

## **Criteria for inclusion onto the President's Panel of Construction Adjudicators**

(These criteria are monitored and their effectiveness is reviewed. DRS reserves the right to update/modify the criteria at any time.)

### **1. General**

This document sets out the requirements for applicants interested in gaining membership of the President's Panel of Construction Adjudicators.

#### **1.1 Entry Criteria**

In order to be considered for inclusion on the Panel of Construction Adjudicators, applicants must satisfy the following entry requirements:

- A professional qualification relating to the candidate's primary profession
- Minimum 10 years post qualification experience in primary profession
- Successful completion of the RSPH/RICS Diploma in Construction Adjudication
- Attendance at and successful completion of an RICS Assessment Day
- Be able to demonstrate active involvement in the process as either expert witness, advocate or dispute resolver;
- Attendance and success at an RICS interview
- Compliance with RICS CPD requirements generally
- Compliance with the specific CPD requirements set out below in the 2 years prior to application

#### **1.2 Documentation**

Prior to attendance at an interview each applicant will be required to send to the RICS:

- A completed skills form
- A summary of experience (see attached example)
- Evidence of successful completion of RSPH/RICS Diploma in Construction Adjudication
- Evidence of compliance with CPD requirements
- Examples of procedural correspondence
- A copy of a Decision (preferably the one following the correspondence)
- The appropriate fee

#### **1.3 References**

RICS will obtain two written references from the referees listed on the skills form. These will be forwarded to the assessment board prior to interview. A member of the interview board (normally the chair) will speak to both referees prior to the interview.

#### **1.4 The Assessment Board**

The interview board comprises three members. A senior panel member chairs the interview; a lawyer practising in the sector has previously assessed this member for suitability. A professional from the sector, who is not on the panel, assists the chair, along with an

independent member. The independent member's role is to ensure the fairness and consistency of the interview.

### **1.5 Service Level Agreement**

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

## **2. Assessment Standards**

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* [1957] 1 WLR 582).

## **3. Criteria**

In order to gain entry to the panel, the applicant must be able to demonstrate competency in the following areas:

- Skills form
- Knowledge and understanding of involvements/conflicts/bias and perceived bias
- Managing the process, including standard documentation
- Knowledge, application and understanding of the law including dealing with jurisdictional challenges
- Decision including identifying the issues and analytical reasoning
- Knowledge and understanding of costs
- CPD/relevant experience
- General

### **3.1 Skills Form**

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

- the candidate's appropriate skill areas have been identified;
- the applicant is recognised in the market place as experienced in all areas set out in the skills form.

### **3.2 Knowledge and understanding of involvements/conflicts/bias and perceived bias**

The applicant should:

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

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

### **3.3 Managing the process, including standard documentation**

The applicant should be able to demonstrate:

- the ability to manage the adjudication 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.

### **3.4 Knowledge, application and understanding of the law including dealing with jurisdictional challenges**

The applicant 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 case law, particularly in respect of contract, tort of negligence, evidence and legislation sufficient to understand the context of legal arguments, so that a rational, reasoned decision can be made.

### **3.5 Decision, including identifying the issues and analytical reasoning**

The applicant 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.

### **3.6 Knowledge and understanding of costs**

Applicants should be familiar with the general principles of deciding (where relevant) costs.

### **3.7 CPD/Relevant Experience**

CPD is important for keeping up to date with practice and procedure. **40 hours** per annum as a minimum should be demonstrated. For the purposes of reassessment, this should include and be spread over the following areas:

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

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

### 3.8 General

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

- ability and aptitude of the applicant as a potential adjudicator
- 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

The Board is required to make a decision based on the applicant's Performance at the interview. The applicant will receive a result of pass, refer or fail.

### 4.1 Pass

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

### 4.2 Refer

Applicants judged 'Improvement Required' or 'Unsatisfactory' in up to two categories will be referred.

A referral means the applicant will be admitted to the panel once the required improvement has been demonstrated.

The Interview Board to make a recommendation to RICS on what the applicant should be asked to do to meet the required standard which may include:

- Training or other study (at the discretion of the interview board)
- Mentoring or gaining further experience
- A suitable recommendation agreed by the board to meet the deficiency in the standard.

The applicant may be required to go forward for another interview assessment, should the board feel this is appropriate.

### **4.3 Fail**

Applicants who are judged 'Improvement Required' or 'Unsatisfactory' in more than two categories will be failed.

Applicants 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 Notification of result**

The applicant 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.

## **6. Summary of Relevant Experience**

The feedback received from customers of DRS has emphasised the importance of appointees being currently or previously involved in the sector in which they are to be appointed (e.g. for disputes relating to the costs of construction appointees are expected to have significant experience in valuing construction projects).

Applicants 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 applicant not only has technical ability to act as an adjudicator but also has the appropriate aptitude and standing.

Applicants 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 at least the previous 5 years.

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 applicant's day to day work, particularly that which demonstrates active involvement in the sector or dispute resolution.

The summary, typically not more than around 500 words (although more information can be provided if the surveyor requires), should cover the following topics:

- 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).
- A brief explanation of your role in the context of the organisation you work for e.g. perhaps you are the head of a department, which is part of a larger organisation with offices in different locations across the country dealing with a variety of matters or a consultant working from the office for one day a week.
- You will be expected to demonstrate current or previous participation in the particular sector relevant to the stated skills given on the Skills Form.
- Reference to completed work at least over the previous 5 years. Ideally the work should include involvement with various aspects of surveying relevant to your sector
- Client Confidentiality is obviously appreciated but indications of the size and nature of projects in which you have been involved can be given

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 adjudicator is a personal, not a corporate one.

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 MRICS and I am the local partner of the Anytown office of Ramsbottom Price where I am based five days a week. My company has four offices overall, three of which deal with general quantity surveying work and one of which deals with claims preparation and dispute resolution. It is the latter in which I am employed .

I deal with a wide variety of disputes both prior to and after formal procedures have been commenced. I regularly act as an expert witness in relation to construction quantum.

Over the previous 3 years I have dealt with a number of adjudications as party representative (five in total). I have prepared delay and cost claims on four multimillion pound projects. I have continued to carry out post contract surveying duties on four projects including a multi storey office block (£10m JCT WCD), a high specification house refurbishment (£1.5 m IFC 98) and a highway scheme (£5m ICE 5<sup>th</sup>)

I have acted as quantum expert in relation to a professional negligence claim against an Architect (failure to obtain planning permission/stop notice). I have acted as quantum expert in a liable case (suggestions of overcharging typical of a "cowboy builder") I have turned down two possible appointments as party representative due to conflicts of interest.

While I have historically dealt with construction projects of various sizes I have not personally dealt with any significant volume of housing related projects. That said our practice retains significant cost data on housing projects should I be asked to advise on such matters.

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](http://www.brillianturveyors.com).