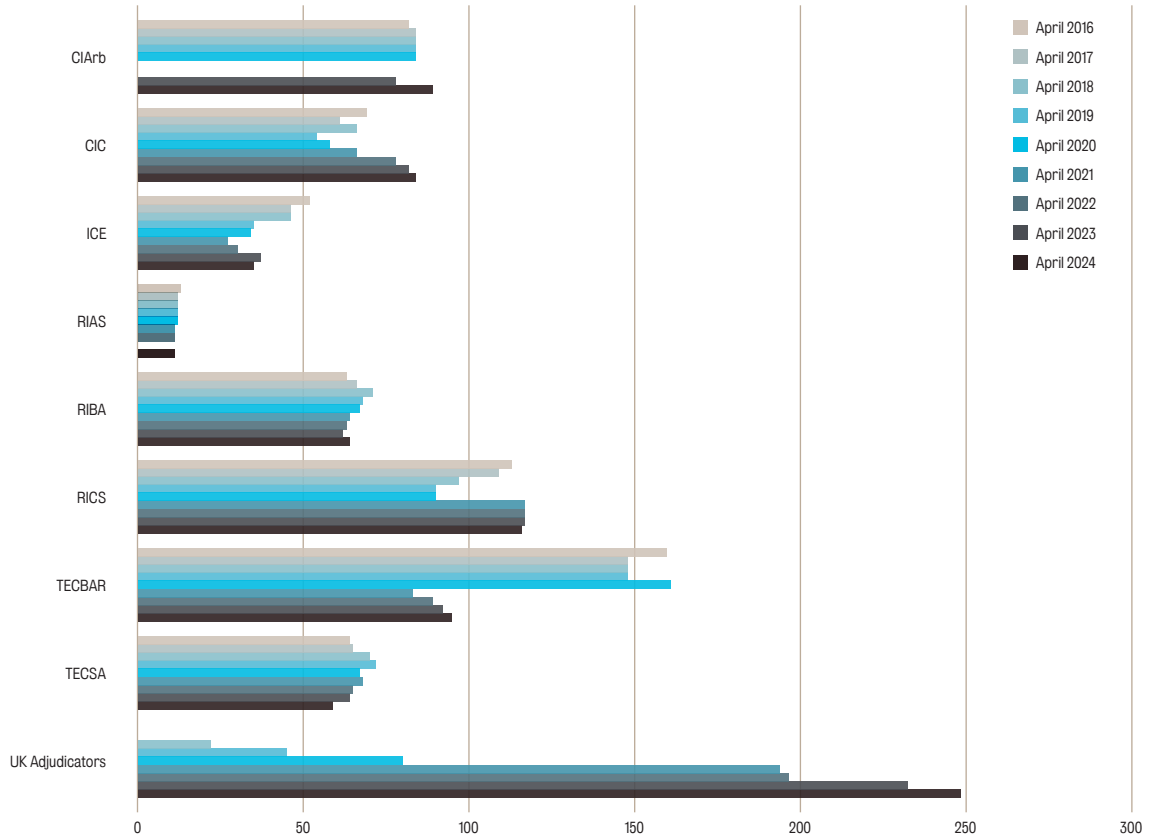
Adjudicator nominating body	April 2016	April 2017	April 2018	April 2019	April 2020	April 2021	April 2022	April 2023	April 2024
CIARB	82	84	84	84	84	N/A	N/A	69	*78
CIC	69	61	66	54	58	66	78	82	84
ICE	52	46	46	35	34	27	30	37	35
RIAS	13	12	12	12	12	11	11	N/A	11
RIBA	63	66	71	68	67	64	63	62	64
RICS	113	109	97	90	90	117	117	117	*116
TECBAR	160	148	148	148	161	83	89	92	95
TECSA	64	65	70	72	67	68	65	64	59
UK Adjudicators	N/A	N/A	22	45	80	194	197	233	249
Total	616	591	616	608	653	630	650	756	791

* Excluding those on the low value panel, which is separate.

Figure 10 also suggests that, since 2016, some ANBs saw a reduction in the number of adjudicators on their panels. UK Adjudicators is the only participating ANB that experienced a steep, tenfold rise from 22 panel members in April 2018 to 249 in April 2024.

Figure 11 below visualises the change in panel numbers over the past nine years. ANBs have either experienced a reduction in panel numbers or the numbers have remained broadly constant, with the exception of UK Adjudicators. It should be added, however, that the number of adjudicators is not indicative of the number of adjudicator nominations that each ANB makes.

Figure 11: Number of adjudicators registered with ANBs between April 2016 and April 2024
 Based on nine received responses



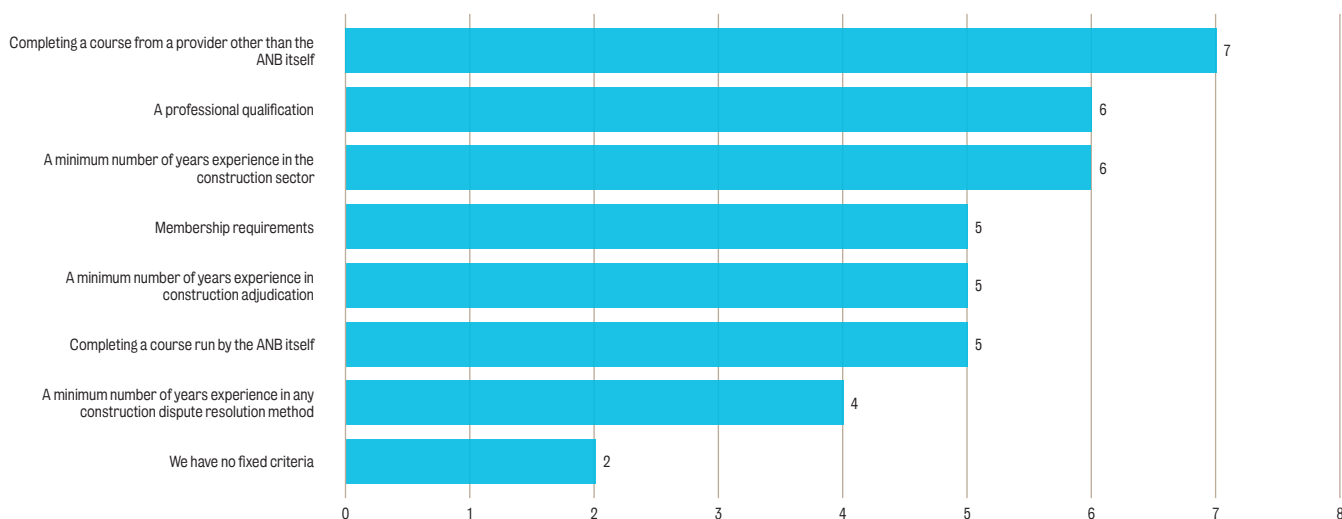
Joining an ANB panel is not always straightforward and may involve a lengthy recruitment process and/or minimum qualification requirements. Out of the participating ANBs, RIAS stated that it had a capped panel of adjudicators as of April 2024.

4. Competency requirements for adjudicators

Reassessment of the composition of adjudicator panels also differed among the participating ANBs. Half of the participating ANBs accept applications at any time, with a further two having no fixed timeframes for doing so. RICS only invites new applications for membership periodically, although a note of interest can be submitted at any time. TECSA stated that its panel is regularly kept under review. Although the LCIA does not keep an adjudication panel, it has a database of practitioners, and interested applicants can join by submitting a form and a CV.

ANBs apply various criteria to determining applications to join their adjudicator panel or list. Figure 12 shows that seven participating ANBs require the completion of a course from a provider other than the ANB itself. Six ANBs require a professional qualification, such as a bar membership, and six also require a minimum level of seniority evidenced by years of experience in the construction sector. Two ANBs have no fixed criteria.

Figure 12: Criteria for an individual to be considered for the adjudicator panel/list
Based on 10 received responses. Respondents were able to select multiple options



Participating ANBs were also asked if there are any other criteria for individuals to be considered for their adjudicator panel or list. The mentioned requirements included:

- The completion of a pupillage
- Compliance with continuous professional development ('CPD') requirements
- References
- Detailed summary of experience, such as through copies of adjudication decisions
- Submission to formal assessment or interview
- Attendance of adjudication workshops or seminars
- Passing of formal examination.

Most ANBs impose certain training requirements for retaining individuals on their adjudicator lists/panels. Many require adjudicators to evidence that they meet CPD requirements. Figure 13 demonstrates that only the LCIA and TECBAR do not have any specific CPD requirement for their adjudicators, although the former does not maintain a panel of adjudicators. Nonetheless, many professionals are already subject to separate requirements to complete CPD by their regulators, such as the Solicitors Regulatory Authority for solicitors, the Bar Standards Board for barristers, or the Architects Registration Board and the RIBA for architects. In addition, TECBAR requires its adjudicators to attend dedicated training courses or competency sessions. RIBA has CPD requirements but they are currently under review.

Figure 13 shows the CPD requirements of participating ANBs. UK Adjudicators and RICS have the highest typical annual CPD requirements at 40 hours. Other ANBs require 24 hours, except for CIArb that requires 20 hours.

Figure 13: CPD requirements of ANBs between May 2023 and April 2024

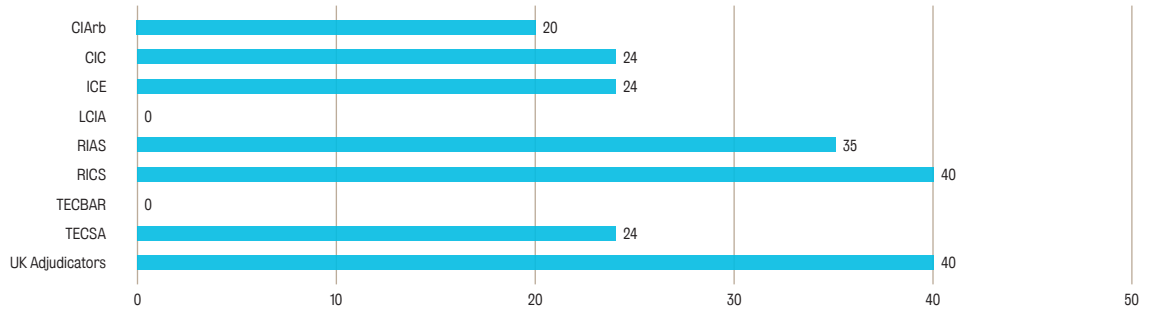
Adjudicator nominating body	Is a CPD log required?	Minimum CPD hours per year
CIArb	Yes	20
CIC	Yes	24
ICE	Yes	24
LCIA	No	N/A
RIAS	Yes	* 35
RIBA	Yes	** N/A
RICS	Yes	40
TECBAR	No	N/A
TECSA	Yes	24
UK Adjudicators	Yes	40

* Recommended, not mandatory.

** RIBA requires a CPD log from its adjudicators but the precise number of CPD hours is currently under review.

Figure 14 illustrates the differences in typical CPD requirements of the participating ANBs from Figure 13.

Figure 14: Minimum typical CPD hours required or recommended by ANBs as of April 2024
Based on nine received responses



What constituted CPD and how it was defined differs across the participating ANBs. CIArb requires 20 CPD hours and a total of 60 hours in a three-year period, out of which 30 hours must relate to adjudication. CIC added that eight of its 24 required CPD hours involve practical adjudication experience, while the remaining 16 can be evidenced by a variety of CPD activities. RIAS has no minimum CPD requirement as such, albeit 35 hours are recommended, and adjudicators must still evidence engagement in eight CPD activities related to two prescribed topics. RICS' 40-hour CPD requirement involves 20 hours of dispute resolution training. Further, RICS explained that 'CPD records must also include competency workshops. A portion of the additional 20 hours can be practical experience gained as a party representative or dispute resolver, acknowledging the importance of maintaining practical dispute resolution skills.'

Four ANBs – RICS, RIBA, TECBAR and UK Adjudicators – stated that they have another mandatory training requirement: attendance of dedicated training courses or competency sessions. RICS reported that its adjudicators must also complete 10 competency workshops within five years. ICE added that they require '[a]ttendance at our annual workshop and we require registered members to support our mentor and pupillage scheme, as mentors. From the summer of 2024, we will also require our members to take part in our buddy scheme where our adjudicators are split into groups of six and asked to meet up on a continual basis to provide each other with support.'



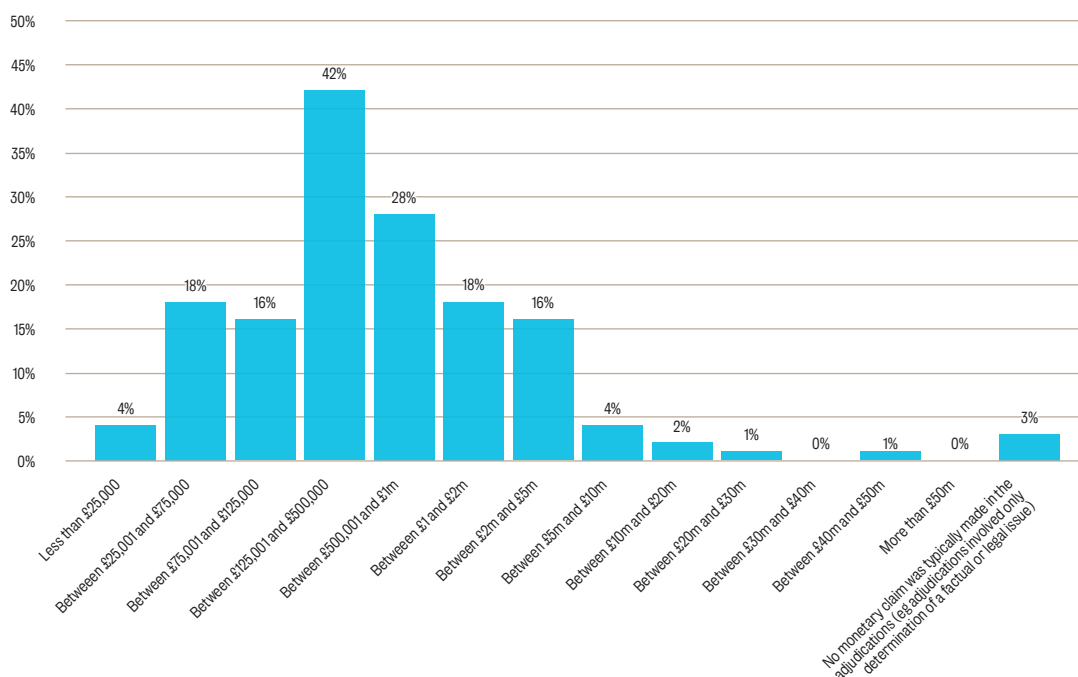
Chapter 2: Trends relating to claims and disputes

5. Claim values in construction adjudication

Figure 15 below shows the typical value of claims in construction adjudication that the questionnaire respondents were involved in in the past year. The most common value was between £125,001 and £500,000, which was reported by 42% of questionnaire respondents. The number of responses drops significantly in relation to claims of £5 million and above. Equally, however, only 4% of respondents stated that claims of less than £25,000 were most common in the past year.

Figure 15: Most frequent claim values in construction adjudications in the past year

Based on 163 received responses. Respondents were able to select multiple options



6. Leading causes of disputes and categories of claim

The HGCRA allows parties to a construction contract to refer to adjudication any dispute 'arising under' the contract to adjudication,⁴⁶ including disputes arising under any contract variations.⁴⁷ As a result, a wide range of claims can be adjudicated. Akenhead J in *Ringway Infrastructure Services Limited v Vauxhall Motors Limited* said:

A 'claim' for the purpose of giving rise to a dispute or difference may not be a claim for money or for the payment of money. The variety, extent and scope of disputes are infinite. It may involve simply an assertion of a right by one party.⁴⁸

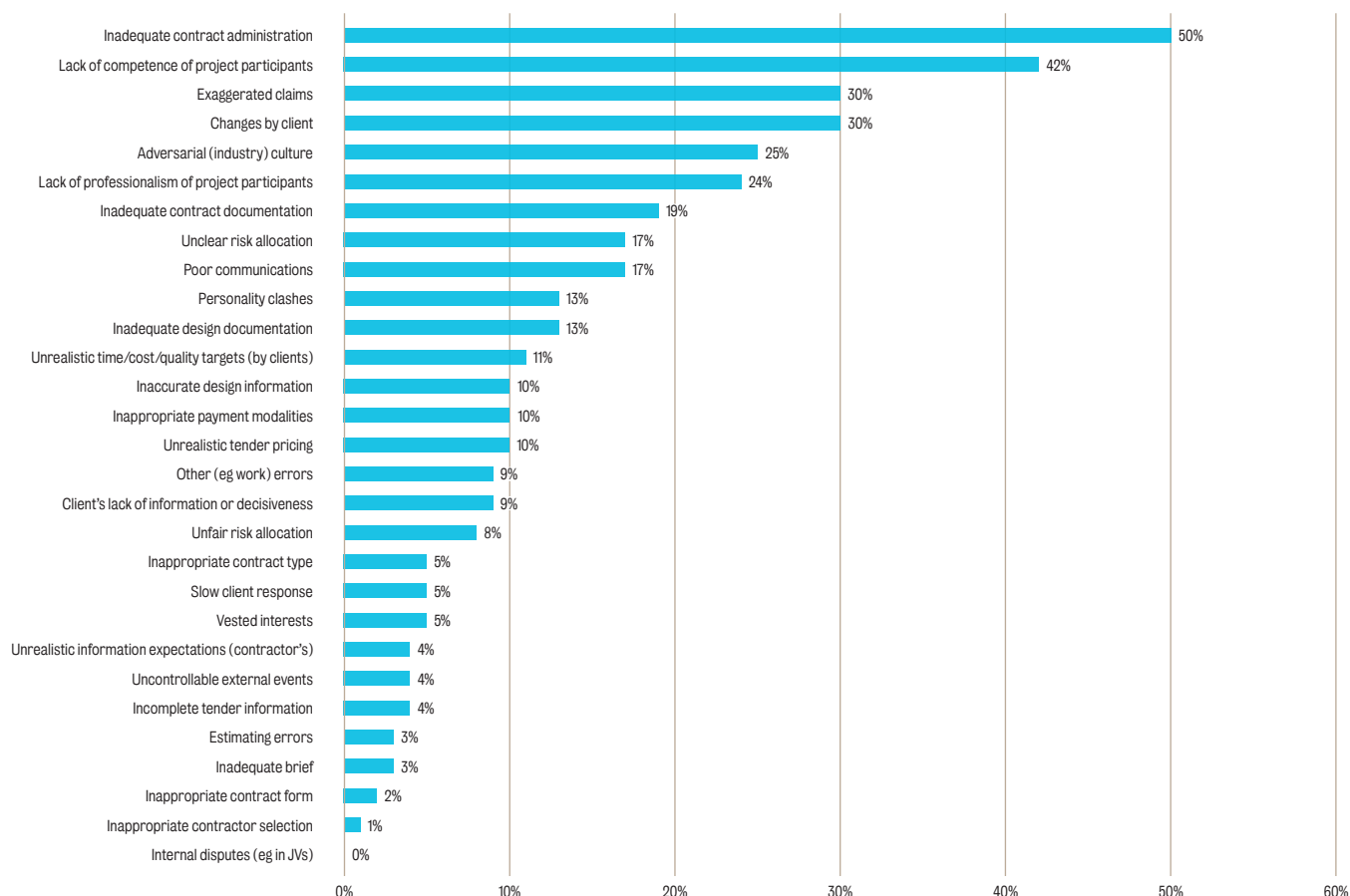
⁴⁶ HGCRA 1996, s 108(1).

⁴⁷ *Westminster Building Co Ltd v Andrew Beckingham* [2004] BKR 163 [25] – [27].

⁴⁸ *Ringway Infrastructure Services Limited v Vauxhall Motors Limited* [2007] EWHC 2421 (TCC) [55].

Figure 16 presents the leading causes of disputes in construction adjudication in the past year.⁴⁹ It shows that inadequate contract administration was identified as a leading cause of adjudicated disputes by 50% of questionnaire respondents, followed closely by lack of competence of project participants at 42%, and exaggerated claims/changes by client at 30%. Not a single individual respondent selected internal disputes (eg in JVs).

Figure 16: Leading causes of disputes in construction adjudication in the past year
Based on 165 received responses. Respondents were able to select multiple options



22% of questionnaire respondents added that they experienced other leading causes of adjudicated disputes in the past year that were not mentioned in Figure 16. 12 respondents identified issues with payment, with one experienced barrister stating:

The majority of disputes are about money. Often the underlying cause of the dispute is not known. A contractor (or subcontractor) may be making a claim for additional payment for many reasons, including estimating errors, or lack of understanding of risk. It is not always apparent in adjudication if these arise or not.

Others have also pointed to the following:

- Disputes as to the formation and interpretation of the contract
- Delays to works and extensions of time
- Negligence and lack of quality inspection
- Commercial practice of project participants.

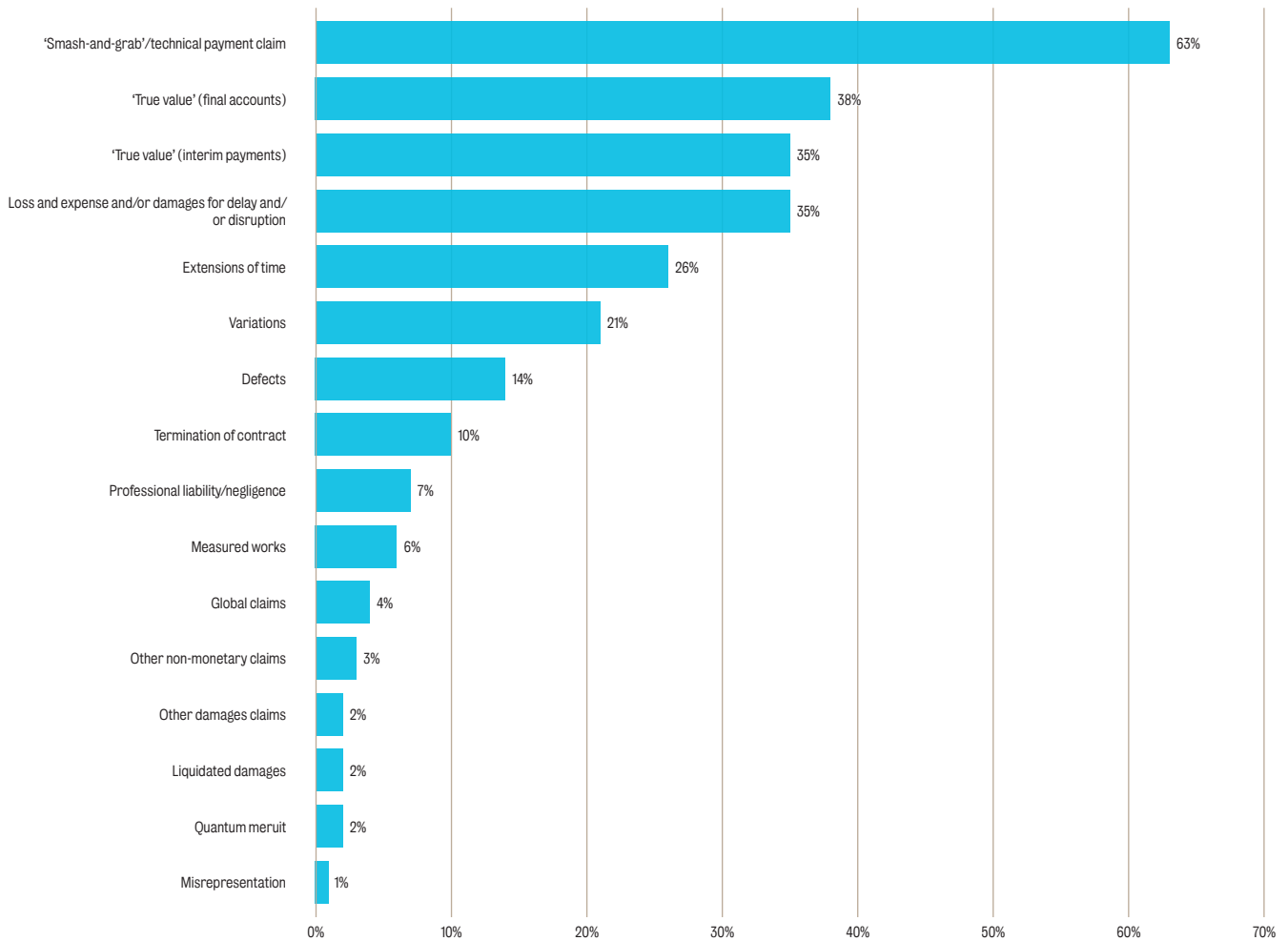
A Northern Irish claims consultant further elaborated, stating that:

The reason for lack of contract administration being that supply chains are afraid of serving appropriate contract notices or managing change effects quickly upstream because they are afraid of damaging relationships and losing work.

⁴⁹ The question used the list of causes identified in Mohan M Kumaraswamy, 'Common Categories and Causes of Construction Claims' (1997) 13(1) *Construction Law Journal* 21, 34.

Figure 17 below illustrates the most common categories of adjudicated claims in the past year. ‘Smash-and-grab’/technical payment claim adjudications were the most common by a wide margin at 63%. This was followed by ‘true value’ (final accounts), ‘true value’ (interim payments), and loss and expense and/or damages for delay and/or disruption categories of claims, selected by 38%, 35%, and 35% of questionnaire respondents respectively.

Figure 17: Most common categories of claims (claim heads) in construction adjudication in the past year
Based on 163 received responses. Respondents were able to select multiple options



5% of questionnaire respondents stated that there are other common categories of claim in construction adjudication that they experienced in the past year. Two mentioned damages for breach of contract and/or wrongful termination. Others pointed to claims for professional fees, non-payment, and contractual interpretation disputes, particularly in the context of PFI contracts.

7. Duration of proceedings

Following the appointment of the adjudicator and receipt of the referral notice, the adjudicator should immediately assess whether he or she can complete the adjudication within the 28-day period provided for by default in the Construction Act. If they cannot do so, they should seek either an extension of time from the parties or resign. The Construction Act provides that the adjudicator may apply for an extension of time of up to 14 days with the consent of the referring party. For any further extensions, the adjudicator must have the consent of both parties.⁵⁰

50 HGCRA 1996, s 108(2).

Figure 18 shows the typical length of adjudication proceedings in the past year counted from the date of referral notice to the date of decision. Most questionnaire respondents (48%) replied that adjudications lasted between 29 and 42 days.

Further, a considerable number of questionnaire respondents, at 32%, stated that the proceedings typically lasted between 43 and 75 days – an extension subject to the agreement of both parties. Equally, however, the default 28-day period appears too short for most cases, save for some, possibly the smallest and least complex disputes, at 16%.

Figure 18: Typical length of proceedings in the past year from the date of referral notice to the date of decision
Based on 158 received responses

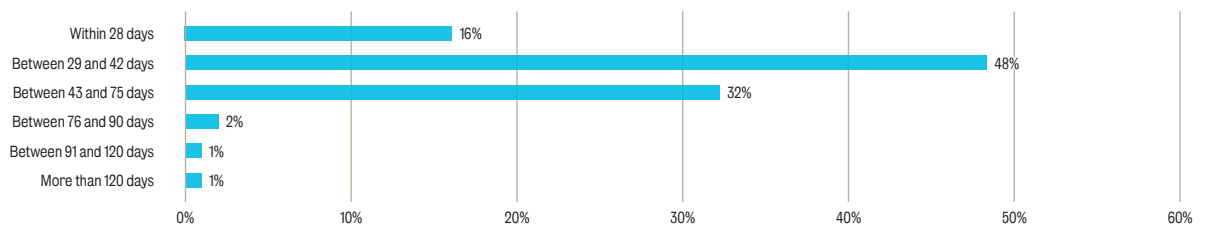
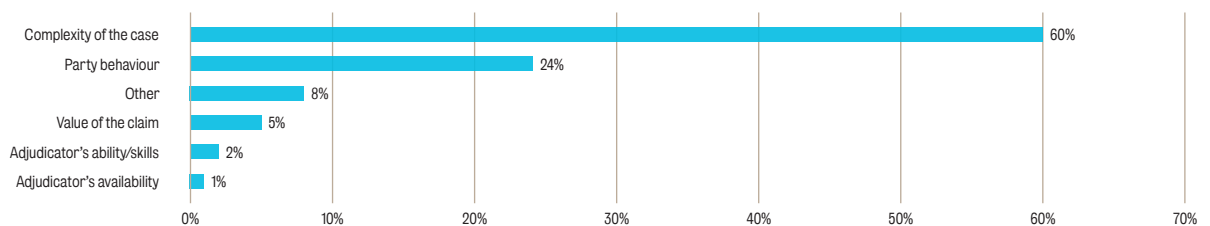


Figure 19 suggests that the complexity of the case is the leading factor affecting the length of proceedings at 60%. Party behaviour takes second place at 24%.

Figure 19: Main factors affecting the length of adjudications in the past year
Based on 161 received responses



8% of questionnaire respondents replied that there were other main factors affecting the length of adjudications. Seven respondents referenced situations in which parties wish to make additional submissions, which extends the length of proceedings. Two respondents also suggested that the adjudication occurred over the festive season and was hence subject to an extension.

One London-based quantity surveyor stated:

It seems that no adjudicator is able to meet with the 28-day timeframe, regardless on the nature of the dispute. They all seem to be either concerned about potential claims from responding parties re natural justice (if they are not afforded extensions of time and multiple submissions or do not have the ability/availability to commit appropriate time to the 28-day process due to other commitments).



Chapter 3: Effectiveness and fairness of proceedings

8. Complaints about adjudicators before adjudicator nominating bodies

Seven participating ANBs – apart from CIC, LCIA and TECBAR – have formal procedures through which a complaint may be brought against an adjudicator. If such a challenge succeeds, ANBs can exclude or suspend the individuals' membership with the ANB or remove them from the panel of adjudicators.

Figure 20 below shows that the number of such formal complaints is low. In the past year, only 12 complaints were received by two ANBs – RIBA and RICS. Only one complaint was upheld but it did not result in the removal of the adjudicator from the ANB panel/list. The number of complaints is a very small fraction, at less than 1%, of the number of adjudication referrals received by those ANBs.

Figure 20: Formal complaints regarding adjudicators between May 2023 and April 2024

Adjudicator nominating body	Total number of adjudication referrals	Number of formal complaints regarding adjudicators received	Number of complaints upheld	Number of complaints resulting in the adjudicator's removal from ANB panel/list
CIArb	98	0	–	–
ICE	101	0	–	–
RIAS	3	0	–	–
RIBA	75	1	Pending	–
RICS	1,340	11	1	0
TECSA	148	0	–	–
UK Adjudicators	461	0	–	–
Total	2,226	12	1	0

RIBA and RICS recognise four main grounds of complaint against adjudicators:

- Breach of natural justice
- Conflicts of interest
- Amount of total fees charged
- Incorrectness of the decision.



Chapter 4: Cost efficiency and adjudicator fees

Figure 21 shows that the most common hourly rates of adjudicators in the past year were between £301 and £350, selected by 39% of questionnaire respondents. This was followed by hourly fees in the £251 to £300 range selected by 25% of respondents.

Figure 21: Typical hourly fees of adjudicators in the past year
Based on 158 received responses. Respondents were able to select multiple options

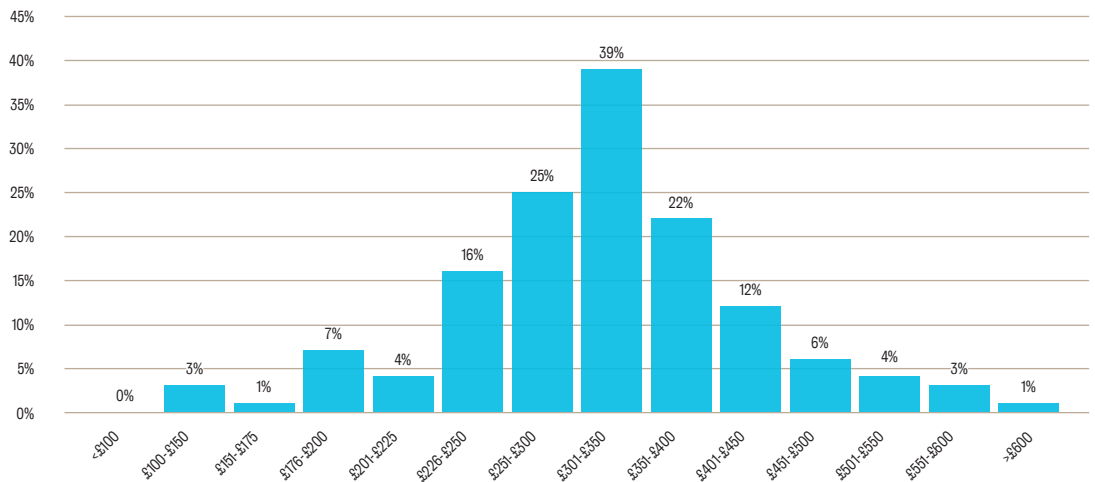
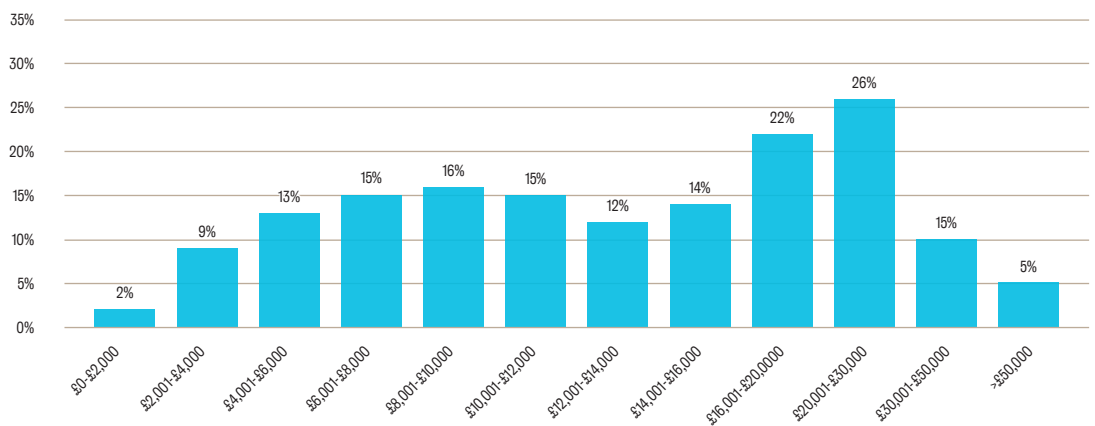


Figure 18 above showed that adjudications in the past year typically lasted between 29 and 42 days, which will have an impact on the total costs of the adjudication. As Figure 22 below shows, it is difficult to identify overall typical fees charged by adjudicators. This varies, most likely depending on the nature of the dispute, the length of the proceedings, and the hourly fees of the adjudicator. However, 26% of respondents stated that the total cost of adjudication was between £20,001 and £30,000. The median answer placed the typical total fees at between £12,001 and £14,000.

Figure 22: Most frequent total fees charged by adjudicators in the past year
Based on 155 received responses. Respondents were able to select multiple options



The median total fees compared with the median hourly fees suggest that, in the past year, adjudicators typically spent between 34 and 47 hours per adjudication.



Chapter 5: Enforcement of adjudication decisions and subsequent litigation or arbitration

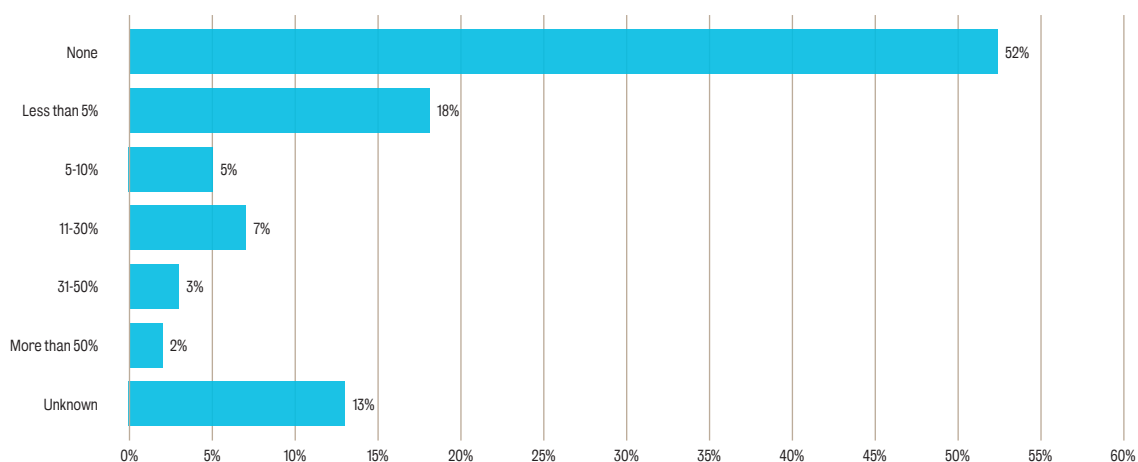
9. Frequency of adjudicated disputes proceeding to litigation or arbitration

The Scheme provides that the decision of an adjudicator is binding, and the parties must comply with it unless they reach agreement to the contrary, or the dispute is finally determined in litigation or arbitration.⁵¹

Figure 23 suggests that, in the past year, the level of compliance with adjudication decisions was high, and few disputes were referred to litigation or arbitration. 52% of questionnaire respondents had not experienced such a case at all, while 18% stated that less than 5% of cases had been referred to litigation or arbitration. Only 2% of questionnaire respondents stated that, in the past year, more than 50% of cases were referred further. This is a low number, particularly given that the majority of questionnaire respondents were involved in not more than five cases in the past year, as per Figure D in Annex A.

Figure 23: Percentage of adjudicated disputes that were referred to litigation or arbitration in the past year

Based on 164 received responses



10. Resisting enforcement of adjudicators' decisions

Parties can resist summary enforcement of adjudicators' decisions on the grounds of lack of jurisdiction and breach of natural justice. Nonetheless, such objections rarely succeed, and the Technology and Construction Court takes a robust pro-enforcement approach to decisions of adjudicators.⁵²

In an effort to analyse the enforcement trends of the TCC towards adjudicators' decisions, this section adopts a different methodology from the remainder of this report. The statistics presented below were analysed through a textual empirical survey of all TCC reported cases⁵³ that related to Part 7 adjudication enforcement claims since 1 October 2011 – the date of entry into force of the 2011 amendments to the Construction Act and The Scheme – rather than questions put to individual respondents in a questionnaire. It should be noted, however, that the TCC transfers many low value adjudication enforcement claims to the Central London County Court, if appropriate,⁵⁴ and that not all judgments are reported.

Figure 24 shows that a jurisdictional defence is raised most frequently either alone or in combination with natural justice in a total of 128 decided cases out of 219, accounting for almost 60% of all cases. Breach of natural justice allegations were made in 72 cases – 32% of the total number. In 88 cases (40%) there was a different allegation. Most often, the responding party resisted enforcement of the decision or sought to dispose of the issue on other grounds, such as through an application under Part 8 of the Civil Procedure Rules or an application for a stay of execution due to the insolvency of the applicant. In several cases, the responding party alleged fraudulent behaviour by the other party as a defence. Fraud, according to some commentators, is a separate category of defence.⁵⁵ The category 'Other' below includes fraud and any other grounds not falling under either jurisdiction or natural justice.

51 The Scheme, Sched, Pt 1, para 23(2).

52 Sir Peter Coulson, *Coulson on Construction Adjudication* (4th edn, OUP 2018) 468.

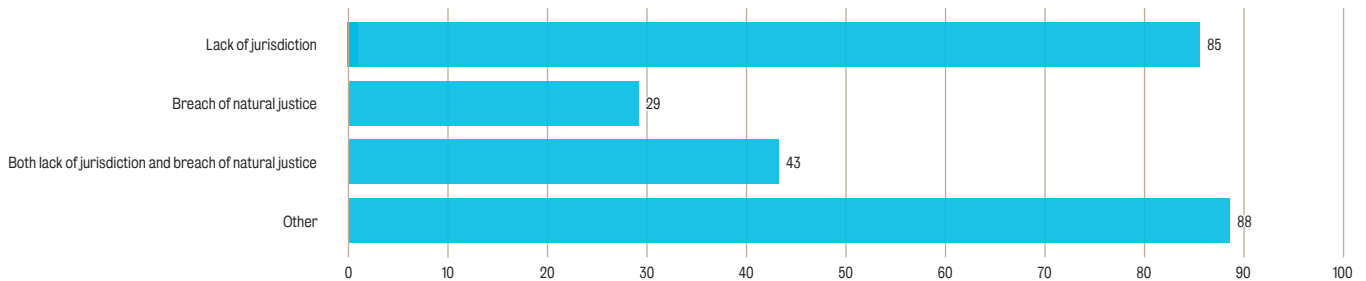
53 'Reported cases' refers to cases that resulted in a published judgment. Therefore, cases that have settled or were otherwise discontinued were not included in the below statistics. According to latest statistics, 81% of all cases started before the TCC were settled before judgment. See <https://www.judiciary.uk/wp-content/uploads/2024/05/24.12_Annual_Report_of_the_TCC_2022-2023_Final_WEB1.pdf>.

54 For example, between October 2022 and September 2023, 58 adjudication enforcement claims were transferred. See *ibid*.

55 Coulson (n 52) 330-333; Darryl Royce, *Adjudication in Construction Law* (2nd edn, Routledge 2022) 225-228.

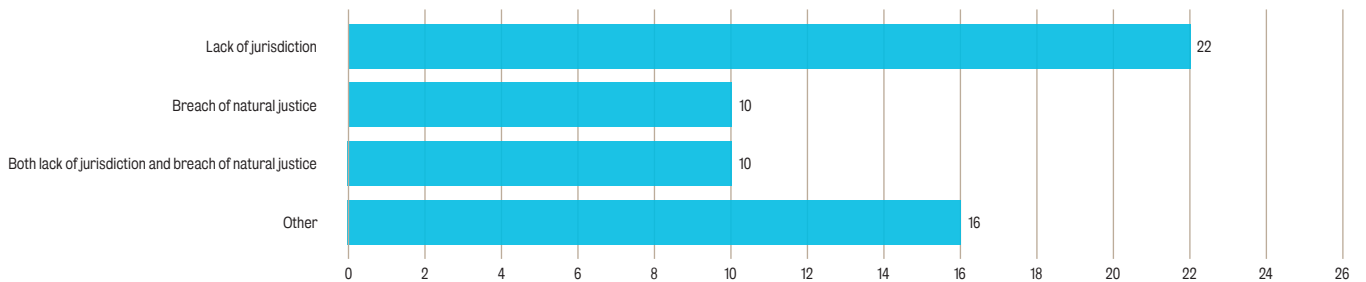
Chapter 5:
Enforcement of adjudication decisions and subsequent litigation or arbitration

Figure 24: Alleged grounds for resisting enforcement of adjudicators' decisions in TCC Part 7 claims since 1 October 2011
 Based on 219 analysed cases



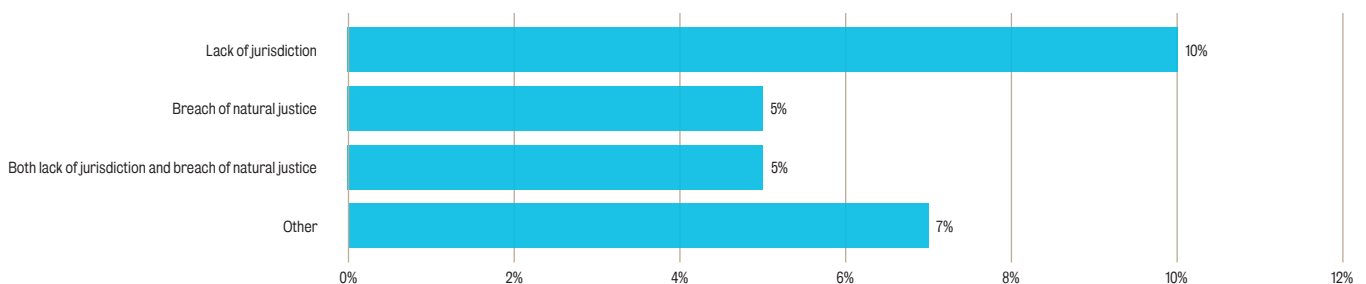
The TCC declined enforcement of the adjudicator's decision in full in 43 cases (20%), while a further seven cases (3%) enforced the decision only partially, out of 219 decided cases. In other words, the TCC fully enforced 77% of adjudication decisions if the case resulted in a reported judgment. Lack of jurisdiction was the most common ground for declining enforcement, with 32 cases, followed by breach of natural justice in 20 cases.

Figure 25: Successful grounds for refusing enforcement of adjudicators' decisions in TCC Part 7 claims since 1 October 2011
 Based on 50 analysed cases including partially enforced claims



Turning to the success rate of the defences calculated against the overall number of reported cases decided by the TCC, jurisdictional grounds defeated 15% of cases, followed by breach of natural justice at 10%, as illustrated by Figure 26. Other grounds defeated enforcement in 7% of cases either by themselves or in combination with jurisdictional or natural justice grounds.

Figure 26: Success rate of grounds for refusing enforcement of adjudicators' decisions in TCC Part 7 claims since 1 October 2011
 Based on 219 analysed cases





Chapter 6: Insolvency and adjudication

The questionnaire asked the individual respondents whether they have taken part in an adjudication commenced by an insolvent party in the past year. 18% answered that they have, as illustrated by Figure 27.

Figure 27: Have you in the past year taken part in an adjudication commenced by an insolvent party?
Based on 165 received responses

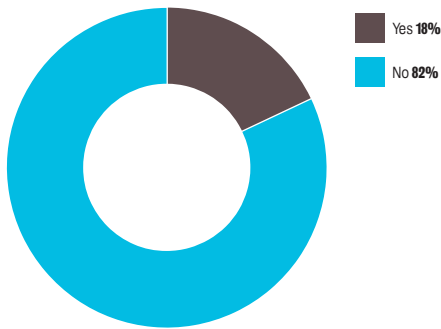
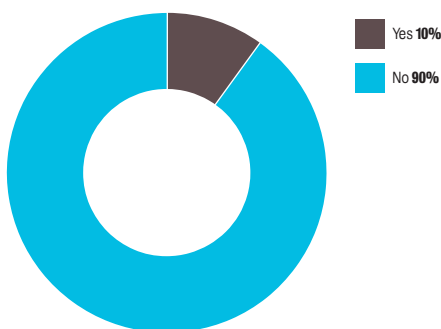


Figure 28 shows whether, in the past year, questionnaire respondents have taken part in an adjudication commenced against an insolvent party. Only 10% have, evidencing that such claims are risky due to the high likelihood that, even if successful, the referring party would not be able to recover any amounts due or its costs.

Figure 28: Have you in the past year taken part in an adjudication commenced against an insolvent party?
Based on 164 received responses



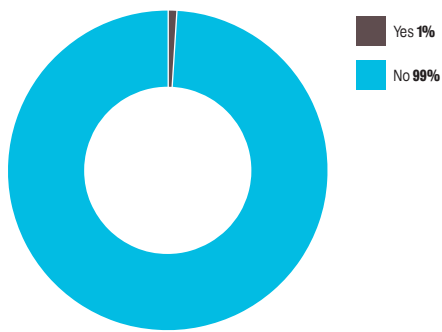
11. Enforcement of adjudicators' decisions by insolvent parties

An insolvent party seeking to enforce an adjudicator's decision faces additional hurdles if the responding party has a potential set-off claim by way of a cross-claim that has not been finally determined. Following the judgments of the Supreme Court in *Bresco Electrical Services Ltd (in liquidation) v Michael J Lonsdale (Electrical) Ltd*⁵⁶ and the Court of Appeal in *John Doyle Construction Ltd (in liquidation) v Erith Contractors Ltd*,⁵⁷ the courts will enforce such a decision summarily if: (i) there is no dispute about the cross-claim, and the claim may be found to exist in a larger amount, so that the summary judgment is for the balance only; or (ii) if the disputed cross-claim is of no substance. However, in both cases, the insolvent company must give clear, evidenced, and unequivocal security.⁵⁸

56 [2020] UKSC 25.
57 [2021] EWCA Civ 1452.
58 *Ibid* [44], [74], [90].

Figure 29 suggests that adjudication enforcement proceedings brought by an insolvent party were particularly rare in the past year. Only 1% of respondents have taken part in such proceedings at all.

Figure 29: Have you in the past year taken part in adjudication enforcement proceedings brought by an insolvent party?
Based on 164 received responses





7

Considerate construction
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Chapter 7:

Diversity in adjudication

The 2022 and 2023 Adjudication Reports looked closely at diversity in adjudication, focusing mainly on gender equality. It should be noted, however, that diversity covers, of course, characteristics other than just gender. The Equality Act 2010 lists the following:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.⁵⁹

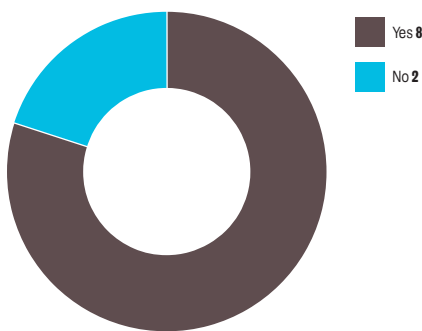
The report this year considered in greater depth the statistics relating to the representation of women, age, disability, and minority ethnic background.

12. Diversity of adjudicator panels/lists

Figure 30 below shows that eight out of the 10 participating ANBs – excluding CIC and the LCIA – keep track of diversity of their adjudicator panel/list. The LCIA, however, does not have a formal adjudicator panel/list, so its response must be understood in that context.

Figure 30: Do you keep track of diversity of your adjudicator panel/list?

Based on 10 received responses



The questionnaire asked participating ANBs for statistics relating to the following physical protected characteristics of their adjudicators: (i) gender, (ii) age, (iii) disability, and (iv) ethnicity. However, the statistics obtained were not comprehensive enough to be fully reported for the following reasons:

- ANBs rarely collect statistics as to the physical characteristics of their adjudicators beyond gender
- If they do, the questionnaires are voluntary with low participation rates from adjudicators. As a result, the statistics obtained are not fully representative.

Nonetheless, the statistics related to gender representation were informative and relevant. The 2022 Adjudication Report found that women accounted for an average of only 7.88% of the adjudicator members of the eight ANBs that published the composition of their panels online. Figure 31 below shows the proportion of women on the ANB panels/lists as of April 2024. The findings show that, excluding CIC and LCIA, women account for an average of 8.9% of adjudicators on these panels/lists.

59 Equality Act 2010, Pt 2, s 4.

Figure 31: Proportion of women on ANB panel/lists as of April 2024

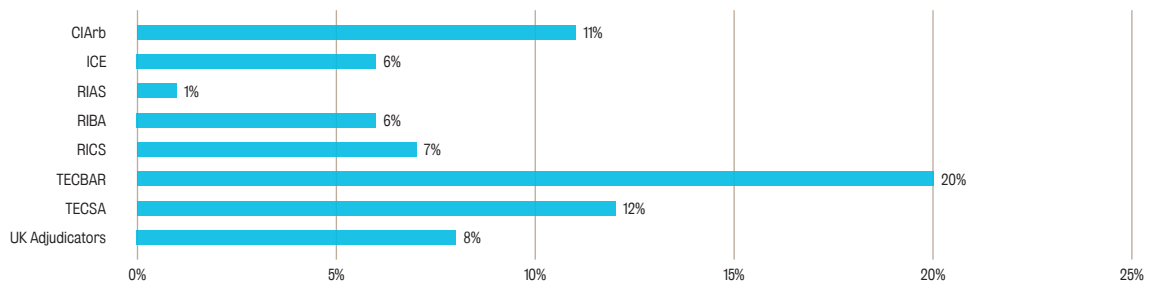
Adjudicator nominating body	Proportion of women on adjudicator panel/list
CIArb	11%
CIC	No monitoring
ICE	6%
LCIA	No monitoring*
RIAS	1%
RIBA	6%
RICS	7%
TECBAR	20%
TECSA	12%
UK Adjudicators	8%
Average	8.9%

* The LCIA does not maintain a panel/list of adjudicators.

The statistics in Figure 31 are visually represented in Figure 32 below.

Figure 32: Proportion of women on the adjudication panel/list as of April 2024

Based on eight received responses



The questionnaire also asked ANBs for the age representation on their adjudicator panel/lists, asking the age groups to be ranked from most to least represented. Figure 33 below shows that individuals above the age of 60 were the most represented group for four ANBs. This is not surprising considering that age is typically commensurate with experience. The 50- to 60-year-old group was the largest group for two ANBs (ICE and TECSA). One outlier was the UK Adjudicators, who had the youngest cohort of adjudicators, with their most represented group being individuals between the ages of 40 and 50.

Figure 33: Representation of adjudicators on ANB panel/list by age group as of April 2024 (with 1 being the most-represented and 5 being the least-represented group)

Adjudicator nominating body	Younger than 30-year-olds	30- to 40-year-olds	40- to 50-year-olds	50- to 60-year-olds	Older than 60-year-olds
CIArb	5	4	3	2	1
ICE	5	4	3	1	2
RIAS	5	4	3	2	1
RIBA	5	4	3	2	1
RICS	5	4	3	2	1
TECSA	5	4	3	1	2
UK Adjudicators	5	2	1	3	4

The questionnaire asked for representation of disabled individuals on ANB panels/lists, but no representative results were discernible. RICS stated that it does request this information, but only 3% of individuals provided it and none of them have declared a disability, with 1% stating that they 'prefer not to say'.

A similar picture is painted in relation to statistics concerning the representation of minority ethnic individuals on adjudicator panels/lists. UK Adjudicators disclosed that 9% of their panel members have a minority ethnic background. RICS reported that 53% of their adjudicators refused to provide the data. Out of those that did, 2% are White Irish, and 44% are White – Welsh/English/Scottish/Northern Irish/British. 1% responded that they ‘prefer not to say’.

13. Diversity of adjudicator appointments

The survey also asked ANBs whether they track the diversity of their adjudicator appointments in the past year. As Figure 34 shows, most did apart from RIAS, TECSA and CIC.

Figure 34: Did you keep track of diversity of your adjudicator appointments in the past year?

Based on 10 received responses



Figure 35 below shows the proportion of women as a share of adjudicator appointments in the period from May 2023 to April 2024. Three ANBs do not monitor the diversity of appointments but, out of those that do, women accounted for only 8.3% of appointments on average.

Figure 35: Proportion of women as a share of recipients of adjudicator appointments in the past year

Adjudicator nominating body	Proportion of women as a share of adjudicator appointments
CI Arb	12%
CIC	No monitoring
ICE	4.3%
LCIA	0%
RIAS	No monitoring
RIBA	5%
RICS	2%
TEC BAR	25%
TECSA	No monitoring
UK Adjudicators	10%
Average	8.3%

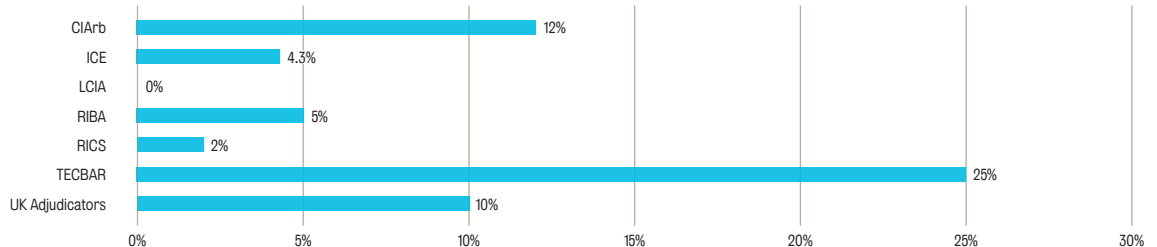
RICS further pointed that, even if nominated, the proportion of women that accept nomination is low. They stated:

[T]he numbers of women on the panel are low (7%). From the adjudications received, approximately 18% of invitations have been sent to women on the panel, but just under 2% of the adjudications have been assigned to women on the panel. While we actively approach women to serve on the panel, many are lawyers with competing priorities and often decline adjudication invitations from DRS due to workloads.

I must emphasise that the DRS team does not operate on a rank referral basis or diversity discrimination, and we apply the adjudicator who is most suited to the type of dispute, experience, qualifications and who is independent and free from conflicts of interest to the cases received. Our case officers adhere to this structured selection procedure.

The statistics in Figure 35 are visualised in Figure 36 below.

Figure 36: Proportion of adjudicator appointments received by women in the past year
Based on seven received responses



The questionnaire also asked ANBs to provide statistics on the most represented age groups of individuals that received adjudication appointments as of April 2024, as is shown in Figure 37. Individuals older than 60 years received the highest proportion of appointments from CIArb and RIBA. For ICE, the bulk of appointments were received by 50- to 60-year-olds while UK Adjudicators typically appointed younger adjudicators: those between the ages of 30 and 40.

Figure 37: Most represented age groups of individuals that received adjudication appointments in the past year (with 1 being the most-represented and 5 being the least-represented group)

Adjudicator nominating body	Younger than 30-year-olds	30- to 40-year-olds	40- to 50-year-olds	50- to 60-year-olds	Older than 60-year-olds
CIArb	5	4	2	3	1
ICE	5	4	3	1	2
RIBA	5	4	3	2	1
UK Adjudicators	5	1	2	3	4

The questionnaire asked for the representation of disabled individuals as a share of recipients of adjudicator appointments, but no representative results were discernible. Most ANBs did not keep such data, while RIBA and LCIA responded that they have not appointed a single disabled adjudicator in the past year.

The answers were similar in relation to the representation of individuals with a minority ethnic background. UK Adjudicators stated that 7% of their appointees had such a background while the proportion stood at 0% for the LCIA and RIBA.

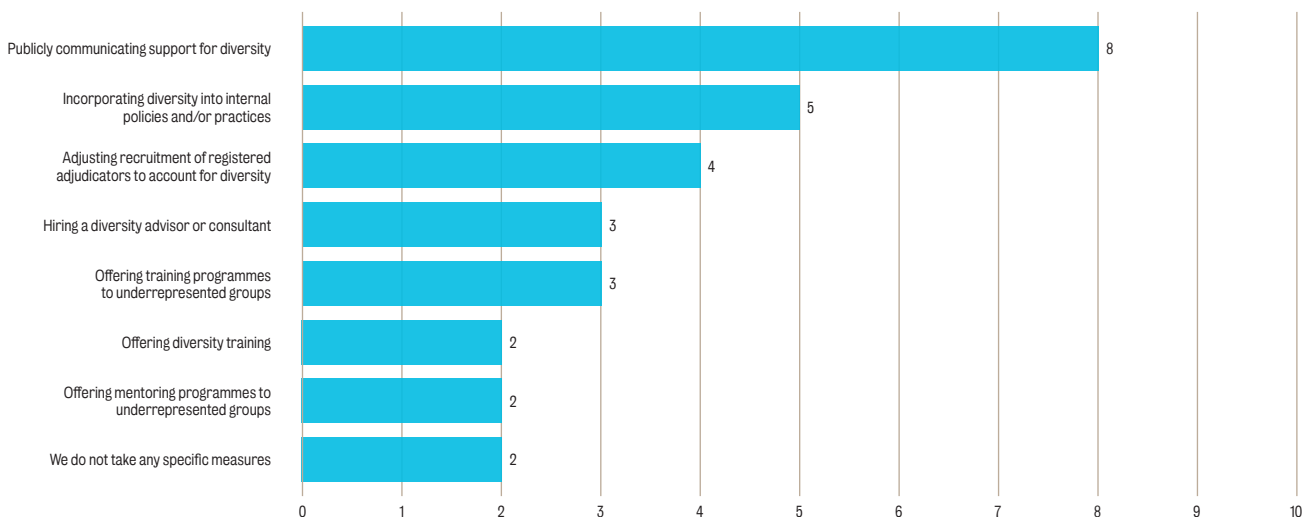
RICS provided the following comment in relation to these statistics:

Both questions [relating to disability and minority ethnic background] are challenging to address due to the lack of data supplied by the panel. RICS DRS is unable to make the completion of characteristic and sensitive data mandatory. While we have individuals whose skin colour and names may classify them as different ethnicities, they may have chosen not to provide ethnicity or disability information. Therefore, our response to these questions may not provide the clearest representation of the panel or the data you are trying to determine.

14. Solutions to poor diversity among adjudicators

The next survey question considered the solutions that participating ANBs took to address poor diversity among their registered adjudicators. Figure 38 shows that eight participating ANBs state that they publicly communicate their support for diversity. Five incorporate it into their internal policies and/or practices. Four state that they adjust the recruitment of their adjudicators to account for diversity. Notably, two ANBs do not take any specific measures in this context.

Figure 38: What measures do you take to improve diversity of your adjudicators?
Based on 10 received responses. Respondents were able to select multiple options



Five participating ANBs stated that they take other measures that were not listed in Figure 38. For example, TECSA stated:

TECSA devoted a half day at its annual adjudication conference to discuss methods by which the diversity of its panel could be improved. TECSA also decided to examine all new applicants for its adjudicator panel places, to ensure equal opportunity for those places.

RICS pointed to its scholarship scheme aimed at empowering women in dispute resolution and adjudication and stated that two women had been awarded the scholarship in the survey period.

CIC provided the following comment:

The CIC ADR Management Board is aware of limited diversity on panels. In discussions with other ANBs and professional bodies, the Board is continuing to look at ways to support younger construction professionals to become dispute resolvers. Also looking at holding an event to engage younger professionals into ADR.

Finally, TECBAR stated that it engages in a wide variety of activities aimed at promoting representation of individuals with various characteristics in adjudication:

In 2024, TECBAR made a specific push prior to its accredited training course in March 2024 to encourage younger members to apply to be on the adjudicator panel.

Also in 2024, TECBAR carried out a survey of female TECBAR members to see whether there was anything more that TECBAR could do to encourage greater participation of females in the adjudication process as TECBAR accredited adjudicators. The results of that survey are confidential, but, in summary, the principal reasons for members not applying to be accredited TECBAR adjudicators was one of personal preference, and not because of any issues with the TECBAR accreditation system or training.

As regards TECBAR's accredited training, in 2024 this was (and always has been) structured such that TECBAR can accommodate primary carers and commitments (religious, family or otherwise) by offering two alternative training sessions, one during the day, and one at the weekend. In extreme circumstances, where members have been unable to attend for family or religious reasons, TECBAR provides access to a recorded version of the sessions to enable those who wish to be accredited adjudicators to apply for the panel.

As regards appointments, TECBAR accommodates reasonable requests from parties as regards the seniority of the adjudicator required for appointment. Otherwise, appointment is strictly on rotation.

The 2022 and 2023 Adjudication Reports also found that a significant problem with reporting the representation of persons with protected characteristics: the composition of the panels/lists is either not published online or is not kept up to date. Figure 39 below states that this is still an issue, with six ANBs not publishing such a list online.

Figure 39: Do you publish the up-to-date composition of your adjudicator panel/list online?
Based on 10 received responses



The survey asked the participating ANBs why they do not publish the composition of their panels online. The prevalent reason appears to be that this has not been discussed or agreed upon before the question was asked in the survey.

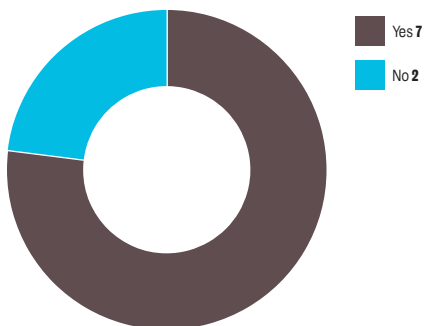
15. The Equal Representation in Adjudication Pledge

The Adjudication Society implemented the recommendations of the 2022 Adjudication Report and launched two initiatives to address the issue of poor diversity among adjudicators:

1. **The Equal Representation in Adjudication Pledge**, through which organisations and adjudication practitioners will undertake to promote diversity among construction adjudicators in the UK.
2. **Women in Adjudication**, an organisation leading various efforts aimed at improving diversity in construction adjudication.⁶⁰

As Figure 40 below shows, most of the participating ANBs have signed The Equal Representation in Adjudication Pledge.

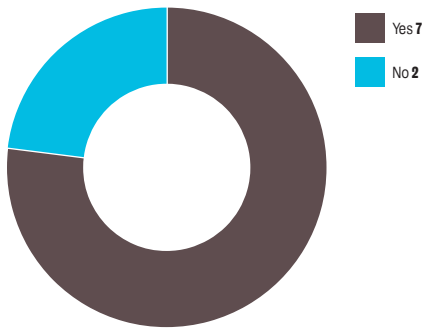
Figure 40: Did you sign The Equal Representation in Adjudication Pledge published by The Adjudication Society?
Based on nine received responses



60 See: <<https://www.adjudication.org/diversity/women-in-adjudication>>.

The same numbers of ANBs actively promote The Pledge among its members, as is shown by Figure 41 below.

Figure 41: Do you promote The Equal Representation in Adjudication Pledge among your members?
Based on nine received responses



Both Figures 40 and 41 show an improvement compared to the findings of the 2023 Adjudication Report, according to which five ANBs had signed The Pledge while only four had promoted it among its membership.

The Pledge can also be signed by individuals. Figure 42 shows that a considerable 80% of questionnaire respondents are aware of The Pledge.

Figure 42: Are you aware of The Equal Representation in Adjudication Pledge published by The Adjudication Society?
Based on 166 received responses



The following question, answers to which are shown in Figure 43 below, asked whether the individual had signed The Pledge. 54% of questionnaire respondents had done so.

Figure 43: Did you sign The Equal Representation in Adjudication Pledge yourself?
Based on 156 received responses

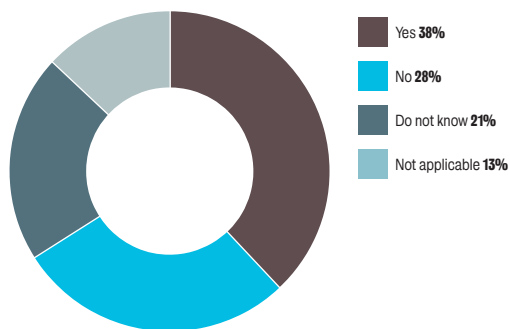


The survey also asked individual questionnaire respondents why they had not signed The Pledge, if that was the case.

Most questionnaire respondents who had not signed The Pledge did not feel that it was relevant to their line of work. Others disagreed with its message, stated that getting the 'best person for the job' should be the only consideration, or believed (wrongly in the authors' understanding) that The Pledge imposes quotas in support of women over men, or perceived The Pledge and other initiatives as discriminatory against men. One respondent was concerned that there are no pledges in relation to other protected characteristics such as ethnicity.

Figure 43 shows whether the organisations with which the questionnaire respondents are affiliated have signed The Pledge. 38% stated that their organisation had signed, while 28% responded that it had not.

Figure 44: Has the organisation that you are affiliated with signed The Equal Representation in Adjudication Pledge?
Based on 130 received responses





80

Chapter 8: Future directions

The questionnaire that informed this report asked the participating ANBs whether they wished to share any views on the current state of construction adjudication in the UK or its reform that were not covered by the previous questions but that they would like to see discussed.

TECSA mentioned that it has published its 'cab rank' procedure for adjudicator nominations, which might be considered attractive in light of concerns over poor transparency of ANB nomination procedures.

RICS pointed to the impact of technology on adjudication practice:

The adoption of digital tools and platforms can significantly enhance efficiency, transparency, and accessibility in adjudication proceedings. We suggest exploring how emerging technologies, such as artificial intelligence, could be leveraged to streamline case management, evidence submission, and communication between parties. Addressing this area in the report would provide a more comprehensive view of the current state and future direction of construction adjudication in the UK.

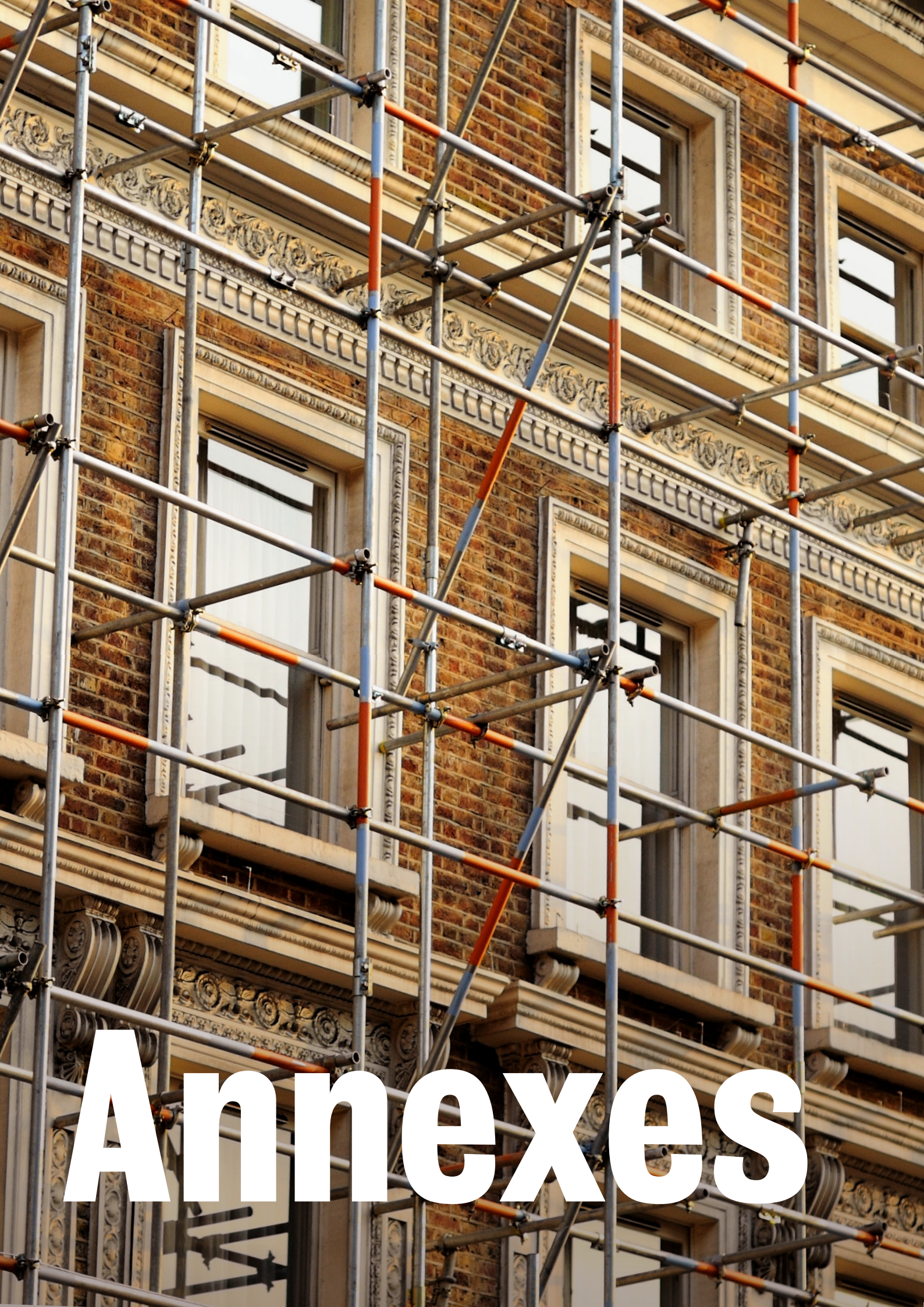
RIBA suggested that more consultations should take place discussing the promotion of diversity within adjudication practice.

CIC asked whether a 'pupillage' procedure should be mandated as a qualification route for adjudicators.

ANBs also had the opportunity to raise issues anonymously. The following two emerged:

- The perceived 'monopoly' of RICS in adjudication
- The lack of transparency among some ANBs as to their panel composition and the procedure for nomination and selection of adjudicators.

The issues above will be discussed in future iterations of the adjudication report.



Annexes

Annex A: Profiles of individual questionnaire respondents

Figure A: Questionnaire respondents' professional background

Based on 165 received responses. Respondents were able to select multiple options

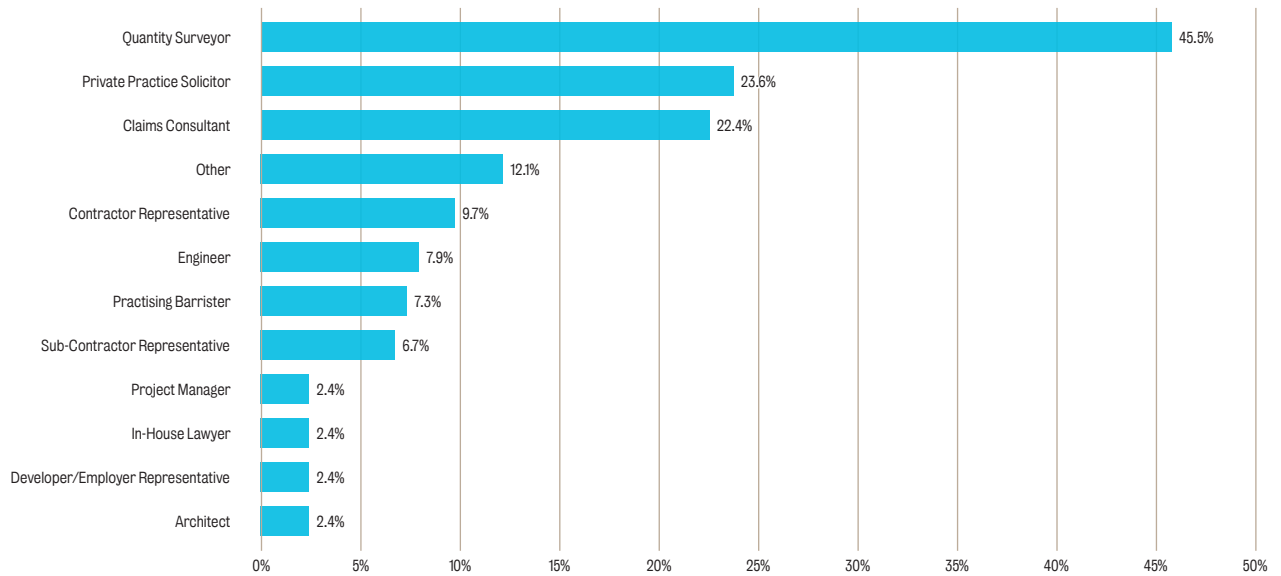
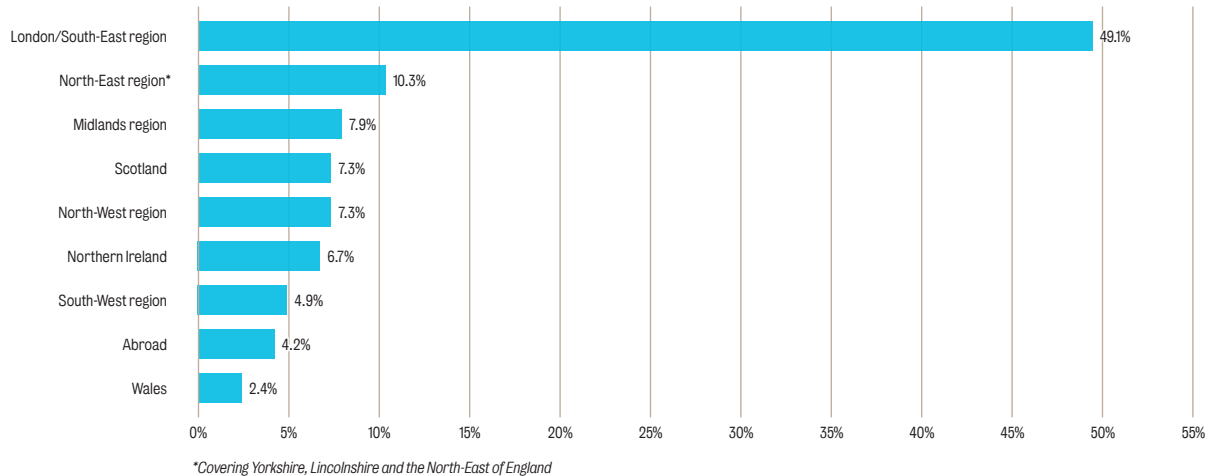


Figure B: Questionnaire respondents' main office or place of practice

Based on 165 received responses



*Covering Yorkshire, Lincolnshire and the North-East of England

Annex A:
Profiles of individual questionnaire respondents

Figure C: Approximate number of construction adjudications that questionnaire respondents were involved with throughout their careers
Based on 166 received responses

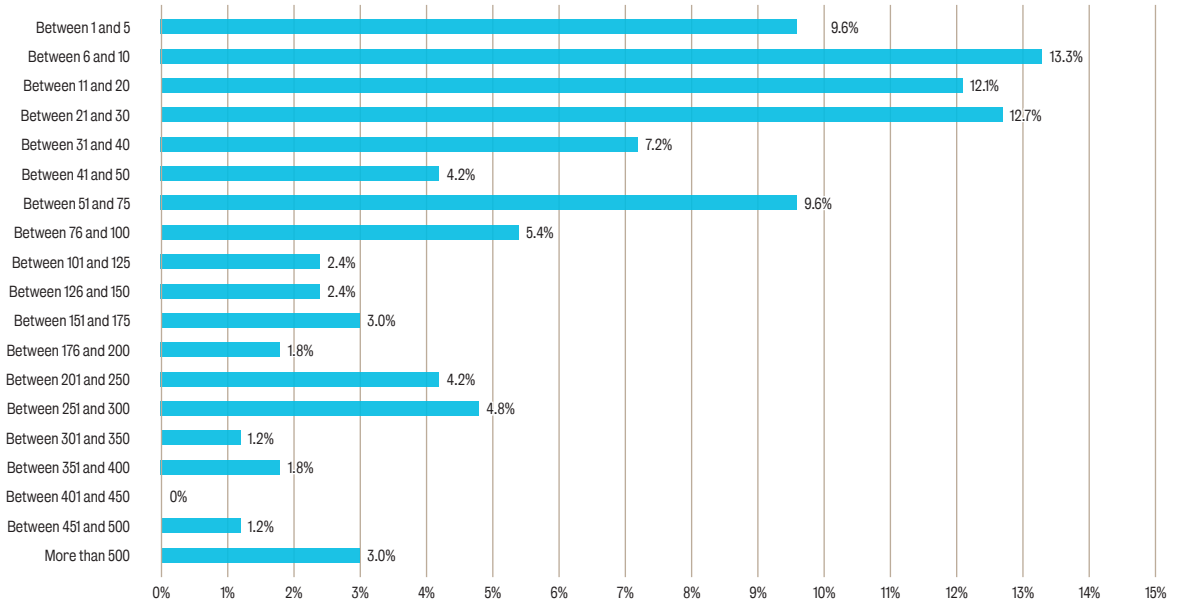
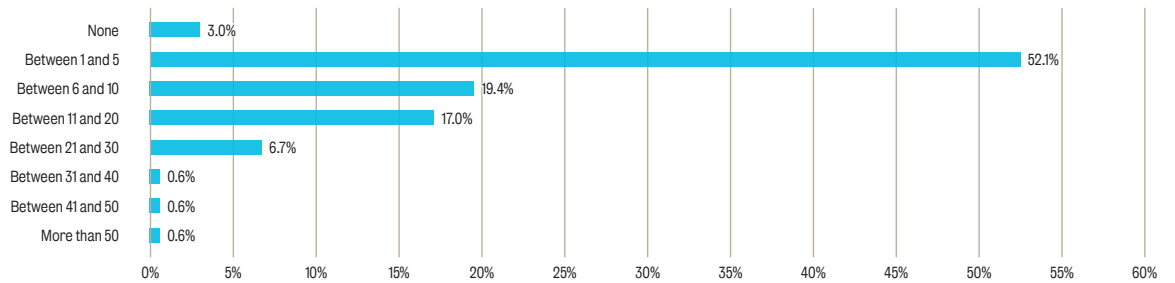


Figure D: Approximate number of construction adjudications that questionnaire respondents were involved with in the past year
Based on 165 received responses



Annex B: Biographies

16. Project Authors

Professor Renato Nazzini is the Director of the Centre of Construction Law & Dispute Resolution at King's College London and a Partner at LMS Legal LLP. He is an experienced arbitrator (chair, sole arbitrator, co-arbitrator and emergency arbitrator) and counsel in international arbitration with varied industry knowledge, not only in construction, oil and gas and infrastructure but many more, including M&A, IT and digital, pharmaceuticals and distribution. He is a dually qualified English solicitor and Italian advocate and has worked in arbitrations in Europe, Latin America, Africa, the Middle East, and Asia. He is a member of the ICC Arbitration and ADR commission, Italy, a member of the ICC Task Force on Dealing with Corruption Issues in International Arbitration, a member of the Advisory Board of Africa Construction Law and a Fellow of the Chartered Institute of Arbitrators. Renato has published seven books, including 'Key Themes in International Construction Arbitration' and 'Construction Arbitration and Alternative Dispute Resolution'. He also authored more than 100 articles and book chapters on international arbitration and competition law and is general co-editor or member of the editorial board of four leading international journals. He has been Visiting Professor at the University of Turin, the University of Zurich, and FGV of Sao Paulo, Brazil. He holds a PhD from the University of London and a PhD from the University of Milan.

Aleksander Godhe is a Research Associate in Dispute Resolution at the Centre of Construction Law & Dispute Resolution, King's College London and a Visiting Fellow at the Stockholm Centre for Commercial Law, Stockholm University. His specialism is in construction disputes, arbitration and international economic law. He is an Independent Consultant in Dispute Resolution and has practical experience with commercial litigation and international arbitration matters under the DIAC, LCIA, ICC, SCC, VIAC, ICSID and Polish-German Chamber of Commerce arbitration rules. Aleksander also teaches dispute resolution, contract and tort law on the MSc in Construction Law & Dispute Resolution at King's College London and on the Africa Construction Law Training Academy. Aleksander is a Co-Founder of the Young Investment Treaty Forum at the British Institute of International and Comparative Law. He is also a Member of the Chartered Institute of Arbitrators (MCIArb), Fellow of the Higher Education Academy (FHEA) and a member of The Society of Construction Law, The European Society of International Law and The Society of Legal Scholars.

17. Project Steering Committee

Jonathan Cope is a Director at MCMS Limited. He has been appointed in over 400 construction and engineering disputes as either adjudicator, arbitrator, expert determiner, conflict avoidance panel member or mediator. These disputes have concerned projects in a variety of sectors including infrastructure, power generation, hospitality, healthcare, offices, education and residential. Jonathan is on the CEDR, CIArb, CIC, RIBA, RICS and TECSA UK panels of adjudicators, as well as the Irish Government's panel of adjudicators. He is a Chartered Arbitrator and is on the CIArb and RICS panels of arbitrators, as well as being on the Transport for London conflict avoidance panel. Jonathan is named as dispute resolver in a variety of significant contracts and framework agreements, and is also regularly agreed to act as dispute resolver by parties and their representatives. Jonathan regularly gives lectures and presentations on construction law and dispute resolution topics in the UK and internationally for organisations such as the Adjudication Society, ARBRIX, CIArb, RICS, SCL and TECBAR. He is the principal author of the current edition of the RICS Guidance Note, 'Surveyors acting as adjudicators in the construction industry', and for 15 years was a regular contributor to the Thomson Reuters Practical Law Construction Blog. Jonathan has also recently co-authored a book titled 'Adjudicating Construction and Engineering Disputes' (London Publishing Partnership, 2024).

Susan Francombe is an Independent Consultant at The Business of Building and is the Chair of The Adjudication Society. She has worked in the construction industry for over 30 years on a variety of construction projects including drainage, hospitals, roads, bridges and tunnels. She is a dual-qualified Civil Engineer and registered Barrister and has a keen interest in adjudication, both as an adjudicator and consultant. Susan is also actively involved in the Institution of Civil Engineers, sitting on a number of committees and helping steer the ICE Law & Contract Management Examinations.

Kathy Gal is a Director and Architect at gal.com. She has extensive design and construction experience across a wide range of project and business sectors in the UK, Europe, the Middle and Far East. Some of the work she has been involved in includes large scale residential and mixed-use developments in London, large scale residential university accommodation in Bahrain and Oman, as well as retail and commercial developments in the UK and Middle East, and a Mosque for 2000 worshippers in the Middle East. She is a member of the RIBA Panel of Construction Adjudicators, regularly acting as adjudicator in construction contract disputes. She also participates regularly in university architectural education at undergraduate and postgraduate levels.

Claire King is a Partner at Fenwick Elliott. She specialises in the resolution of both domestic and international construction and engineering disputes that may arise during the life cycle of a project including those relating to delays, variations, defects, interim payment notices and final account disputes. She has experience of all major forms of dispute resolution including litigation, adjudication, arbitration, and mediation and she regularly advises clients on the best strategies to adopt in order to resolve their disputes in accordance with their commercial objectives. She regularly advises in relation to the key standard form construction contracts including the NEC, JCT, FIDIC and IChemE forms and has worked across a wide range of sectors within the industry, including in relation to a nuclear implicated facility. She is also a fellow of the Chartered Institute of Arbitrators; member of The Society of Construction Law; member of The King's College Construction Law Association; member of TeCSA; committee member of The Adjudication Society and a founder member of Women in Adjudication. Claire is the author of Fenwick Elliott's Insight publication and her articles have been widely published across numerous industry journals and she is also a regular speaker on construction law issues.

Dr Hamish Lal is a Partner at Hamish Lal Partners and the immediate past Chair of The Adjudication Society and The Society of Construction Law. He is ranked Band 1 in Construction and Band 1 in International Construction Arbitration in Chambers & Partners UK, and in the Top-Tier in The Legal 500 UK. Hamish is a Solicitor-Advocate (All Higher Courts) and admitted to Part II of the Dubai International Bar Admissions. He is an Adjunct Professor at the University College Dublin (UCD) Sutherland School of Law, a Fulbright Scholar. Hamish is a specialist in international construction arbitration and deals with prospective and retrospective delay analysis, disruption, cumulative impact claims, FEED errors, nonconformance reports, design codes, pipeline weld defects, bad-weather windows, vessel-standby, unforeseen ground conditions, professional negligence, taking over/ completion, liquidated damages, incentive payments, variations, bond calls and termination under various forms of contract under the International Federation of Consulting Engineers, CRINE/LOGIC and NEC3/4. Hamish is also the Author of 'Manual of Construction Agreements' published by LexisNexis and General Editor of Construction Law Journal, published by Sweet & Maxwell.

Lynne McCafferty KC is a Barrister at 4 Pump Court. She has particular expertise in Construction & Engineering, Energy, International Arbitration, Professional Negligence and Technology & Telecoms. She is registered as an advocate in the Dubai International Financial Centre Courts (DIFC). She is particularly noted for her advocacy skills, having had extensive advocacy experience in the Technology & Construction Court, international and domestic arbitrations, dispute adjudication boards, adjudication proceedings, and mediation. Her practice encompasses all types of construction and engineering disputes, from huge infrastructure projects to multi-million pound commercial and residential developments to high-profile PFI projects. Lynne has been instructed under a wide range of arbitration rules including ICC, LMAA, LCIA, DIFC, and DIAC. She has also been appointed as an arbitrator both by the ICC and on an ad hoc basis. She is highly experienced in cross-examining expert witnesses in a wide range of disciplines. Most of Lynne's cases involve highly technical issues. She is known for the forensic technical understanding and rigorous attention to detail required for these heavy and complex cases. She has extensive experience of working with and leading large teams of solicitors, juniors, and experts.

James Pickavance is a Partner at Jones Day and handles complex construction and engineering matters. He represents contractors, owners, developers, and consultants in public and private projects, particularly in the energy, power, major infrastructure, and commercial development sectors. As well as acting in a project advisory and dispute avoidance capacity, he has experience in all major forms of dispute resolution, particularly international arbitration conducted under all major institutional rules and putative seats. He has acted under various applicable laws, both common and civil. James is a member of the Society of Construction Law, a committee member of the Adjudication Society, and a board member of the International Construction Law Association. He is a Visiting Professor at King's College London and teaches the Master's degree construction course. In addition to dozens of published articles, he is author of 'A Practical Guide to Construction Adjudication' (2015) and contributing author of 'Construction Arbitration and Alternative Dispute Resolution: Theory and Practice around the World' (2021). Who's Who Legal lists James in the 2023 edition of Thought Leaders 'Global Elite'. He is also listed in the 2023 editions of Chambers & Partners and Legal 500 law directories.

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