

DISPUTE RESOLUTION SERVICE



# ADR for Compulsory Purchase Disputes



# Introduction

The Royal Institution of Chartered Surveyors offers an Alternative Dispute Resolution service for Compulsory Purchase Disputes. It is designed to help resolve issues between Acquiring Authorities and the owners of land or property subject to a Compulsory Purchase Order.

An Acquiring Authority may order a property to be compulsorily purchased in a variety of circumstances. In the United Kingdom, most orders are made using powers given to Acquiring Authorities by legislation. For example, if the route of a proposed new motorway crosses a piece of land and the owner does not want to sell it, an order may be made to purchase the land compulsorily. Similarly, a local authority may need to demolish properties to make way for a new development. If the owners do not agree to sell, the local authority may exercise legal powers to acquire the properties. When this happens, the Acquiring Authority will normally compensate the owners. The amount of compensation to be paid is often the subject of disagreement which can lead to court action.

This ADR service is not designed to resist the making of a Compulsory Purchase Order (CPO) or have one set aside. It is designed to enable the cost effective and efficient resolution of disputes between Acquiring Authorities and claimants where the acquisition of the property is proceeding under a CPO and disputes have arisen over matters such as the value of the property. Other issues which this service can help with include disputes over the costs of acquiring and moving to a new property, or additional payments such as the cost of seeking professional advice regarding compensation.

## How is a dispute resolved?

Parties can choose to resolve their dispute via independent determination or mediation.

### a. Independent Determination

The parties agree that the dispute will be decided for them by an expert Independent Determiner. The Independent Determiner will base their decision on an assessment of: (i) the evidence submitted by each of the parties, (ii) the results of their own investigations, and (iii) application of their own knowledge and expertise.

### b. Mediation

The parties agree to negotiate a settlement of the issues. They instruct an experienced and expert mediator to help them engage in meaningful dialogue, explore the issues in dispute in detail, and keep them focused on achieving an amicable outcome.



## Key benefits of the RICS ADR service

- The service is simple and flexible so that parties can adapt the process to suit the size and complexity of their dispute
- It is specifically tailored to resolve compulsory purchase matters
- Parties can choose whether outcomes will be binding or non-binding
- It is cost-effective and significantly cheaper than litigation. Parties have a clear understanding, in advance, of what the procedure costs and how much they are likely to pay
- Parties retain control over the shape, timetable and outcome of the process
- RICS Independent Determiners and Mediators bring specialist sector knowledge and experience to the process
- The service is managed and run by RICS, which is impartial and has over 45 years of experience providing ADR services in the property sector.



# A. How does independent determination work?

RICS will appoint someone who is an expert in CPO matters to act as an Independent Determiner. The Independent Determiner will consider the evidence and reach a decision. The decision is usually final and binding, but parties have the option to agree otherwise.

Independent determination is well suited to resolving disputes about the amount of compensation to be paid. In relation to a claim for CPO compensation, an independent determiner - who has relevant expertise and experience in CP valuation and is not instructed by either party but is independently appointed by RICS - can decide what is a fair and realistic amount of compensation.

It provides a quicker and more cost-effective method for obtaining a decision than taking the matter to court/tribunal. A further key benefit is that the decision is made by somebody who is an expert in CPO valuation.

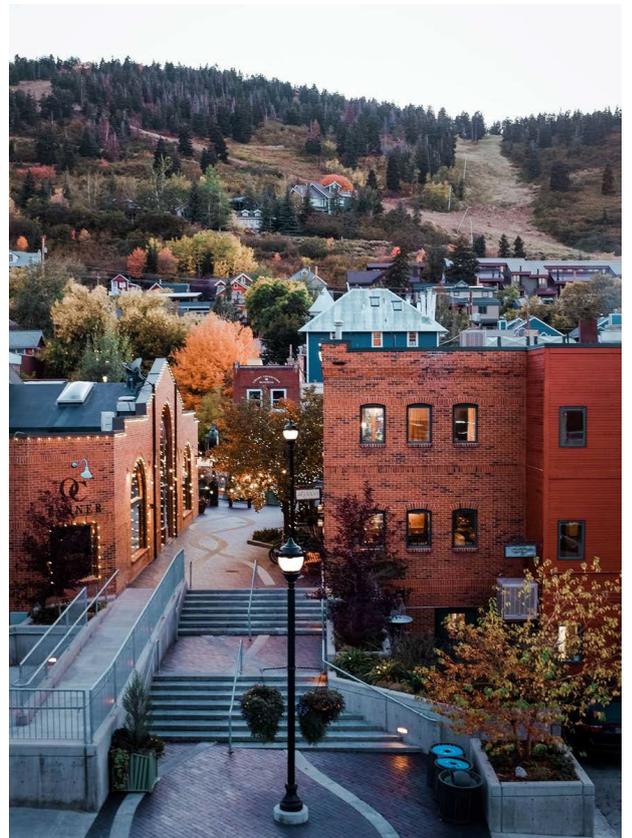
The Independent Determiner will be appointed by the RICS Dispute Resolution Service (DRS), an impartial body whose function is to appoint professionals to resolve disputes. DRS will ensure that the Independent Determiner is free from any conflict of interest and is available to undertake the appointment as and when required by the parties.

The Independent Determiner will decide the dispute based on:

- a) Evidence and argument submitted by the parties in writing (or in person at a joint meeting if held)
- b) The results of their own investigations and enquiries
- c) The application of their knowledge and expertise

The Independent Determiner will invite both parties to make submissions to support their cases.

They will also make their own enquiries, including seeking clarification directly from the parties, if required.



## Sample Procedure: Independent Determination

There is no standard “one size fits all” procedure. This is an indication of how a typical independent determination may run:

The Independent Determiner will be a person agreed by the parties or, where they cannot agree, appointed by RICS.

The Independent Determiner will invite the claimant to submit evidence in support of their claim including any amounts sought.

The Independent Determiner will invite the Acquiring Authority to submit a response to the claim.

The Independent Determiner will decide the timetable and evidential procedure, including whether a meeting in person or site visit is necessary.

The Independent Determiner will provide a written, reasoned decision within the agreed timescale.

## The Decision

- a. The Independent Determiner’s decision will be in writing and include reasons.
- b. The decision will normally be final and binding (unless the parties have previously agreed that it will not be).

## Fees and Costs

Unless the parties have agreed otherwise, each party will bear their own costs and expenses in relation to the commencement of an independent determination.

The parties can agree whether one or both of them will be responsible for payment of the RICS application fee and the Independent Determiner's fees. If there is no agreement, the Independent Determiner will decide as part of their decision who pays these fees and in what proportion.

The Independent Determiner will release their decision to both parties upon payment of their fees.

**A.** An application fee of **£300 plus VAT** is payable to RICS for processing the appointment of an Independent Determiner.

- This fee may be payable by the Acquiring Authority if their policy states that they shall bear such costs.
- Where there is no such policy or agreement, the fee will be payable by the parties in equal shares in advance of the appointment being made.
- Either party may, however, choose to pay the full fee, and the Independent Determiner, when they decide the dispute, will say whether the fee should be reimbursed by the other party.

**B.** The fees payable to the Independent Determiner are **£260 per hour (plus VAT)** to a maximum of **12 hours**, plus reasonable disbursements.

- Should the parties agree that more time is necessary, an hourly rate for additional hours will need to be agreed by the parties and the Independent Determiner.



## B. How does mediation work?

RICS will appoint an impartial professional to act as mediator. This will be a person who is knowledgeable and experienced in CPO matters. The role of the mediator is to help the parties engage in a meaningful discussion, which is focussed on achieving a mutually agreeable outcome to the dispute.



The benefits of mediation are that it:

- Allows the parties to explore options for an agreed settlement - the outcome is not imposed upon them
- Focuses both parties on working towards a practical solution
- Is not bound by procedural rules. The parties will agree with the Mediator how the mediation is to run, including the extent to which the Mediator will offer advice or guidance to the parties.
- Helps both parties identify the critical issue(s), which need to be resolved, and ensures that a prompt resolution of the dispute is not hindered by the parties spending unnecessary time and energy on issues that are not particularly relevant.

The mediation process is protected by the rules of confidentiality and privilege. This means that any matters discussed and revealed during the mediation process should not be disclosed to parties who are not involved in the mediation. Also, nothing said or uncovered in the mediation can be admissible in evidence in any legal proceedings that may follow in the future.

The mediation will conclude in any of the following circumstances:

- The parties settle all issues in dispute
- The agreed timetable has come to an end, and the parties fail to agree for the mediation to continue further
- One or both parties decide to withdraw from the mediation
- The parties decide to refer the dispute to independent determination or court/tribunal.

## Sample Procedure: Mediation

There is no standard “one size fits all” mediation procedure. This is an indication of how a mediation may run. Once appointed, the Mediator will:

Agree the agenda and timetable for the mediation with the parties



Invite both parties to submit a written account of their relative positions and the arguments they would like to put forward



Set up and facilitate a meeting with the parties and work with them to narrow the issues and explore possible solutions



If required, assist the parties to put into writing the matters on which they have agreed, which will form the basis of their written settlement



N.B. The written settlement prepared at the end of a mediation is a legal contract between the parties. They are therefore bound to do what they have agreed to do and can be liable for breach of contract should they not do so.

## Fees and Costs

Unless the parties agree otherwise, each party will bear their own costs and expenses in relation to the mediation. The parties can agree whether one or both of them will be responsible for payment of the Mediator's fees.

- A. An application fee of **£300 plus VAT** is payable to RICS for processing the appointment of a Mediator. This fee may be payable by the Acquiring Authority if their policy states that they shall bear such costs. Where there is no such policy or agreement, the fee will be paid by the parties in equal shares in advance of the appointment being made.
- B. The fees payable to the Mediator are **£260 plus VAT per hour** to a maximum of **9 hours**, plus reasonable disbursements. Should the parties agree that more time is necessary, an hourly rate will need to be agreed by the parties and the Mediator.

## Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

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