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UK construction participants' experiences of adjudication

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This paper aims to fill a gap in the literature by exploring the construction professionals' interaction with adjudication at a key stage in its evolution based on a focus group analysis of industry experiences. The research aims to provide a richer understanding of the professional's interaction with the adjudication process more generally, as well providing detailed insights into the issues that different professional groupings have experienced with the process, more specifically. At first glance, the conclusions of the research offer few surprises, confirming the importance of financial aspects of the process, the timescales involved, the quality of adjudication professionals and the role of legal practitioners in adjudication. A closer examination of the focus group analysis, however, suggests that the loss of confidence in the process is attributable to a myriad of interrelated factors linking professional reputation with understanding of commercial realities and business relationships, lawyer–client power imbalances and dispute tactics, the role of lawyers with dispute complexity, parliamentary intentions and the timescale of the process. Although, it is recognised that on-going changes to adjudication will add more uncertainties into the context, the findings of this study will act as a springboard from which further research will be conducted.

1. Introduction

In the UK, adjudication was first introduced on a statutory basis under the Housing Grants Construction and Regeneration Act 1996 (1996). Section 108 of the 1996 Act provided, until recently, a legislative framework to facilitate the operation of the adjudication procedure (Eversheds, 2005). Part 8 of the Local Democracy, Economic Development and Construction Act 2009 (2009) has now replaced these provisions (CI Arb, 2010). Adjudication was intended to allow disputes to be resolved on an interim basis, so that the relationship between the parties could be maintained after the dispute, with any final resolution of outstanding matters being picked up by negotiation or by other forms of dispute resolution (Furst and Ramsey, 2001). Since 1998, the statutory adjudication process has developed from a commercial pro-tem idea into a sophisticated dispute resolution mechanism, which requires very experienced and knowledgeable adjudication practitioners.

While there is universal acceptance of the process within the industry (Kennedy, 2006), adjudication is by no means a panacea; it is not a substitute for litigation or arbitration. Anecdotally, there remains some disquiet about the effectiveness of the adjudication process among construction industry participants (see, for example, Kennedy *et al.*, 2010). Also, while it is generally recognised that the adjudication provisions under the 1996 Act have generally improved cash flow within the industry, and dispute resolution process more specifically, it has often been described as 'ineffective' in other respects (CIOB, 2008; DCLG, 2008).

While the process is often described as being a cheaper and quicker option than litigation or arbitration (Agapiou, 2011), adjudication has not always been used in the manner intended and examples of its use in clearly inappropriate situations abound (Riches and Dancaaster, 2004). Akintoye *et al.* (2011: p. 610) state

the original objectives of the 'HGCR 1996' Act are being undermined by exploitation of 'loop-holes' stopping the flow of money through the supply-chain; lack of clarity relating to payment resulting in adverse effects on cash flow; increased litigation; and disputes under construction contracts were threatening the viability of individual businesses and eventually would undermine the long-term health of the construction industry.

Minogue (2010: p. 20) bemoans the increasingly legalistic character of adjudication, stating

It has now adopted all of the hallmarks of a minilitigation. . . Most adjudications start with rather pointless jurisdictional and procedural wrangling. They continue with lengthy position papers that are pleadings in disguise. Parties then produce reports from independent programmers or cost advisers and even witness statements. Finally, as we have seen, despite the exemplary lead taken by the Technology and Construction Court, there is endless argument about enforcement.

Others, such as, Redmond (2009) reiterate the concerns with adjudication, stating that

... disputes are taking much more than the basic 28 days. Some Adjudications last for months, limping in a haphazard way from extension to extension and costing well over £100 000 on each side.

The balance of judicial opinion would seem to suggest that the adjudication process as originally intended by parliament (in the 1996 Act) and in court decisions such as *Macob Civil Engineering Ltd* has now developed into something much more expensive and confrontational in nature (Lal, 2008) (perhaps more from a practical point of view), particularly given the increasing complexity of many construction disputes (Uff, 2009).

The Local Democracy, Economic Development and Construction Act 2009 (the Construction Act 2009) received Royal Assent in July 2009 and came into force on 1 October 2011 (Akintoye *et al.*, 2011). The new legislation amends Part II of the Housing Grants, Construction and Regeneration Act 1996. The main benefits of the new Act, as conceived by the government, was to improve cash flow in construction supply chains and encourage parties to resolve disputes by adjudication rather than by arbitration or litigation (Gwilliam, 2010).

This paper aims to fill a gap in the literature by exploring UK construction participants' interaction with adjudication at a key stage in its evolution based on a thematic analysis of industry experiences.

2. Industry research

There have been numerous reports, surveys, opinions, articles and publications detailing the success, progress, development and failure of the adjudication process (see, for example, works by Khatib and Blagden (2006), Bowes (2007), Dancaster (2008), Kennedy *et al.* (2010), Verster *et al.* (2010) and Akintoye *et al.* (2011)). There has also been much commentary on how to improve it, but few qualitative analyses on the utility of the process, particularly from the construction industry's perspective.

The most authoritative analysis of the construction industry's interaction with adjudication is the research undertaken by the Adjudication Reporting Centre (ARC). This research has monitored the progress of adjudication based on returned questionnaires from adjudicator nominating bodies (ANBs) and on questionnaires returned by adjudicators over the past 12 years. The last report was published in June 2010. It is important to note that while the authors offer no explanation for the underlying trends, the analysis of Kennedy *et al.* (2010) does provide valuable insights into the industry's interaction with the adjudication process, over time. Gregory-Stevens *et al.* (2010) produced a comprehensive analysis of the ARC's adjudication statistics and reported trends. According to their interpretation of the ARC data, there would seem to have

been a loss of confidence in the adjudication process consequent from 'the length of time a dispute takes to be decided, the increasing costs of the process (legal representation, adjudicator fees, expert fees and the cost of referral documentation) and the expectation of the parties'.

These findings are consistent with earlier analysis of the adjudication process (e.g. Kennedy, 2008). However, the major drawback with the ARC research and other studies is the lack of triangulation of quantitative findings. A qualitative approach would add richness to the data from the 'thin abstraction' provided by the quantitative data collection technique, thereby providing an opportunity to understand the complex interaction between the factors that have contributed to this loss of confidence over time.

3. Research design

The research design utilised a quasi-experimental method, sampling construction professionals across various disciplines within the industry. Construction participants' interaction with the adjudication process is so complex that few individuals have a complete understanding of the myriad of interconnected issues. The purpose of the investigation was to explore participants' interaction with adjudication based upon a thematic analysis of participants' views and experiences based on a focus group approach. A focus group is, according to Lederman (see Thomas *et al.*, 1995: p. 216)

a technique involving the use of in-depth group interviews in which participants are selected because they are a purposive, although not necessarily representative, sampling of a specific population, this group being 'focused' on a given topic.

Thus, participants in this type of investigation are selected on the basis that they would have something to say on a topic and would be comfortable talking to the interviewer and each other (Richardson and Rabiee, 2001). According to Krueger and Casey (2000) focus groups are effective where respondents are allowed to use their own words to unravel a problem, identify possible implications and describe what they think.

3.1 Sample

The snowball sampling technique was used to identify focus group participants. This technique involved the researcher asking 25 personal contacts to name five 'influential' individuals with whom they 'talked to the most about adjudication'. The individuals identified were asked the same question, and so on, until no new names were identified. The groups incorporated four discipline groups of five participants per group. Thus, the sample frame comprised 20 participants. The group sample size was selected in order to achieve a balance between being sufficiently large to obtain a diverse range of viewpoints and small enough to be manageable. The four discipline groups comprised adjudicators, lawyers, contractors and surveyors. These groups

comprise the primary users of adjudication, being those with the greatest potential interaction with the process. Among the participants in this qualitative study were commercial directors of large main and subcontracting firms, well-known construction lawyers and leading adjudicators. All the participants had some experience of adjudication-related settlement within the past 2-year period. Often, quantitative researchers fail to understand the usefulness of studying small samples (Marshall, 1996). According to Pound *et al.* (2005), this is because there is a misunderstanding about the aims of the qualitative approach, where improved understanding of complex human issues is more important than generalisability of results.

3.2 Focus group format

The focus groups were attended by a moderator, a note-taker/assistant and discussion participants. The sessions lasted approximately 90 min. In each case, the moderator introduced the purpose of the group discussion, set out the 'rules' (e.g. in relation to confidentiality, how to identify each other) and identified everyone's roles. The moderator facilitated discussion around participant topic guides. It is worth noting that the gathering of qualitative data using topic guides has its own difficulties in pure research terms but it was felt that focus group participants might be more likely to respond if they were prompted in some way. Nevertheless, each guide was designed to encourage wider discussion and open new avenues for exploration and thus some overlap was inevitable and desirable. It was recognised that adjudicators and lawyers who volunteered to participate may have had a vested interest in this topic, and may represent either those who are very positive or very negative towards it.

4. Data analysis

The focus group discussions were recorded, transcribed and subjected to thematic analysis in order to identify key recurring themes and emerging issues. Thematic analysis, according to Braun and Clarke (2006), 'is a method for identifying, analysing, and reporting patterns (themes) within data. It minimally organises and describes your data set in (rich) detail'. In this type of analysis, themes that emerge from the data are not imposed by researchers under predetermined categories.

A review of the anecdotal evidence reveals that scholars, practitioners, adjudicators, lawyers, disputants and policy makers all have disparate visions of what adjudication is or what it should be, suggesting that qualitative approaches would be useful to discern the disparate nature of these views, thereby enhancing our understanding of the key determinants of an effective process. Recognising that a primary purpose of this study was to corroborate the main themes considered important within the literature, and that the sample frame was not constructed to be representative of practitioners' views and experiences, the focus group transcripts was analysed at two levels. Level 1 was a basic level thematic analysis aiming to

search for and index the themes and sub-themes that emerged within the focus group transcripts. This was carried out in the following steps.

- (a) Review the aims of the focus group programme and participant topic guides.
- (b) Assign categories and sub-categories.
- (c) Read the transcripts and apply indexation.
- (d) Note any new themes emerging from the data and update categories and sub-categories.
- (e) Re-read the transcript to transcript.
- (f) Create a mapping exercise to identify if issues or themes were covered.
- (g) Check indexation is complete and reaffirm the framework that is applied.

Level 2 searched beyond confirmation of key themes to identify more complex topics and search for any patterns across the focus group discussions. These analyses focused on secondary as well as primary impacts and aimed at identifying impacts unique to particular focus group participant groups or common to the groups.

5. Factors affecting the effectiveness of the adjudication process

The findings from the lower order (level 1) data analysis confirmed the relevance of four major themes highlighted within the literature among all the focus group participants: financial aspects of the process, the timescale involved, the quality of adjudication professionals, and the role of legal practitioners in adjudication (see, for example, Kennedy *et al.* (2010)). Many issues under these themes were raised spontaneously by focus participants including adjudicators' experience and professional reputation, understanding of commercial realities and business relationships, lawyer-client power imbalance and dispute complexity. There was evidence of interplay between sub-themes in the higher-order (level 2) pattern analysis; for example, the role of lawyers was linked to dispute complexity, which was also discussed in relation to parliamentary intentions and also in relation to the timescale of the process. In this study, quotes from the focus group transcripts illustrate construction participants' perceptions and experiences of adjudication in their own terms. The selection of quotations was a subjective process, aiming to provide evidence to support the findings.

6. Experience of adjudication

The consensus among the sample frame was that the adjudication process was working well within the construction industry. The adjudicators and legal practitioners within the study were engaged in a large number of adjudications with an obvious move away from arbitration and litigation/expert witness work. One of the adjudicators noted

The amount of expert witness work has dropped very considerably and we find that the expert witness work that we do is restricted to either pre-starter housing grants or lower value cases or very large cases that have either been to adjudication and people are dissatisfied with the answer and have gone to arbitration or litigation of disputes where people do not trust adjudication and have gone straight to litigation or arbitration. So expert witness work has declined considerably.

It could be argued that financial gains from adjudication could affect the lawyers' and adjudicators' views of the process compared with other methods of dispute resolution such as litigation and arbitration. It seems that the introduction of adjudication would have resulted in the provision of sustainable revenue streams for adjudicators and lawyers alike. Indeed, one of the lawyers pointed out that

There has been a huge increase in the number of adjudications being referred. A lot of people have taken up adjudication big time. What we have noticed is the decrease in the number of arbitrations that we are involved in. When I first started, we dealt with a lot of arbitrations and court cases. Quite often you would raise court actions and arrestments but that is happening less and less. I think that it is partly because of adjudication but also partly to do with the Commercial Courts.

Indeed, according to many industry commentators, arbitration in the construction industry has failed to live up to its promise and in many instances has proved more hidebound and inflexible than litigation. Critics such as Gaitskell (2007) also argue that it is unsuitable where questions of law are significant or for multi-party disputes where not all the parties are bound by arbitration – a common phenomenon in the construction industry whereby disputes such as complex loss and expense claims, poor workmanship or design often involve several parties. It seems that lawyers, according to Gould *et al.*, (2010), have led arbitration to mirror a High Court hearing rather than a procedure decided by the parties. There are indications that the adjudication process has now evolved in something much more *legalistic* than originally intended, but it remains unclear whether this will be detrimental to the process in the longterm, as in the case of arbitration.

7. Financial aspects

Many within the sample frame considered adjudication to be expensive. The contractor grouping noted that the direct costs incurred were in excess of their initial expectations and were regarded as 'substantial', with the whole process being incredibly time consuming for staff and management alike. Furthermore, the financial aspect of the process would seem to be removing adjudication from being a viable option for smaller subcontractors with smaller value disputes, with one of the contracting parties stating

I would agree that the concept of adjudication is that it is available to everyone. Unfortunately, the reality of this statement is somewhat

different. It is expensive and massively time consuming for members of staff... Especially our smaller sub-contractors would not be available to spend time on adjudication particularly if it is a sole trader/owner manager/partner arrangement. Because it is so time consuming and expensive, our opinion is that adjudication would only be worthwhile on a dispute to the value of at least £100 000.

This view, however, seems at odds with the findings of the latest ARC survey. In 2008, the majority of adjudications were in the value range £10 000–50 000 (Kennedy *et al.*, 2010). In probing *why* the process remains largely inaccessible to the smaller subcontracting parties within the industry, there was consensus among the adjudicator grouping that this was due to the increased costs associated with legal representation, particularly in relation to more complex disputes. Indeed, one of the adjudicators highlighted the following.

It's very rare for a sub-contractor or main contractor to appear at adjudication without representation. Everybody now feels that they need to have a lawyer or consultant. This results in an increase to costs, and with legal advice the referred dispute and arguments are developing into more complicated issues, which therefore increases the adjudicator's costs. This results in increased costs for all parties taking part. The concept of parties being able to go to adjudication themselves was the plan at the start – however with the involvement of lawyers, this has changed the original plan. I cannot imagine it reverting back to the original concept.

The surveyor grouping also considered the cost of the process, in light of the role of parliament and the courts more specifically. As one surveyor pointed out

... I don't think that parliament really thought this through. I think that parliament, if we keep ourselves outwith the adjudication part, parliament failed to understand the industry in terms of court actions which was costing the government a lot of money – you get the judge for nothing and the courtroom and administration is nothing. You then produce adjudication, which is a simplistic process to resolve disputes, which previously courts were devoting time to. People started to remove and take disputes out of the civil courts and let them get on with other disputes and let the construction industry pay the cost for resolving their disputes.

8. Timescales

On the matter of adjudication timescales, the practitioner groupings were united. For simple disputes, the timescale of 28 days was regarded as sufficient. While many commentators criticise the process for not providing sufficient time for adjudicators to scrutinise all the documentation (Lal, 2008), the sample did not share this opinion. It was also felt that the complexity of the refereed disputes was affecting the allotted timescale among many within the sample frame, with one contractor noting

The timescale is very much dependent on the complexity of the case. From experience the responding party does not have enough

time to respond. There was very little time to get our information and response compiled. In both cases there were complicated technical issues and the adjudicator wanted a hearing with both parties in attendance. That took time to arrange a suitable time for everyone to attend including expert witnesses, which had the overall effect of pushing on the timescale.

The process was initially envisaged to aid cash-flow-related disputes. However, construction parties are referring more and more complex disputes such as claims for delay and disruption (Kennedy *et al.*, 2010), and still expect the adjudicator's decision within the 28-day period. Furthermore, the period allowed to appoint an adjudicator was regarded as inadequate among some within the sample frame in situations where parties are unable to agree on the appointment of an adjudicator. This was illustrated where a responding party had, according to one of the lawyers participating in the study, delayed the process for a period in excess of 3 weeks. The view that speed was important for effective dispute resolution was shared among all the focus group participants.

9. Standard and quality of adjudicators

The quality of adjudicators was described as variable by some of the participants. Perhaps this might explain some of the fear and dissatisfaction expressed by the contractors' group on the quality of adjudicators, particularly where specific complex and technical issues are central to a dispute, but outwith an adjudicator's skill and knowledge base. Among the issues highlighted by focus group participants was the importance for every adjudicator to be registered with an ANB and to be involved with a process of continued professional development. One of the adjudicators suggested

There are too many adjudicators in the loop to get enough experience. The training given is not always adequate but the main problem is that an adjudicator may get an appointment one year then it would be another year till they get another appointment, which affects their practical experience. I am not suggesting that adjudicators should run a number of disputes at the same time – that would indicate that they were not achieving their real job. People are jumping on the bandwagon and they are not registered. I would suggest that carrying out an adjudication every 6 months, i.e. two per a year is probably suffice. Not all adjudicators are ANB appointed. I would be happy if all adjudicators were appointed and were used more frequently.

The sample frame also agreed on the need for mandatory, stringent assessment and a system of quality control to improve on the choice and quality of adjudicators, which in turn would improve the quality of decisions. Interestingly, many of the ANBs have now taken on board many of the criticisms concerning adjudicator performance and have been particularly ruthless in reducing the number enrolled on their registered lists (Kennedy *et al.*, 2010). Currently, the majority of ANBs

employ rigorous selection and reappointment criteria such that only the best are appointed and remain on panels (Kennedy *et al.*, 2010).

10. The role of lawyers

Many individuals within the construction industry consider that lawyers have hijacked the adjudication process. The adjudicator and the contractor grouping all agreed with this sentiment. One of the contractors commented

My feeling is that the process is becoming more driven by lawyers all the time and I don't think that the process was designed for that. I think people like us are more pragmatic to resolving disputes. We think that points of law especially jurisdiction are a result of lawyers and parties who would be better off resolving these issues without intervention. But lawyers are here, because main contractors, and sub-contractors use them, so they are here for good, which I fear is not a good thing. The costs involved do not reflect the spirit of adjudication and that is down to the lawyers.

The lawyers, unsurprisingly, defended their profession and their role in the adjudication process. One of the lawyers pointed out

Of course we haven't hijacked adjudication! I really don't think we have. Lawyers have a place in the process – analysing what the dispute is and what are the legal issues relating to the problem; an analysis of what are the real issues. One lawyer is able to bond with another lawyer when dealing with referral notices. I think both work. There are many other people involved in adjudication, i.e. claims consultants are more involved in the process. ... It is a perception issue. I think that there is a perception that if you have a lawyer then the costs will increase. It is interesting to compare lawyer fees with that of claims consultants – you would be surprised. People are reading about cases that have ended up in court and it is lawyers that are dealing and presenting the case. It is all down to people's perception.

The lawyer grouping felt that they were required for the purposes of analysis and to determine the nature of the legal issues within a dispute. However, this may simply represent self-reported bias on the part of the lawyers based upon their personal experiences. Undoubtedly, lawyers' economic and psychological incentives differ to those of other participants, particularly disputants. Indeed, as Macaulay (1979) states

... only the most innocent could think that these differences do not affect their practice; rather most lawyers would be most eager to do things which they find most satisfying and not distasteful and which will contribute to their income today and in the future.

The question arises as to whether these differences which cause disputes that would otherwise be settled through mediation or negotiation are referred to adjudication.

11. Development of the adjudication process

In discussing the development of the adjudication process, groups were asked what change or changes they would make to the adjudication process. The sample frame had a number of suggestions relating to compulsory training and assessment of adjudicators, while other suggestions related to the enforcement of adjudicators' decisions.

Another area for reconsideration was for the correction of errors using the slip rule or where, in arbitration, a decision is drafted and issued to parties for comment prior to issue. This would allow for obvious mistakes to be noted and amended. One of the adjudicators suggested that 'straightforward arithmetical error – yes shouldn't be an error. Example of typing error, wrong names for defending and responding parties, these should all be able to be corrected'.

Case law has, certainly, confirmed that adjudicators can err in matters of law and their decisions being factually incorrect, but that may not give rise to having the decision being set aside. Nevertheless, it is well established that if either party does not like an adjudicator's decision there is always recourse to commence subsequent arbitration or litigation proceedings. The current position under English law is that an adjudicator can correct typographical and arithmetical errors. The Technology and Construction Court made that clear in the *Bloor Construction (UK) Limited & Kirkland (London) Limited* case in 2000 and more recently in the case of *YCMS Limited v. Stephen Grabiner*, decided in 2009. Interestingly, under the provisions of the Construction Act 2009, contracts will have to provide, in writing, that the adjudicator is allowed to correct clerical or typographical errors arising by accident or omission (Salmond, 2010). One further suggestion from the sample frame was for a more cost-effective process and the permitting of a balanced period of time between the referring party and the respondent. A mechanism for limiting the size of submissions, which would reduce staff costs associated with preparing referral and respondent notices, was also advocated by the adjudicator grouping.

Part 8 of the Local Democracy, Economic Development and Construction Act 2009 came into force on 1 October 2011. We can only speculate on the likely impact of the amendments at this point and while the groups welcomed the amendments to the process, they felt that the administrative burden on parties would probably increase, as the industry grappled with the implementation of the new provisions under the 2009 Act. This point was echoed by Phillipott (2009) who, for instance, believed that adjudicators would have difficulties dealing with the new legislative provisions, particularly those relating to oral contracts under the 2009 Act. Indeed, some within the sample frame thought that the amendment may exacerbate the industry's frustration with the procedural niceties of the process still further, especially in the early stages of implementation; a view echoed in

a recent survey of the industry's awareness of the new legislative provisions (Akintoye *et al.*, 2011). The lawyer and adjudicator groupings also questioned the validity of the reforms given the lack of independent and objective analysis of the effectiveness of adjudication under the Housing Grants Construction and Regeneration Act 1996 and the exclusive focus on industry consultation as the basis for the amendments to provisions.

12. Most effective form of dispute resolution

The final question addressed the issue of the most effective form of dispute resolution. The resounding response among the sample frame was that every process has its place and is very dependent on the dispute, with one participant noting

I think that everything has its place – depending on the dispute. Adjudication is good for that fact that you have an independent in the dispute to provide a quick resolution. Adjudication is far more adversarial than anticipated. At the end of adjudication people are not talking... If it is a straightforward dispute then sitting down together to conduct a mediation would work. I'm not able to say what is the most effective – they all have their place.

Many within the sample frame felt that adjudication had not always resolved a dispute, but had provided a quick answer. However, some of the contractors also felt that while the system has proved itself, it was much more adversarial than initially anticipated and had not always preserved business relationships. Indeed, this point echoes Hill's view that adjudication does not necessarily preserve good will, particularly if the losing party challenges the decision subsequently or resists enforcement (Hill, 2001). The surveyors raised the point that disputes could be divided into two categories – disputes that parties recognise and want to resolve and disputes that parties do not acknowledge and do not want to resolve. According to the surveyors' grouping, the first category could be quite easily addressed through negotiation, mediation and conciliation, whereas the latter category only through litigation, arbitration or adjudication. Nevertheless, many within the sample frame recognised the need to encourage dispute avoidance rather than dispute resolution, encompassing among other things fairer contracts, procurement, teamwork and the management of differences. One of the contracting parties commented

I would like to have had the opportunity to use mediation, as it appears a lot less confrontational, hopefully there is not much preparation required and hopefully relationships might be better at the end of it. In our recent adjudication as a referring party the client appeared very happy about the outcome and continued to use us. It helped them; they are an enterprise company and had to have someone make a decision on it. They wanted a third party to make a decision on it. Also the problem with mediation is and this is what our MD was unhappy about is that in any form of negotiation you end up reaching a middle ground. We believe at our adjudication when we referred that we were totally correct and hence if we went to mediation we feared we would only get 50% of dispute.

The contractors' view toward dispute resolution was clear. Their companies operated on the basis of dispute avoidance, with the aim of discussing and negotiating through any differences encountered. This was also widely acknowledged as the most cost- and time-effective process of them all by the lawyer adjudicator and surveyor groupings alike.

13. Conclusion

This paper has explored the construction industry's interaction with the adjudication process based upon a qualitative analysis involving participants drawn from across various construction professional disciplines and user groups. The research provides a fuller picture of participants' interaction with the adjudication process more generally, in addition to detailed insights into the issues that different participant groupings have experienced with the process more specifically. At first glance, the lower order (level 1) analysis offers few surprises, confirming much of the (mostly) anecdotal evidence on the importance of financial aspects of the adjudication process, the timescale involved, the quality of adjudication professionals and the role of legal practitioners.

However, closer examination seems to reveal interplays between factors that link professional reputation with an understanding of commercial realities and business relationships, lawyer-client power imbalances and dispute tactics as important determinants of the effectiveness of adjudication. The higher-order (level 2) analysis relating to patterns reveals even more intriguing findings, suggesting that the loss of confidence in the process may be attributable to a multitude of factors linking the role of lawyers to dispute complexity which was also discussed in relation to parliamentary intentions and also in relation to the timescale of the process. The findings from the higher-order analysis are important as they emphasise the need for cross-disciplinary work to explore a fuller picture of the effectiveness of adjudication, and the factors underlying practitioners' loss of confidence in the process.

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