

RIBA



Royal Institute
of British Architects

Taking Action

**Dispute resolution, legal action and claims
for negligence**

August 2007

Taking Action

Part 3: Dispute Resolution, taking legal action and claims for negligence

Introduction

If you believe an architect has fallen short of expected high standards of professionalism such that you have suffered a loss or damage, this section provides information on the different forms of dispute resolution available, seeking recompense through legal action and claims of negligence.

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1. Establishing RIBA Membership and Registration

- i. If you have a problem or dispute with someone you believe is an RIBA chartered architect, first of all confirm that he or she is, in fact, a member. Members are listed in the on-line RIBA **Members Directory** <http://members.riba.org/memdir/> or you can phone the Membership Department on 020 7307 3800 to check. A fully qualified RIBA member (see below) is entitled to call him or herself a '**Chartered Architect**' www.riba.org/go/RIBA/Member/Joining_29.html and use the '**RIBA**' affix [www.riba.org/fileLibrary/pdf/P1_Advertising_\(GN3\).pdf](http://www.riba.org/fileLibrary/pdf/P1_Advertising_(GN3).pdf)
- ii. You can check whether the person is registered at the Architects Registration Board by searching the **ARB Register** on-line at <http://search.arb.org.uk/> or phone the ARB on 020 7580 5861 to establish whether the architect is currently registered.

2. What to do first

- i. If, unfortunately, things start to go wrong it is always best to try to talk to your architect before considering taking matters any further.
Be prepared for your conversation:
 - check your **appointment agreement** (i.e. the terms of engagement with the architect) which you should have agreed together at the outset. These should have been set out in writing by the architect (see **Section 7** below)
 - Remind yourself of the specific services he or she (or the practice) was contracted to provide, plus any particular requirements that were part of your agreed brief (such as the project budget or timetable)
 - Identify where you believe the requirements of your agreement have not been met.
- ii. However, if communications have broken down already, and/or you do not want to have such a discussion without some kind of assistance, the **RIBA mediation service** (see **Section 3** below) will be able to nominate a third party mediator.
- iii. Read these notes carefully before deciding on a course of action, and in particular, see if there is an explanation in Part 2 which is useful to you.

3. Seeking a resolution

- i. The most common cause of complaint from clients is a misunderstanding about, or dissatisfaction with, their architect's services. If this is the reason for your complaint, and your main priority is to sort out the problem, then the Institute may be able to help you through one of our **dispute resolution services** (mediation, adjudication and arbitration – collectively known as 'ADR'- alternative dispute resolution)
www.riba.org/go/RIBA/Member/Practice_326.html?q=dispute%20resolution

Mediation

- ii. This is an informal procedure aimed at resolving difficulties which have arisen between an architect and client. It is particularly suitable when the relationship has broken down and communication has become a problem. The mediator can act as the intermediary to try to re-establish good working relations. The mediator will assist in negotiations between both parties, either with everyone present, or separately, to try to reach a solution. Mediation does not of itself impose a resolution. The settlement eventually reached will only become binding with the consent of all the parties. The RIBA can nominate a mediator for you from our list of approved mediators.

- ii. For information on fees and contact details, see the table at the end of these notes and visit the mediation web-site at www.riba.org/go/RIBA/Member/Practice_4854.html.

Adjudication

- iv. This is a method of resolving contractual disputes. The scope for statutory adjudication was set out in the Housing Grants, Regeneration and Construction Act 1996 www.opsi.gov.uk/acts/acts1996/1996053.htm. The Act provides a statutory right to adjudication in most building contracts (except contracts with a residential occupier), and contracts for architect's services. It is intended to be more cost-effective and faster than either arbitration or litigation. It is most frequently used to ensure payment, but any other type of dispute about the contract can also be adjudicated.

- v. The adjudicator's decision is generally made within 28 days of referral and is enforceable in the courts. Unless the parties agree to be bound by the decision, it is temporarily binding until finally resolved by Arbitration or Litigation.

- vi. Where the right to adjudication is supplied by the Act and the contract does not name an adjudicator or an adjudicator-appointing body other than the RIBA, then either party may apply to the Institute for nominations.

- vii. Where statutory adjudication is not applicable, many standard contract forms provide schemes for voluntary adjudication generally modelled on the statutory scheme.

The RIBA List of Adjudicators

- viii. The List **The RIBA List of Adjudicators** is composed of architects, engineers, quantity surveyors and lawyers who are all suitably qualified, trained and experienced, and required to undertake specialist CPD annually. They have all taken a written test, and additionally may also have been interviewed, to ensure they are properly qualified and skilled for inclusion.

- ix. For information on fees and contact details, see the table at the end. and visit the adjudication web-site at www.adjudication.co.uk/faq.htm

Arbitration

- x. Many building contracts and contracts for architects' services contain a provision for disputes to be resolved by arbitration. Frequently, the President of the RIBA is specified in the contract as the appointor of the arbitrator.

- xii. If there is no such a provision in your contract, you may nevertheless still agree with the other party to resolve your dispute through arbitration, and further agree to make a joint request to the President of the RIBA to make the appointment.

The President's List of Arbitrators

- xiii. The List comprises those whom the President has chosen on the recommendation of the President's Advisory Committee on Dispute Resolution. The Committee will have satisfied itself that every person it recommends is capable of fulfilling the duties of an arbitrator, with sufficient legal understanding and practical expertise to deal with the types of dispute for which appointments will be requested.
- xiiii. The List is composed of architects, engineers and quantity surveyors. Of these, some are additionally qualified as solicitors or barristers.
- xiv. For information on fees and contact details, see the table at the end. and visit the arbitration web-site at www.riba.org/go/RIBA/Member/Practice_4865.htm

4. Seeking legal advice and taking legal action

- i. Before embarking on any legal proceeding (including the options outlined above), it is wise to seek advice from a construction lawyer and/or an expert. A specialist solicitor or another architect will be able to advise you about the best course of action for your particular dispute and the likely costs and risks involved in pursuing it. Make sure that the solicitor you engage is proficient in construction law and contracts. The Law Society www.lawsociety.org.uk/choosingandusing.law, tel. 0870 606 6575, can help you find an appropriately-qualified solicitor in your locality. The RIBA's Client Services www.architecture.com/go/Architecture/Using/Finding_291.html (tel. 0207 307 3700) will be able to provide you with names of architects who act as experts. Pursuing litigation to resolve conflicts over design and workmanship requires skill and knowledge, so be cautious about appointing a solicitor with no experience in this area.
- ii. Taking legal action is a serious, and potentially expensive step to take, so do not pursue it lightly. But if you are confident you have sufficient evidence to demonstrate that the architect has breached the terms of his or her contract, reparation (i.e. an order to undertake remedial action or pay damages) may be pursued through litigation.
- iii. If the sum of money you wish to dispute or recover through legal action **is less than £5,000**, your claim can be pursued in the **Small Claims Court** www.hmcourts-service.gov.uk/infoabout/claims/index.htm. So, while litigation in a higher court (such as a county court or the Royal Courts of Justice) can be extremely costly, using the Small Claims Court is intended to be as inexpensive as possible. **However, whenever legal action is taken you must be prepared to risk losing, in which case costs could be awarded against you.**
- iv. While architects are expected to set out their terms and conditions of engagement in writing (see [Part 2](#)), if you do not have a written contract you may still have grounds to take the matter to court – seek legal advice to see if you have a case. Courts can recognise a 'verbal agreement' or 'contract by conduct' in the absence of a written contract.

- v. In certain circumstances, you may qualify for Legal Aid www.clsdirect.org.uk/legalhelp/calculator.jsp?lang=en.

5. Insurance Claims

- i. The Institute expects all its practising members to be covered by appropriate insurance against claims relating to professional negligence. (The Architects Registration Board specifies a mandatory minimum level of £250,000 Professional Indemnity Insurance (PII) cover www.arb.org.uk/regulation/pii-guidelines.shtml.)
- ii. The RIBA does *not* specify either the type of cover or a minimum level because we recognise that different types of insurance are applicable to different circumstances and potential liabilities. But the Institute *does* specify that all Chartered Practices must have adequate PII protection. We will have declarations from the principals of Chartered Practices that PII is held, but we do not have copies of members' policy documents. Please note that a client/claimant is *not* entitled to know the identity of an architect's insurer, nor see a copy of the insurance certificate. There are no particular reasons why an architect may wish to withhold this information but he or she is under no obligation to provide it.
- iii. Please note that if you do acquire the contact details of the architect's insurers, they are unlikely to respond to unsolicited correspondence before they receive formal notification of the claim from the architect (see point v. below).
- iv. To succeed in a financial claim against the architect, you must prove breach of contract or negligence, and loss. Where technical or professional negligence is alleged it is normally necessary to support your case with, for example, the opinion evidence of an expert. The RIBA holds a list of suitably qualified experts and RIBA Client Services www.architecture.com/go/Architecture/Using/Finding_291.html (tel. 0207 307 3700) will be able to provide you with names in your region.
- v. If you are able to show adequate proof, and you wish to make a claim for costs/compensation arising from an architect's negligence you should write directly to the practice. All PII policies require the architect to 'notify' potential claims to the insurer. So from the point of notification you should expect to be in correspondence with the insurer regarding matters related to the claim – usually via a broker or appointed claims handler (who may be a solicitor).
- vi. If you are going to make a substantial claim against an architect's insurance policy and are prepared for the insurers to defend it rigorously, also be prepared to wait months for it to be settled. Furthermore, you must accept the risk that you could lose with costs awarded against you.
- vii. NB. Data collected from actual claims over a number of years shows that the split between damages and costs is about 40% damages, 60% costs.

6. Dispute Resolution - table of information, contacts and costs

TYPE OF ACTION	APPLICABLE TO :	ASSOCIATED COSTS	TAKE NOTE...
1. LITIGATION	<p>Any contractual or fee dispute.</p> <p>Your solicitor will advise whether you have grounds for litigation on any other matter.</p> <p>Contact: Law Society www.lawsociety.org.uk/choosingandusing.law Tel. 0870 606 6575</p>	<p>Your solicitor will advise you on the costs involved.</p> <p><u>Legal Aid</u> may be available in some instances. Use the Community Legal Service [www.clsdirect.org.uk/legalhelp/calculator.jsp?lang=en] web-site to find out if you qualify. Alternatively, the solicitor may work on a ‘no win, no fee’ basis.</p>	<p>Either party may be awarded damages and/or costs. Costs may be apportioned.</p> <p>The losing party could be required to pay both parties’ costs.</p>
2. ARBITRATION	<p>Parties to an arbitration agreement where there is provision for the RIBA President (or a Vice-President) to nominate an arbitrator.</p>	<p>Administration fee on application for an appointment, £250 + VAT (as at August 2007).</p>	<p>Either party may be awarded damages and/or costs. Costs may be apportioned.</p> <p>Arbitration is a private process with considerable party autonomy. An arbitrator’s Award is final, binding and enforceable.</p>

TYPE OF ACTION	APPLICABLE TO :	ASSOCIATED COSTS	TAKE NOTE...
ARBITRATION CONT'D	<p>Contact: RIBA www.riba.org/go/RIBA/Member/Practi ce_4865.html?q=arbitration Tel. 020 7307 3649, Fax. 020 7307 3793, E-mail: adjudication@inst.riba.org</p> <p>or the Chartered Institute of Arbitrators: http://www.arbitrators.org/ Tel. 020 7421 7444</p>	<p>Arbitration costs, including arbitrator's fee.</p> <p>Certain costs are potentially recoverable, if successful.</p>	
3. ADJUDICATION	<p>Parties to a contract in which there is provision for the RIBA, or the RIBA President (or a Vice-President) to appoint an adjudicator.</p> <p>Contact: RIBA www.riba.org/go/RIBA/Member/Practi ce_4855.html?q=Adjudication Tel. 020 7307 3649, Fax. 020 7307 3793, E-mail: adjudication@inst.riba.org, or the Chartered Institute of Arbitrators www.drs-ciarb.com/AboutUs.asp Tel. 020 7421 7444</p>	<p>Administration fee on application for an appointment, £240 + VAT (as at August 2007) (or £100 plus VAT for disputes arising under the JCT Building Contract for Home Owner/ Occupier)</p> <p>Adjudication costs, including the adjudicator's fee.</p> <p>(Both parties bear their own costs.)</p>	<p>An adjudicator's decision is enforceable and binding pending a final resolution by arbitration or litigation. However, the parties may agree to accept the adjudicator's decision as finally determining their dispute and then no further enforcement action will be necessary.</p> <p>The majority of adjudication arises under the statutory right from the Housing Grants, Construction and Regeneration Act 1996.</p>

TYPE OF ACTION	APPLICABLE TO :	ASSOCIATED COSTS	TAKE NOTE...
4. MEDIATION	Any contractual or fee dispute. Contact: RIBA www.riba.org/go/RIBA/Member/Practise_4854.html Tel. 020 7307 3649, Fax. 020 7307 3793, E-mail: adjudication@inst.riba.org	Administration fee on application, £150 + VAT (as at August 2007). Mediation costs, including the mediator's fee.	The mediator may be able to find a solution to the difficulties between the parties without recourse to legal or disciplinary action. Mediation relies on a willingness by the parties involved to co-operate.