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Trends in Dispute Boards and Adjudication

6 February 2025

Claire King, Fenwick Elliott
Raquel Macedo Moreira, King's College London
Jeremy Glover, Fenwick Elliott



The First Dispute Board, Al Mathews, DRBF Forum Vol. I, Issue I

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- ➔ *“The construction of the first bore of the Eisenhower Tunnel in Colorado was a financial disaster. Determined not to get burnt again, the Colorado Department of Highways, for the construction of the second bore, provided for a ‘Review Board’ to make recommendations which could not be settled at the job level.”*
- ➔ *“The first bore of the Eisenhower Tunnel had resulted in enormous claims, on which the DOH had paid out some \$50,000,000. But with the second bore, the biggest problem the Board had was that we went along for over two years with no problems.”*

The first adjudicator?

Robert Hooke (1635–1703):

“carried out occasional views on properties in the City, providing professional adjudications in disputes between property owners or builders, usually for a fee of 10s”

Dr Stephen Inwood

The Man Who Knew Too Much; Pan, 2002, p.386

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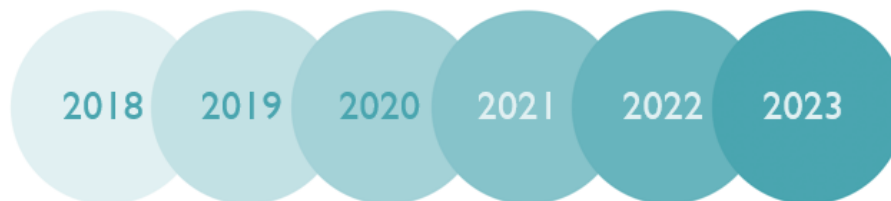
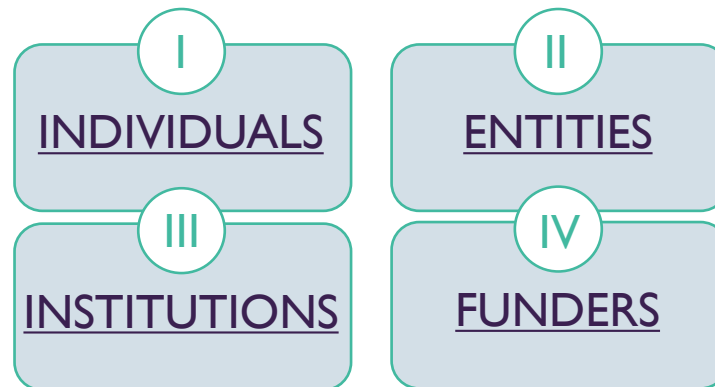
2024 Dispute Board International Survey



DISPUTE BOARDS

The scope of the Research

- **CONCEPT OF DBs:**
 - Job site dispute avoidance and/or resolution mechanism, constituted by individual(s), that operates independently from the parties to the contract(s) and with the purpose of addressing the disputes of a specific Project.



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The report in numbers

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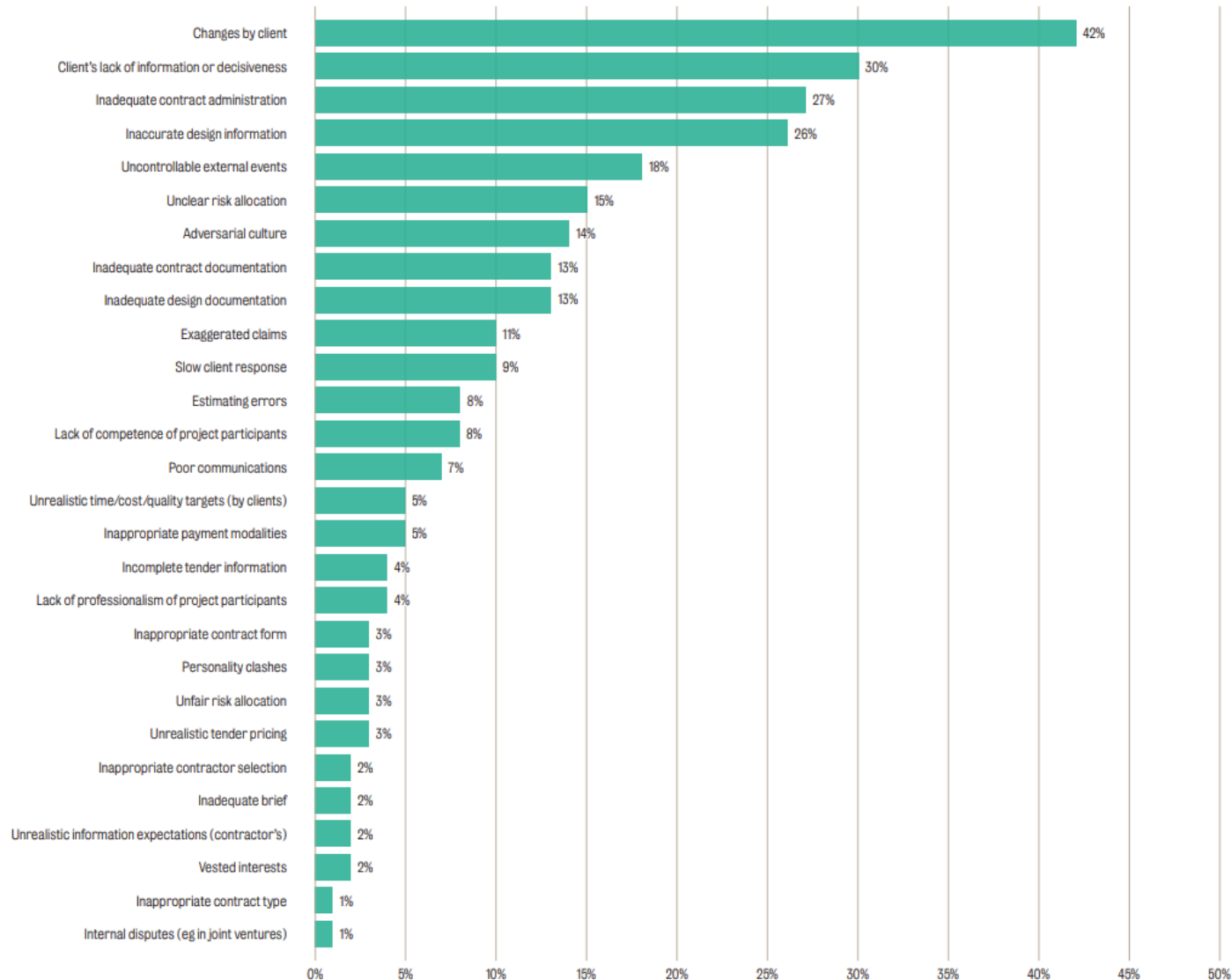
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Cause of disputes

Figure 40: Most frequent cause of disputes (Individuals' responses)

Based on 131 responses received. Respondents were able to select up to three options



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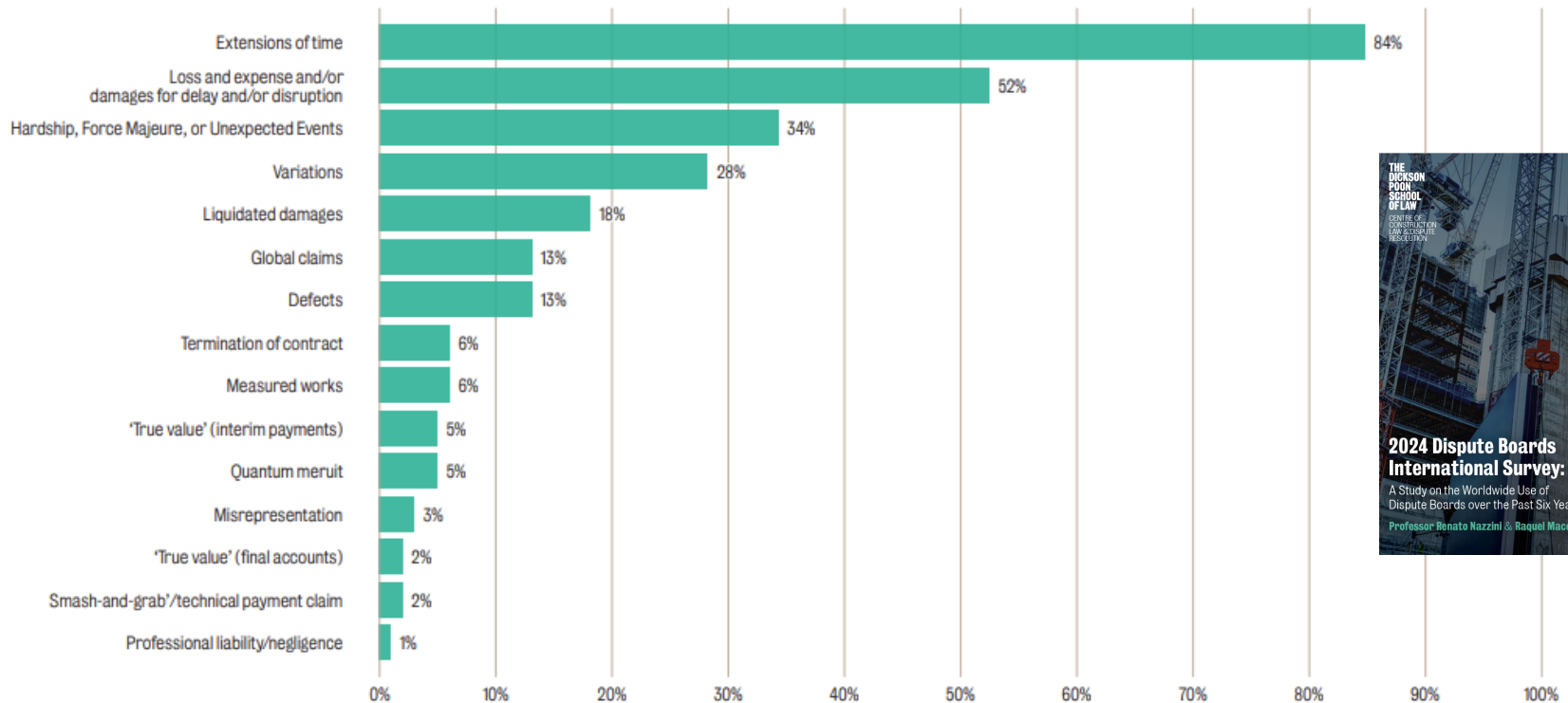
Category of claims

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Figure 42: Most frequent category of claims (Individuals' responses)

Based on 123 responses received. Respondents were able to select up to three options



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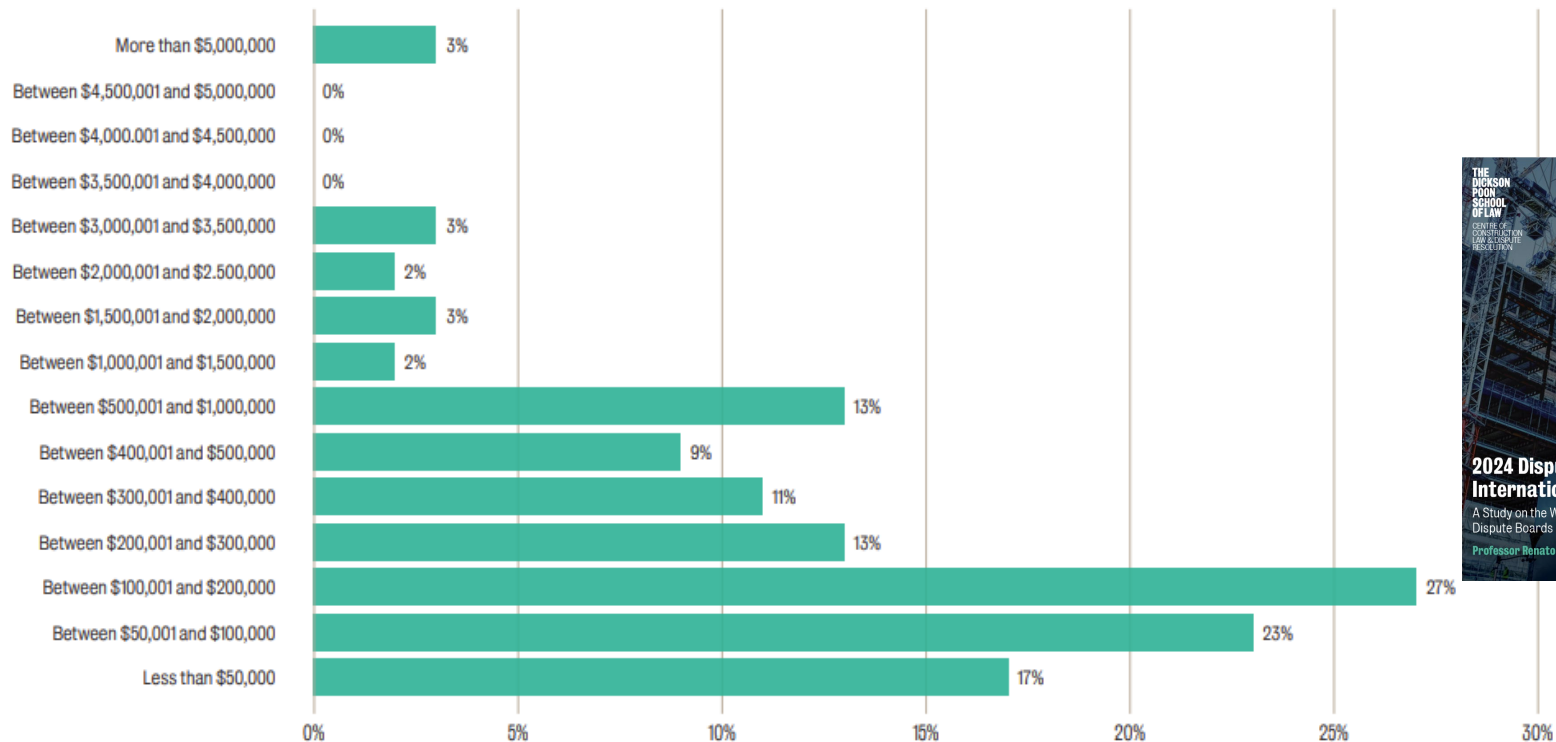
Costs

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Figure 88: Average total costs (Individuals' responses)

Based on 115 responses received. Respondents were able to select more than one option if applicable



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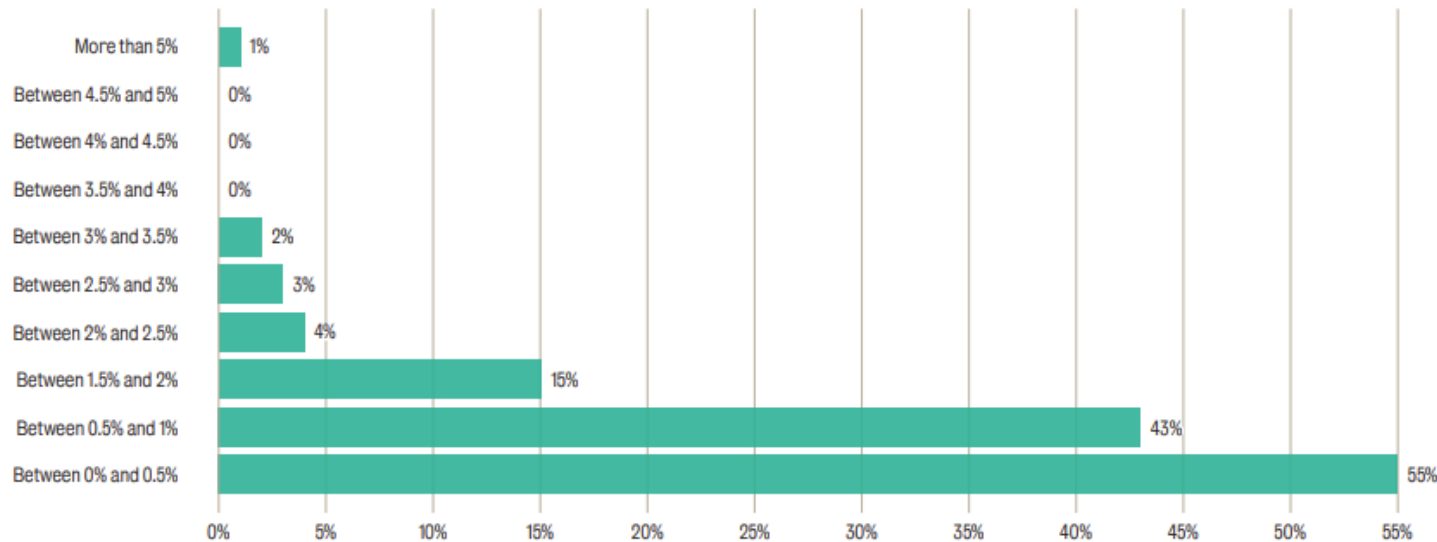
Costs

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Figure 90: Dispute Board costs as a percentage of the total value of the Project (Individuals' responses)

Based on 117 responses received. Respondents were able to select more than one option if applicable



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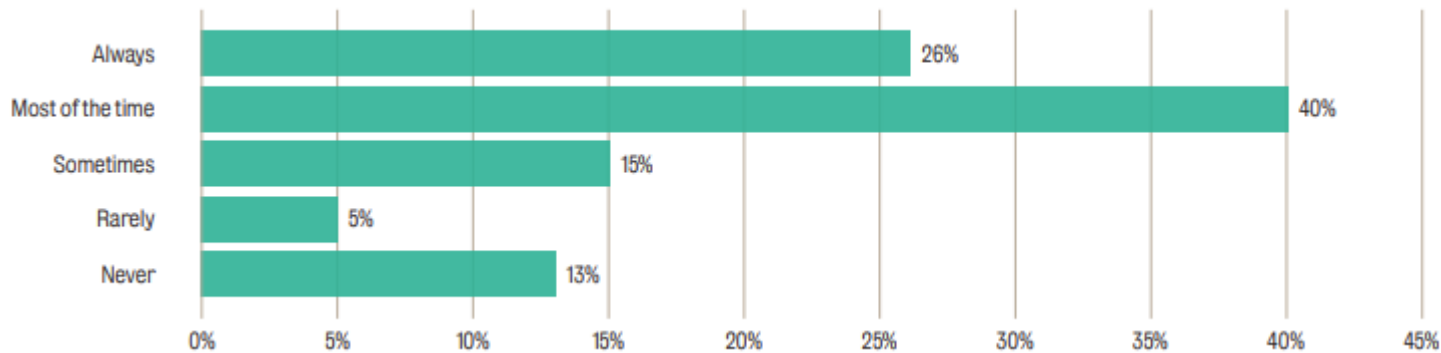
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Effectiveness in dispute resolution

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Figure 60: How often did parties comply with non-binding recommendations of Dispute Boards? (Individuals' responses)
Based on 117 responses received



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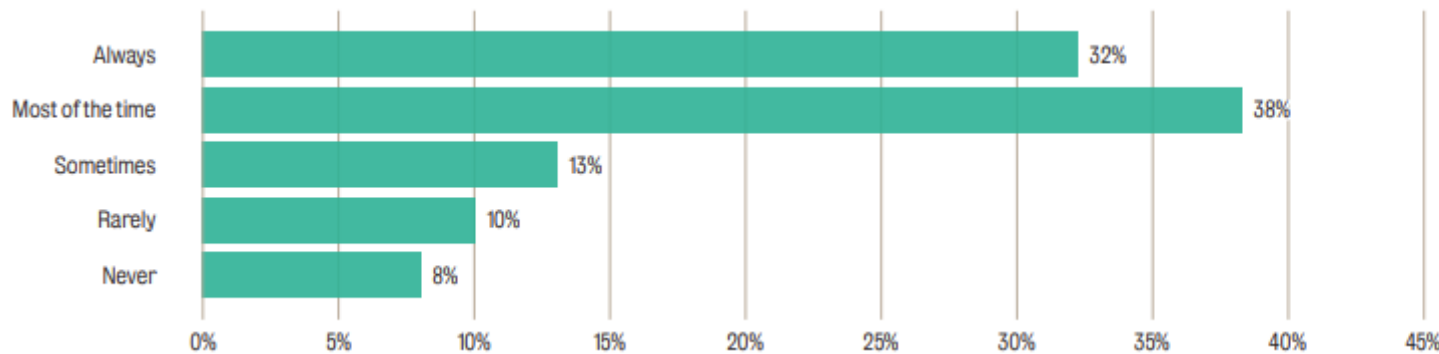
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Figure 62: How often did parties voluntarily comply with binding decisions of Dispute Boards? (Individuals' responses)
Based on 120 responses received



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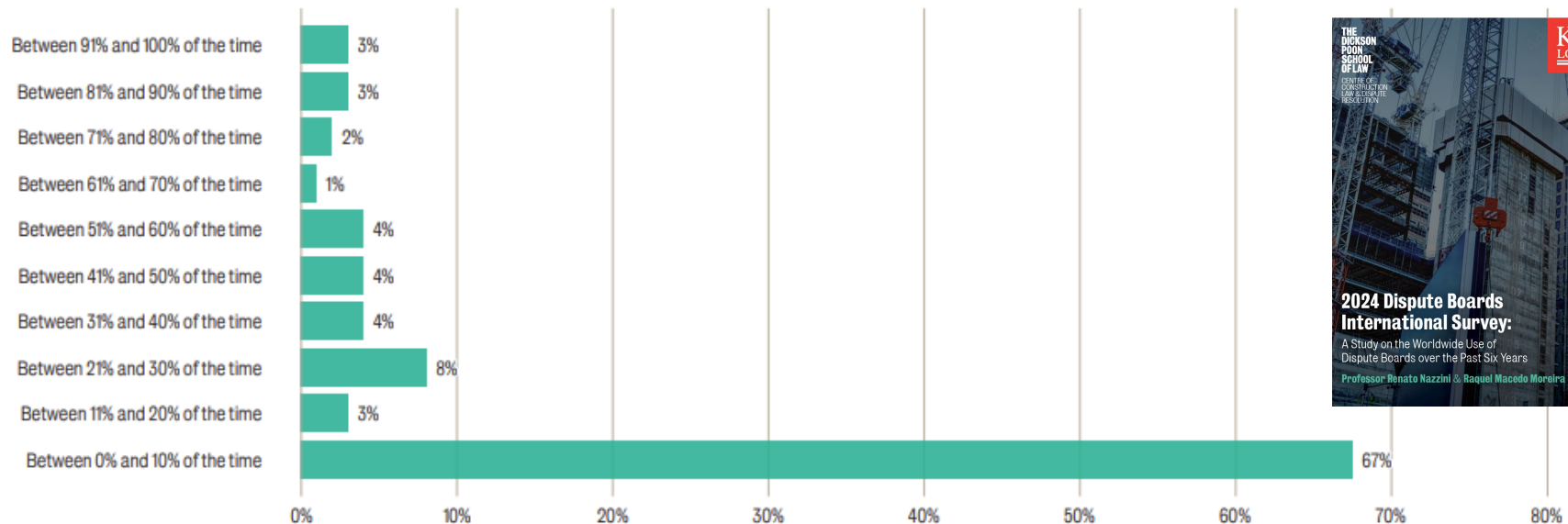
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Figure 68: How often was the Dispute Board's decision referred to subsequent litigation or arbitration? (Individuals' responses)
Based on 121 responses received



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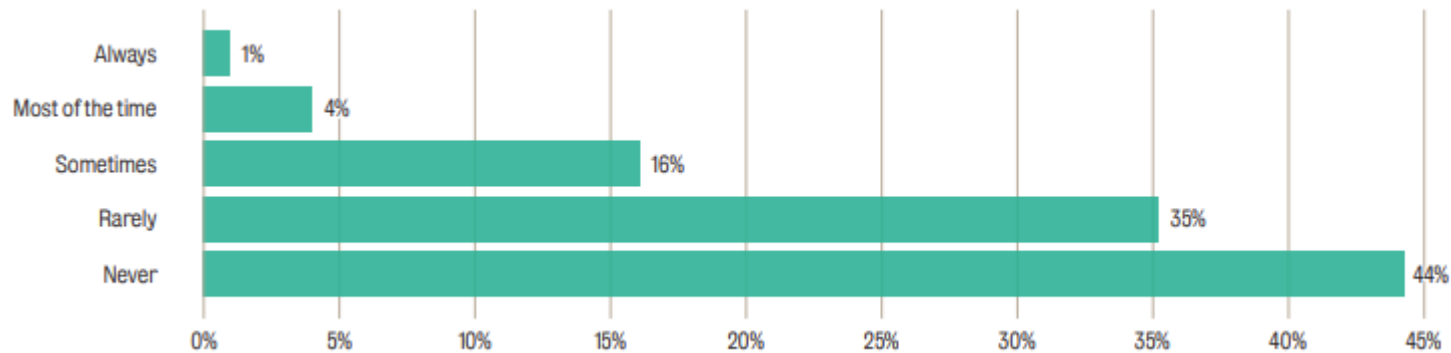
Effectiveness in dispute resolution

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Figure 70: How often was the Dispute Board's decision substantially different from the decision reached in the subsequent litigation or arbitration?
(Individuals' responses)

Based on 108 responses received



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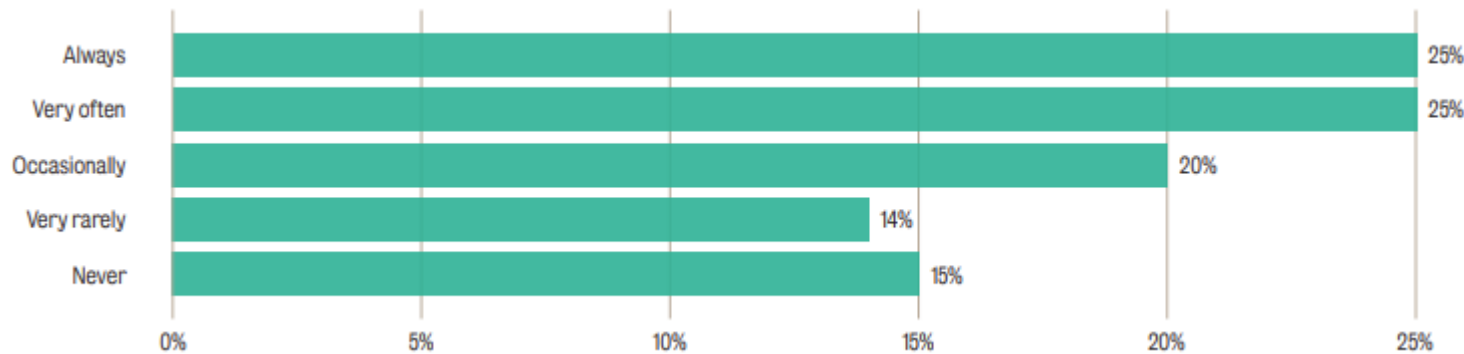
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Figure 52: How often were dispute avoidance measures adopted? (Individuals' responses)

Based on 132 responses received



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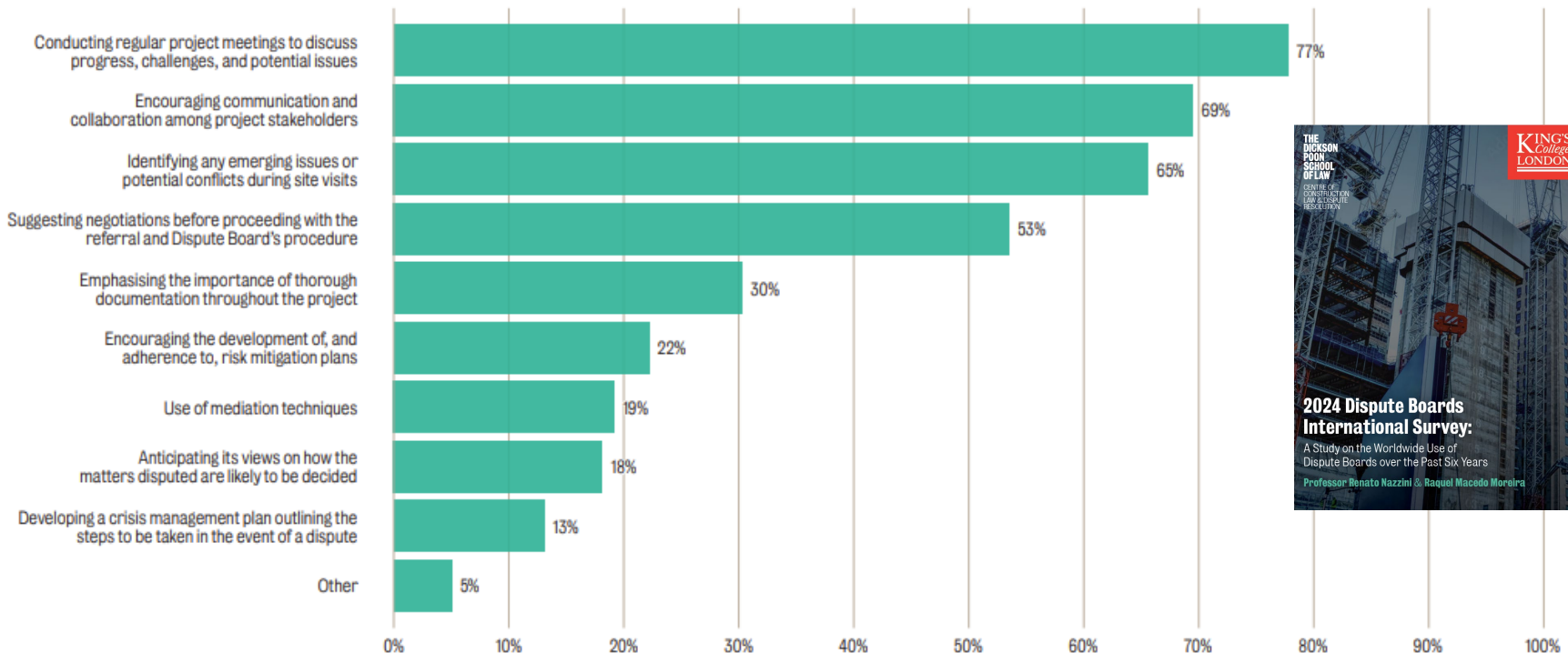
Effectiveness in dispute avoidance

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Figure 54: Commonly adopted dispute avoidance measure (Individuals' responses)

Based on 111 responses received. Respondents were able to select more than one option if applicable



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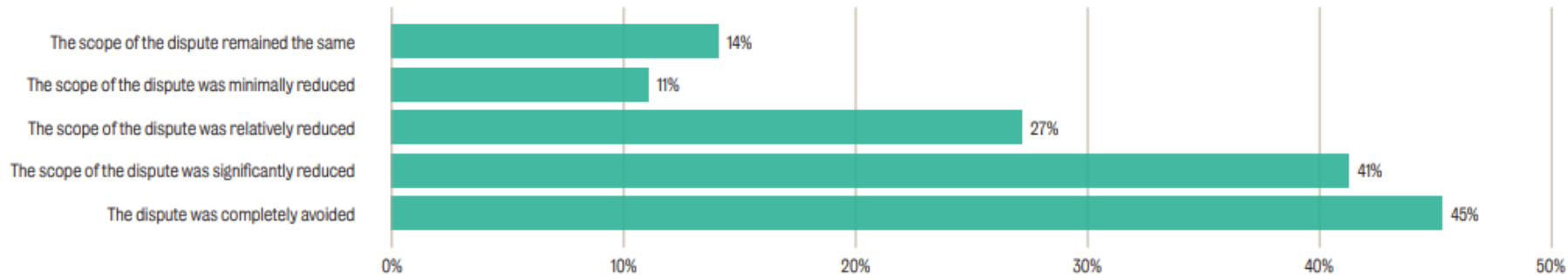
Effectiveness in dispute avoidance

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Figure 56: Result after the implementation of dispute avoidance measures (Individuals' responses)

Based on 111 responses received. Respondents were able to select up to two options



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2024 Construction Adjudication in the UK



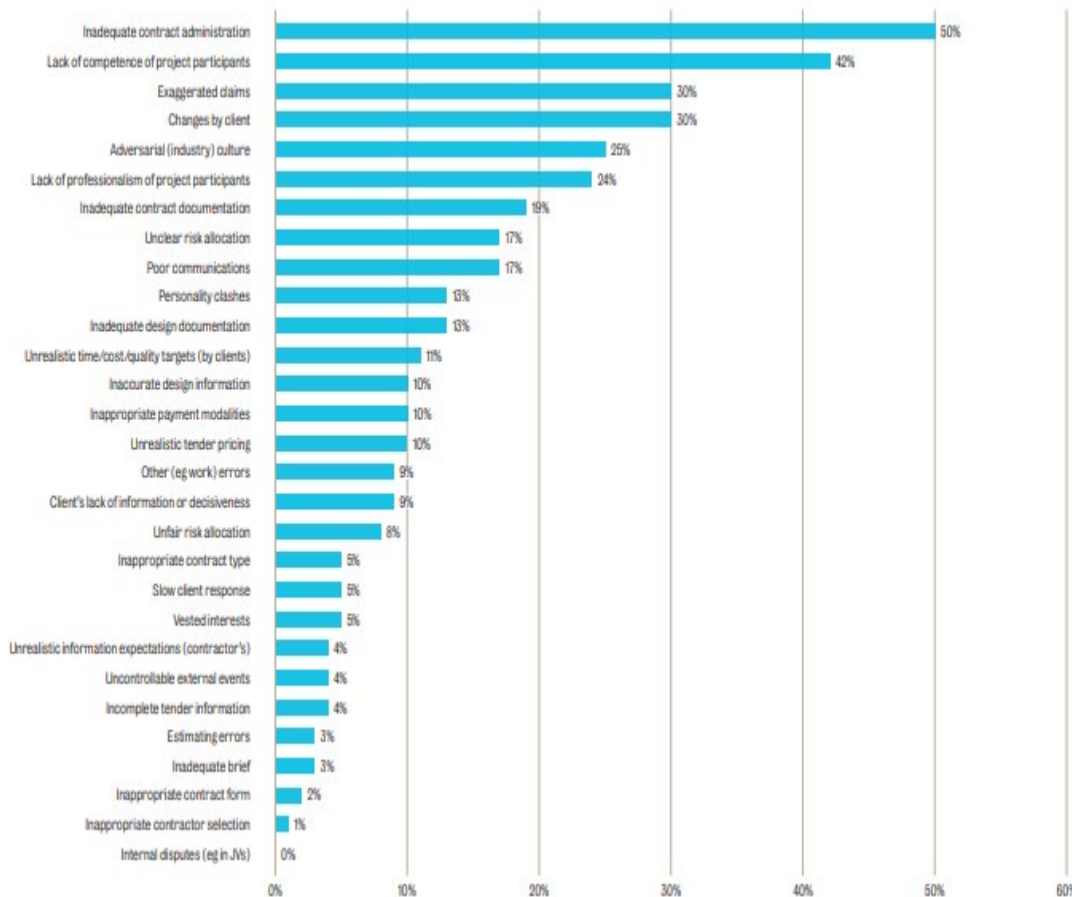
Where did the data come from?

- Third annual report by King's College
 - Builds on historic reports commissioned by the Adjudication Society
- Two questionnaires:
 1. Questionnaire addressed to Adjudicator Nominating Bodies (“**ANBs**”)
 - 10 ANBs replied
 - Eg CIArb, CIC, ICE, RIBA, RICS, TeCSA and UK Adjudicators
 - Number of referrals to ANBs increased 9% compared with 2023
 2. Questionnaire addressed to individuals involved in UK statutory adjudication
 - 166 individuals replied

Leading causes of disputes

Figure 16: Leading causes of disputes in construction adjudication in the past year

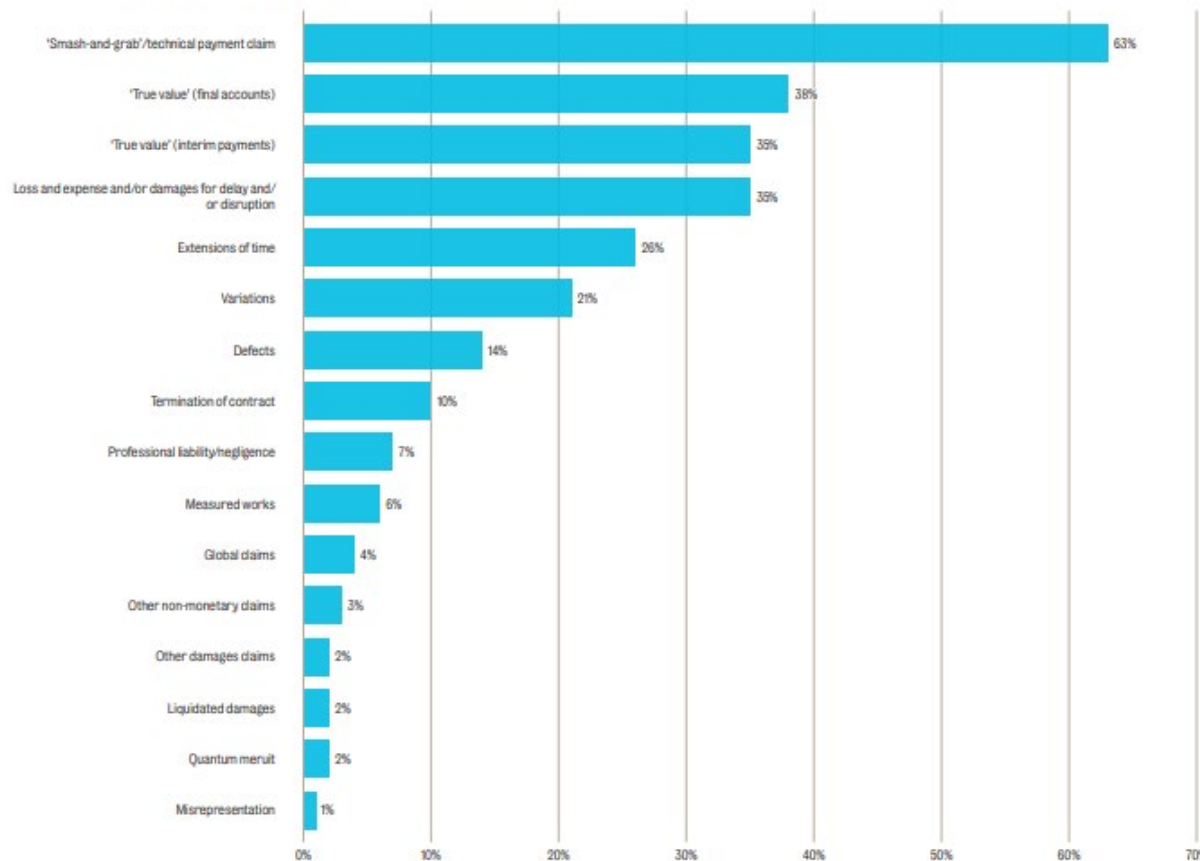
Based on 165 received responses. Respondents were able to select multiple options



- 22% had experienced other causes of disputes in the last year:
 - Disputes re formation and interpretation of contract
 - Delays to work and EOTs
 - Negligence and lack of quality inspection
 - Commercial practise of project participants
- Noted 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*”

Common categories of claims

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



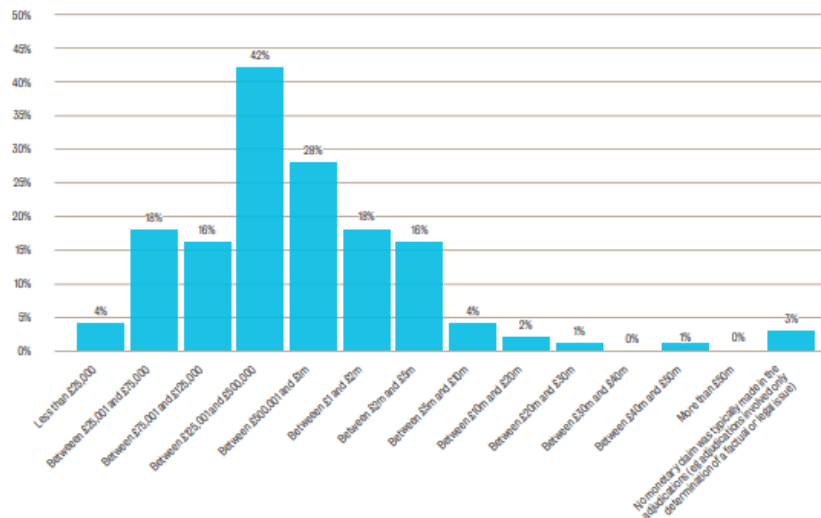
- Technical payment disputes by far the most frequent category
- True value disputes much higher up the list than for Dispute Boards
- EOTs / L&E lower down the list but also a component in final account disputes

Value of Claims?

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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

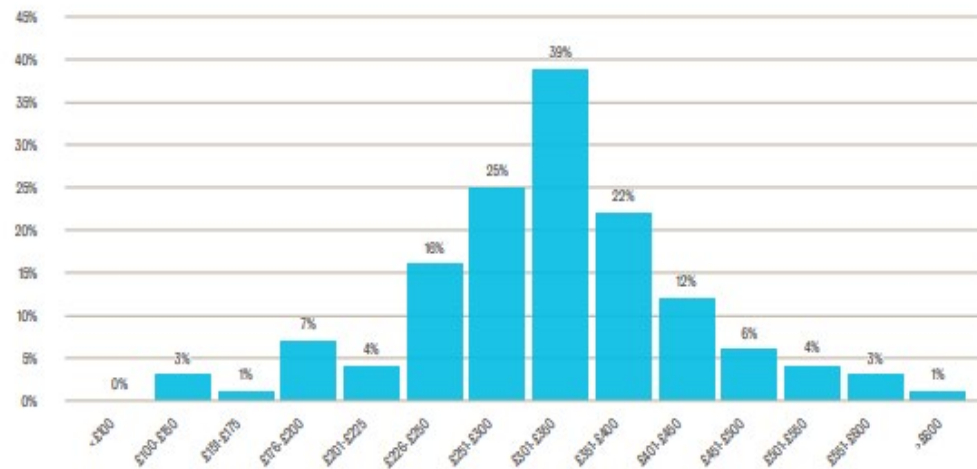


- Most common value between £125,001 and £500,000
- 1% between £40m and £50m
- Drop in claims worth £5 million and above compared to the previous year's report

Costs – Typical hourly fees

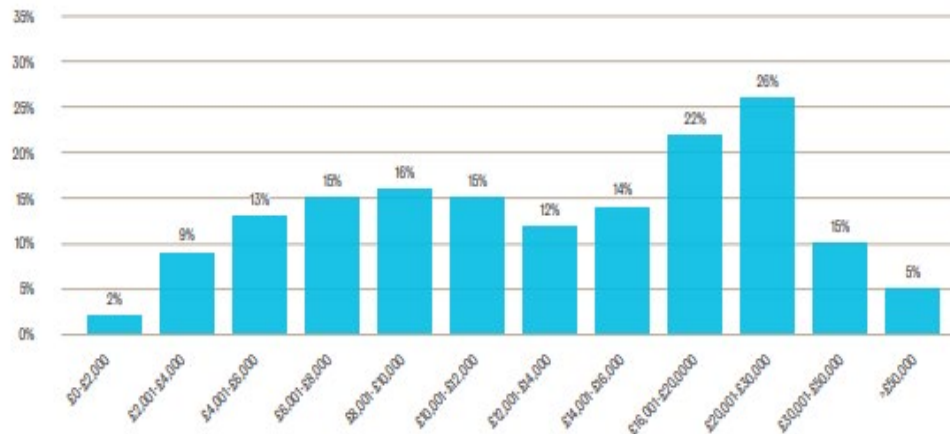
Figure 21: Typical hourly fees of adjudicators in the past year

Based on 158 received responses. Respondents were able to select multiple options



Costs – Adjudicator Fees

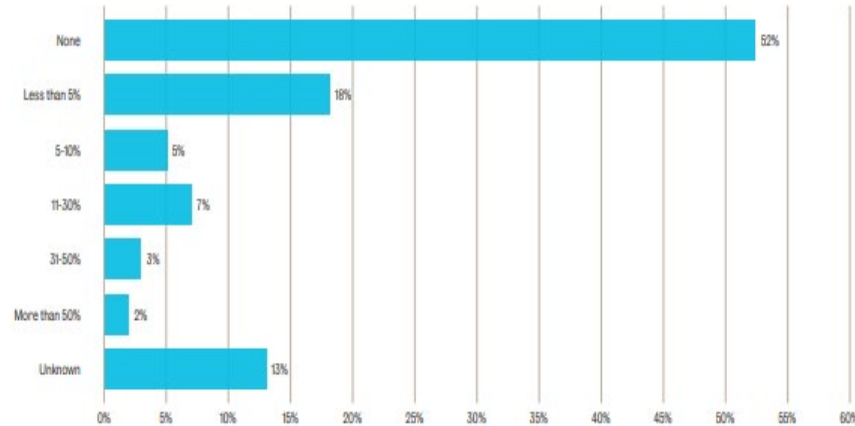
Figure 22: Most frequent total fees charged by adjudicators in the past year
Based on 155 received responses. Respondents were able to select multiple options



- Excludes legal and expert costs
- Costs of each party irrecoverable under the Housing Grants Act

What happens next? (1)

Figure 23: Percentage of adjudicated disputes that were referred to litigation or arbitration in the past year
Based on 164 received responses



- High levels of compliance with Adjudicator's decision
- 18% said that less than 5% of cases referred to litigation or arbitration

What happens next? (2)

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

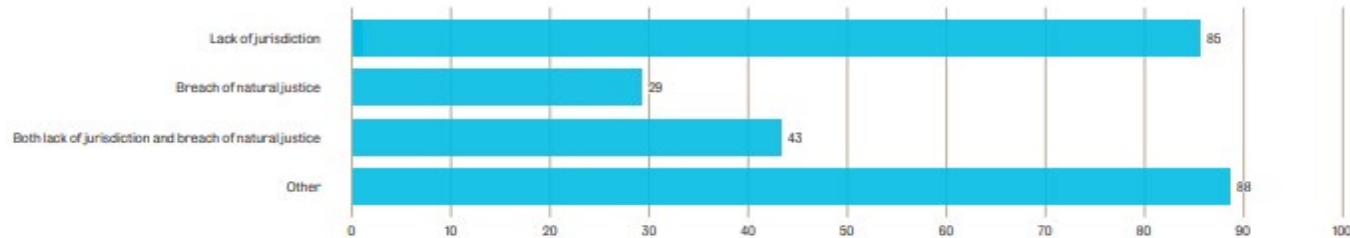


Figure 25: Successful grounds for refusing enforcement of adjudicators' decisions in TCC Part 7 claims since 1 October 2011
Based on 50 analysed cases including partially enforced claims

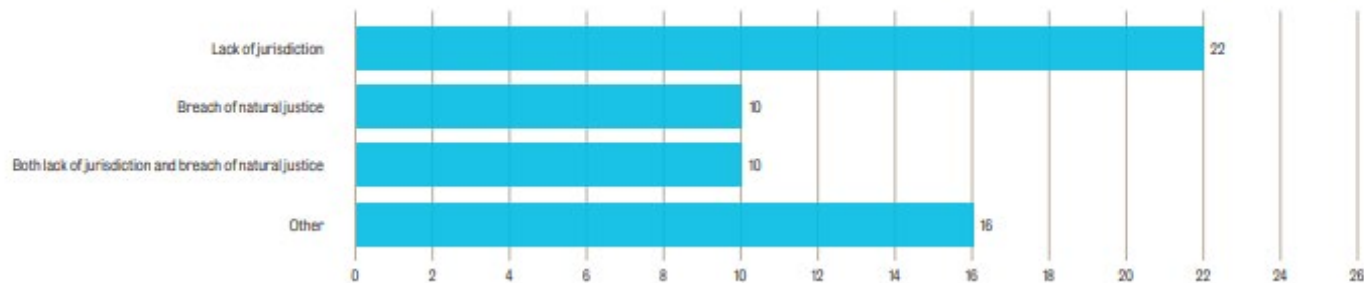
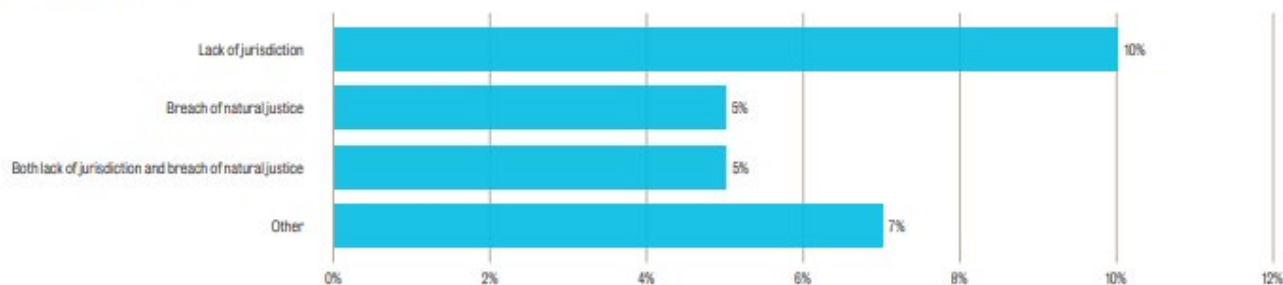


Figure 26: Success rate of grounds for refusing enforcement of adjudicators' decisions in TCC Part 7 claims since 1 October 2011
Based on 219 analysed cases



Satisfaction?

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
CI Arb	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

Diversity?

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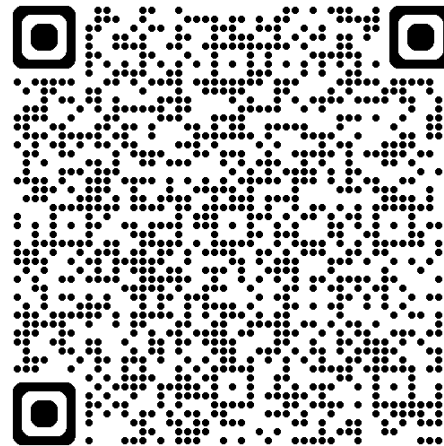
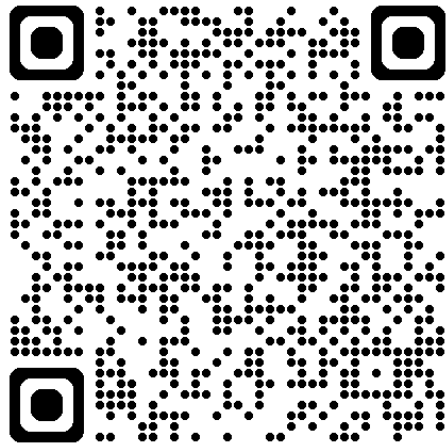
- More ANBs keeping track of diversity on their panels
- 7 out of 10 signed The Equal Representation in Adjudication Pledge
- Women only up to 8.9% of adjudicators for ANBs which keep records
- TECBAR had highest percentage – 20% women on their panel
- More work to do!



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The Two Reports

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Thank you. Questions?

Claire King, Fenwick Elliott
Raquel Macedo Moreira, King's College London
Jeremy Glover, Fenwick Elliott

