

RURAL ARBITRATION

RURAL ARBITRATION GUIDANCE NOTE

TO ASSIST RURAL SURVEYORS
APPOINTED TO ACT IN ARBITRATION

RURAL ARBITRATION GUIDANCE NOTE

Main purpose:

- To demystify rural arbitration
- To encourage greater involvement by rural surveyors
- To raise standards in rural arbitration
- To reduce costs to clients
- To speed up the dispute resolution process
- To encourage greater use of arbitration as a way to resolve rural disputes

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Relevance to members

- Aims to give members confidence to participate
- Gives guidance on best practice and duties of parties and representatives including surveyors involved in arbitration
- Explains arbitrator's role and duties and powers
- Explains parties' rights in arbitration

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Relevance to clients

- Clear guidance on what to expect from the arbitrator and their surveyor representatives
- Explanation of what arbitration is
- Sets out their rights and duties as a party
- Guidance on benefits of arbitration and how to get the best out of the process

RURAL ARBITRATION GUIDANCE NOTE

Relevance to other professionals

- Aims to give other professionals confidence in the arbitration process
- Guidance on what to expect from the arbitrator and the remit under which he/she operates
- Sets out duties and rights of all those involved in arbitration
- Guidance on benefits of arbitration and how to get the best out of the process

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Arbitrators – who are they?

- Rural panel consists of approx. 25 RICS members
- All have extensive experience in rural property matters
- Extensively trained, CPD requirement is double that of RICS members
- Have to pass initial training (now a diploma) and panel interview
- Ongoing training through organisations like Arbrix

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Statutory framework:

Key Acts

- Arbitration Act 1996 (AA'96)
- Agricultural Holdings Act 1986 (AHA '86)
- Agricultural Tenancies Act 1995 (ATA '95)

All sections referred to are AA'96 unless stated otherwise.

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Arbitration Act 1996

- Key statute to know
- Brought into cover AHA tenancies by RRO 2006 (SI2006/2805)
- Main principles set out in sections 1,33 and 40
 - Section 1 – fair resolution, impartial tribunal, without unnecessary delay or expense
 - Section 33 – Duties of Tribunal – to act fairly giving each party a reasonable chance to put his case and deal with that of his opponent and adopt procedures in accordance with section 1
 - Section 40 – Duties of the parties – to act properly and expeditiously and comply with the Tribunal

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If issues arise during the arbitration process arbitrator will revert to first principles – Sections 1,33 and 40

Arbitrator will rarely (for example) strike out a claim or exclude evidence altogether as this would be in breach of duties under s.33. Ability to penalise a party on costs if their behaviour is poor

Act is comprehensive and covers most eventualities such as jurisdictional challenge, costs, peremptory orders (akin to Unless Orders)

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Nature of Arbitration

- Adversarial – arbitrator is there to determine evidence in front of him/her, not to bring his/her own. Parties must therefore make their case. arbitrator is not an independent expert or mediator.
- Courts becoming less inclined to intervene where parties have agreed to arbitrate
- Agreeing to arbitrate includes signing an agreement with an arbitration clause in it or entering into an agreement covered by statute that then refers disputes to arbitration (AHA 1986, ATA 1995) or any other agreement evidenced in writing

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Application and Appointment

- No minimum requirements for documents but arbitrator will need to see contract/tenancy, relevant notices and relevant correspondence
- Fees are normally payable to appointing body and need to be paid before application is "made"
- arbitrator must be impartial, so will have checked for conflicts of interest before accepting appointment. Any concerns can and should be raised as early as possible as may give rise to a later challenge
- Jurisdictional or other challenges (is arbitration under the an Act or under a contractual clause, pre arbitration notices correct etc.)

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Action by parties on appointment

- Initial contact from arbitrator – respond as requested, do not just ignore
- Make any jurisdiction or other challenges early
- Consider legal issues early and appoint legal adviser if necessary
- Ask for more time if reasonable prospect of progress being made
- Keep arbitrator informed
- Unless arbitrator's costs are extortionate, should agree to them (most rural arbitrators charge between £150 and £250 ph)

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Case management

- Arbitrator will usually suggest a preliminary meeting (often by telephone)
- Ask for preliminary meeting if concerned about lack of progress
- Preliminary hearing will then usually set timetable
- Do not be pressured into unreasonable time limits
- Consider asking for cost capping if appropriate
- Consider use of peremptory orders

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Case management cont'd

Consider:

- Any legal points (and how to deal with them, arbitrator or court?)
- Need for expert evidence
- Who will be advocate – proportionality –most competent surveyors should be able to handle simpler cases such as rent arbitrations
- Dual role? (Expert/advocate)
- Disclosure
- Keep client informed!

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The hearing

- Preparation - fail to prepare, prepare to fail
- Respect the arbitrator but know your rights (know sections 1,33 and 40 off by heart and quote them on record if you feel you are being treated unfairly)
- The arbitrator is there to assess the evidence presented. Make sure you give him/her some and use it to come to a conclusion
- Proper bundles, paginated and cross referenced will help you and help the arbitrator

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- Pre write opening statement as it calms the nerves to have something already prepared
- Pre write your closing statement and add to it as the hearing progresses if necessary. Make sure it comes to a conclusion!
- Know the running order
- Don't forget to re-examine your witnesses after their have been cross-examined
- Take your time, don't be afraid to add something at the last minute – better to have an arbitrator grumble at you at the hearing than a client sue you for missing a key submission!

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The award

- The award should usually follow within a few weeks
- Send a copy to client and (if applicable) their other advisors immediately
- Watch time limits for appeal or section 57 application (amending mistakes)
- Arbitrator will normally expect to be paid before releasing the award. Try to agree with opponent that each party pays half to release award – does not prejudice right to get your client's half back if costs awarded in his/her favour

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Costs

- Usually follow the event
- CPR does not apply but may be referred to as a good guide
- Arbitrator has discretion, so consider raising issues if opponents have not behaved well
- Proportionality (consider raising section 65 cost capping – before hearing!)

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Post Award

- Watch time limits for appeals (28 days from date of award)
- Can ask arbitrator to correct obvious mistakes (such as mathematical errors) – Section 57
- Courts very reluctant to intervene - bar for successful appeal now extremely high
- Grounds set out in section 67 (jurisdiction), s.68 (serious irregularity) and section 69 (question of law)
- Can ask arbitrator to make additional awards (e.g. on costs)

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Simplified Arbitration Scheme

- Aimed at rural sector
- Encompasses general theme of making arbitration cost effective and proportionate
- Key features:
 - Parties have to consent to use of simplified scheme
 - Arbitrator's costs limited to £3,000
 - Each party will pay half, regardless of outcome
 - Each party will pay their own costs regardless of outcome
 - Expert evidence only if called for by arbitrator
 - Usually only for rent arbitrations

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Other guidance notes and professional statements

You will also need to have read:

- Surveyors acting as advocates professional statement and guidance note (second and third edition respectively)
- Surveyors acting as expert witnesses practice statement (4th Edition)
- Conflicts of interest for members acting as dispute resolvers guidance note (1st edition, second edition due out shortly)

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Summary

- Rural arbitration should be cost effective, proportionate and easy to use
- Arbitrators are there to help resolve the dispute and should be respected but not feared. Do not be afraid to ask for clarification and guidance on the process
- Most competent Chartered Surveyors should be able to act as advocates for simpler arbitrations such as rent reviews

RURAL ARBITRATION GUIDANCE NOTE

Golden rules

- Know your subject,
- Know your case,
- Know your evidence,
- Know your rights and duties,
- Know the Arbitration Act 1996

(especially sections 1, 33 and 40)