

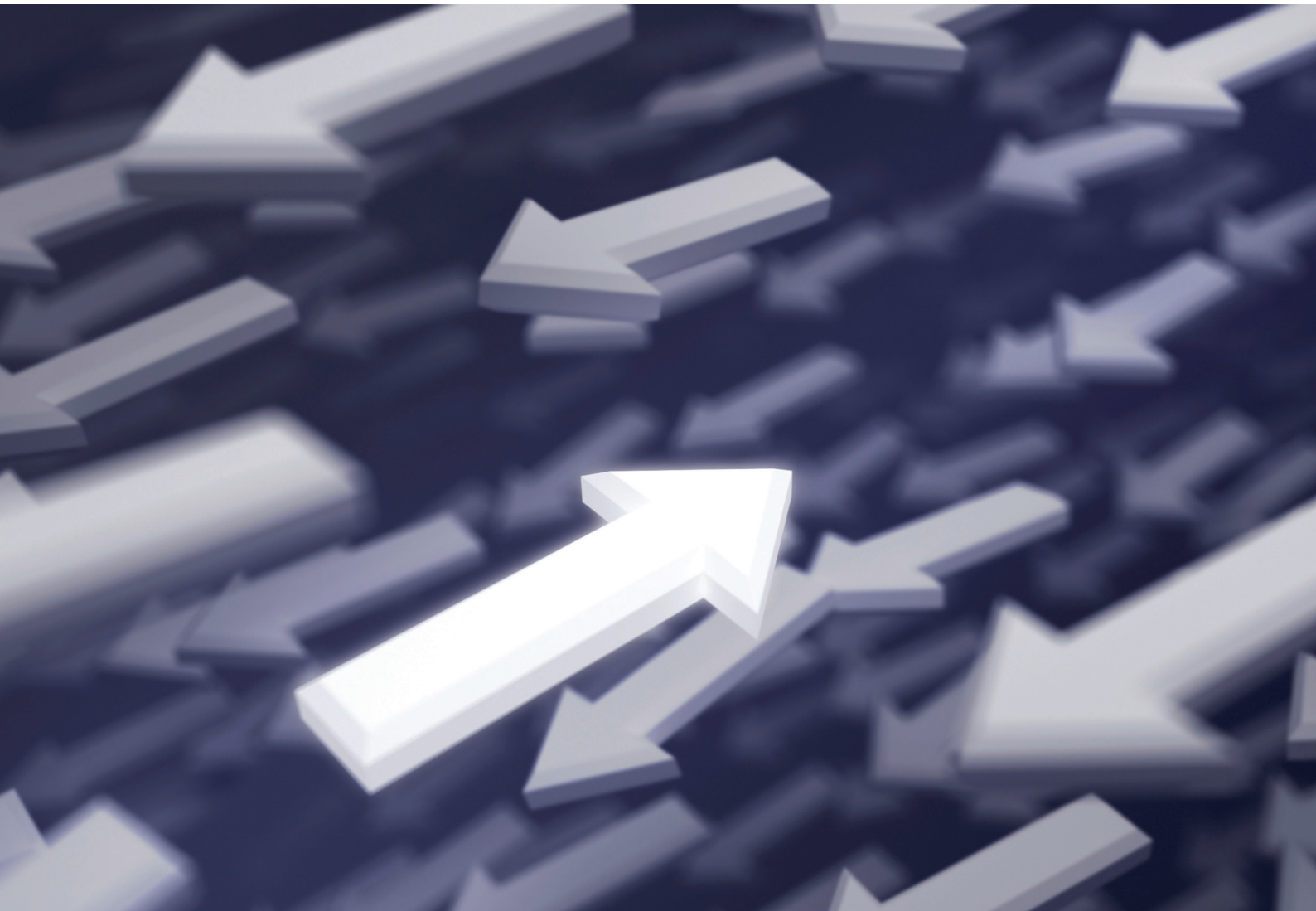


The Law Society

2nd edition, May 2018

# Surveyors and lawyers involved in tenancy renewals under PACT

Joint guidance note from the Law Society and RICS,  
England and Wales





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# Foreword

PACT is of course the acronym for Professional Arbitration on Court Terms. It provides landlords, tenants and their advisers, when engaged in negotiating the renewal of commercial leases, with an established and efficient way of resolving any disputes, whether as to the rent or any other terms. PACT was an early example of ADR (Alternative Dispute Resolution) and its introduction was welcomed by its users; and by all accounts those who use it continue to appreciate its value. It has also provided some relief to the County Courts, as virtually any case concerning the terms of a new tenancy to be granted under Part II of the *Landlord and Tenant Act 1954* can be resolved through PACT.

Because of its flexibility and versatility, PACT is very well suited to the needs of landlords, tenants and their advisers, and it also accords very well with the growing role of ADR as encouraged by the courts. The parties are able to appoint an arbitrator or independent expert, whether surveyor or lawyer, with relevant expertise to resolve all or part of a dispute; they are also able to control the timing and location of the proceedings to suit their need and convenience, and to adopt an appropriate procedure – e.g. to proceed on a documents-only basis. The control available to the parties is particularly beneficial to parties using PACT before the issue of court proceedings. Its flexibility contrasts very favourably with the time limits and standard directions which are being increasingly adopted by the courts.

Anyone wishing to use PACT, or even anyone considering whether to use PACT, would be very greatly assisted by the contents of this guidance note, which I would strongly recommend to all those concerned with the renewal of commercial leases. It constitutes a practical and comprehensive explanation of this well-established scheme for settling disputed lease renewals.

**Lord Neuberger of Abbotsbury**

March 2018

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## About RICS

**RICS promotes and enforces the highest professional qualifications and standards in the development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to the markets we serve.**

We accredit 125,000 professionals and any individual or firm registered with RICS is subject to our quality assurance. Their expertise covers property, asset valuation and real estate management; the costing and leadership of construction projects; the development of infrastructure; and the management of natural resources, such as mining, farms and woodland. From environmental assessments and building controls to negotiating land rights in an emerging economy; if our members are involved the same professional standards and ethics apply.

We believe that standards underpin effective markets. With up to seventy per cent of the world's wealth bound up in land and real estate, our sector is vital to economic development, helping to support stable, sustainable investment and growth around the globe.

With offices covering the major political and financial centres of the world, our market presence means we are ideally placed to influence policy and embed professional standards. We work at a cross-governmental level, delivering international standards that will support a safe and vibrant marketplace in land, real estate, construction and infrastructure, for the benefit of all.

We are proud of our reputation and we guard it fiercely, so clients who work with an RICS professional can have confidence in the quality and ethics of the services they receive.

## About the Law Society

The Law Society is the independent professional body for solicitors. We represent and support our members, promoting the highest professional standards and the rule of law.

We exist to represent, promote and support all solicitors, so they in turn can help their clients.

We also work to ensure that no one is above the law and to protect everyone's right to have access to justice. We promote England and Wales as the jurisdiction of choice and the vital role legal services play in our economy.

We work internationally to open up markets to our members and to defend human rights while supporting our members with opportunities in the domestic market.

# RICS professional standards and guidance

## RICS guidance notes

### Definition and scope

RICS guidance notes set out good practice for RICS members and for firms that are regulated by RICS. An RICS guidance note is a professional or personal standard for the purposes of RICS Rules of Conduct.

Guidance notes constitute areas of professional, behavioural competence and/or good practice. RICS recognises that there may be exceptional circumstances in which it is appropriate for a member to depart from these provisions – in such situations RICS may require the member to justify their decisions and actions.

### Application of these provisions in legal or disciplinary proceedings

In regulatory or disciplinary proceedings, RICS will take account of relevant guidance notes in deciding whether a member acted professionally, appropriately and with reasonable competence. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS guidance notes into account.

RICS recognises that there may be legislative requirements or regional, national or international standards that take precedence over an RICS guidance note.

### Document status defined

The following table shows the categories of RICS professional content and their definitions.

#### Publications status

Type of document	Definition
<i>RICS Rules of Conduct for Members and RICS Rules of Conduct for Firms</i>	These Rules set out the standards of professional conduct and practice expected of members and firms registered for regulation by RICS.
International standard	High-level standard developed in collaboration with other relevant bodies.
RICS professional statement (PS)	Mandatory requirements for RICS members and regulated firms.
RICS guidance note (GN)	A document that provides users with recommendations for professional advice and areas of good practice.
RICS code of practice (CoP)	A document developed in collaboration with other professional bodies and stakeholders that will have the status of a professional statement or guidance note.
RICS jurisdiction guide	This provides relevant local market information associated with an RICS international standard or RICS professional statement. This will include local legislation, associations and professional bodies as well as any other useful information that will help a user understand the local requirements connected with the standard or statement. This is not guidance or best practice material, but rather information to support adoption and implementation of the standard or statement locally.



# Abbreviations in this guidance note

**1954 Act:** The *Landlord and Tenant Act 1954* (as amended).

**ADR:** Alternative dispute resolution.

**Arbitration Act:** The *Arbitration Act 1996*.

**Award:** The decision of a Third Party acting as a PACT appointed arbitrator.

**Consent Order:** An agreement between the landlord and tenant in court proceedings relating to a business tenancy renewal to refer an issue or issues to PACT.

**CPR:** *Civil Procedure Rules 1998*.

**Determination:** The decision of a Third Party acting as a PACT appointed independent expert.

**PACT:** Professional Arbitration on Court Terms.

**Party/Parties:** The landlord or tenant who is/are taking part in the PACT referral.

**Pre-issue PACT:** The PACT procedure that can be used before the court proceedings have been issued, i.e. started. So, before a claim form and a fee have been given to the court, and the court has stamped the claim form with its seal.

**Post-issue PACT:** The PACT procedure that can be used after the court proceedings have been issued, i.e. started. So, after a claim form and a fee have been given to the court and the court has stamped the claim form with its seal.

**RICS DRS:** The RICS Dispute Resolution Service.

**Third Party:** The arbitrator or independent expert appointed to decide the issue or issues referred under PACT.

**Valuation Date:** The date at which the rent is to be assessed in accordance with the statutory provisions contained in section 34 of the 1954 Act.

**Written Agreement:** An agreement between the landlord and tenant in a business tenancy renewal to refer matters in dispute to PACT, before court proceedings have been issued.

# 1 Introduction

**1.1** The last few years have seen an increasing focus on the cost of litigation. Legal fees have been rising and court fees have increased substantially. The courts have been keen to promote ADR and there has been a widespread increase in the use of mediation.

**1.2** While there is no specific protocol under the CPR for use with business tenancy renewals, the guidance in Part 56 of the CPR makes it clear that the Parties should make appropriate attempts to resolve a tenancy renewal dispute without starting proceedings, and in particular, the Parties should consider the use of an appropriate form of ADR to do so. Failure to engage in ADR if appropriate could lead to adverse cost consequences.

**1.3** Professional Arbitration on Court Terms (PACT) is a scheme that has been developed over recent years as a form of ADR specific to 1954 Act business tenancy renewals. Since its inception, PACT has been extended. It can now be used by agreement before court proceedings have been issued, an independent expert can be appointed as an alternative to or in addition to an arbitrator and it can be used for opposed renewals. The name PACT is retained in this guidance note as it is now a familiar term within the property industry. (See Appendix A for the history and legislative background to PACT).

**1.4** The key point is that PACT is an extremely flexible and cost effective form of ADR that is specific to business tenancy renewals under the 1954 Act. It is a similar procedure to rent reviews where an arbitrator or independent expert is appointed.

**1.5** PACT can only be used with the agreement of both Parties. Where court proceedings have been started (issued) before PACT is used, a Consent Order is required to stay the proceedings to allow a reference to PACT to take place.

**1.6** PACT allows the Parties to agree to refer the aspects of a 1954 Act tenancy renewal that have not been agreed to an independent Third Party for a binding decision. The Third Party can act as an arbitrator or independent expert and could be a surveyor or lawyer depending on the issues in dispute. It is up to the Parties to agree which. In appropriate circumstances, the Third Party can be appointed as an independent expert to decide certain issues and as an arbitrator for others.

**1.7** A guide to the principal differences between the powers, rights and duties of an arbitrator and an independent expert, and factors influencing which to choose can be found in Appendix B.

**1.8** Once appointed, the Third Party will be subject to the relevant law applicable to an arbitrator or to an independent expert. In general, the procedures adopted in a PACT reference will be similar to the procedures widely adopted in rent review by arbitrators and independent experts. (See the latest versions of RICS guidance notes *Surveyors acting as arbitrators in commercial property rent reviews* and *Surveyors acting as independent experts in commercial property rent reviews*).

**1.9** It is crucial to reach a detailed agreement concerning all relevant issues relating to the PACT referral before the PACT referral is made. This will be documented by a comprehensive Written Agreement in a Pre-issue PACT referral or in a Consent Order in a Post-issue PACT referral.

**1.10** Note that throughout this guidance reference is made to a business tenancy rather than a lease. This is to reflect the wording used in the 1954 Act, although the terms are interchangeable.

## 2 The advantages of PACT

- 2.1** The Parties can control the procedure. For example, decisions can be made on a documents-only basis or after informal hearings; disclosure might be omitted or reduced (where appropriate) and the rules of evidence modified.
- 2.2** The Parties can control the timing.
- 2.3** Any hearing date can be fixed by agreement and to suit the Parties.
- 2.4** There will be no delays caused by court office backlogs or unproductive calls with the court office to establish what is going on.
- 2.5** Delays in the court lists will be avoided.
- 2.6** The Parties can choose their own Third Party or in the absence of agreement the Law Society or RICS can appoint from a panel of specialists.
- 2.7** The Third Party will be a specialist in their field.
- 2.8** Overall costs should be considerably less in most cases due to the shorter timetable, simpler procedure and by avoiding a full court hearing.
- 2.9** The Third Party can take legal advice if required.

## 3 When PACT can be used

### Pre-issue PACT

**3.1** Following service of a section 25 or section 26 notice under the 1954 Act, the tenant wishes to take a new tenancy and the landlord either opposes the grant of a new tenancy or some terms cannot be agreed.

**3.2** No court application has been made by either Party and the Parties agree in writing to postpone such application and extend the statutory time limits pending the PACT decision.

**3.3** The Parties can identify the matters on which they disagree and if these matters are determined, it is likely that the terms of the new tenancy can be settled.

### Post-issue PACT

**3.4** Following service of a section 25 or section 26 notice under the 1954 Act, the tenant wishes to take a new tenancy and the landlord either opposes the grant of a new tenancy or some terms cannot be agreed.

**3.5** Once the Parties have made an application to the court to fix the terms of the new tenancy.

**3.6** Both Parties agree to, and the court endorses, the appointment of an independent Third Party to decide all or some of the matters on which they have not agreed.

## 4 What matters in dispute are suitable for a PACT referral?

**4.1** Most matters in dispute arising from a 1954 Act business tenancy renewal are capable of being referred to PACT including:

- whether the landlord has any valid grounds to oppose the renewal
- duration of the new tenancy – section 33
- other terms – section 35
- rent – section 34 and
- interim rent – section 24A.

**4.2** The matters in dispute need to be agreed or determined in the above sequence. This is because appropriate 'other terms' cannot be determined without knowing the duration of the tenancy; the appropriate extent of certain of the tenant's obligations will depend on this (for example repair or service charge). Similarly, the rent cannot properly be assessed until both the duration and other terms of the tenancy are known.

**4.3** Accordingly, the appointment of the Third Party should provide for sequential Awards or Determinations where there are both non-rent and rent matters to be decided.

**4.4** After agreeing or determining the substantive matters in dispute it is still possible that the Parties are unable to agree the precise drafting of the tenancy. A PACT procedure to determine the drafting may be appropriate, using a suitably experienced Third Party such as a solicitor or barrister.

**4.5** In practice, the Parties sometimes agree to refer the rent to PACT for a decision based on agreed heads of terms (HOTs), particularly where there is unlikely to be a dispute concerning the detail of the tenancy. The Parties should try to ensure the HOTs are as comprehensive as possible and consider agreeing that the rent decision can be set aside and the rent be revisited if agreement on the tenancy cannot be achieved.

## 5 How to use PACT Pre-issue

**5.1** Pre-issue PACT can only be used with the agreement of both Parties. It is essential that a tenant who agrees to Pre-issue PACT is aware of the danger of losing its statutory right to a new tenancy if it does not take steps to extend the time limit to make an application to court. Advisers of tenants proposing to use Pre-issue PACT should ensure the tenant is aware of this.

**5.2** Pre-issue PACT is used before an application is made to the court. If all matters can be resolved by a combination of agreement and/or PACT referral(s) an application to court may not be needed. However, the tenant needs to preserve its right to apply to the court in case the PACT process does not deal with all issues.

**5.3** An agreement to extend the statutory time limit must comply with section 29B of the 1954 Act. It must be made in writing, before the end of the statutory period. The extended period may be extended further by agreement. It is wise to obtain legal advice to ensure that the agreed extension is properly made and that the tenant's rights are protected. The date agreed for the extension must be fixed, but should be the Parties' best estimate of a date that is two or three months after the Award or Determination is likely to be published. This should give sufficient time for the new tenancy to be completed and registered.

**5.4** To proceed with Pre-issue PACT, the Parties need to document in the Written Agreement:

- those matters that are agreed
- the terms agreed
- those matters to be referred to a Third Party for a decision
- those matters not to be referred to a Third Party for a decision and
- whether the Third Party is to act as an independent expert or an arbitrator.

**5.5** The more that can be agreed by the Parties and put in the Written Agreement the better. Ideally this should include, in addition to those matters referred to above, the Valuation Date and the date from which the new tenancy is to commence.

**5.6** If the Parties have agreed that the matters in dispute are to be referred to a Third Party acting as an independent expert, the Written Agreement should document any significant procedural steps that the Parties wish the independent expert to take. It is good practice to agree a letter of appointment and instruction to the independent expert and annex this to the Written Agreement. This is not necessary if an arbitrator is appointed as the procedure will be regulated by the *Arbitration Act*.

**5.7** The drafting of the Written Agreement is very important, particularly where the Third Party is acting as an independent expert and so cannot rely upon the *Arbitration Act*. For example, it may be prudent to cover off any likely problem areas such as agreeing that an independent expert can proceed to issue a rental determination even if only one Party so requests.

**5.8** Model forms for uncontested Pre-issue PACT are in Appendix C and E.

## 6 How to use PACT Post-issue

**6.1** Post-issue PACT can only be used with the agreement of both Parties and a sealed Consent Order from the court, which stays the proceedings.

**6.2** The Parties will agree a Consent Order setting out:

- those matters that are agreed
- the terms agreed
- those matters to be referred to a Third Party for a decision and
- whether the Third Party is to act as an independent expert or arbitrator.

**6.3** If the Parties have agreed that the matters in dispute are to be referred to a Third Party acting as an independent expert, the Consent Order should agree any significant procedural steps that the Parties wish the independent expert to take. It is good practice to agree a letter of appointment and instruction to the independent expert to be annexed to the Consent Order. This is not necessary if an arbitrator is appointed as the procedure is regulated by the *Arbitration Act*.

**6.4** The more that can be agreed by the Parties and put in the Consent Order the better. Ideally this should include, in addition to those matters referred to above, the Valuation Date and the date from which the new tenancy is to commence.

**6.5** The drafting of the Consent Order is very important, particularly where the Third Party is acting as an independent expert and so cannot rely upon the *Arbitration Act*. For example, it may be prudent to provide for any problem areas, such as agreeing that the independent expert can proceed to issue a rental determination even if only one Party so requests.

**6.6** Model forms for uncontested Post-issue PACT are in Appendix D and F.

## 7 The appointment of the Third Party

**7.1** The Parties can agree the identity of the Third Party and obtain the Third Party's consent to act. They can include details of any agreement with the Third Party in the Written Agreement Pre-issue or in the Consent Order Post-issue.

**7.2** Alternatively, they can agree to finalise the appointment of the Third Party after entering into the Written Agreement or after the Consent Order has been made. In this case, there will need to be clarity and agreement as to the process to be adopted, including time limits for making the appointment.

**7.3** Where the identity of the Third Party is not agreed, the Parties can agree to apply to RICS DRS or to the Law Society to appoint the Third Party. A sample form to make the application is in Appendix G.

**7.4** RICS DRS or the Law Society will check that the proposed Third Party can deal expeditiously and is not conflicted. They will inform the Parties of the identity of the Third Party.

**7.5** The Third Party will often hold a preliminary meeting in person or by way of a telephone conference call, at which appropriate procedures may be decided if not already included in the Written Agreement or Consent Order.

**7.6** The Parties should seek to establish the basis on which the Third Party's fees and disbursements will be charged. If the appointment is by the agreement of the Parties, the charging basis of the fees will have been agreed as a matter of contract as part of that process, and this should merely be confirmed.

**7.7** If the appointment is by RICS DRS or the Law Society, however, the appointment will have been made before the basis of charges is agreed and so agreement will need to be reached post-appointment. Guidance regarding the position of arbitrators and independent experts in respect of their charges can be found in the current versions of RICS guidance notes *Surveyors acting as arbitrators in commercial property rent reviews* and *Surveyors acting as independent experts in commercial property rent reviews*.



## 8 Valuation Date and miscellaneous procedural issues

**8.1** The procedures adopted in a PACT referral are likely to be similar to those widely adopted by arbitrators and independent experts when dealing with rent reviews, but subject to the provisions in the 1954 Act.

**8.2** Of particular significance is the Valuation Date. It is important to agree the Valuation Date and to include it in the Written Agreement (Pre-issue PACT) or Consent Order (Post-issue PACT). This is because the courts have decided that the proper interpretation of the 1954 Act is that, in the absence of an agreement between the Parties, the Valuation Date is the date of commencement of the new tenancy, which is not known at the date of the appointment of the Third Party.

**8.3** Depending on the terms of the appointment, the Third Party may have a discretion to permit a Party to amend its proposed rent or other terms. It would be usual to permit such amendment up to the time when representations are exchanged and thereafter if there are good reasons for the proposed amendment. The Third Party may make a consequential costs award (providing there is the jurisdiction to do so) if one Party is disadvantaged by the proposed amendment.

**8.4** It is usual to include a provision in the Written Agreement or Consent Order that either Party may discontinue the PACT procedure at any time on paying any abortive costs as decided by the Third Party.

**8.5** It is also usual to include a provision in the Written Agreement or Consent Order that any agreement reached by the Parties during the PACT referral should be recorded in the arbitrator's Award or independent expert's Determination.

**8.6** In the case of Post-issue PACT referrals, the Parties should keep in mind the possible need to seek any necessary extensions or amendments to the court order.

## 9 The Award or Determination

**9.1** The form of the arbitration Award or independent expert Determination will be the same as such Awards or Determinations unrelated to PACT, for example in rent review. An arbitrator will give reasons unless the Parties agree otherwise (*Arbitration Act*, section 52(4)). An independent expert will not give reasons (to include any form of mathematical valuation calculation) unless it is a pre-agreed term of the appointment or unless the independent expert decides to comply with a request for reasons from both Parties, or from one Party when the other Party does not object.

**9.2** Where an Award or Determination will fix the duration of the tenancy, it is good practice to fix this by reference to the date on which the lease term will expire. This will avoid problems and any possible unfairness that may arise if the start of the new tenancy is delayed for reasons outside of the Third Party's control. The statutory maximum 15-year term cannot be exceeded without agreement.

**9.3** The Third Party must take care to ensure that the Award or Determination contains no ambiguity and deals with all matters referred to the Third Party. The Third Party must be careful not to exceed the jurisdiction conferred by the terms of the appointment, supplemented in the case of an arbitrator by the *Arbitration Act*.

**9.4** The powers of the court contained in the CPR do not devolve to the Third Party unless contained in the terms of the appointment or conferred by statute. For example, an independent expert will not have the power to award interest or costs unless it is specifically included in the terms of appointment.

# 10 Costs

## 10.1 Payment before release of an Award or Determination

An arbitrator is entitled to withhold release of an Award until paid (*Arbitration Act*, section 56). There is no statutory authority giving an independent expert the same power, but it is normal custom and practice for an independent expert to require payment prior to release of the Determination, in the same way as an arbitrator.

## 10.2 Arbitrator

An arbitrator's task is not complete until the matter of costs has been disposed of. The *Arbitration Act* gives the arbitrator the power to determine liability and amount for their own costs and the Parties' costs. Any agreement by the Parties to share costs between them in a specific ratio will be valid only if it is made (or reaffirmed) after the appointment of the arbitrator (*Arbitration Act*, section 60). An agreement contained in a Consent Order may therefore need to be reaffirmed after the arbitrator's appointment.

## 10.3 Independent expert

An independent expert has no duties or powers regarding costs save for those contained in the contract with the Parties. It is therefore important for the independent expert's authority over costs to be dealt with in the Written Agreement or Consent Order, or at the appointment stage. The power may be conferred to deal with the independent expert's own costs only or extended to include the Parties' costs as well. It is generally accepted that when given the power to determine costs the independent expert should adopt the same quasi-judicial approach as an arbitrator.

## 10.4 The Award or Determination of costs

The Award or Determination of the liability for costs may be included in the substantive Award or Determination, or reserved pending further representations by the Parties. The Parties will usually wish to make representations on costs, particularly if there have been admissible (on the question of costs) offers to settle, the contents of which the arbitrator or independent expert was not aware of at the time of making the substantive Award or Determination. It is suggested that the Third Party asks the Parties whether they want costs to be included in the substantive Award or Determination or whether they want to make further representations in due course.

Whether part of the substantive Award or in a separate document, the award of costs should state:

- a) which Party shall pay costs and in what proportion
- b) the basis on which they are to be assessed (quantified) and
- c) the person or body who will assess the quantification of the recoverable costs in the absence of agreement between the Parties.

## 10.5 Quantification

Assuming the Third Party's fees have been properly dealt with at the outset there should be no dispute about the quantification of the Third Party's costs. If the award or determination on costs requires each Party to pay its own costs, no further involvement from the Third Party is required. Where an order has been made for one Party to pay all or part of the opposing Party's costs, however, a dispute concerning quantification of the amount recoverable may arise.

The Third Party may be asked to decide the amount of the costs payable. In these circumstances, the procedure should be to:

- a) invite a statement of costs claimed (with supporting documentation) from the claiming Party
- b) give the paying Party an opportunity to comment and
- c) make a decision in accordance with the basis stipulated by the Third Party – normally the amount assessed under any head of claim will be the lesser of the amount paid by the Party or what would have been a reasonable amount for the Party to have paid to have obtained the services required.

# 11 Producing the tenancy document

## 11.1 Pre-issue PACT

Once the Third Party has made an Award or Determination, if all matters are resolved (other than interim rent), the tenancy may be entered into. The Third Party has no role in the completion of the tenancy. Either the landlord or tenant may ask the court to enforce a binding agreement, Award or Determination.

## 11.2 Post-issue PACT

Once the Third Party has made an Award or Determination, if all matters are resolved (other than interim rent), either Party may apply to the court for an order under section 29 of the 1954 Act for the grant of a new tenancy on those terms. Once the court order is made the tenant has 14 days to apply to revoke the order as provided in the 1954 Act.

## 12 Revocation orders

**12.1** Where the court has ordered a new tenancy following a PACT Award or Determination, the tenant can apply to the court within 14 days for a revocation order. The court must revoke the order for a new tenancy and if the landlord and tenant agree, or the court orders, the current tenancy can be extended to give the landlord a reasonable opportunity to let the property.

**12.2** Where the PACT referral was Pre-issue, the revocation provisions will not apply. It is up to the Parties to agree if the tenant is to have any opportunity to decline to accept the new tenancy and if so, on what terms. Any agreement should be clearly recorded in the Written Agreement.

## 13 Appeals

**13.1** Where there has been a PACT referral, either Pre-issue or Post-issue, any appeal would be against the arbitrator's Award or independent expert's Determination.

**13.2** Any appeal would be governed by the relevant law applicable to appealing arbitrators or independent experts. (See the latest versions of RICS guidance notes *Surveyors acting as arbitrators in commercial property rent reviews* and *Surveyors acting as independent experts in commercial property rent reviews*).

**13.3** Appeals against decisions by arbitrators are governed by the *Arbitration Act* and are generally in respect of a point of law or because of serious irregularity. Appeals against decisions by independent experts are more limited, generally where the independent expert has answered the wrong question – which would be unlikely in the context of most PACT referrals.

## 14 Interim rent

**14.1** Interim rent can be referred to PACT. It can be referred for a decision at the same time as the rent or subsequently.

**14.2** There are potential valuation difficulties if the interim rent is dealt with at the same time as the rent. For example, if the tenant elects not to accept the new tenancy and subsequently vacates the premises, the interim rent would be valued on a different basis. One option is for the Parties to request the Third Party to value on alternative bases. The better course may be for the Third Party to value the rent and then adjourn the process for an agreed period for the Parties to negotiate the interim rent. If the Parties cannot so agree, the interim rent can be referred back to the same Third Party for a decision.

**14.3** The rules relating to interim rent are complex and it is important to ensure that the Valuation Date and the valuation basis are agreed between the Parties and included in the Consent Order or Written Agreement. See Appendix H for a summary note relating to interim rent.

# 15 Summary: key steps in the process

**15.1** Agree to refer specific matters in dispute to PACT.

**15.2** Document the agreement – a Written Agreement or Consent Order should be entered into, setting out:

- whether the Third Party is to act as arbitrator or independent expert
- the terms agreed and the terms in dispute
- the matters to be decided by the Third Party
- the identity of the Third Party or a mechanism to appoint with agreed time limits
- agreement as to the Valuation Date
- any agreed procedure, including jurisdiction on costs, if the Third Party is an independent expert
- in Pre-issue PACT a provision that the statutory time limits for issuing proceedings have been extended by agreement and
- in Pre-issue PACT any provisions agreed that permit the tenant to decline the new tenancy following the Award or Determination.

**15.3** Appoint the Third Party identified in the Written Agreement or Consent Order or apply to RICS DRS or the Law Society for an appointment.

**15.4** Follow the PACT referral process. The issues referred to PACT will be decided by the arbitrator or independent expert who will produce an Award or Determination.

**15.5** The Third Party will deal with costs either in the substantive Award or Determination, or thereafter.

**15.6** Once the PACT referral has concluded following the final Award or Determination, the Parties will proceed to complete the lease or refer any remaining matters to the court.

**15.7** Either agree the interim rent or refer it to PACT.



# Appendix A

## History and legislative background to PACT

When PACT was first introduced (circa 1997), a referral to PACT could only be with the approval of the court as part of court proceedings (Post-issue PACT). This was because, following notice from the landlord under section 25 of the 1954 Act, the tenant had to make its originating application to the court (to fix the terms of the tenancy) within four months of the date of the section 25 notice. Similar timescales existed where the tenant had initiated the process by serving a section 26 notice. The courts were, therefore, unavoidably involved in the renewal process at this relatively early stage.

The *Regulatory Reform (Business Tenancies) (England and Wales) Order 2003* (the 'Regulatory Reform Order') amended the 1954 Act and abolished the need for the tenant to make an originating application to the court by the early prescribed date set out above. Since 1 June 2004 the position is that either Party can make an application to the court at any time up to the expiration of the section 25 notice, or later by the agreement of the Parties. Where the process has been instigated by the tenant serving a section 26 notice under the 1954 Act requesting a new tenancy, it is the expiration of this notice that provides the deadline. The situation post the Regulatory Reform Order allows the possibility of a PACT process being initiated without the need to seek the court's involvement (Pre- issue PACT). After service of the initial section 25 or section 26 notice the Parties can simply agree to appoint an arbitrator or independent expert (if necessary through RICS or the Law Society) and be bound by the result.

# Appendix B

## Comparison of arbitration with determination by independent expert

The main differences in the duties and suggested procedures for arbitrators and independent experts regarding a referral under PACT may be summarised as follows:

Arbitrator	Independent expert
<b>a)</b> Arbitrators act (as do judges) only on evidence and arguments submitted to them, but they can draw the Parties' attention to matters of which they may not be aware. They are also able to take the initiative in ascertaining facts and the law. Their Award must lie between the extremes contended for by the Parties. Arbitrators are, however, expected to use their expertise in assessing the relevance and quality of the evidence and arguments submitted to them.	<b>a)</b> Independent experts have the duty of investigation to discover the facts, details of relevant comparable transactions and all other information relevant to their valuation (though they may receive information regarding these matters from the Parties).
<b>b)</b> Arbitrators cannot decide without receiving evidence from the Parties, or from one of the Parties when they are 'proceeding in default' by the other, except where proceeding on their own initiative.	<b>b)</b> Independent experts base their decision upon their own knowledge and investigations, but they may be required by the instrument under which they are appointed (i.e. the Consent Order or the Written Agreement) to receive representations from the Parties.
<b>c)</b> The procedure for arbitration is regulated by the <i>Arbitration Act 1996</i> .	<b>c)</b> There is no legislation governing procedure for independent experts, and they must therefore settle their own contract with the Parties.
<b>d)</b> A Party to arbitration can seek and (through the courts) compel disclosure of documents or the attendance of witnesses.	<b>d)</b> Independent experts have no such powers.
<b>e)</b> Arbitrators may not delegate any of their duties, powers or responsibilities, although they can seek assistance.	<b>e)</b> Independent experts have a duty to use their own knowledge and experience in arriving at their decision. However, during the investigation, independent experts may seek routine administrative or other assistance from any other person, provided independent experts can vouch for the accuracy with which such tasks are carried out.
<b>f)</b> In an arbitration, arbitrators can award that one Party shall pay all or part of the arbitrator's fees and all or part of the other Party's costs. They can also assess the quantification of those fees and costs.	<b>f)</b> Independent experts have no power to make any orders as to their fees, or as to the costs of a Party, unless such a power is conferred upon them by the Consent Order or Written Agreement.
<b>g)</b> Arbitrator's fees can be determined by the court under the <i>Arbitration Act 1996</i> .	<b>g)</b> There is no procedure for formal Determination of independent experts' fees.
<b>h)</b> There is some (albeit limited) right of appeal against the Award of an arbitrator on a point of law. An arbitrator's Award may also be challenged in the courts on the basis that the arbitrator did not have jurisdiction or on the grounds of 'serious irregularity'. If a serious irregularity is shown, the court may (in whole or part) remit the Award, set it aside or declare it to be of no effect.	<b>h)</b> There is no right of appeal against the Determination of an independent expert, though in some very limited circumstances the court may set it aside.
<b>i)</b> Providing they have not acted in bad faith, arbitrators are not liable for negligence (see s.29 of the <i>Arbitration Act 1996</i> ).	<b>i)</b> Independent experts are liable in damages for any losses sustained by a Party through their negligence. This is so notwithstanding that the court will not interfere with a final and binding Determination that they have made.

# Appendix C

## Pre-issue PACT: Written Agreement to refer terms and/or rent

**Written Agreement to refer disputed terms in a 1954 Act tenancy renewal to a Third Party for a decision before proceedings have been issued – Pre-issue PACT**

Landlord: .....

Tenant: .....

Premises: .....

### Extension of 1954 Act statutory time limit:

1 It is agreed that the statutory deadline for making an application to the court for a new tenancy is extended pursuant to section 29B of the *Landlord and Tenant Act 1954* until [insert date]. The statutory deadline will be extended further by the Parties in writing if the PACT referral has not concluded by the end of the agreed extension.

### Agreement to refer disputed terms to PACT

2 The Parties have agreed to refer their dispute to PACT for a decision as set out below.

### Agreed terms

3 The new tenancy shall be granted to include the provisions as to [duration], [other terms] and [rent] that have been agreed between the Parties and are set out in Part 1 of the Schedule to this Written Agreement.

### Provisions to be referred to PACT

4 The provisions of the new tenancy that are in dispute are set out in Part 2 of the Schedule to this Written Agreement. The Parties have agreed to refer some or all, of these terms to be decided by a Third Party.

### Procedure for the PACT referral

5 The agreed procedure for the referral to PACT is set out in Part 3 of the Schedule.

### Tenant's option to reject new tenancy

6 Once all of the terms of the new tenancy have been determined the Tenant will have a period of 21 days in which to inform the Landlord if it does not wish to accept the new tenancy. Unless otherwise agreed the current tenancy will determine on the expiration of three months after the Landlord is so informed. The written notice or letter is to be served by [express means of service – e.g. recorded delivery].

### Tenant's right to stop process

7 If at any time the Tenant informs the Landlord by written Notice or letter that it no longer wants a new tenancy the extension of the statutory deadline for making an application to the court for a new tenancy will immediately cease. Unless otherwise agreed the current tenancy will determine on the expiration of three months after the Landlord is so informed. The written notice or letter is to be served by [express means of service e.g. recorded delivery].

### Costs

8 If the Tenant either decides during the PACT reference that it no longer wants a new tenancy or rejects the new tenancy once the PACT reference has concluded, in the absence of agreement the Tenant will be liable for the costs of the Third Party and for the costs of the Landlord to be assessed by the Third Party if not agreed.

**Schedule**

**Part 1: the agreed terms**

1 The agreed terms of the new tenancy are:

**NB.** set out below all agreed terms for the new tenancy including the following if agreed:

The duration of the new tenancy – including commencement date and termination date:	
Whether there is to be a break in the new tenancy; is it mutual or to be operated by one Party; is it to be conditional and if so what are the conditions:	
The repairing obligations in the new tenancy:	
The service charge provisions:	
Is assignment permitted and on what terms:	
Is subletting permitted and on what terms:	
What are the key insurance provisions:	
What is the permitted user:	
Are alterations permitted and if so on what terms:	
Key rent review provisions:	
Any other terms:	
The rent to be paid pursuant to the new tenancy:	

**Part 2: the disputed terms**

1 The terms of the new tenancy to be referred for the decision of a Third Party under PACT are:

**Part 3: capacity and procedure**

1 Set out here the disputed terms that will be decided by the Third Party in the capacity and order set out below:

Duration of the new tenancy pursuant to section 33 of the Act:	(specify arbitrator or independent expert)
Whether a break clause is to be included in the new tenancy and on what terms:	(specify arbitrator or independent expert)
Any other terms to be included in the new tenancy pursuant to section 35 of the Act:	(specify arbitrator or independent expert)
The rent to be paid for the new tenancy pursuant to section 34 of the Act:	(specify arbitrator or independent expert)

2 The Parties shall endeavour to agree upon the identity of the arbitrator or independent expert and make a joint appointment within 21 days of the date of this Written Agreement, failing which either party may apply to the RICS DRS or the President of the Law Society.

**Or**

The Parties have agreed to appoint [ ] of [ ] to act as arbitrator/independent expert and a joint appointment has been made having regard to the terms of this Schedule.

3 The Parties agree that the Valuation Date for the purposes of ascertaining the rent in accordance with section 34 is [ ].

**Arbitrator only**

**4** The Parties agree, if required by the arbitrator, to attend either in person or by way of telephone conference as soon as reasonable to agree appropriate procedures and directions.

**5** The Parties agree they will request that the arbitrator should record in the Award any terms of the new tenancy settled by agreement during the PACT reference.

**Independent expert only**

**6** The independent expert will be appointed on the following terms:

Set out here the procedure that the Parties agree the independent expert should follow to include:

- i) Whether the Parties are to be permitted to make representations and counter-representations.
- ii) Whether the independent expert is to give written reasons.
- iii) The extent of the independent expert's jurisdiction over costs – both their own costs and those of the Parties.
- iv) Whether the Parties are to be permitted to make representations and counter-representations re costs.
- v) That the independent expert is to act as an arbitrator when dealing with costs.

**7** The Parties agree to ask the independent expert to record in the Determination any terms of the new tenancy settled by agreement during the PACT reference.

**8** The terms of the new tenancy shall be finally determined on the date that the rent for the new tenancy is agreed or the date of the Determination of the rent for the new tenancy, or the date when the arbitrator's Award has been published and any appeal process concluded or the time limit for appeal has expired.

# Appendix D

## Consent Order in a Post-issue PACT referral to refer all terms and/or rent.

In the County Court

Sitting at [ ]

In the Matter of the *Landlord and Tenant Act 1954* ('Act')

And in the Matter of premises known as:

BETWEEN:

[ ]

Claimant

and

[ ]

Defendant

---

### CONSENT ORDER

---

Upon the Parties by their Solicitors agreeing the directions in advance of the hearing listed on

[ ]:

IT IS ORDERED THAT:

#### Allocation

1 The case is allocated to multi-track and Allocation Questionnaires be dispensed with.

#### Directions hearing

2 The Directions hearing listed for [ ] on [ ] be vacated.

#### Costs management

3 The costs management provisions of the CPR do not apply to these proceedings.

#### Agreed terms

4 The new tenancy shall be granted to include the provisions as to duration, other terms and rent that have been agreed between the Parties and are set out in Part 1 of the Schedule to this Consent Order.

**Provisions to be referred to PACT**

5 The provisions of the new tenancy that are in dispute are set out in Part 2 of the Schedule to this Consent Order. The Parties have agreed to refer some or all of these terms to be decided by a Third Party.

**Procedure for the PACT referral**

6 The agreed procedure for the referral to PACT is set out in Part 3 of the Schedule.

**Further directions**

7 If, following the reference to the Third Party for a decision in accordance with the Schedule to this Consent Order, all of the terms of the new tenancy have been agreed or determined, either Party shall have liberty to apply for an order pursuant to section 29 of the said Act for the grant of a new tenancy on those terms.

**Notice of Discontinuance**

8 On the filing of a Notice of Discontinuance by the Claimant (if Landlord, with Tenant's consent) unless otherwise agreed the current tenancy shall cease and determine on the expiration of three months from the date of filing of the said Notice with the Court.

**Stay of proceedings**

9 The proceedings are stayed on the terms agreed between the Parties in this Consent Order.

**Liberty to apply**

10 Either Party shall have liberty to apply to the Court for the purpose of carrying these terms into effect.

**Costs**

11 There be no order as to costs.

Dated: .....

.....  
Solicitors for the Tenant:

.....  
Solicitors for the Landlord:

**Schedule**

**Part 1: the agreed terms**

1 The agreed terms of the new tenancy are:

**NB.** set out below all agreed terms for the new tenancy including the following if agreed:

The duration of the new tenancy – including commencement date and termination date:	
Whether there is to be a break in the new tenancy, is it mutual or to be operated by one party, is it to be conditional and if so what are the conditions:	
The repairing obligations in the new tenancy:	
The service charge provisions:	
Is assignment permitted and on what terms:	
Is subletting permitted and on what terms:	
What are the key insurance provisions:	
What is the permitted user:	
Are alterations permitted and if so on what terms:	
Key rent review provisions:	
Any other terms:	
The rent to be paid pursuant to the new tenancy:	

**Part 2: the disputed terms**

1 The terms of the new tenancy to be referred for the decision of a Third Party under PACT are:

**Part 3: capacity and procedure**

1 Set out here the disputed terms that will be decided by the Third Party in the capacity and order set out below:

Duration of the new tenancy pursuant to section 33 of the Act:	(specify arbitrator or independent expert)
Whether a break clause is to be included in the new tenancy and on what terms:	(specify arbitrator or independent expert)
Any other terms to be included in the new tenancy pursuant to section 35 of the Act:	(specify arbitrator or independent expert)
The rent to be paid for the new tenancy pursuant to section 34 of the Act:	(specify arbitrator or independent expert)

2 The Parties shall endeavour to agree upon the identity of the arbitrator or independent expert and make a joint appointment within 21 days of the date of this Consent Order, failing which either party may apply to the RICS DRS or the President of the Law Society.

**Or**

The Parties have agreed to appoint [ ] of [ ] to act as arbitrator/independent expert and a joint appointment has been made having regard to the terms of this Schedule.

3 The Parties will not be bound by their respective claim form, particulars of claim acknowledgment of service or statement of case lodged with the court.



**4** The Parties agree that the valuation date for the purposes of ascertaining the rent in accordance with section 34 is [ ].

**Arbitrator only**

**5** The Parties agree, if required by the arbitrator, to attend either in person or by way of telephone conference as soon as reasonable to agree appropriate procedures and directions.

**6** The Parties agree they will request that the arbitrator should record in the Award any terms of the new tenancy settled by agreement during the PACT reference.

**Independent expert only**

**7** The independent expert will be appointed on the following terms:

Set out here the procedure that the Parties agree the independent expert should follow to include:

- i) Whether the Parties are to be permitted to make representations and counter-representations.
- ii) Whether the independent expert is to give written reasons.
- iii) The extent of the independent expert's jurisdiction over costs – both their own costs and those of the Parties.
- iv) Whether the Parties are to be permitted to make representations and counter-representations re costs.
- v) That the independent expert is to act as an arbitrator when dealing with costs.

**8** The Parties agree to ask the independent expert to record in the Determination any terms of the new tenancy settled by agreement during the PACT reference.

**9** If Notice of Discontinuance is filed by the Tenant it will notify the Third Party. Unless otherwise agreed the Tenant will be liable for the costs of the Third Party and the Landlord. The Landlord's costs are to be referred to assessment if not agreed.

**10** If Notice of Discontinuance is filed by the Landlord with the Tenant's consent, the Landlord will notify the Third Party and inform the Third Party of any agreement reached relating to costs.

**11** The terms of the new tenancy shall be finally determined on the date that the rent for the new tenancy is agreed or the date of the Determination of the rent for the new tenancy or the date when the arbitrator's Award has been published and any appeal process concluded or the time limit for appeal has expired.

# Appendix E

## Pre-issue PACT – Written Agreement to refer interim rent

**Written Agreement to refer interim rent in a 1954 Act tenancy renewal to a Third Party for a decision where no proceedings have been issued**

Landlord: .....

Tenant: .....

Premises: .....

### Agreement to refer interim rent to PACT

1 The Parties have agreed to refer their dispute to PACT for a decision as set out below.

#### Provisions to be referred to PACT

2 All terms and rent for the new tenancy having been agreed or determined, the interim rent payable while the tenancy continues by virtue of section 24 until completion of the new tenancy, shall be determined in accordance with section 24A of the Act by a Third Party.

**Or**

The Tenant having vacated the Premises, the interim rent payable while the tenancy continued by virtue of section 24 shall be determined in accordance with section 24A of the Act by a Third Party.

#### Procedure for the PACT referral

3 The agreed procedure for the PACT referral is set out in the Schedule to this order.

#### Schedule

1 The interim rent will be decided by the Third Party acting as an arbitrator/independent expert.

2 The Valuation Date is [ ].

3 The basis of valuation is [ ].

4 The interim rent will be payable for the period from [ ] to [ ].

5 The Parties shall endeavour to agree upon the identity of the arbitrator or independent expert and make a joint appointment within 21 days of the date of this Written Agreement failing which either party may apply to the RICS DRS or the President of the Law Society.

**Or**

The Parties have agreed to appoint [ ] of [ ] to act as arbitrator/independent expert and a joint appointment has been made having regard to the terms of this Schedule.

**Arbitrator only**

**6** The Parties agree, if required by the arbitrator, to attend either in person or by way of telephone conference as soon as reasonable to agree appropriate procedures and directions.

**Independent expert only**

**7** The independent expert will be appointed on the following terms:

Set out here the procedure that the Parties agree the independent expert should follow to include:

- i) Whether the Parties are to be permitted to make representations and counter-representations.
- ii) Whether the independent expert is to give written reasons.
- iii) The extent of the independent expert's jurisdiction over costs – both their own costs and those of the Parties.
- iv) Whether the Parties are to be permitted to make representations and counter-representations re costs.
- v) That the independent expert is to act as an arbitrator when dealing with costs.

**8** The amount of the interim rent shall be finally determined on the date that the interim rent is agreed or the date of the Determination of the interim rent or the date when the arbitrator's Award has been published and any appeal process concluded or the time limit for appeal has expired.

# Appendix F

## Consent Order to refer interim rent in a 1954 Act tenancy renewal to a Third Party

In the County Court

Sitting at [ ]

In the Matter of the *Landlord and Tenant Act 1954* ('Act')

And in the Matter of premises known as:

BETWEEN:

[ ]

Claimant

and

[ ]

Defendant

---

### CONSENT ORDER

---

Upon the joint application of the Parties by their respective Solicitors and upon reading the agreed terms:

IT IS ORDERED THAT:

#### Provisions to be referred to PACT

**1** All terms and rent for the new tenancy having been agreed or determined, the interim rent payable while the tenancy continues by virtue of section 24 until completion of the new tenancy shall be determined in accordance with section 24A of the Act by a Third Party.

**Or**

The Tenant having vacated the Premises, the interim rent payable while the tenancy continued by virtue of section 24 shall be determined in accordance with section 24A of the Act by a Third Party.

#### Procedure for the PACT referral

**2** The agreed procedure for the PACT referral is set out in the Schedule to this order.

#### Stay of proceedings

**3** The proceedings are stayed on the terms agreed between the Parties in this Consent Order.

**Liberty to apply**

4 Either Party shall have liberty to apply to the Court for the purpose of carrying these terms into effect.

**Costs**

5 There be no order as to costs.

Dated: .....

.....  
Solicitors for the Tenant:

.....  
Solicitors for the Landlord:

**Schedule**

1 The interim rent will be decided by the Third Party acting as an arbitrator/independent expert.

2 The Valuation Date is [ ].

3 The basis of valuation is [ ].

4 The interim rent will be payable for the period from [ ] to [ ].

5 The Parties shall endeavour to agree upon the identity of the arbitrator or independent expert and make a joint appointment within 21 days of the date of this Consent Order failing which either party may apply to the RICS DRS or the President of the Law Society.

**Or**

The Parties have agreed to appoint [ ] of [ ] to act as arbitrator/ independent expert and a joint appointment has been made having regard to the terms of this Schedule.

6 The Parties will not be bound by their respective claim form, particulars of claim acknowledgment of service or statement of case lodged with the court.

**Arbitrator only**

7 The Parties agree, if required by the arbitrator, to attend either in person or by way of telephone conference as soon as reasonable to agree appropriate procedures and directions.

**Independent expert only**

8 The Independent expert will be appointed on the following terms:

Set out here the procedure that the Parties agree the independent expert should follow to include:

- i) Whether the Parties are to be permitted to make representations and counter-representations.
- ii) Whether the independent expert is to give written reasons.
- iii) The extent of the independent expert's jurisdiction over costs – both their own costs and those of the Parties.
- iv) Whether the Parties are to be permitted to make representations and counter representations re costs.
- v) That the independent expert is to act as an arbitrator when dealing with costs.

9 The amount of the interim rent shall be finally determined on the date that the interim rent is agreed or the date of the Determination of the interim rent, or the date when the Arbitrator's Award has been published and any appeal process concluded or the time limit for appeal has expired.

# Appendix G

## RICS application form for appointment of an arbitrator/ independent expert

### Tenancy renewal dispute

An applicant is encouraged to read the PACT guidance note before submitting this application form to RICS.

I/we.....  
.....  
.....  
.....  
.....(Landlord — name, address, telephone and email)

And

.....  
.....  
.....  
.....  
.....(Tenant — name, address, telephone and email)

**Hereby apply for the appointment of an arbitrator/independent expert by the President of RICS.**

**This application is made pursuant to a Consent Order** (a sealed copy of which is attached)

**dated**.....

Or

**This application is made pursuant to a Written Agreement signed by both Parties** (a copy of which is attached)

**dated**.....

### Information about the property

Please describe the property and its location, including the full postal address

Address: .....  
.....  
.....  
.....

Town/city: ..... Postcode: .....

Brief description of the property, the permitted use and any other relevant information:

.....  
.....  
.....  
.....

**Information about the dispute**

Please provide a summary of all issues in dispute (including rent and non-rent matters):

What type of dispute resolver is required?

Independent expert

Arbitrator

**Landlord representative**

Title: ..... First name: ..... Last name: .....

Professional qualification (e.g. MRICS, FRICS, Solicitor): .....

Firm name: .....

Address: .....

.....  
.....

Telephone/mobile: ..... Email: .....

**Tenant representative**

Title: ..... First name: ..... Last name: .....

Professional qualification (e.g. MRICS, FRICS, Solicitor): .....

Firm name: .....

Address: .....

.....

.....

**Conflicts of interest**

RICS will take reasonable steps to ensure the appointed arbitrator/independent expert is impartial. Please provide details of any persons and/or organisations involved, including any companies or related entities, that a prospective arbitrator/independent expert would need to consider when undertaking checks for conflicts of interest. If you consider that a particular person is conflicted, please provide brief and clear reasons.

Name	Firm	Reason

**Please note:** while RICS will carefully consider representations about who to appoint, or not, we will reach our own decision, subject to being satisfied the appointee is suitably qualified and independent.

**Professional background of the arbitrator/independent expert**

Please provide views relevant to the qualifications required of the arbitrator/independent expert.

.....

.....

.....

.....



**How to pay**

RICS charges **£425.00** inclusive of VAT to administer an appointment. This payment is non-refundable, whether the appointment is made, or not (e.g. if the matter is settled by agreement and the application is withdrawn). You can choose to pay by the following methods:

- **Cheque** made payable to RICS. Please include your name and postcode on the reverse.
- **Card payment.** One of our advisers will help you to arrange payment. Please call: RICS – 020 7334 3806
- **Bank or building society transfer:**

RICS bank account details
Account number: <b>30786339</b>
Sort code: <b>56-00-45</b>
Swift code: <b>NWBK GB2L</b>
Please email a copy of the remittance to <b>bacs@rics.org</b>

Please provide your name and postcode. This will ensure your payment will be correctly allocated to your application.

RICS is unable to accept credit or debit card details by email due to PCI compliance regulations. Please be aware the applicant party has responsibility to ensure that payment is complete.

**Application submitted by:**

Landlord name: .....

Landlord signature: .....

Date: .....

Tenant name: .....

Tenant signature: .....

Date: .....

Please return the completed application form by email or post to:

**RICS Dispute Resolution Services**

55 Colmore Row  
 Birmingham  
 B3 2AS  
 Email: drs@rics.org

**Your privacy**

RICS takes the privacy and security of the personal information you provide very seriously. Your details are held in a secure database with authorised access only. We apply data processing policies in compliance with the *Data Protection Act 1998* and the *Privacy and Electronic Communications Regulations* (EC Directive 2003). RICS will not use the information you provide in this application to contact you with offers of products and services. Nor will RICS share your information with third parties for the purpose of sending you details of offers of products and services.

**Note**

Appointments of arbitrators/independent experts are administered by RICS DRS with approval of the President of RICS.

Submitting this application form to RICS confirms that you have read and understand the information contained in this application. Your application is accepted on this basis.

# Appendix H

## Summary note re interim rent – the valuation basis

### Introduction

The 1954 Act was reformed in 1969 and the concept of interim rent was introduced.

The rules relating to interim rent introduced by the 1969 Reforms (the 'old rules') were amended in June 2004 ('the new rules').

### The New Rules – Valuation: Section 24C of the Landlord and Tenant Act 1954

The amendments from June 2004 introduced a new basis of valuation for three specific scenarios. In all other cases, the position is similar to the old valuation rules. All three of the scenarios governed by the new rules are situations where the tenant is sure of its ability to obtain a new tenancy of the premises originally demised.

#### Scenario 1: The status quo

The first scenario is the simplest. In summary where:

1. the landlord does not oppose from the outset
2. a new tenancy is granted
3. the terms of the new tenancy are not substantially different from the terms of the old tenancy and/or
4. there has been no substantial change in the market between the date of the interim rent commencement and the date of the new tenancy commencement

the interim rent will be the same as the new rent under the new tenancy, i.e. calculated by reference to s.34.

#### Section 34 of the Landlord and Tenant Act 1954

Section 34 provides that the Valuation Date is the commencement date of the new tenancy.

Pursuant to section 34 the rent is to be valued on the basis of the market rent of the premises on the following assumptions:

1. the terms of the new tenancy
2. the duration of the new tenancy and
3. willing parties

and disregards:

1. the tenant's occupation
2. goodwill and
3. qualifying tenant's improvements.

## Scenario 2: the market has moved

This scenario is similar to the first scenario but there has been a substantial change in the market between the date that the interim rent became payable and the commencement date of the new tenancy.

In summary where:

1. the landlord does not oppose from the outset
2. a new tenancy is granted
3. the terms of the new tenancy are not substantially different from the terms of the old tenancy and/or
4. there has been a substantial change in the market between the date of interim rent commencement and the date of the new tenancy rent commencement

the interim rent will be calculated by reference to section 34 (i.e. a similar basis to the new rent). However, the Valuation Date will move to the date of interim rent commencement (i.e. the earliest date which could have been put in the section 25 notice or section 26 request).

## Scenario 3: terms changed

This scenario occurs irrespective of whether the market has moved, where the terms of the new tenancy differ from those of the old tenancy such that any section 34 valuation of the continuation tenancy would be substantially different from the section 34 valuation of the rent under the new tenancy.

The interim rent will be one the court considers it reasonable for the tenant to pay during the continuation tenancy. In summary, the interim rent will be a section 34 valuation but also on the basis of:

1. an amount that is reasonable for the tenant to pay
2. having regard to the rent payable under the old tenancy
3. having regard to the rent payable under any subtenancy
4. on the terms of the old tenancy and/or
5. for the duration of the new tenancy

the Valuation Date is not specified in the amendments, however, having regard to the case law decided on the old rules the accepted view is that the Valuation Date is the commencement date for payment of the interim rent.

## Section 24D of the Landlord and Tenant Act 1954 – all other cases

In all cases not within the three scenarios outlined in section 24C, the rules set out in section 24D apply. These are similar to the 'old rules'.

Some of the more common situations where valuation pursuant to section 24D will be appropriate are:

1. if the landlord opposes the renewal initially
2. if the tenant does not occupy the whole of the premises in the continuation tenancy and the new tenancy is not of the whole or
3. if the tenant vacates before taking up the new tenancy.

The interim rent will be determined by reference to section 34, but also by reference to:

1. an amount that is reasonable for the tenant to pay
2. having regard to the rent payable under the old tenancy
3. on the terms of the old tenancy and/or
4. on a tenancy from year to year.

The Valuation Date is not specified but the accepted view is that the Valuation Date is the commencement date for the payment of the interim rent.



