

Third Party Opinion

Introduction

1. Third Party Opinion is an alternative to adjudication, arbitration and mediation. It differs from mediation in that an independent professional is appointed on behalf of the parties to provide a professional opinion and recommendation for settlement. The independent professional's recommendation may be, by prior agreement, legally binding.

2. Third Party Opinion is suited to disputes concerning matters of valuation or of a technical nature such as the performance or installation of a product or service, where the matter can reasonably be expected to be resolved in a relatively short timescale. It can be agreed upon, by all parties, as a method to resolve a dispute, even if it is not provided for in the contract.

Procedure

1. Under the scheme, Third Party Opinion is offered as an alternative means of dispute resolution (ADR) where differences or disputes arise, for example, between members of the RIBA and their clients, between an employer and a contractor, between a contractor and subcontractor or between members of the RIBA. It is only suitable where the parties have a genuine wish to settle. Independent professionals are selected from those listed by the RIBA for appointment under the Scheme.

2. The independent professional will make a recommendation for settlement of a case by providing an Opinion. The proceedings will be conducted in confidence, on a without prejudice basis.

3. The scheme is co-ordinated centrally by a member of RIBA HQ staff (the Administrator) reporting to the Director of Practice. Parties wishing to apply for Third Party Opinion under the scheme will apply jointly or individually to the Administrator each setting out the nature of the difference or dispute (the Submission) on no more than two sides of an A4 sheet.

4. When the Administrator is satisfied that both parties agree to the scheme the Administrator will, on receipt of the application fee of £50 (exc. VAT), nominate an independent professional who will proceed with the case.

5. The independent professional will contact both parties to arrange for submission of documents. Submissions will be limited to the two sides of A4 submitted by each party with the application, along with a maximum of 10 sides of A4 of supporting documents (although further information may be requested subsequently). Otherwise, the independent professional will decide the procedure leading to his/her Opinion which could include a telephone discussion, a meeting or site visit.

6. The Administrator reserves the right to decide whether a matter referred to the RIBA is suitable for the RIBA Third Party Opinion scheme. If the Administrator deems that the matter is not suitable for the scheme, any application fee will be returned to the applying party.

7. If, on receipt of submissions, the independent professional is of the view that producing a useful Opinion in the 5 hour time limit is not possible, he/she will inform the

parties and make a proposal for a reasonable extended timescale for agreement by the parties. If, at this point, the parties cannot agree and decide not to proceed with the matter, then the RIBA will refund the application fee.

8. If a settlement is reached the parties will be required to sign a binding agreement. The contents of the agreement will be confidential.

9. A Third Party Opinion may be abandoned at any time, prior to the issue to the parties of the Opinion, by the withdrawal of one of the parties by notice in writing to the other parties and the independent professional, or if the independent professional is of the opinion that no useful purpose can be achieved by continuing.

10. Neither the RIBA nor the independent professional shall be liable for anything done or omitted in the discharge or purported discharge of their functions and any employee or agent of the independent professional is similarly protected from liability.

11. An application fee of £50 (exclusive of VAT) is charged to appoint an independent professional under this Scheme. The fees of the independent professional will be based on the time spent dealing with the dispute and will, subject to any agreement by the parties to a proposal for a reasonable extended timescale, not exceed £100 per hour (exclusive of VAT), up to a maximum of 5 hours spent dealing with the dispute. Travel expenses may be charged in addition. The independent professional may require payment of a deposit in advance of undertaking a review of the submissions. The parties shall be jointly and severally responsible for the payment of the fees and will normally be required to share them equally unless otherwise agreed.