



# Homeowner Contract (with Consultant) 2013 Edition for use in Scotland

SBC 543

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**Homeowner Contract  
(with Consultant)  
2013 Edition for use in Scotland**

**Building contract  
for a homeowner/occupier  
who has appointed a consultant  
to oversee the work**

**Appropriate for:**

This contract is for work to be carried out by a building contractor for a home owner/occupier (the customer) who has appointed a consultant.

For use in Scotland.

Not for use in England and Wales

<p><b>Important note:</b> if you don't want the consultant to deal directly with the builder, the building contract will not be suitable. In this case you should use SBCC Building contract for a home owner/occupier which is for use where no consultant is involved during the building process.</p>
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For further guidance, see Guidance Notes, below.

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**Customer's name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone number:** \_\_\_\_\_

**Address of the premises where the work will be done, if different from the above:**

**Contractor's name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone number:** \_\_\_\_\_

**VAT registration number:** \_\_\_\_\_

If he is not registered for VAT the contractor must tick here.

This contract is between the customer and the contractor only, but the customer has appointed a consultant.

**Consultant's name:** \_\_\_\_\_

\_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Phone number:** \_\_\_\_\_

**Profession:** \_\_\_\_\_

**This contract is in two parts:**

- **Part 1 deals with the arrangements for the work**
- **Part 2 contains the conditions.**

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**Part 1**

**The arrangements for the work**

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**A The work to be done**

1 Give a short description of the work to be done.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2 A full description of the work to be done is given in the documents ticked below. These are the work details.

- Contractor's quotation                      Date of quotation: \_\_\_/\_\_\_/\_\_\_
- Consultant's drawings                      Identifying numbers: \_\_\_\_\_
- Consultant's specification                      Date of specification: \_\_\_/\_\_\_/\_\_\_
- Other documents (Please specify the documents and show whether the consultant or the contractor prepared them.)

\_\_\_\_\_

\_\_\_\_\_

(Both the customer and the contractor should initial the documents and the customer should keep a set of them with his copy of this contract.)

**B Planning permission, building regulations and party walls**

- 1 The consultant has applied, or will apply, for planning permission and building regulations approval that may be needed.
- 2 The contractor will not start work at the premises before any planning permission and building regulations approval that are needed have been received.

**C Using facilities on the premises**

The customer has ticked below the facilities which he will allow the contractor to use free of charge.

- Electricity     Telephone/fax
- Washroom/toilet     Water

**D Price**

- 1 The price for the work shown in the work details is  
£ \_\_\_\_\_ (including any VAT).
- 2 The contractor will itemise the price and show the items on which VAT is charged, and at what rate.

- 3 The price also includes the contractor's costs of dealing with any unexpected problems which he could have discovered by carrying out a careful inspection of the consultant's documents after visiting the premises.
- 4 If the work details are changed the price will be increased or reduced depending on the changes made. (See condition 5.)
- 5 The price for the work shown in the work details, together with all the increases or decreases made to it, will be the total price.

**E Payment**

- 1 The customer should tick one of the boxes below to show how he will pay the contractor. (See condition 8.)  
The customer will pay either:

- 95%** of the total price for the work (as explained at D5 above) when the consultant certifies that the contractor has finished all the work; or
- the agreed instalments shown below (together with any price adjustment for changes to the work) when the consultant certifies that the relevant stage of the work is finished.

Stage	Instalment
_____	_____
_____	_____
_____	_____

(The total of any amounts written above should equal **95%** of the amount shown at D1.)

- 2 The customer will not have to pay the remaining **5%** of the total price until 14 days after the consultant has certified that the contractor has put right all the faults he is responsible for, and which arose in the work at any time up to 3 months after the work was finished. (See condition 8.)

**F The working period**

- 1 The customer should tick one of the boxes below to show the working period. The working period is the agreed length of time for doing the work.

- The contractor will start the work no later than \_\_\_\_/\_\_\_\_/\_\_\_\_ (see F3 below) and finish it by \_\_\_\_/\_\_\_\_/\_\_\_\_.
- The work will be finished within \_\_\_\_\_ weeks from a start date to be agreed between the customer and the contractor.

- 2 The working period will be extended in certain circumstances. (See condition 6.)

- 3 The contractor does not have to provide any goods or services listed in condition 11(f) before the end of the seven-day cancellation period referred to in condition 11(a). If the customer would like the contractor to provide any of those goods or services before this time, the customer must confirm this in writing. The customer accepts that he may have to pay for those goods or services, even if he later cancels this contract.

**G Product guarantees**

The contractor will give the customer any guarantees issued by the manufacturers of products installed in the work.



**H Insurance**

Before the work starts:

- 1 The customer will tell his household insurers (if any) that he is about to have work done at the premises.
- 2 The contractor will have an "all risks" insurance policy to cover himself and the customer for the full costs of damage to the work and to unfixed materials which are on the premises before being used in the work.
- 3 The contractor will have an up-to-date public liability policy for death or injury to people and damage to property.
- 4 The contractor should fill in the box below to show the amount insured for any one claim arising from one event.

£
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**I Working hours**

The customer will allow the contractor to do the work between \_\_\_\_\_ am and \_\_\_\_\_ pm from Monday to Friday, unless they agree otherwise.

**J Occupation and security of the premises**

- 1 The customer has ticked a box below to show whether the premises will be lived in while the work is being done.

- The premises will be lived in
- The premises will not be lived in

- 2 If the premises are unoccupied at any time while the work is being done the contractor will take practical and common-sense precautions to deter intruders entering.

**K Disputes**

- 1 If a dispute cannot be resolved by direct negotiations each party shall give serious consideration to any request to refer the matter to mediation .
- 2 The customer or the contractor can have disputes decided within 21 days by an adjudicator appointed under an adjudication scheme for this contract. The adjudication scheme is run by the Royal Incorporation of Architects in Scotland (RIAS), Scottish Building Federation (SBF) or the National Specialist Contractors Council (NSCC). This is as well as the right to go to court.
- 3 The customer or the contractor can start court proceedings to settle any disputes.
- 4 The contractor agrees that if he wants a dispute to be decided by adjudication he will not apply to the National Specialists Contractors Council.
- 5 If the customer or the contractor chooses adjudication to decide disputes they both accept that the cost, rules and procedures involved will become part of this contract.

Free details of the cost, rules and procedures for adjudication are available from the following.

**Scottish Building Federation**

Crichton House  
4 Crichton's Close  
Holyrood  
Edinburgh  
EH8 8DT

Phone: 0131 556 8866  
Fax: 0131 558 5247  
E-mail: [info@scottish-building.co.uk](mailto:info@scottish-building.co.uk)

**Royal Institute of Architects in Scotland**

15 Rutland Square  
Edinburgh  
EH1 2BE

Phone: 0131 229 7205/7545  
Fax: 0131 228 2188  
E-mail: [adjudication@inst.rias.org.uk](mailto:adjudication@inst.rias.org.uk)

**National Specialist Contractors Council**

**Scottish Committee**  
PO Box 3816,  
Peebles, EH45 9WF

Phone and Fax:  
08442495907  
E-mail: [John.McKinney@nsc.org.uk](mailto:John.McKinney@nsc.org.uk)

**Mediation**

Details of mediation services can be found at [www.scottishmediation.org.uk](http://www.scottishmediation.org.uk)

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**These conditions apply if the consultant is acting for the customer and dealing with the contractor while the building work is being done.**

- 1 Contractor's responsibilities** The contractor will do the following.
- (a) Carry out the work set out in the work details carefully, competently and as the consultant instructs.
  - (b) Use materials which are of satisfactory quality and suitable for their intended purpose. The materials will be new unless the customer agrees otherwise in writing.
  - (c) Start and finish the work within the working period or any extension made to it.
  - (d) Be at the premises regularly to carry out the work during the agreed working hours.
  - (e) Not sub-contract any of the work without the consultant's permission.
  - (f) Store away his tools and equipment and ladders at the end of each working day.
  - (g) Regularly dispose of any rubbish from the work.
  - (h) Be responsible for any damage he may cause to the premises and its contents or to neighbouring properties.
  - (i) Leave the working areas in a clean and tidy condition after finishing the work.
  - (j) Keep to all his legal duties and responsibilities.
- 2 Customer's responsibilities** The customer will do the following.
- (a) Give the contractor access to the premises during the agreed working hours throughout the working period.
  - (b) Keep the working areas sufficiently clear of obstructions to allow the contractor to carry out the work.
  - (c) Allow the contractor to carry out the work in an order which he considers necessary to finish the work on time.
  - (d) Make sure the consultant carries out his responsibility to certify the work carried out under this contract.
- 3 The consultant's roles**
- (a) The consultant will act for the customer while the work is being done. He will give the contractor instructions, extend timescales if necessary, issue a certificate when all the work, or each stage of the work, has been finished, and issue a certificate when the contractor has put right all faults which have appeared in the work at any time between the date it started and 3 months after it was finished.
  - (b) The consultant will give a copy of the certificates he issues to the customer and the contractor.
  - (c) This contract does not create a legal relationship between the consultant and the contractor. If the contractor disagrees with anything the consultant does, he must take the matter up with the customer.
- 4 Health and safety**
- (a) The contractor will take all practical steps to:
    - (i) prevent or minimise health and safety risks to the customer and other people living in or visiting the premises;
    - (ii) minimise environmental disturbance, nuisance or pollution from the work; and
    - (iii) make sure that any temporary protection for the work is safe and weatherproof.
  - (b) The customer will:

- (i) take notice of all warnings the contractor gives about any health and safety or environmental risks which he is taking measures to prevent or minimise; and
  - (ii) not knowingly allow people living in or visiting the premises, particularly children, to be exposed to any dangers from the work.
- 5 Changing the work details** Only the consultant can change the work details on the customer's behalf. Changes will be dealt with as follows.
- (a) If the changes increase the amount of work shown in the work details and the contractor agrees the changes, he will quote a price for the extra work and time involved. The customer will then decide whether to go ahead with the changes. If the customer agrees to the changes the consultant will instruct the contractor.
  - (b) If the changes reduce the amount of work shown in the work details the contractor will make an appropriate reduction in the price.
  - (c) If the changes alter the cost of any items in the work details without increasing or reducing the amount of work involved, an appropriate adjustment of the price will be made to reflect those changes.
- 6 Extending the working period**
- (a) The consultant will extend the working period by a fair and reasonable amount if the contractor:
    - (i) has to spend extra time on the work because of changes made to the work details; or
    - (ii) cannot finish the work on time for reasons beyond his control, including any delay caused by the customer or the consultant.
  - (b) The contractor can claim any reasonable costs arising from the working period being extended because of any delay caused by the customer or the consultant.
- 7 Certifying finished work and making good**
- (a) When all the work has been finished to the consultant's reasonable satisfaction he will issue a certificate showing the date the work finished.
  - (b) No later than 3 months after the consultant certifies that all the work has finished, the consultant will give the contractor a list of any faults which have arisen and which the contractor is responsible for.
  - (c) When the contractor has put right all the faults on the list to the consultant's reasonable satisfaction, the consultant will issue a certificate to confirm this.
- 8 Payment**
- (a) When the consultant certifies that the work is finished (if the customer is not paying by instalments), or when the consultant certifies that each stage of the work is finished (if the customer is paying by instalments), the contractor will invoice the customer for 95% of the amount due after taking account of any price increase or decrease for changes made to the work details. The invoice will be itemised and show the rate of VAT charged on each item.
  - (b) If the consultant is satisfied that the invoice details are correct, the customer will pay the amount of the invoice no later than 14 days after receiving it from the contractor.
  - (c) The customer will pay the remaining 5% of the total price no later than 14 days after the date the consultant issued his certificate confirming that all the reported faults have been put right.
- 9 Contractor's continuing responsibility** For at least 5 years after carrying out the work the contractor will remain responsible for any faults in the work (other than fair wear and tear) which are caused by him.
- 10 Bringing the contract to an end** As well as the customer's cancellation rights set out in condition 11 below, the following also apply.
- (a) If the contractor:
    - (i) is not at the premises regularly to carry out the work; or

- (ii) is not meeting his health and safety and environmental responsibilities; or
  - (iii) is so incompetent or careless that the work is of an unacceptable standard;
- and does not correct the matter within 7 days of receiving a written warning from the customer or the consultant, the customer can end this contract by giving the contractor written notice. The contract will end as soon as that notice is given.
- (b) If the customer ends this contract he will only have to pay any money due to the contractor when the work has been finished by another contractor.
  - (c) If the customer:
    - (i) does not pay an amount due, without having good reason; or
    - (ii) prevents or obstructs the contractor from carrying out the work;
 and does not correct the matter within 7 days of receiving a written warning from the contractor, the contractor can end this contract by giving the customer written notice. The contract will end as soon as that notice is given.
  - (d) The contractor can also give the customer written notice to end this contract with immediate effect if the consultant fails or refuses to act as he should under this contract and the matter is not put right within 7 days of the contractor reporting this in writing to the customer.
  - (e) If the contractor ends this contract the customer will pay him, within 14 days of the contract ending, for work properly carried out, for any materials made specially for the work and for any other of the contractor's materials on the premises which he allows the customer to keep.

## 11 Right to cancel

- (a) The customer can cancel this contract for any reason by giving the contractor notice in writing within 7 days of signing the contract.
- (b) The customer can use the cancellation form attached as Schedule 1 at the back of this contract to cancel this contract, but does not have to. On that cancellation form, the contractor should fill in:
  - (i) the name and address of the person the cancellation form should be sent to; and
  - (ii) the contract reference number or code, or any other details that identify the contract.
- (c) The customer can send the written notice by post or email, or can deliver it in person. The notice should be sent or delivered to the name and address set out in the cancellation form at the back of this contract.
- (d) The written notice will be considered to have been given on the day it is posted or sent by email, whether or not the contractor actually receives it.
- (e) If the customer cancels this contract under this condition 11, the contractor will refund any money the customer has paid to the contractor in connection with this contract, except in the circumstances set out in condition 11(f) below.
- (f) The customer may have to pay for goods or services provided before he cancels this contract if he has agreed, in writing, to the contractor providing the goods or services before the end of the seven-day cancellation period referred to in condition 11(a) above. The customer may have to pay for the following types of goods and services provided before cancellation.
  - (i) Services of any kind
  - (ii) Goods needed in an emergency
  - (iii) Goods that are personalised or made to the customer's specification, and any services relating to those goods
  - (iv) Perishable goods (goods which decay or go bad quickly)
  - (v) Goods that have been used or incorporated into the land
- (g) If the customer cancels this contract, any related credit agreement (for example, a credit agreement the contractor has provided or arranged in connection with this contract) will automatically be cancelled.

- 12 Insolvency** (a) If the customer or the contractor becomes insolvent (unable to pay their debts), this contract will come to an end unless the insolvency practitioner involved makes a suitable arrangement to allow the contract to continue.
- (b) If this contract comes to an end because the contractor becomes insolvent, the customer will not have to pay any amount then due to the contractor until the work has been finished by another contractor.
- 13 Other rights and remedies** (a) The customer and the contractor can claim from each other the costs and expenses which result from either of them failing to keep to this contract.
- (b) This contract does not rule out or limit any other legal remedies which may be available to the customer or the contractor.
- (c) Only the customer and the contractor can take action to enforce the terms of this contract.
- 14 Law of the contract** The law of Scotland applies to this contract and any legal proceedings

Customer's signature: \_\_\_\_\_

Contractor's signature: \_\_\_\_\_

Date: \_\_\_\_\_

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**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING HOMEOWNER CONTRACT**

**Schedule 1**

**Cancellation form**

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If you want to cancel the contract you **must do so in writing** and deliver or send it to the person named below. You can use this form if you want to, but you do not have to.

To: \_\_\_\_\_

\_\_\_\_\_  
(contractor to insert name and address of the person the notice may be given to.)

I want to cancel my contract \_\_\_\_\_

\_\_\_\_\_  
(contractor to insert reference number, code or other details to identify the contract).

Customer's signature: \_\_\_\_\_

Name and address: \_\_\_\_\_

Date: \_\_\_\_\_

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## Guidance notes

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### The documents in this folder

Apart from the changes made to the wording for the purposes of Scots law and practice, these documents are in the same terms as the JCT contract documents published for use in England and Wales.

We've prepared these documents for people who intend to have work done by a builder but also want a professional consultant, such as an architect, surveyor or engineer, to give you advice and help with your project. The documents apply to building projects in Scotland. The contract should not be used in England and Wales as they have a different legal system.

- One of the documents is an agreement between you and the consultant. It covers a range of services that the consultant can provide for you (such as producing designs and detailed specifications for the work, applying for planning permission and building warrant, and overseeing the work while it is being done).
- The other document is a building contract between you and the builder. It covers the work the builder must carry out and the consultant's role in dealing with the builder.

**Important note:** if you don't want the consultant to deal directly with the builder, the building contract will not be suitable. In this case you can use SBCC Building contract for a home owner/occupier which is for use where no consultant is involved during the building process.

The documents in this folder have been designed for householders and homeowners. If the building work is being carried out for a business you should use one of the commercial contracts we publish.

### The consultancy agreement

When you are looking for people to help you with your building work you may find recommendations from friends and neighbours useful. You can also get lists of professionals in your area from the following.

#### Architects

Royal Incorporation of Architects in Scotland  
15 Rutland Square,  
Edinburgh, EH1 2BE

Phone: 0131 229 7205  
Fax: 0131 228 2188  
Email: [@rias.org.uk](mailto:@rias.org.uk)

#### Surveyors

RICS in Scotland  
9 Manor Place  
Edinburgh  
EH3 7DN

Phone: 0131 225 7078  
Fax: 0131 240 0831  
Email: [@rics.org.uk](mailto:@rics.org.uk)

#### Engineers

Association for Consultancy and Engineering (Scottish Group)  
Rybka, 24 Rutland Street  
Edinburgh  
EH1 2AN

Phone: 0131 228 8446  
Fax: 0131 228 8447  
Email: [marketing@rybka.co.uk](mailto:marketing@rybka.co.uk)

The consultant you choose will want to:

- discuss your building project with you;
- find out how much you want to spend; and
- arrange the terms under which he or she will provide their professional services to you.



This is where the consultancy agreement comes in. Ask the consultant to go through the agreement with you and to discuss precisely what is involved in each of the stages shown in Part 1, and the conditions shown in Part 2.

When you have both agreed on the services the consultant will provide, he or she will then be able to tell you their fee.

Before you and the consultant sign the agreement, make sure that if the consultant will be dealing with the builder (stage 4 of the services), you agree how often he or she will inspect the work while it is being done.

## The building contract

The building contract is for use between you and the builder, but only when a consultant is dealing with the builder on your behalf. Ask the consultant to explain how the contract works and his or her role. **Before you sign the contract, ask the consultant to explain the adjudication scheme referred to in K2 on page 6 and how this affects you if a dispute arises. Details of the adjudication scheme are available at [www.sbcconline.com](http://www.sbcconline.com) and from the organisations running the scheme.**

It is vital that you choose a good and reputable builder. You may want to rely on personal recommendations, but you can ask the consultant to get quotations for the work and suggest a builder as part of his or her services at stage 3 of the agreement. You may also get lists of builders in your area from the following.

### Architects

Royal Incorporation  
of Architects of  
Scotland  
15 Rutland Square  
Edinburgh  
EH1 2BE

Phone: 0131 229  
7025/7545  
Fax: 0131 228  
2188  
E-mail:  
[adjudication@rias.org.uk](mailto:adjudication@rias.org.uk)

### Builders

Scottish Building  
Federation  
Crichton House  
4 Crichton's Close  
Holyrood  
Edinburgh  
EH8 8DT

Phone: 0131 556  
8866  
Fax: 0131 558 5247  
E-mail:  
[info@scottish-building.co.uk](mailto:info@scottish-building.co.uk)

### National Specialist Contractors Council

PO Box 3816,  
Peebles, EH45 9WF

Phone and Fax: 08442495907  
E-mail:  
[John.McKinney@nscc.org.uk](mailto:John.McKinney@nscc.org.uk)

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You will obviously want to make sure that all the building work is being done properly, but remember that if the consultant is dealing with the builder for you, all the instructions about the work or changes you want to make to it should be given to the builder by the consultant and not you.

## Disputes

If you have a disagreement with your consultant that you can't settle, the agreement allows you to refer the problem to mediation, to an adjudicator or to go to court. Adjudication is also available under the building contract for any disputes between you and the builder.

## Right to cancel

The customer can cancel the agreement or building contract within 7 days of signing it. See 'Right to cancel' in Part 2 of the agreement or building contract. There is a cancellation form at the back of the agreement and building contract.

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## Rules for adjudication

**For use with the SBCC Building Contract for a Home Owner/Occupier who has appointed a consultant (HOC/Scot)**

### 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 who has appointed a Consultant ("the building contract").
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") or Scottish Building Federation ("SBF") or the National Specialist Contractors Council – Scottish Committee ("NSCC"). Each of these bodies is called an appointing body.
7. If the customer and the contractor have each applied for adjudication about the same dispute, but one of them has applied to the RIAS and the other has applied to the SBF or NSCC, the adjudicator will be appointed by the appointing body whose date of confirmation of receipt of the application is the earlier.
8. If either the customer or the contractor 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.

### 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 £100 (exclusive of VAT) to one of the above appointing bodies. (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.

### Costs of adjudication

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 £100 (exclusive of VAT) per hour up to a maximum of 10 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 £100 (exclusive of VAT) 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 customer and the contractor 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: [adjudication@rias.org.uk](mailto:adjudication@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](mailto:info@scottish-building.co.uk)

National Specialist Contractors Council  
P. O Box 3816,  
Peebles, EH45 9WF  
Phone and Fax: 08442495907  
e-mail : [John.McKinney@nsc.org.uk](mailto:John.McKinney@nsc.org.uk)

## **Notes on rules for Adjudication for use with the SBCC Building Contract for a home owner/occupier who has appointed a consultant**

### **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 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"), Scottish Building ("SBF") and 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 will 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?**

The RIAS, SBF and NSCC, charge a fee of £100 (exclusive of VAT) 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 £100 per hour, up to a maximum of 10 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 to the RIAS, Scottish Building Federation and NSCC. 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.

For Draft Use Only



# **Consultancy agreement**

For a homeowner/occupier  
appointing a consultant  
in relation to building work

**2013 Edition for use in Scotland**

For Draft Use Only

**Appropriate Use:**

This agreement is for a consultant to provide building consultancy services to a homeowner/occupier (the customer)

For use in Scotland

Not for use in England and Wales

For Draft Use Only



**Customer's name:** \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Address of the premises where the work will be done, if different from the above:

**Consultant's name:** \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Profession: \_\_\_\_\_

VAT registration number: \_\_\_\_\_

If he is not registered for VAT the consultant must tick here.

**This contract is in two parts:**

- **Part 1 deals with the consultant's services**
- **Part 2 contains the conditions**

## Part 1

## The consultant's services

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### A The services

The consultant will provide the services relating to the ticked boxes below. He will tell the customer what work is involved for each service, and what the customer can expect for the fee the consultant will charge.

#### ***Before building work starts***

##### *Stage 1*

- Discuss the customer's needs and set a budget for both his services and the building work.
  - Carry out a basic survey of the site where the building work will take place and advise on what other surveys may be necessary.
  - Produce a sketch plan and give guidance about the cost, time and programme for the building work.
  - Prepare a letter or written report about how the customer's needs can be met.
  - Advise on whether any other consultants should be appointed.
  - Advise on any planning permission or building warrant needed, and any appeals procedures.
  - Agree the services which the customer wants at stages 2 and 3 and agree whether or not the customer wants the consultant to provide services at stage 4.
  - Tell the customer about the building contract he should use if the consultant is not providing services at stage 4.
  - Agree his fees with the customer and the basis on which he will charge them (see section B 'Consultant's fees').
  - Provide other services at this stage. (Please specify.)
- 
- 

##### *Stage 2*

- Make detailed drawings for the building work.
  - Prepare a specification for the building work.
  - Apply for planning permission, if necessary (see B3 below).
  - Apply for building warrant if necessary (see B3 below).
  - Lead and co-ordinate any other consultants appointed by the customer.
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- Provide other services for this stage. (Please specify.)

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*Stage 3*

- Explain the terms of the building contract and help the customer fill in the details.
- Get quotations for the building work and help to choose the contractor.
- Explain the consultant's and contractor's roles in dealing with health, safety and environmental matters connected with the building work.
- Provide other services at this stage. (Please specify.)

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***After building work has started***

*Stage 4*

- Provide all the services listed below.
- Inspect the building work to see whether the contractor is generally keeping to his responsibilities under the building contract.
  - Advise about how any changes to the building work will affect the planned timescales and costs.
  - Give instructions to the contractor, and extend deadlines if necessary, while the building work is being done.
  - Check the builder's invoices to make sure they are accurate. If necessary, explain the invoice to the customer.
  - When the building work or each stage of the work is finished to his reasonable satisfaction, issue a certificate (to the customer and the contractor) which shows the finish date.
  - Give the contractor a list of any faults which have appeared at any time up to 3 months after the finish date and which the contractor must put right.
  - When the contractor has put right all the faults listed by the consultant, issue a certificate (to the customer and the contractor) to confirm this.
  - Provide other services for this stage. (Please specify.)

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### **Before the services start**

The consultant does not have to provide any goods or services listed in condition 8(f) before the end of the seven-day cancellation period referred to in condition 8(a). If the customer would like the consultant to provide any of those goods or services before this time, the customer must confirm this in writing. The customer accepts that he may have to pay for those goods or services, even if he later cancels this contract.

**B Consultant's fees** 1 The total of the consultant's fees is £\_\_\_\_\_ (including any VAT).

The customer will pay in stages as follows.

£\_\_\_\_\_ at the end of stage 1.

£\_\_\_\_\_ at the end of stage 2.

£\_\_\_\_\_ at the end of stage 3.

£\_\_\_\_\_ at the end of stage 4.

2 If the customer agrees to have any service charged at an hourly rate, the rate is £\_\_\_\_\_ an hour (including any VAT).

3 The consultant's fees do **not** include the following.

- The local authority's charges and fees for planning permission and building warrant approval.
  - The cost of other consultants.
- The customer must pay all of these separately.

4 If the customer wants to change the services the consultant has agreed to provide, or to change the building work, the consultant's fees can be increased or reduced depending on the changes made (see condition 3).

**C Insurance**

1 The box below shows the minimum amount of professional indemnity insurance the consultant will keep in force to cover his liabilities to the customer under this agreement.

£\_\_\_\_\_ for any one claim or series of claims arising out of one event.

2 The consultant will show the customer written confirmation of the professional indemnity insurance he has in place if the customer wishes to see it.

**D Disputes**

1 If a dispute cannot be resolved by direct negotiations each party shall give serious consideration to any request to refer the matter to mediation.

2 The customer or the consultant can start court proceedings to settle any disputes between them.

3 The customer or the consultant can also have disputes decided within 21 days by an adjudicator appointed under an adjudication scheme for this agreement run by The Royal Institution of Chartered Surveyors (RICS), Scottish Building Federation (SBF), the Royal Incorporation of Architects in Scotland (RIAS), or the National Specialist Contractors Council-Scottish Committee (NSCC). This is as well as the right to go to court.

- 4 The consultant agrees that if he wants a dispute to be decided by adjudication and he is a member of one of the organisations set out in D3 above, he will not apply to that body for an adjudicator.
- 5 If the customer or the consultant chooses adjudication to decide disputes they both accept that the cost, rules and procedures involved will become part of this agreement.

Free details of the cost, rules and procedures for adjudication are available from the following.

**The Royal Institution of Architects in Scotland**  
15 Rutland Square  
Edinburgh  
EH1 2BE

**Scottish Building Federation**  
Crichton House  
4 Crichton's Close  
Holyrood  
Edinburgh  
EH8 8DT

**National Specialist Contractors Council-  
Scottish Committee**  
PO Box 3816,  
Peebles, EH45 9WF

Phone: 0131 229 7205/7545  
Fax: 0131 228 2188  
E-mail:  
adjudication@inst.rias.org.uk

Phone: 0131 556 8866  
Fax: 0131 558 5247  
E-mail: [info@scottish-  
building.co.uk](mailto:info@scottish-building.co.uk)

Phone and Fax:  
08442495907  
Email: [John.McKinney@nsc  
.org.uk](mailto:John.McKinney@nsc.org.uk)

#### Mediation

Details of mediation services can be found at [www.scottishmediation.org.uk](http://www.scottishmediation.org.uk)

## Part 2

## The conditions

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- 1 Consultant's responsibilities**
- (a) The consultant will do the following.
    - (i) Act as the customer's representative.
    - (ii) Carry out the services with reasonable skill, care and attention.
    - (iii) Be fair to both the customer and the contractor when giving instructions or issuing certificates under the building contract.
    - (iv) Co-operate with any other consultants appointed by the customer.
    - (v) Keep to all his legal duties and responsibilities.
  - (b) The consultant will not do the following without the customer's permission.
    - (i) Sub-contract any of the services.
    - (ii) Agree to the contractor subcontracting any of the building work.
- 2 Customer's responsibilities**
- (a) The customer will do the following.
    - (i) Give the consultant any relevant information he needs to carry out the services.
    - (ii) Consider the advice the consultant gives.
    - (iii) Allow the consultant to deal with the contractor.
  - (b) The customer will not do the following.
    - (i) Interfere with instructions given by, or certificate issued by, the consultant.
    - (ii) Deal with the contractor directly.
- 3 Changing the services**
- Only the customer can change the services. Changes will be dealt with as follows.
- (a) If the changes increase the consultant's services, the consultant will tell the customer about any extra fee he will charge. The consultant must do this before the customer decides whether or not to go ahead with the changes.
  - (b) If the changes reduce the consultant's services, the consultant will reduce his fee to take account of those changes.
- 4 Paying the consultant's fee**
- When the consultant has provided all the services required at each stage he will give the customer an invoice for his fee (including any VAT) for that stage. The customer will pay the invoiced amount no later than 14 days from the date of the consultant's invoice.
- 5 Consultant's continuing responsibility**
- For at least 5 years after providing the services the consultant will remain responsible for any consequences of failing to keep to this agreement.
- 6 Copyright**
- The consultant will hold the copyright in any documents he prepares for the building work, but the customer and the contractor will each be allowed to have a copy of them only for the purpose of that building work and any future repair or maintenance of it.
- 7 Bringing this agreement to an end**
- As well as the customer's cancellation rights set out in condition 8 below, the following also apply.
- (a) At any time before the customer and the contractor sign the building contract, the consultant or the customer can end this agreement by giving the other person 7 days' written notice which shows the date the agreement will end. No reason needs to be given for ending the agreement.
  - (b) When the customer and contractor have signed the building contract the following will apply.
    - (i) If the consultant is not providing the services properly, and does not correct the matter within 7 days of receiving a written warning from the customer, the customer can end this agreement by giving the consultant written notice. The agreement will end as soon as that notice is given.

- (ii) If the customer does not pay the consultant's fees when they are due, or prevents or obstructs the consultant from providing the services, and does not correct the matter within 7 days of receiving a written warning from the consultant, the consultant can end this agreement by giving the customer written notice. The agreement will end as soon as that notice is given.
- (c) If the customer or the consultant becomes insolvent (unable to pay their debts) this agreement will end unless the insolvency practitioner involved makes a suitable arrangement to allow the agreement to continue.
- (d) If this agreement comes to an end, the customer will only have to pay the consultant's fee for the services satisfactorily carried out up to the date the agreement ends.

**8 Right to cancel**

- (a) The customer can cancel this contract for any reason by giving the consultant notice in writing within 7 days of signing the contract.
- (b) The customer can use the cancellation form attached as Schedule 1 at the back of this contract to cancel this contract, but does not have to. On that cancellation form, the consultant should fill in:
  - (i) the name and address of the person the cancellation form should be sent to; and
  - (ii) the contract reference number or code, or any other details that identify the contract.
- (c) The customer can send the written notice by post or email, or can deliver it in person. The notice should be sent or delivered to the name and address set out in the cancellation form at the back of this contract.
- (d) The written notice will be considered to have been given on the day it is posted or sent by email, whether or not the consultant actually receives it.
- (e) If the customer cancels this contract under this condition 8, the consultant will refund any money the customer has paid to the consultant in connection with this contract, except in the circumstances set out in condition 8(f) below.
- (f) The customer may have to pay for goods or services provided before he cancels this contract if he has agreed, in writing, to the consultant providing the goods or services before the end of the seven-day cancellation period referred to in condition 8(a) above. The customer may have to pay for the following types of goods and services provided before cancellation.
  - (i) Services of any kind
  - (ii) Goods needed in an emergency
  - (iii) Goods that are personalised or made to the customer's specification, and any services relating to those goods
  - (iv) Perishable goods (goods which decay or go bad quickly)
  - (v) Goods that have been used or incorporated into the land
- (g) If the customer cancels this contract, any related credit agreement (for example, a credit agreement the consultant has provided or arranged in connection with this contract) will automatically be cancelled.

**9 Other rights and remedies**

- (a) The customer and the consultant can claim from each other the costs and expenses which result from either of them failing to keep to this agreement.
- (b) This agreement does not rule out or limit any other legal remedies which may be available to the customer or the consultant.
- (c) Only the customer and the consultant can take action to enforce the terms of this agreement.

**10 Law of the agreement**

The law of Scotland applies to this agreement and any legal proceedings.

Customer's signature: \_\_\_\_\_

Consultant's signature: \_\_\_\_\_

Date: \_\_\_\_\_

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**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING HOMEOWNER CONTRACT**

**Schedule 1                      Cancellation form**

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If you want to cancel the contract you **must do so in writing** and deliver or send it to the person named below. You can use this form if you want to, but you do not have to.

To: \_\_\_\_\_

\_\_\_\_\_  
(consultant to insert name and address of the person the notice may be given to.)

I want to cancel my contract \_\_\_\_\_

\_\_\_\_\_ (consultant to insert reference number, code or other details to identify the contract).

Customer's signature: \_\_\_\_\_

Name and address: \_\_\_\_\_

Date: \_\_\_\_\_

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## Rules for adjudication

### For use with the SBCC Consultancy Agreement for a Home Owner/Occupier appointing a consultant to provide building consultancy services (HOCA/Scot)

#### Generally

1. These adjudication rules apply to disputes which arise between the customer and the consultant (sometimes referred to as the parties) under the Consultancy Agreement for a Home Owner/Occupier who has appointed a consultant to provide building consultancy services.
2. The customer or the consultant can apply for adjudication on any dispute which arises under the Consultancy Agreement..
3. An adjudicator can be appointed either by the Royal Incorporation of Architects in Scotland ("RIAS") or Scottish Building Federation ("SBF") or the National Specialist Contractors Council – Scottish Committee ("NSCC"). Each of these bodies is called an appointing body.

#### Applying for an adjudicator

4. If the customer or the consultant wants to have a dispute decided by an adjudicator he must complete the application form and send it with a payment of £100 (exclusive of VAT) to one of the above appointing bodies. (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 consultant.
6. The appointing body will appoint an adjudicator within 7 days of receipt of the application.

7. If the customer and the consultant have each applied for adjudication about the same dispute, but one of them has applied to the RIAS and the other has applied to the SBF or NSCC, the adjudicator will be appointed by the appointing body whose date of confirmation of receipt of the application is the earlier.
8. If either the customer or the consultant 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

10. The adjudicator will charge an hourly fee for his services. He will tell the customer and the consultant, 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 £100 per hour up to a maximum of 10 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 consultant 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 £100 (exclusive of VAT) 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 consultant 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 customer and the consultant 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 consultant, and will carry out the adjudication by reference to the terms of the Consultancy Agreement
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 consultant 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 consultant 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 consultant, with interest, any amount which he decides is appropriate. The adjudicator can also order the consultant 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 consultant.
21. The adjudicator is not required to give reasons for his decisions.
22. The customer and the consultant must follow the adjudicator's decision as part of their obligations under the Consultancy Agreement, 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](mailto: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](mailto:info@scottish-building.co.uk)

National Specialist Contractors Council  
PO Box 3816,  
Peebles, EH45 9WF  
Phone and Fax: 08442495907  
e-mail : [John.McKinney@nsc.org.uk](mailto:John.McKinney@nsc.org.uk)

## **Notes on rules for Adjudication for use with the SBCC Building Contract for a home owner/occupier who has appointed a consultant**

### **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 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"), Scottish Building ("SBF") and 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 will 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?**

The RIAS, SBF and NSCC, charge a fee of £100 (exclusive of VAT) 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 £100 per hour, up to a maximum of 10 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 to the RIAS, Scottish Building Federation and NSCC. 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.