

Independent Adjudication Service: Royal Institution of Chartered Surveyors (RICS)

Guidance Notes for Members

What is the Adjudication Scheme (“the RICS Scheme”)?

Approved by RICS, the RICS Scheme is an independent adjudication service that has been set up to resolve disputes between member firms of RICS and their customers. The RICS Scheme is designed to adjudicate disputes that have reached deadlock or where eight weeks have passed since the customer's complaint was first raised. The RICS Scheme is administered and managed by the Centre for Effective Dispute Resolution (CEDR), an independent alternative dispute resolution provider.

Who are CEDR?

CEDR are experts in the resolution of disputes and deadlocked negotiations of all shapes and sizes from modest claims to disputes valued in the billions. As Europe's largest cross-sector full service dispute resolution provider, CEDR specialises in preventing, managing and resolving consumer-to-business and business-to-business conflict through the use of alternative dispute resolution techniques. CEDR provides access to more than 200 conciliation, mediation, adjudication and arbitration schemes; resolving thousands of disputes each year. Many of our services are provided to consumers and members of trade associations, allowing quick, cost-effective and final resolution.

A not-for-profit organisation, CEDR also provides training in conflict prevention and conflict management to individuals, businesses, national governments and NGOs in over 60 countries. In the last 25 years we have assisted over 100,000 parties in commercial disputes and helped resolve over 300,000 consumer complaints across 30 sectors.

How does the RICS Scheme work?

The Scheme provides an independent adjudication service that is based entirely on documentary evidence. A professional adjudicator will be appointed to the case and will consider the evidence submitted by the customer and the member firm, along with the relevant law and any terms and conditions. The adjudicator will produce a written decision

containing full reasons for the decision. Once a decision is produced, the customer will have 20 working days to either accept or reject the decision. The decision can only be accepted or rejected in full and there is no right of appeal. If the decision is

accepted, the member firm is contractually bound to comply with the decision. If the outcome is rejected, no action is required and the decision will have no effect on either party.

Any decision made by an adjudicator applies only to the dispute pursuant to which the decision was made. Every dispute will be decided on its own facts and a decision made in one dispute does not establish a precedent for future cases.

Decisions are confidential and are not available for wider public scrutiny.

Independence and Impartiality

To ensure full independence and impartiality, the RICS Scheme adjudicators have no direct contact with either of the parties. A document-based process, the RICS Scheme allows both parties an equal opportunity to provide evidence and to state their positions, to which equal consideration will be given by the adjudicator. The RICS Scheme administration team are readily available to assist both parties with any questions they may have and to offer guidance.

Who are the adjudicators?

The adjudicators are either legally qualified, surveyors or engineers and deal with consumer disputes across a range of industries. Full details of the adjudicators can be found on the Scheme website at www.cedr.com/consumer/rics/.

How does an adjudicator decide the outcome to a dispute?

Once an adjudicator is in receipt of the case papers, the documents provided will be reviewed and the evidence will be assessed in light of the relevant law. Principles of independence, impartiality and proportionality are adhered to by the adjudicators throughout the process. The starting point is always the customer's application form, which details the dispute and the remedy or remedies that are being sought. The adjudicator will then consider whether the customer has provided sufficient evidence to support their claim. This means evidence of the alleged failure by the member firm and evidence of the

alleged loss suffered. In considering the evidence provided, the adjudicator will also assess how much weight to attach to each piece of evidence. The adjudicator will then review the member firm's defence and consider whether it has provided any evidence to rebut the customer's claim. Again, the adjudicator will consider how much weight to attach to the member firm's evidence. A decision is then made by weighing up all the evidence and seeking a fair and reasonable resolution with regard to the law, the terms of the service provided, any relevant codes of practice and the Scheme Rules.

Throughout the adjudication process, the adjudicator will be fair and unbiased and will endeavour to act quickly and efficiently to resolve the dispute in a fair and reasonable way.

The RICS Scheme Rules

All cases referred to CEDR will be dealt with under the RICS Scheme Rules, which can be found at www.cedr.com/consumer/rics/. Subscribers are strongly advised to ensure that all members of staff who will be required to deal with cases referred to the RICS Scheme have familiarised, read and understand the Rules and the subscriber's obligations under them. The Scheme Rules are designed to provide guidance on the adjudication process to both parties. CEDR and the adjudicator must adhere to the Scheme Rules at all times when processing and deciding the outcome of a case.

How is a customer referred to the RICS Scheme?

The member firm, at the end of its complaints process, where no mutually acceptable solution is reached and the parties have reached 'deadlock' or where eight weeks have passed since the complaint was first raised, is required to signpost the customer to the RICS Scheme. Note: the customer has 12 months in which to bring a claim to the RICS Scheme, starting from the date of the deadlock letter. (Rule 2.3.9)

Who pays for the scheme?

The member firm will pay for the service, regardless of the case outcome. The scheme is free to consumers and as such, the company will pay £350 plus VAT for an adjudicated case. If a case is deemed out of scope (with the objection being upheld), there is no case fee applicable to the member firm. However, if there is an early settlement, the applicable fee is £75 plus VAT per case.

What types of cases can CEDR consider?

In order to bring a claim, the subject matter of the customer's complaint (Rule 2.1) must fall within the scope of the Scheme Rules. The RICS Scheme can only deal with complaints relating to the surveying activities of subscribing RICS member firms including, but not limited to:

- Homebuyers reports;
- Insurance distribution;
- Valuation;
- Land measurement;
- Building surveys; and
- Professional advice.

What types of cases can CEDR dismiss?

CEDR will accept applications unless they fall into one of the following categories (Rule 2.3):

1. Claims brought by someone who does not fall within the definition of a "customer";
2. Claims which are made against a RICS member firm that does not participate in the Scheme;
3. It has been less than eight weeks since the customer first complained to the company, unless the company has provided the customer with its final position in relation to the dispute;
4. The customer has made no attempt to contact the company about the dispute before applying to the Scheme;
5. The dispute is considered by CEDR or the adjudicator to be frivolous and/or vexatious;
6. The subject matter of the dispute is the same as an existing or previous valid application made to the Scheme by the same customer against the same company;
7. The dispute has been or is the subject of court proceedings or an alternative independent procedure for the determination of disputes (unless such court

proceedings or alternative procedure have been abandoned, stayed or suspended).

8. Disputes where the customer is claiming a total sum of money which exceeds £25,000.
9. The customer brought the claim to CEDR at least 12 months from the date upon which the company gave notice to the customer that the company was unable to resolve the complaint (or, where no notice is given, at least 12 months since the customer's last attempt to contact the company);
10. Where dealing with such a type of dispute would seriously impair the effective operation of CEDR;
11. Where the dispute falls outside of RICS' Terms of Reference;
12. Where the subject matter of the customer's claim relates to any of the following situations:
 - a) A dispute solely about a valuation figure that does not relate to any alleged defect;
 - b) A dispute about a defect relating to a valuation of a property under a Buy to Let mortgage;
 - c) A dispute about property and/or land boundaries;
 - d) A dispute about lettings, property management and/or estate agency;
 - e) A dispute relating to a right to light;
 - f) A dispute in relation to party walls;
 - g) A dispute about one or more expert witnesses or expert witness' report(s);
 - h) A dispute about the amount of compensation the customer receives from a third party following work or services carried out by the company.

The RICS Scheme administration team assess all applications against the above criteria, and those which do not fall within the scope of the scheme will be immediately withdrawn.

What remedies can the customer claim on the application form?

The customer in the application form can claim the following remedies:

- An apology;
- A product or service;
- Something to be done about one or more bills;
- Some practical action to be taken;
- A payment that must total no more than £25,000.00 (including VAT). This sum includes any claims for compensation, refunds, credits and/or waivers.

Can I object to a case being considered by CEDR?

Although the RICS Scheme administrative team carry out an initial assessment on the validity of a RICS Scheme application, this may not cover all instances in which a case may be outside our scope, as further evidence may be required to prove this.

1. If a member firm has evidence that proves that the entirety of a RICS Scheme application falls into one or more of the reasons for rejecting a claim, detailed above, this evidence must be provided within 15 working days of the application being sent to the member firm. Member firms must specify the grounds (by referencing the applicable rule) on which they consider the application to fall entirely outside the scope of the RICS Scheme.
2. Upon receipt of an objection, the RICS Scheme administrators will refer the matter to an adjudicator for a determination to be made as to the validity of the application.
3. If the objection is upheld, the case will be withdrawn and no fee will be charged.
4. If the objection is rejected, the member firm will be given a time extension of two working days to either defend or settle the claim.
5. Where a dispute arises as to the validity of an application, the decision of the RICS Scheme will be final.

When CEDR sends a customer's application to you, what options do you have?

1. Object

If the member firm considers the claim to fall outside the scope of the Scheme, an objection can be made by the member firm to the acceptance of the application.

You can object to CEDR's acceptance of an application if you consider that the application falls into one of the categories set out under Rule 2.3 (as referred to above) and should not have been accepted by CEDR.

The evidential burden rests with the member firm to prove why the application falls outside the scope of the scheme. The full procedure for objections is detailed in Rule 4.3. Where a dispute arises as to the validity of an application, the decision of CEDR will be final.

For example, where the customer has not exhausted the member firm's complaints process and eight weeks have not passed since the customer first complained, the member firm can object to the acceptance of the case on the ground that the parties have not yet reached deadlock.

2. Settle

As stated above, the Scheme allows the member firm to settle the case by providing either all of the

remedies stated on the application form or to reach a negotiated settlement directly with the customer. Once CEDR receives notice of the member firm's intention to settle within 15 working days, CEDR will close the case. CEDR will charge the member firm the reduced rate of £75.00.

The member firm is required to provide the customer with the agreed remedies within 20 working days unless an alternative timescale is agreed with the customer. If the customer notifies CEDR that the remedies have not been provided, CEDR will reopen the case and the member firm will be given 15 working days to either provide a defence or provide evidence that the agreed remedies have been given within the agreed timescale. (Rule 4.2.3).

Note: case fees will apply where an adjudicator has been appointed by CEDR, even if a settlement is reached before a decision is issued.

3. Defend

The defence is effectively the member firm's only opportunity to respond to the customer's application. The defence and any evidence that the member firm chooses to submit with it will be put before the adjudicator and will be taken into account when a decision is made. It is important to ensure that all of the points raised in the application are addressed. Do not assume that the application will simply repeat some or all of the points made by the customer in previous correspondence. The defence should deal with each and every complaint made in the application, stating clearly whether you agree or disagree with the

points raised and your reasons why, supported by relevant evidence and references to any law.

Always bear in mind that the way an adjudicator approaches a case is very similar in its essential elements to the approach that a judge would adopt in a court of law. However, all of the disputes brought to CEDR are decided on the documents submitted by the parties alone – there are no oral hearings. Therefore, statements submitted and/or documentary evidence provided with the defence are the only opportunity the member firm has to make its case.

Please note that CEDR cannot provide any advice as to how to respond to a claim nor can it advise customers how to articulate a claim. It can, however, provide advice and information to the parties in relation to how the RICS Scheme works.

NOTE: In the event that CEDR accepts an application, the member firm has 15 working days to either object, settle or defend the application (Rule 4.1.5).

What should be included in your response?

The principal purpose of a defence is to respond to each of the points that the customer has raised in their application to the RICS Scheme. You should deal with each and every complaint that the customer

has made, stating clearly whether you agree or disagree with the points made and your reasons why. The danger of not responding to all of the complaints is that the adjudicator will only have one side of the story for those complaints that you remain silent on. This could result in the adjudicator finding in the customer's favour on that point. Where you disagree with the customer and wish to put across an alternative point of view, you must provide evidence to support your position. Adjudication is an evidence-based process, so you must prove to the adjudicator's satisfaction that your position is correct.

Examples of evidence you can submit include (but are not limited to):

- The contract between your company and the customer;
- A copy of your terms and conditions;
- Any relevant bills or invoices;
- Any letters or e-mail correspondence that has been exchanged;
- Any relevant call recordings or account notes.

What powers does the adjudicator have and what are the possible outcomes of a decision?

Under Rule 5.2, the adjudicator has a variety of powers in relation to the case. Namely, an adjudicator can:

- Extend any of the time limits for customer and member firm action set out in the Scheme Rules;
- Request further evidence of documents from the customer or the member firm, and set the time limits in which the party has to provide these;
- Proceed with the adjudication if either the customer or the member firm does not keep to the Rules or any instructions/direction made pursuant to the Rules;
- Consult any relevant evidence not presented by the parties (but the adjudicator must inform the parties about such evidence and allow them to provide comments);
- Receive and take account of any evidence the adjudicator thinks is relevant;
- End the adjudication if, in the adjudicator's opinions, the entirety of the claim falls outside the scope of the Scheme (there is no appeal if the adjudicator decides to end the adjudication);
- End the adjudication if the customer and member firm settle their dispute before a decision is made; and
- Determine whether or not the member firm has complied with their decision, in the event that a dispute arises between the parties regarding compliance.

In terms of possible outcomes, under Rule 5.3, the adjudicator may direct the member firm to provide the following remedies where the customer's claim succeeds in full or in part:

- Provide the customer with an apology;
- Provide the customer with a product or service;

- Take some practical action;
- Do something about one or more of the customer's bills;
- Make a payment to the customer, the total value of which shall not exceed £25,000.00 (including VAT).

Note: In exceptional circumstances, the adjudicator may award more than has been claimed by the customer (Rule 5.4).

When CEDR issues a decision made by the adjudicator, it is only capable of being accepted or rejected by the customer. The customer has 20 working days in which to accept the decision, if accepted, the outcome is binding on the member firm. There is no right of appeal against the adjudicator's decision by either party.

The Decision has been issued, what are the member firm's next steps?

Where the adjudicator has directed the member firm to take any action in relation to the customer and the customer has accepted the decision, the member firm in accordance with Rule 4.6, must complete the action(s) within 20 working days from the date on which CEDR notifies the member firm of the customer's acceptance of the decision.

In the event that the member firm is unable to complete the necessary actions within the 20 days, the member firm must advise the customer and CEDR why it is unable to comply and provide any substitute date before the expiration of the timeframe. Where the customer informs CEDR that the member firm has not completed the actions within 20 days, CEDR will contact the member firm and request compliance. Should the member firm not respond or fails to comply, CEDR will refer the matter to a senior member of staff. Failure to respond may result in appropriate action being taken by CEDR, such as suspension of the member firm's membership of the Scheme.

Our obligations

Key Performance Indicators (KPIs)

The RICS Scheme is operated under a set of KPI's agreed with RICS:

- 1 More than 80% of calls to be answered in less than two minutes;
- 2 More than 90% of calls to be answered in less than five minutes;

- 3 100% of cases concluded within 90 days from receipt of complete case file to issuing of adjudicator's final decision; and
- 4 100% of written correspondence to be replied within 10 days.

Complaints and Appeals

As with any organisation, we occasionally receive complaints about our service. Though we find that more often than not complaints about us are made by consumers who have lost their case and therefore still feel aggrieved, we do have a published complaints procedure and the outcome of complaints made against us are discussed at Board of Directors level. We also have an Independent External Reviewer to whom we can refer complaints as the final step of our escalation process.

When CEDR issues a decision made by an adjudicator, it is only capable of being accepted and rejected, and only by the customer. There is no right of appeal against an adjudicator's decision.