

## Reassessment of Arbitrators (Non-rent)

### All Panel Members must comply with and sign the Service Level Agreement between the Panel Member and DRS

#### 1 General

One of the conditions of panel membership (as stipulated in the Service Level Agreement), is regular reassessment of panel members. This will comprise of a formal interview , lasting approximately 60 minutes and will ordinarily take place at five yearly intervals but may be triggered by any of the following:

- Expiry of 5 year period since last assessment;
- Adverse feedback;
- A recommendation by the Advisory Body following a complaint against the panel member;
- Failure to comply with CPD requirements
- Discretion of the President

#### 1.2 Prior to the interview, each candidate will be required to send to the RICS:

- A completed skills form
- A set of directions
- An award (preferably the one following the directions)
- A costs award

(Where a candidate is not able to provide a recent award or costs award, then the candidate will be required to critique a mock award provided by RICS.)

- A summary of the candidate's working circumstances and type of work dealt with over the last 18 months (see attached information);
- Complete record of CPD for previous 5 years with Dispute Resolution topics highlighted;
- The appropriate fee

#### 1.3 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.

#### 1.4 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.

#### 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 remain on 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:

- the candidate's appropriate skill areas as an arbitrator have been correctly identified;
- the candidate is aware of the different experience required for arbitrator and independent expert roles;
- the response from referees, corresponds with the areas of expertise identified by the candidate and the referees have personal knowledge of the candidate's experience in the areas ticked on the skills form;
- the arbitrator 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;
- 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 directions and standard documentation**

The candidate should be able to demonstrate the ability to:

- manage the arbitration in a transparent, efficient and expedient manner;
- 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 jurisdictional problems and challenges.
- 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 award 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 and giving an award;
- 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 costs, including Calderbank offers and the principle of 'near misses'.

### 3.1.7 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 arbitrator 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.**

### 3.1.8 General

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

- ability and aptitude of the 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 Reassessment

### 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 will remain on the panel and, if the required improvement is met, will be passed. If the standard is not met, the candidate will be failed and has the right of appeal. The Interview Board to make a recommendation to RICS on what the candidate should be asked to do to meet the required standard. (New candidates who are referred will not be added to the panel until the referral conditions are met.)

## 4.3 Fail

Candidates who are judged 'Improvement Required' or 'Unsatisfactory' in more than two categories will be **failed**. Candidates who fail will be removed from the panel but will have opportunity to appeal against the decision to an Appeal Board.

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.