



Union Internationale des Architectes • International Union of Architects

Professional Practice Information Notes

Note 4: Dispute Resolution

This document has been prepared by the Professional Practice Commission of the International Union of Architects for the use and reference of UIA member sections in enhancing the practice of architecture.

It is intended to serve as an informational supplement to the policy issue, “Practice of Architecture”, found in the UIA Accord on Recommended International Standards of Professionalism in Architectural Practice.

This Professional Practice Information Note was prepared by a Commission Drafting Panel chaired by Dr. Tillman Prinz of Germany.

Adopted by the
Professional Practice Commission
September 24, 2009
New Delhi, India

UIA Professional Practice Program Joint Secretariat

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16. Update on compilation of materials related to: Negotiation/ Mediation/ Arbitration

Discussion Paper for the UIA Professional Practice Commission
Meeting 23rd to 26th September 2009 in New Delhi/India

UIA PPC Meeting Marrakech 2008/ Minutes:

MOTION: It was moved by Tillman Prinz and seconded by Louise Cox that a summary of existing materials on Negotiation/Mediation/Arbitration be compiled by Tillman Prinz and that the summary be included on the PPC Website as an "Interim Practice Note". The motion was approved unanimously by voice vote.

Part I.

Definition

0. Negotiation is a dialogue intended to resolve disputes, to produce an agreement upon courses of action, to bargain for individual or collective advantage, or to craft outcomes to satisfy various interests. It is the primary method of alternative dispute resolution. In *Getting To Yes*, authors Roger Fisher and William Ury gives the following four principles for negotiations:

- Separate people from the problem.
- Focus on interests, not on positions.
- Generate options (that satisfy interests).
- Find objective criteria/ standards.

1. Mediation is a process in which a third-party neutral assists in resolving a dispute between two or more other parties. It is a non-adversarial approach to conflict resolution. The role of the mediator is to facilitate communication between the parties, assist them in focusing on the real issues of the dispute, and generate options that meet the interests or needs of all relevant parties in an effort to resolve the conflict.

2. Adjudication is the legal process by which an arbiter or judge reviews evidence and argumentation including legal reasoning set forth by opposing parties or litigants to come to a decision which determines rights and obligations between the parties involved

3. Arbitration, a form of alternative dispute resolution (ADR) is a legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer it to one or more persons (the "arbitrators", "arbiters" or "arbitral tribunal"), by whose decision (the "award") they agree to be bound

4. Litigation to carry on a legal contest by judicial process.

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Background

In the face of increasing cost and delay, many are turning to places other than the courts for resolution of disputes. In the legal profession this move away from the court system and towards other means has been termed "ADR," or, "alternative dispute resolution."*1 "ADR" embraces "all means of dispute resolution . . . [which are] . . . alternatives to a formal decision-making process." Accordingly, the acronym "ADR" encompasses any method of resolving any dispute that does not require the ultimate decision to be made formally by a judge, a jury or any other decision-maker that has been designated as the competent forum of dispute resolution by the respective state authorities." (Christian Duve, Dispute Resolution in Globalization Context, 221 N.Y.L.J. 9 (1999).

Policy

(to be defined)

Part II.

Items to addressed:

A. Applicability of dispute resolution to conflicts in architectural practice

Define the relevant disputes in architectural practice

Examples:

Client – architect

- Bad/ wrong advice of the architect
- Changes is in design
- Conflict in each work stage (RIBA
- Misinterpretation of desired design
- No agreement on the design
- Building permits on the “wrong” design”
- Wrong tender documents
- Wrong tender procedure without appropriate advice
- Contract administration/ supervision/ wrong certification

Client – contractor with architect as agent for supervising execution

- Accusation that the architect does not the supervision sufficiently

B. Propose necessary measures in contracts and agreements

Collect clauses

- Who provides them?
- Standard form of contract (UK + Ireland)
- Develop dispute resolution clause for the relationship of client/contractor, because of collateral warranty more than client/architect.
- A database of models and clauses regarding Dispute Resolution including Dispute Avoidance Mechanism used in the EU and elsewhere shall be developed as a reference and service to the ACE Members.
- Reword ADR clause in UIA/FIDIC Architect/Client Agreement –



- What services do exist for architects regarding Dispute Resolution in the UIA Member Organisations?
 - Mediation Boards
 - Arbitration Board
 - Other

Collect the relevant information at ACE Secretariat including other organisations, such as Dispute board rules international chamber of commerce

- Recommendations to UIA members: develop consistent means of dispute resolution.

C. Proposal for a UIA Dispute Resolution Board (DRB)

Example: See attached RIBA Dispute Resolution

Attachments:

AIA Effective Negotiations
AIA Mediation for Conflict Resolution
RIBA Dispute Resolution

Tillman Prinz
Berlin, 01 September 2009

Effective Negotiations

Contributed by Victor O. Schinnerer & Company from a presentation by Steven J. Isaacs, Assoc. AIA, PE at Schinnerer's 46th Annual Meeting of Invited Attorneys June 2007

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SUMMARY

When it comes to negotiations, many design firms have a culture of avoiding confrontation. Shifting our perceptions, however, can give us a more actionable stance. We can learn to define our interests; understand the other parties' interests; and, with good preparation techniques, conduct a mutually successful negotiation.

WHY DO ARCHITECTS AVOID CONFLICT?

"The client holds all the cards."

"It is against our service culture to press for our interests in negotiations."

"The relationship is more important than anything."

This is the dilemma for architects and engineers when facing the prospect of negotiations in any form. Many in the design professions have difficulty even accepting that negotiations are a key element in their daily activities. The root causes include

- Enormous desire to avoid conflict
- Deficient understanding of your interests
- Lack of preparation

CONFLICT AVOIDANCE

When groups of architects and engineers are asked their reaction to the word "conflict," the immediate responses are primarily such terms as fear, anger, stress, fight, and avoid.

In more than 40 sessions over the past few years with groups of 12 to 20 people, the issue with negotiations has become clear. They see conflict, in its many forms in the workplace, as something to avoid at almost any cost. Whether the need is to request more funds for a significant client change or to tell an employee about a performance problem, the confrontation is avoided. The excuses are excellent and numerous. The No. 1 excuse? "I need to focus all my energy on getting the work done."

Conflict avoidance is a dominant trend in the design industry. One goal of a negotiation workshop is to

help professionals change their views of conflict to a more actionable form.

Redefining conflict as purely a difference of *interests* begins to shine a light on this new view.

Unfortunately, conflict normally appears as a difference in *positions*, and the reaction by our industry is, at best, poor. We hasten to seek compromise, find middle ground, and move on to the work. This establishes the worst precedent for the entire project relationship because it signals to the rest of the team a desire to avoid dealing with issues rather than participate in joint problem solving.

A root cause of avoidance is the widespread belief that the client can get someone else to do the work—cheaper, faster, and accepting any terms in the agreement. The truth is that there will always be a firm willing to accept one or all of the above conditions. This knowledge leads to a common symptom of avoidance: giving in.

The industry must enhance its understanding of the negotiation process. The design professional must accept that even though another firm will always be willing to take more risk, the client has selected *your* firm for a reason. The client's interests will be best served by using your firm, and they have concluded this already. The threat of "going to No. 2" on the list must be overcome. You do this by understanding your own interests.

YOUR INTERESTS—WHAT ARE THEY?

Key factors in the normal decision process for accepting a commission are fee, scope, and terms and conditions. In some cases, the fee dominates the decision. This is certainly important, but some significant issues must be considered beyond fee.

Architects, although aware of these, rarely consider them appropriately before pursuing or negotiating projects. The other factors include the following:

Backlog. How much other work is in the pipeline?

Risk. What is the chance this client or contractor will resolve issues litigiously instead of through alternative approaches, primarily negotiations?

Reputation. Will the completion of this project enhance or weaken the image of my organization?

Experience. Will this commission expand my firm's knowledge about the market?

Cash flow. Will my firm be paid in a reasonable time and without a fight?

Relationship. Can we build a long-term connection with this client?

Schedule. Can we fulfill the client's expectations?

Staff. Does anyone in the firm have the desire to work on this assignment?

Too often, the entire decision is focused on the fee. Even those firms that do consider many factors default to the fee as the overriding issue. They never consider the many other available options in making this decision—primarily because they devote insufficient time to preparing for the negotiation.

PREPARING TO NEGOTIATE

In discussions with hundreds of professionals in negotiation workshops, we have asked the following questions with sample answers shown:

- *What is the average raw rate for labor in your firm?* \$30 per hour
- *What is the effective multiplier for your firm?* 3.0
- *So, what is the average hourly rate?* \$90 per hour
- *What portion of that rate is profit?* \$10

For every hour worked, this firm makes \$10 per hour in profit! (This varies widely from firm to firm.) What if you knew that, in any significant negotiation, one more hour in preparation would raise your fee by \$1,000? The rate of return on that one hour becomes about \$920 per hour (\$1,000 less the cost-without-profit, \$80.) If this is possible, why are you not spending that hour? What if you spent two hours and could get \$5,000 more in fees?

Preparation time for negotiations probably gives you a greater hourly rate of return than anything else you do in your practice. Yet most practitioners don't prepare until they are on the way to the negotiations, sometimes without even talking to the people who will do the work.

Consider preparing for negotiation in these ways:

- **Don't make a promise you cannot keep.** Negotiations begin in marketing. This is especially true at the interview.

- **Spend the time and energy to determine your interests** in the negotiation (see the list above).
- **Search for your client's interests.** Most of this has already been done while preparing for the proposal and the interview.
- **Understand the terms and scope of the agreement.** Even if the client does not include this information in the request for proposal, do the research to determine the client's expectations in these areas.
- **Determine previous experience with the client.** Speak to individuals within and outside your firm to assess the typical or historical goals and process of this client during a negotiation.
- **Quantify as much as possible.** We often believe that issues in a negotiation are subjective and cannot be quantified. This is not the case, but it takes a willingness to make assumptions and test these over time.
- **Practice for the actual negotiation.** Build potential options for resolving conflicts that may arise during the negotiations. Understand the potential implications of these options.
- **Rehearse** with others how you will react to a variety of situations.

No one expects a design professional to do all of these things, but doing something other than "business as usual" will produce a new level of confidence. We have discovered that issues with negotiations in the design profession are vast. The previous discussion reviews a few of them and suggests potential solutions. The industry must address these and other issues if practitioners are to improve results and better satisfy their interests.

ABOUT THE CONTRIBUTOR

Steven J. Isaacs, Assoc. AIA, PE, is senior faculty for the Advanced Management Institute (AMI), with 30 years' experience leading design firms and major engineering, architecture, and planning projects throughout the world. He has taught his course in Negotiation and Conflict Resolution for the engineering and architecture industry for more than a decade for AMI and in firms throughout the country. Previously, Isaacs was president of SmithGroup/California and of Stone Marraccini & Patterson. He also worked worldwide for more than a decade at Bechtel Inc. and previously in senior-level planning for the New York City Department of Highways.

RESOURCES

More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 12.01.13 Risk Management Basics
- 11.05.01 Dealing with Aggressive Negotiators
- 12.01.07 Controlling Exposure to Risk

For More Information on This Topic

See also “Negotiating Agreement,” by Ava J. Abramovitz, Esq., Hon. AIA, in *The Architect’s Handbook of Professional Practice*, 14th edition, pp. 479–90. The *Handbook* can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by sending an e-mail to bookstore@aia.org.



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Key Terms

- Practice
- Firm planning
- Quality assurance
- Risk management
- Project management



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Mediation for Conflict Resolution

Excerpted and adapted from “Mediation” by Mark Appel in *The Architect’s Handbook of Professional Practice*, 13th edition

August 2006

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SUMMARY

The costs of preparing and defending lawsuits and, more broadly, the human and emotional toll taken by litigation have caused many people to turn to mediation. The success stories resulting from mediation suggest that the time and minimal expense incurred by the participants may be worth the effort. However, there are also times to go to court instead of opting for mediation. Here’s how to tell the difference.

WHY MEDIATE?

Mediators concur that there are several points during the development of most claims when the claim becomes “mediate-able.” Parties may not notice those possibilities, though, and may need encouragement to consider mediation. Mediators report that getting parties to the mediation table is the hardest part of their job. Once the process begins, there is a 75 percent or better resolution rate.

Why do parties ultimately choose to mediate? The reasons are varied. Litigation is financially prohibitive and emotionally exhausting. Mediation is cheaper, faster, and takes less of an emotional toll. In our cluttered courts, with civil backlogs of up to six years in some jurisdictions, mediation may be the best, if not the only, way to get a case resolved expeditiously. In many jurisdictions, courts themselves recognize this benefit and have established their own mediation capabilities to combat rising caseloads.

Mediation is not characterized with the formalities and rules of the court system. It is conducted in layman’s terms easily understood by participants. More important, in a well-conducted mediation, everyone can win. No party may get everything it wants, but no party should leave feeling it was victimized by the process. Mediation also differs from arbitration and litigation in that it involves only stakeholders (and their key legal and insurance advisors). Witnesses are not necessary. The strength of a case is only one of many factors

parties take into account in deciding how to resolve the case. Moreover, mediation is private, so all the parties share a sense of personal control and an understanding of the importance of the case.

Mediation is usually voluntary, although courts increasingly are requiring parties to try mediation before going to trial. There are two significant advantages to early voluntary mediation. According to Linda R. Singer, principal in ADR Associates, a leading Washington, D.C., mediation firm, “Sitting down with the other parties early, before positions harden, may avoid both unnecessary hard feelings and additional transaction costs. Coming to the table voluntarily without waiting for a court’s encouragement or order also allows the parties to select their own mediator and thus retain more control over the process.”

WHY NOT MEDIATE?

If the reasons favoring mediation are so compelling, why aren’t all cases mediated? Some claims do not come into mediation because they turn on legal issues that only a court can resolve and because parties need, if not want, a definitive court ruling. Some continue in court because parties without liability refuse to “pay up” solely to make the case disappear. Others are not resolved because parties and their counsel need to “know more” before they can secure their mediation stances. (Even these cases can be resolved more quickly if a creative mediator and cooperative parties devise a limited discovery schedule.) Still others are not resolved because of grossly uneven bargaining power among the parties that the mediator cannot undo or manage effectively. (Here again, a little creative mediation might succeed in negotiating an effective resolution once the mediator has brought the parties together.) Finally, some cases remain pending due as much to the incompetence of a poor mediator as to the reluctance of the parties.

HOW TO DECIDE

The fact remains that the very inducements to mediate can also be seen as reasons to avoid the

process—namely, it is hidden and without rules and formalities. How, then, do you decide whether or not to mediate?

Evaluate your own case. Will your success turn on a legal issue, particularly one that will free the firm without a trial? The solution may then rest in court unless the firm has a reason not to take the chance of an unfavorable ruling. Alternatively, if some wrongdoing can be laid at the firm’s door—because of the law, evidence, or equities—then mediation may prove the better route.

Evaluate the mediator. There are no formal standards, training, or licensing procedures with which one must comply to wear the label “mediator.” Anyone can enter the fray with minimal or no training. Therefore, before you agree to mediation, you should ask the mediators about their philosophy on mediation, how they view their role, and about their training, experience, and references. Only when you are certain that the mediators will in fact maintain a neutral stance should you agree to proceed.

Determine your stance before you begin. As informal as mediation may appear, it has most of the attributes of a well-run settlement conference. The firm will need to determine negotiating strategies and best- and worst-case alternatives ahead of time. In particular, the firm will need to know where it will bend and where it will break and how to use those insights to its best advantage. Most important, you will have to be prepared to settle the case.

Make sure you have the authority you need to settle. All sides should know that coming to the table with settlement authority is a prerequisite for attendance. Mediators often ask in confidence about the scope and nature of the authority already granted. Good mediators keep that information confidential. If asked, they may use its implications to test the settlement waters and to encourage the parties to get settlement authority more appropriate for the case, when necessary.

Mediators also recognize that during the course of mediation, settlement ideas and restructuring options may surface that no one could have anticipated. A good mediator can help the parties develop ways to present those options to their respective management if that would help speed case resolution.

ABOUT THE CONTRIBUTOR

Mark Appel is a senior vice president at the American Arbitration Association (AAA), a global provider of private dispute resolution services, education, and training to corporations, individuals, and governments. As an experienced mediator and mediator trainer, he oversees the AAA’s mediation outreach and education efforts.

RESOURCES

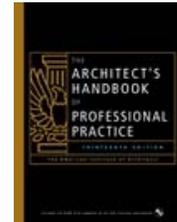
More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 12.03.02 Pros and Cons of Arbitration
- 12.03.04 The Mediation Process
- 12.03.05 Preparing for Mediation

For More Information on This Topic

See also “Managing Disputes” by Frank Musica, Esq., Assoc. AIA; “Arbitration” by Howard Goldberg, Esq.; and “Litigation” by Katherine Davitt Enos, Esq., Assoc. AIA, *The Architect’s Handbook of Professional Practice*, 13th edition, Chapter 12, page 345. The *Handbook* can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by sending an e-mail to bookstore@aia.org.



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Key Terms

- Practice
- Legal management
- Disputes
- Mediation claims

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.

Contents

This section is divided into the following areas:

1. Establishing RIBA Membership and registration
2. What to do first
3. Seeking a resolution
 - Mediation
 - Adjudication
 - The RIBA List of Adjudicators
 - Arbitration
 - The President's List of Arbitrators
4. Seeking legal advice and taking legal action
5. Insurance claims
6. Table of information, contacts and costs.

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.
- xv. 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.