**Draft Adjudication Protocol**

**applicable to the Dispute Resolution Scheme Rules under the Natural Hazards Insurance Act 2023**

# **Background**

* 1. The Dispute Resolution Scheme Adjudication Protocol (**Adjudication** **Protocol**) applies where a dispute has been referred to an adjudication under Rule 7.1 in the Dispute Resolution Scheme Rules (as amended from time to time) (**Scheme Rules**).
  2. An adjudication under the Scheme Rules is a process where an independent adjudicator determines the dispute for the parties.

# **Interpretation**

* 1. The Adjudication Protocol is to be read alongside the Scheme Rules, in particular Rule 7 which sets out the “Adjudication rules” that will apply to a dispute referred to adjudication under the Scheme Rules. This includes appointment of the adjudicator, the types of order that an adjudicator may make, the overall timeframes for the adjudication, the payment of costs, representation, enforcement, rights of appeal and related matters.
  2. Each person participating in an adjudication under the Scheme Rules should ensure that they are familiar with both the Scheme Rules and this Adjudication Protocol.
  3. Any defined term used in the Adjudication Protocol and defined in the Scheme Rules has the same meaning as in the Scheme Rules.
  4. If any aspect of the Adjudication Protocol conflicts with the Scheme Rules, the Scheme Rules take priority. In addition to Rule 7, the Scheme Rules cover the following matters which may be relevant to an adjudication process and are not separately covered by the Adjudication Protocol:
     1. Scheme Rule 2 which defines a number of terms in the Scheme Rules,
     2. Scheme Rule 3 which outlines principles by which the Scheme Rules are interpreted,
     3. Scheme Rule 8 which describes how the dispute resolution procedures under the Scheme will be conducted,
     4. Scheme Rule 9 which describes information management processes and confidentiality requirements,
     5. Scheme Rule 10 which describes the rules relating to exclusion of liability for (relevantly) the Scheme provider and adjudicator,
     6. Scheme Rule 11 which outlines the process by which participation in an adjudication ends, and
     7. Scheme Rule 12 which describes general provisions applicable to the Scheme.
  5. A reference to the Adjudication Protocol is a reference to this Adjudication Protocol, as amended from time to time.

# **Purpose of the Adjudication Protocol**

* 1. The purpose of the Adjudication Protocol is to set out the process for adjudication to be followed once the dispute has been referred to the adjudication process by the applicant under the Scheme Rules and the Scheme provider has appointed an adjudicator.

# **Responsibilities of the Adjudicator**

* 1. An adjudicator appointed by the Scheme provider to resolve a dispute must:
     1. carry out the adjudication in accordance with the Scheme Rules, the Adjudication Protocol and have regard to the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness,
     2. act as an independent decision-maker for the dispute. They must not be an advocate for any party to the dispute, and
     3. conduct the adjudication in a timely manner and avoid incurring unnecessary expense for any party to the adjudication.

# **Responsibilities of the Parties**

* 1. Each party to a dispute referred to adjudication must:
     1. comply with the Scheme Rules and the Adjudication Protocol, and
     2. assist in the proper conduct of the adjudication by the adjudicator and cooperate with the adjudicator throughout the process.

# **The Adjudication Process**

* 1. Within 3 working days of being appointed, the adjudicator must:
     1. inform each party of the adjudicator’s appointment and contact details,
     2. provide each party with a copy of the information that the applicant used to refer the dispute to the Scheme under Scheme Rule 5.5, and
     3. inform each party that the timeframe in clause 6.2 of the Adjudication Protocol will start from the date that the information in clauses 6.1(a) and (b) is provided.
  2. Within 10 working days of an adjudicator notifying each party of the adjudicator’s appointment and providing the accompanying information (in accordance with clause 6.1 above), the applicant must submit to the adjudicator and the Commission (and also the private insurer if they are joined to the dispute under Rule 5.8 of the Scheme Rules) a statement of position which describes:
     1. the nature of the dispute (giving sufficient detail about time, place, names of persons and other relevant circumstances),
     2. their position on the dispute, and
     3. the relief or remedy being sought.
  3. The applicant must also provide the adjudicator and the Commission (and the private insurer, where relevant) with a copy of any documents (including any expert reports and witness statements) that the applicant relies upon, at the same time as providing the applicant’s statement of position.
  4. Within 10 working days of an applicant submitting a statement of position to the adjudicator and the Commission (and also the private insurer if they are joined to the dispute), the Commission (and the private insurer, where relevant) must, each submit a statement of position to the adjudicator and applicant which describes:
     1. what aspects of the dispute are accepted and what aspects of the dispute it disagrees with, and why, and
     2. its position on the relief or remedy sought.
  5. The Commission (and the private insurer, where relevant) must (separately or jointly) provide the adjudicator and the applicant with a copy of any document(s) (including any expert reports and witness statements) that it relies upon, at the same time as providing its statement of position.
  6. Within 10 working days of the Commission (and the private insurer, where relevant) submitting its statements of position, the applicant may file a statement of reply to that statement of position. The applicant must ensure its statement of reply is strictly in reply to the statement of position by the Commission (and/or the private insurer, where relevant) and must not raise any new issues.
  7. As soon as reasonably practicable after the statements of position and the applicant’s reply have been submitted, and subject to the extension of applicable timeframes under clause 7.1(d) of the Adjudication Protocol and Rule 7.6 of the Scheme Rules, the adjudicator must issue their written determination of the dispute.

# **The Adjudicator’s Powers**

* 1. The adjudicator may:
     1. deal with all procedural matters either by email, or by video/telephone conference with each party, but in either case must issue any procedural directions in writing.



* + 1. at any time during the adjudication process, either on their own initiative or on request by a party, order a party to provide to each other (and/or to the adjudicator) specified documents relevant to the dispute not already provided during the process. The scope of any order requiring the provision of documents must be proportionate to the nature of the dispute and the issues in dispute.
    2. ask questions and request a party to provide further submissions on any issue or issues raised by the dispute. The requested party must respond to such a request within 5 working days of the request.
    3. at any time during the adjudication process, either on their own initiative or on request by a party, extend any timeframe in clause 6 of the Adjudication Protocol, as the adjudicator considers necessary and reasonable, taking into account the principles in clause 4.1 of the Adjudication Protocol.
  1. Except as specified in the Adjudication Protocol and/or Scheme Rules, the adjudicator may conduct the adjudication following any process they consider necessary and reasonable, having regard to the nature and circumstances of the dispute, the wishes of each party, and clause 4.1 of the Adjudication Protocol.
  2. If either party does not comply with the Scheme Rules and/or the Adjudication Protocol, the adjudication process may proceed to a binding resolution by the adjudicator unless Rule 11.2 of the Scheme Rules applies.

# **Confidentiality**

* 1. Adjudication is a confidential process. An adjudicator appointed to resolve a dispute under the Scheme Rules and the Adjudication Protocol is bound by the Information Management/confidentiality requirements in Rules 9.1 to 9.10 of the Scheme Rules as if references to the Scheme provider were references to the adjudicator (with all necessary modifications).