

Reassessment of Commercial Rent Independent Experts

All Panel Members must comply with and sign the Service Level Agreement between the Panel Member and DRS

1 General

One of the conditions of panel membership (as stipulated in the Service Level Agreement), is regular reassessment of panel members. This will comprise of a formal interview, lasting approximately 60 minutes and will ordinarily take place at five yearly intervals but may be triggered by any of the following:

- Expiry of 5 year period since last assessment;
- Adverse feedback;
- A recommendation by the Advisory Body following a complaint against the panel member;
- Failure to comply with CPD requirements;
- Lack of regular market involvement in stated areas of expertise;
- Discretion of the President.

1.2 It is essential that those who act as independent expert continue to be actively involved in their stated areas of expertise. Experts will be required to update Dispute Resolution Services on their market involvement every two and a half years by forwarding details of recent experience as set out at the end of this document.

1.3 Prior to the interview each candidate will be required to send to the RICS:

- A completed skills form;
- A summary of the candidate's working circumstances and type of work dealt with over the last 18 months (see attached information);
- A set of procedural instructions;

(Where a candidate is not able to provide a recent determination, then the candidate will be required to critique a mock determination provided by RICS.)

- A determination, preferably reasoned;
- A determination with costs;
- Complete record of CPD for previous 5 years with Dispute Resolution topics highlighted;
- The appropriate fee.

1.4 Written references will have been obtained by RICS prior to the interview and will be forwarded to the interview board. A member of the interview board will usually speak to the referees prior to the interview.

1.5 The interview board will comprise of 3 members. It will be chaired by a senior panel member, who will have been assessed for suitability of acting as chair by a lawyer practising in the sector. The chair will be assisted by a professional from the sector, who is not a panel member, and an independent member. The independent member's role is to ensure fairness and consistency of approach.

2 Standard

- 2.1** The standard of performance will be assessed by reference to the abilities and qualities that would normally be expected of a member on the RICS panel. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. (Bolam -v- Friern Barnet Hospital Management Committee)

3 Criteria

- 3.1** In order to remain on the panel, the candidate must be able to demonstrate competency in the following areas:

3.1.1 Skills Form

The interview board will have a discussion with the candidate to establish that:

- the candidate's appropriate skill areas as an independent expert have been identified;
- the candidate is aware of the different experience required for arbitrator and independent expert roles;
- the response from referees corresponds with the areas of expertise identified by the candidate and the referees have personal knowledge of the candidate's experience in the areas ticked on the skills form;
- the expert is recognised in the market place as actively involved in all areas set out in the skills form. An example of the level of involvement expected is contained in the attached information sheet.

3.1.2 Knowledge and understanding of involvements/conflicts/bias and perceived bias

The candidate should be:

- able to demonstrate an understanding of involvement;
- able to explain when an involvement becomes a conflict;
- aware of the risks of both real and apparent bias and the steps that could be taken to avoid reasonably foreseeable difficulties.

3.1.3 Managing the process, including standard documentation

The candidate should produce appropriate documentation and be able to demonstrate the ability to manage and control the process.

3.1.4 Knowledge, application and understanding of the law including dealing with jurisdictional challenges

The candidate should be aware of relevant case law.

3.1.5 Determination

The candidate should be:

- aware of when a reasoned determination can be given;
- understand what information it should contain;
- able to provide concise, clear and logical reasons for a determination;
- able to communicate in a structured, fluent and logical manner.

3.1.6 Knowledge and understanding of costs

Candidates should be familiar with the general principles of deciding costs, including Calderbank offers and the principle of 'near misses'.

3.1.7 CPD

CPD is important for keeping up to date with practice and procedure. **Forty hours** per annum as a minimum should be demonstrated. For the purposes of reassessment, this should include and be spread over the following areas:

- acting as a party representative in third party proceedings;
- acting as an arbitrator or other dispute resolver;
- attending or presenting at relevant events (this can include Arbrix);
- attending workshop type events;
- private study.

Please note: Currently DRS cannot access members' confidential records, and a complete CPD record including RICS on-line records must be provided with dispute resolution matters highlighted.

3.1.8 General

The interview board may also consider overall suitability and this can include:

- ability and aptitude of the independent expert;
- the standard and professionalism of any documentation and communications;
- any upheld RICS complaints against the member;
- any judicial criticism or comment if applicable.

4 Reassessment outcomes

4.1 Pass

A **pass** will be allocated to candidates who are judged to be competent in every category set out in the criteria.

4.2 Refer

Those who are judged 'Improvement Required' or 'Unsatisfactory' in up to two categories will be **referred**. A referral means the candidate will remain on the panel and, if the required improvement is met, will be passed. If the standard is not met, the candidate will be failed and has the right of appeal. The Interview Board to make a recommendation to RICS on what the candidate should be asked to do to meet the required standard.

4.3 Fail

Candidates who are judged 'Improvement Required' or Unsatisfactory' in more than two categories will be **failed**. Candidates who fail will be removed from the panel but will have opportunity to appeal against the decision to an Appeal Board.

4.4 The candidate will not be informed of the decision or the reasoning on the day of the interview.

5 Appeal procedure

Candidates who have failed their interview have the right to appeal. Candidates may appeal against a fault in the process, not because they disagree with the assessors' decision about their competence. For further information, please refer to the DRS Appeal Procedure.

Summary of Relevant Experience for Independent Expert Reassessment

The Independent Expert shall provide a brief summary of his working circumstances and type of work he has been dealing with over the previous 2 years. While mention can be given to work received from the DRS or other RICS panels, the emphasis will be on the work which has been dealt with as part of the surveyor's day to day work, particularly that which demonstrates active involvement in the market.

Surveyors are invited to provide a brief summary, typically not more than around 500 words although more information can be provided if the surveyor requires, covering the following topics:

- (1) A comment on the role which is played in the organisation you work for, i.e. sole practitioner, director, Consultant or other (what your title or job description is).
- (2) A brief explanation of your role in the context of the organisation you work for e.g. perhaps you are the head of commercial office, which is part of a larger organisation with offices in different locations across the country dealing with a variety of matters ranging from residential to agricultural work or, consultant working from the office for one day a week.
- (3) As an Independent Expert you will be expected to demonstrate your continuing (rather than historic) participation in his particular market place relevant to the stated skills given on the Skills Form.
- (4) Reference to completed work over the previous 2 years. Ideally the work should include involvement with acquisitions and lettings and/or rental negotiations such as rent reviews and lease renewals. A rough indication of the number of such negotiations dealt with should be given with a few examples:

e.g. dealt with rent reviews and lease renewals on parade of eight shops in Ripon on behalf of landlord and retained by Smith Shoes to deal with their professional work throughout

Yorkshire. Six rent reviews dealt with in various towns on shops with the rentals varying from £10,000 per annum exclusive to £35,000 per annum exclusive.

- (5) Reference should also be made to other work undertaken such as rating, investment purchases or sales and valuations. While the emphasis should be on transactional work, information on work done in these other sectors also give a good indication of the surveyor's awareness of general rental values in his/her particular market place.
- (6) It is quite possible that you may have an involvement in a market, e.g. supermarkets, by virtue of development rather than transactional work. However, as this can take a number of years to come into fruition it is quite possible that no actual lettings have been completed by you within the time period considered. In this instance the background and preparation work may still be of relevance.
- (7) Whilst the Independent Expert's *personal* experience is paramount, it may also be relevant to point out what professional colleagues have also been dealing with in the surveyor's office or firm. For example, it is possible that a surveyor will have dealt with approximately 40 rent reviews, three investment purchases, five rating appeals, four completed Arbitrations through DRS appointments, but no lettings. In this instance it may be relevant that his two colleagues in the Bradford office deal exclusively with retail agency throughout Yorkshire.
- (8) Client confidentiality is obviously appreciated but indications of the size of rents dealt with can be given, e.g. "four shops in a parade of around £12,500 per annum exclusive each" or a "rent review on a small supermarket let to Lidl of around 15,000ft²".
- (9) In addition to the personal involvement in the market concerned the surveyor you will be expected to have complied with RICS Regulations relating to CPD and provide details in accordance with the guidelines.
- (10) Submissions made by you in connection with the above will also be considered in conjunction with the marketing material including websites which advertise your or your firm's expertise. However, where a firm's website refers solely to their expertise in one specific field, the surveyor will be expected to justify why s/he should still be viewed as having expertise on other areas included on the skills form. While this may be interesting and relevant background information, obviously it has to be stressed that the nomination of an Independent Expert is a personal, not a corporate one.
- (11) The surveyor should also confirm approximately how many nominations by the DRS he has accepted and how many have been declined due to conflicts of interest.

Example of a Typical Summary

My name is Jonathan Withers FRICS and I am Director in Charge of the Skelmersdale office of Ramsbottom Price where I am based five days a week. My company has four offices overall, three of which deal with residential and my two colleagues and I deal with the commercial side of the business.

I deal with a wide variety of commercial work involving retail office and industrial premises although my firm's traditional strength has been in the retail sector. This continues to this day with approximately 70% of our income coming from this sector, 20% from office work, 5% from industrial agency and the rest valuation work.

Over the previous 2 years I have deal with the letting and acquisition of approximately 10 properties throughout Lancashire and Yorkshire ranging from a prime commercial property in Commercial Street, Leeds (rent £95,000 per annum exclusive) to an extension of an existing unit in secondary Selby where the rent was £5,000 per annum exclusive. In addition to this I have dealt with some 25 rent reviews and lease renewals on retail property with the largest shop being an £85,000 per annum exclusive lease renewal in the Merion Centre.

I have dealt with five rating appeals on behalf of clients and I am currently involved in a compulsory purchase situation where my client's property is being acquired by the Local Authority for a road extension.

I have dealt with two Expert Determinations which have been referred to me by agreement of the parties, details can be provided if requested and have made six Awards as Arbitrator, having received approximately 20 invitations to act from DRS. I have turned down five instructions as Arbitrator from the DRS due to conflicts of interest.

While I have historically dealt with rent reviews on small convenience stores I have not personally dealt with any rent review or letting work on these premises over the time period being considered. However, my colleague John Barnaby is retained by Scratch Book Stores to acquire units throughout Yorkshire on their behalf and he has completed approximately 25 deals on stores of between 2,000ft² to 3,500ft² and disposed of five stores due to relocation.

I attach herewith come corporate marketing information which we send to our clients which will give you a further idea of the work which my company, and I personally, deal with and you are welcome to consider the contents of the firm's website which is www.brillianturveyors.com.