



RIAS

The Royal Incorporation
of Architects in Scotland

Client Advisory Guide on

Dispute Resolution

Sometimes in construction contracts disputes unfortunately happen. The RIAS offers guidance on dispute resolution services for those involved.

The following notes give advice on how best to proceed.

Establishing Membership and Registration

The Royal Incorporation of Architects in Scotland (RIAS) can only advise on matters concerning its members. The Architects Act 1997 requires any person who practises architecture using the title 'architect' in the UK to be registered at the **Architects Registration Board (ARB)** and this applies to all RIAS Members. In addition members are entitled to use the following initials - **RIAS**, **FRIAS** or **RIBA**, (the RIAS represents the Royal Institute of British Architects in Scotland) and to describe themselves as a "Chartered Architect". Registered architects have completed at least seven years academic and practical training and are highly skilled and qualified professionals.

The title "Architect" is protected by statute, and only those on the Register can use this title. However there is no protection of function, and anyone, whether qualified or not, can attempt to carry out designs and drawings for construction work.

The RIAS can check member details for you. If there is any doubt about the status of your architect first of all confirm that he/she is in fact a member. You can check the Architects' Register, by contacting the Architects Registration Board (ARB), 8 Weymouth Street, London, Tel. 0207 580 5861. They have a useful website which also has guidance on their complaints procedure, at www.arb.org.uk.

Dispute Resolution

Most architect's appointment documents contain dispute resolution clauses, which can offer alternatives to court action. These include:

- Mediation/conciliation,
- Adjudication,
- Arbitration.

Mediation

The parties have to agree to appoint (and pay) a mediator who assists the parties to reach their own settlement. This is a voluntary process, from which either party can withdraw. It is conducted on a “without prejudice” basis, with the mediator facilitating and guiding the process: no settlement can be imposed without agreement between the parties. It can be a cost effective alternative to punitive court proceedings.

The RIAS holds a list of mediators and can give some advice on how to proceed. However it is up to the parties to make contact with a mediator on the list and agree terms.

Adjudication

Construction contracts now include a statutory right to adjudication, and all parties have the right to call up an adjudication in non-domestic circumstances. This route cannot be imposed on a domestic customer, unless a contract has been signed which specifically includes adjudication clauses. However, the parties can jointly appoint an adjudicator should they be able to agree to do so. An adjudication can be settled relatively quickly (decisions can be made within 28 days) so that it can be a cost effective solution.

Adjudicators’ decisions can be enforced through the courts, if the losing party refuses to abide by the decision. It is seen as a form of “rough justice” to avoid delay on construction projects. An advice booklet “A Users’ Guide to Adjudication” can be viewed at the Construction Industry Council website at www.cic.org.uk.

The RIAS is an Adjudicator Nominating Body, and can advise on the process. A charge is made for nominations

Arbitration

This is a quasi legal process which can be used as an alternative to court action. The parties appoint (and pay) the arbitrator, who can impose a decision which can be enforced, if necessary, through the courts. Legal advice should be sought prior to going to arbitration.

Expert Witness/Technical Report

Sometimes it is necessary to establish the facts of a situation by commissioning an independent report from a third party. This might be undertaken as a preliminary to court action, or for re-assurance that what has been done conforms to normal practice. For example, a technical report might be commissioned to look into the causes of a building defect; or it might look at the fees charged in relation to the amount of work undertaken. Commissioning a report can be costly, and would normally be undertaken following legal advice.

Once a dispute has gone to court it may be necessary for an expert witness to be called, to give an unbiased professional opinion as part of the proceedings. When commissioning an independent report it is useful to ask the same person whether they are also willing to speak in court as an expert witness. The RIAS can assist with a list of suitable names but takes no part in individual appointments.

Dispute Resolution or making a complaint?

It is important to note the difference between pursuing resolution and making a complaint. Dispute resolution is intended to find a solution to a problem. The outcome sought is the resumption of a professional relationship where communication has broken down. Such an outcome will not be achieved through the disciplinary investigation of a complaint.

The purpose of a disciplinary procedure is to determine whether or not a professional person has breached his/her code of conduct. If ultimately the investigation into a complaint concludes that the architect is guilty of professional misconduct or incompetence, he or she can be sanctioned. Serious complaints should be addressed to the Architects Registration Board. We can discuss your problem and advise on whether approaching the ARB is the appropriate course of action. Even if you have been obliged to take on legal proceedings, or have sorted the problem out, this route is still open to you if you feel, at the end of that process, further action is required. Complaints to the ARB should be made within a maximum of 5 years, to avoid contravention of the Human Rights Act.

Making a Complaint

Undertaking a building project can be a challenging experience and there are occasions when problems arise, or a satisfactory outcome is not achieved.

The RIAS' role in dealing with consumer complaints is limited to providing advice about what can be done. The architectural profession is regulated by the ARB, who deal with matters of "unacceptable professional conduct" and "serious professional incompetence". They undertake investigations as they think appropriate and if justified will reprimand, fine or even strike the architect off the Register. However, they will not award damages. Most client problems and disputes do not fall into these categories, and in these cases the RIAS can give some assistance or guidance on dispute resolution.

Under the ARB Code of Conduct architects are obliged to have a procedure in place for dealing with complaints.

Making a Complaint **CONTINUED**

Initial Steps

Before making a complaint, there are a number of useful steps you can take to clarify your position

1. Reading our leaflet *Why use a Chartered Architect?* available to download from the Client Advisory section of the RIAS website. may assist you in understanding the roles and responsibilities of your architect, and your own position as a client.
2. Check your appointment document, and any conditions of appointment attached. There may be procedures set out in these documents, which will assist with a way forward.
3. Write down your concerns, and set up a formal meeting to go through with your architect, the points you wish to resolve. This gives both parties a clear record of your concerns. Keep a record of what was said and agreed.

Seeking advice from RIAS

You may wish to talk through your concerns with senior RIAS staff before approaching your architect. We are happy to discuss problems and offer assistance and initial advice. However, if you have already involved legal agents we will be unable to advise further. If you wish to register a formal complaint it should be addressed directly to the Architects Registration Board, which is the disciplinary body for all architects.

Obtaining an explanation

The client has the right to have a reasonable explanation of the processes of design, approvals and construction, and the responsibilities of the parties concerned. In our experience many of the complaints and difficulties that come to the attention of the RIAS arise through a lack of communication or explanation by architects of their roles and responsibilities.

We recommend that you make a list of your concerns, and set up a formal meeting with your architect to discuss your difficulties. Sometimes it may be easier to write a letter, and ask for a full explanation. This gives everyone the chance to clarify the problem, consider options, and agree to what might be done. It is important to keep a record of what was said and agreed, so that if difficulties remain unresolved, the parties have a written record as a basis for more formal dispute resolution mechanisms.

Seeking compensation

Negotiating a settlement with your architect and/or contractor is always the least costly route, particularly where relatively small sums of money are in dispute. The alternative of taking the legal route requires proof of negligence, is expensive and slow, and has an uncertain outcome. All architects carry professional indemnity insurance to protect themselves and their clients from proven negligence, but the process is complex and

Making a Complaint CONTINUED

costly, and legal advice should be taken before embarking on this route.

Please note that the Incorporation does not have a compensation fund and has no authority (i.e. statutory powers) to award damages or order members to refund fees, pay compensation or undertake remedial work.

A negotiated settlement

In almost all cases of complaint or difficulty we would advise that the matter is dealt with by negotiation with your architect. Resorting to the law, obtaining a second opinion, or bringing in a third party to arbitrate or mediate will inevitably add costs. The most important thing to keep in mind is the need to achieve a successful project. Disputes that delay progress, particularly when your project is under construction, can be counterproductive. If you lose faith in the architect or the contractor this can have a very negative effect on your project. It is therefore essential to bring your concerns to the attention of the parties involved, so that they can be speedily dealt with.

Conclusion

The basis of any professional relationship is one of trust. The undertaking of building works, however small – can be difficult, time consuming, and not infrequently stressful. For many people, it represents one of the largest single investments of capital they may make in their lives. Every project is unique, and unforeseen problems can arise, particularly during the construction phase. It is essential for Clients to trust their architects to give the best professional advice throughout the process. It is also important that free, open and informative communication is maintained on both sides. The Client's understanding of their responsibilities under a building contract is also paramount in assisting good progress of the work.

To achieve a successful building project at the right price, of good quality, and in a reasonable time, it is essential that problems and disputes are resolved as speedily as possible.



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