

Rules for Adjudication

Rules for use with the SBCC
Building Contract for a
homeowner/occupier
And SBCC Consultancy agreement
in relation to building work

HO/Adj/Scot 2016 Edition
for use in Scotland

SBC 556

RULES FOR ADJUDICATION

For use with the SBCC Building Contract for a Home Owner/Occupier and SBCC Consultancy Agreement for a Home Owner/Occupier

Generally

1. These adjudication rules apply to disputes which arise between the customer and the contractor (sometimes referred to as the parties) under the Building contract for a home owner/occupier ("the building contract"). These adjudication rules also apply to disputes between the customer and the consultant under the Consultancy agreement for home owner/occupier. Where this is the case the rules shall be read with 'the consultancy agreement' being substituted for 'the building contract' and 'consultant' being substituted for 'contractor'.
2. The customer or the contractor can apply for adjudication on any dispute which arises under the building contract.
3. An adjudicator can be appointed either by the Royal Incorporation of Architects in Scotland ("RIAS"), the Royal Institution of Chartered Surveyors in Scotland (RICS) or the Scottish Building Federation ("SBF"). Each of these bodies is called an appointing body.

Applying for an adjudicator

4. If the customer or the contractor wants to have a dispute decided by an adjudicator he must complete the application form and send it with a payment of £144.00 (inclusive of VAT)^[1] to one of the above appointing bodies^[2]. (The payment covers the appointing body's administration costs).
5. Within 48 hours including weekends but excluding bank holidays of receiving the application the appointing body will confirm receipt in writing to both customer and contractor.
6. The appointing body will appoint an adjudicator within 7 days of receipt of the application.
7. If the customer and the contractor have each applied for adjudication about the same dispute, but each has applied to a different appointing body, the adjudicator will be appointed by the appointing body whose date of confirmation of receipt of the application is the earlier.
8. If either of the parties applies for adjudication but the other person starts court proceedings about the same dispute, the adjudication can still go ahead pending settlement of the dispute by the court.
9. Once an adjudicator is appointed the role of the appointing body is at an end, and all further communications must be made directly to the adjudicator.

Costs of adjudication

^[1] Prices may vary. Please contact the relevant body.

^[2] See restriction in the building contract as to the choice of appointing body.

10. The adjudicator will charge an hourly fee for his services. He will tell the customer and the contractor, before he begins the adjudication process, what his fee will be. The amount of the fee will depend on the complexity of the issues in dispute, but will not exceed £150 per hour up to a maximum of 15 hours. This is regardless of how many additional hours the adjudicator actually spends on the adjudication.
11. When he makes his decision the adjudicator will state whether the customer or the contractor is to be responsible for paying his fees, or whether payment is to be divided between them in a proportion that the adjudicator decides.
12. The adjudicator can also order that the application payment of £144 made by one party should be reimbursed to him by the other party.
13. If the party responsible for paying any or all of the adjudicator's fees does not pay them, the adjudicator can take court proceedings against that party to recover the amount not paid. The adjudicator will not claim that unpaid amount from the other party.
14. The customer and the contractor will be responsible for their own costs in preparing for the adjudication, e.g. costs for professional advice and getting documents together.

Powers and duties of the adjudicator

15. As soon as possible after his appointment the adjudicator will notify the parties that he will be carrying out the adjudication. At this point he may ask them for information about the dispute.
16. The adjudicator will act fairly between the customer and the contractor, and will carry out the adjudication by reference to the terms of the building contract.
17. If he wishes, the adjudicator can visit the premises where the work has been carried out. The visit will be at a time when both the customer and the contractor are expected to be present. During the visit the adjudicator can examine the work. He can ask questions about the dispute. The customer and the contractor will co-operate with the adjudicator and give any information he needs.
18. If either party chooses not to be present when the adjudicator visits the premises, the adjudicator can go ahead in their absence.
19. If the dispute is about payment the adjudicator can order the customer to pay the contractor with interest, any amount which he decides is appropriate. The adjudicator can also order the contractor to repay the customer, with interest, any money which he decides is appropriate. The rate of interest will be no more than 5% above the Bank of England Base Rate current at the date when the adjudicator considers that interest should apply and will run for such period as the adjudicator thinks fit.

The adjudicator's decision

20. The adjudicator will give his decision in writing no later than 21 days after being appointed. He will send a copy of the decision to the customer and the contractor.
21. The adjudicator is not required to give reasons for his decisions.
22. The customer and the contractor must follow the adjudicator's decision as part of their obligations under the building contract unless and until either party obtains a court judgement about the dispute which is different from the decision of the adjudicator.

Application forms to appoint an adjudicator are available from:

Royal Incorporation of Architects in Scotland

15 Rutland Square, Edinburgh, EH1 2BE

Tel: 0131 229 7205/7545

Fax: 0131 228 2188

e-mail: info@rias.org.uk

Scottish Building Federation

Crichton House

4 Crichton's Close

Holyrood

Edinburgh

EH8 8DT

Tel: 0131 556 8866

Fax: 0131 558 5247

e-mail: info@scottish-building.co.uk

Royal Institution of Chartered Surveyors in Scotland

3rd Floor,

125 Princes Street

Edinburgh EH2 4AD

Phone: 0131 225 7078

E-mail : drsscotland@rics.org

Adjudication under the SBCC Building Contract for a Home Owner/Occupier and SBCC Consultancy Agreement for a Home Owner/Occupier

EXPLANATORY NOTES

What is adjudication?

Adjudication is a procedure whereby a dispute between the parties is resolved by the binding decision of an impartial third party called an adjudicator.

The adjudicator is an expert who decides a dispute using specialist expertise. The adjudicator will also base his decision on the results of his own personal investigations, and this is likely to include an inspection of the works. An adjudicator will consider matters brought to his attention by the parties, but he is not bound by them and will come to his own decision.

The decision of an adjudicator is binding subject to any later decision made by the court.

Who will be the adjudicator?

Either party can apply to one of three appointing bodies named in the contract. The appointing bodies are the Royal Incorporation of Architects in Scotland ("RIAS"), the Royal Institution of Chartered Surveyors in Scotland (RICS), Scottish Building ("SBF") and the Association of Independent Construction Adjudicators ('AICA') as agents for the National Specialist Contractors Council-Scottish Committee (NSCC). The adjudicator will be appointed from an approved panel of adjudicators. The adjudicator will be an expert in the subject matter of the dispute e.g. quality of work and/or materials.

What will the adjudicator do when he is appointed?

When an adjudicator has been appointed, both parties will be notified, in writing, by the appointing body. They will be told who the adjudicator is, and advised that the adjudicator will contact both parties directly. The adjudicator will invite both parties to give their personal views as to what the dispute is about and what decision they think the adjudicator should reach. This will usually take the form of brief written statements. The adjudicator will consider the written and verbal statements put forward by the parties. He may require to inspect the works and to put questions directly to the parties.

How long will the adjudication take?

The objective of the adjudication procedure is to resolve the dispute within 28 days from the day an application for the adjudicator is received by the appointing body. Once an application is received by the appointing body, an adjudicator will normally be appointed within 7 days (including weekends but excluding bank holidays). Once the adjudicator is appointed he will reach his decision within 21 days (including weekends but excluding bank holidays). In many cases the adjudicator may be able to make his decision sooner, particularly if the issue in dispute is straightforward.

What happens after the adjudicator makes his decision?

The adjudicator will write to both parties informing them of his decision and asking for payment of his fees. The adjudicator's decision will be binding on the parties subject to the right of either party to refer the issue in dispute to the courts.

How much will it cost?

An application fee of £144.00 (inclusive of VAT)^[1] is charged to appoint an adjudicator. The person who applies for an adjudicator pays this application fee. The application fee may be reimbursed by the other party if the adjudicator decides in favour of the applicant. The fees of the adjudicator will be based on the time spent dealing with the dispute and will not exceed £150 per hour (exclusive of VAT), up to a maximum of 15 hours spent dealing with the dispute. The adjudicator can decide who pays his fees. It is possible for a party who loses to be responsible for all of the adjudicator's fees as well as the application fee. If a losing party fails to pay their portion of the adjudicator's fees, the adjudicator cannot order the other party to pay them. He may, however, bring an action against the party who has not paid his fees.

Where can I get further advice?

Further advice can be obtained from the appointing bodies