

Criteria for Inclusion on the Panel of Rent Review Arbitrators

1 General

In order to be considered for inclusion on the Panel of Commercial Rent Review Arbitrators, candidates must satisfy the following entry requirements:

- Minimum MRICS
- Minimum 10 years post qualification experience in primary profession;
- Recognition in your market of your involvement and expertise in that sector
- Be able to demonstrate active involvement in the dispute resolution as either expert witness, advocate or dispute resolver;
- Attendance at and successful completion of the RSPH/RICS Diploma in Arbitration¹ and assessment weekend **or** DRS Training Course for potential Arbitrators including associated written assignments
- Attendance and success at the RICS DRS interview
- Compliance with RICS CPD requirements generally
- Compliance with the specific CPD requirements set out below in the two years prior to application
- Must be prepared to cooperate with any investigation by RICS relating to a complaint against you as a panel member
- Must accept that a panel member can be removed from the panel at the discretion of the President.

(NB Membership of an RICS panel of dispute resolvers does not guarantee a quota of (or any) appointments.)

1.2 Prior to attendance at an Assessment Day/Interview each candidate will be required to send to the RICS:

- A completed skills form;
- A summary of recent experience (see attached example)
- Evidence of compliance with CPD requirements
- The appropriate fee

1.3 A copy of the Candidate's Examination "Reasoned Award" and other relevant draft documents will be provided to the interview panel.

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.

¹ When available

1.6 Candidates successful at interview will be required to comply with and sign the Service Level Agreement between the Panel Member and DRS

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 gain entry to 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 in the field of Arbitration have been identified;
- the candidate is recognised in the market place as experienced in all areas set out in the skills form.

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;
- able to understand the need to operate within the boundaries of natural justice, commensurate with the process of arbitration. There must be an understanding of the overall importance of fairness in allowing the parties to present their case.

3.1.3 Managing the process, including standard documentation

The candidate should be able to demonstrate:

- the ability to manage the arbitration in a transparent, efficient and expedient manner;
- sufficient standing, gravitas and flexibility of attitude to manage the process (including hearing if appropriate)
- the ability to control the process, apply judgmental skills and produce appropriate documentation throughout the process.

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

The candidate should;

- have the ability to deal effectively with both threshold and subsequent jurisdictional problems and challenges. This requires a clear understanding of the criteria to be considered when determining whether and how to proceed and the need to clearly communicate to the parties any jurisdiction determination;
- be aware of relevant statutes and caselaw, particularly in respect of contract, evidence and legislation sufficient to understand the context of legal arguments, so that a rational, reasoned decision can be made.

3.1.5 Award, including identifying the issues and analytical reasoning

The candidate should be able to demonstrate the ability to:

- identify, express and analyse the issues and sub-issues that need to be considered in reaching a decision;
- apply judgmental skills throughout the process;
- provide concise, clear and logical reasons for a decision;
- 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 (where relevant) costs.

3.1.7 CPD/Relevant Experience

CPD is important for keeping up to date with practice and procedure. **40 hours** of relevant CPD per annum as a minimum should be demonstrated. 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;
- 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 candidate as a potential arbitrator
- the standard and professionalism of any documentation and communications;
- any upheld RICS complaints against the member;
- any judicial criticism or comment if applicable.

4 Possible Outcomes of Assessment

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 may be admitted to the panel once the required improvement has been demonstrated. The interview board to make a recommendation to RICS on what the candidate should be required to do to meet the required standard. This may include: training or other study (at the discretion of the interview board); mentoring or gaining further experience, or other recommendation. The candidate may then be required to go forward for further interview/assessment.

4.3 Fail

Candidates who are judged 'Improvement Required' or 'Unsatisfactory' in more than two categories will be **failed**. Candidates who fail will not be admitted to the panel but will have opportunity to appeal against the decision to an Appeal Board. A further fee may be payable.

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 inclusion on RICS Panel of Arbitrators.

The feedback received from customers of DRS has emphasised the importance of appointees, being actively involved in the market place. Customers who ask us to appoint a third party expect the appointee to not only have the technical skills to carry out a third party appointment, but also to be recognised in the market place as someone actively involved in their skill or geographical area.

Candidates who are invited to attend a training/assessment course must successfully complete both the training course and subsequent interview. The interview panel will be testing that the candidate not only has technical ability to act as a third party but also has the appropriate aptitude.

Candidates who wish to be considered for a panel appointment should provide a brief summary of his/her working circumstances and type of work dealt 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. The summary, typically not more than around 500 words (although more information can be provided if the surveyor requires) should cover the following topics:-

- (1) A comment on your role 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) Arbitrators will be expected to demonstrate 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 *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 Determination 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) 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 his/her skills form. While this may be interesting and relevant background information, obviously it has to be stressed that the nomination of an arbitrator is a personal appointment rather than a corporate one.
- 10 In addition to the personal involvement in the market concerned, you will be expected to have complied with RICS Regulations relating to CPD and provide details in accordance with the guidelines.

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 18 months 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 I have received approximately 15 invitations to act as independent expert from DRS but have turned down 10 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 some 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.