

Application for appointment of an Arbitrator or Independent Expert

Rent review disputes only, Scotland



Application for appointment/nomination of an Arbitrator or Independent Expert by the Chairman of RICS Scotland (Rent review disputes only)

N.B. Applications for the appointment/nomination an arbitrator or independent expert in a **non-rent review** dispute should use form 'Application for appointment/nomination of an Arbitrator or Independent Expert by the Chairman of RICS Scotland (non-rent review disputes only).'

Explanatory Notes

N.B. These explanatory notes form part of, and should be read in conjunction with, the application form below for the appointment of an arbitrator or independent expert in rent review disputes only.

1 General

- 1.1 The application form below may be copied to the other party to the dispute (or their representative if applicable).
- 1.2 It is important that all sections of the application form are completed accurately and in full. RICS relies upon the information contained within the application form to appoint or nominate an appropriate third party that will have the confidence of the parties. An incomplete or incorrect application form may result in an inappropriate appointment/nomination and/or delays.
- 1.3 As a matter of policy, RICS will notify the other party to the dispute (or their representative if applicable) of the reference to the RICS, and reserves the right to set out the details that have been submitted by the referring party. RICS further reserves the right to copy the application form and any accompanying documentation to the other party to the dispute. This is the basis upon which applications are accepted by RICS. This does not relieve the referring party of their obligation under the Arbitration (Scotland) Act 2010 to give notice to the responding party of the reference to the RICS.
- 1.4 Details of any surveyor on the Chairman's panel of arbitrators or independent experts whose appointment/nomination would, in the view of any party, give rise to a conflict of interest should be provided to RICS before an appointment/nomination is made. Full reasons must accompany any such objections. The Chairman shall consider representations made by either party but may not be bound by them.
- 1.5 The information provided in the application form will be forwarded to one or more prospective dispute resolvers in order that they can carry out diligence checks and determine whether or not they are in a position to act in the dispute (see Conflicts of Interest below).
- 1.6 Applications are processed on the understanding that appointment/nomination may be made on behalf of the Chairman of RICS Scotland by one of his/her duly appointed agents.

2 Information about the dispute

- 2.1 The application form can be used for a wide variety of disputes, and the information we require will differ accordingly. Types of dispute can include; the valuation of a matrimonial home in divorce proceedings; a construction dispute; a partnership dispute; a dispute over valuation; a dispute over development land; or any other type of the dispute where the Chairman of RICS Scotland is named, or agreed between parties, as the appointing body.

- 2.2 It is not necessary to send a copy of the contract/lease documentation to RICS. The referring party should send a copy of the lease to the appointed/nominated dispute resolver once the appointment has been made. RICS is under no obligation to interpret lease provisions or ascertain whether an application is valid. The onus is on the referring party to ensure that they have the requisite authority to make the application, and that the application is made in accordance with the terms of the lease. RICS will make an appointment/nomination in accordance with the information provided.
- 2.3 It is essential that RICS receives sufficient information about the dispute in order that an appropriate appointment/nomination can be made. The dispute resolver will also require sufficient information that they may be satisfied that the dispute is within their normal professional expertise.
- 2.4 Some contracts/leases impose special requirements/obligations on the dispute resolver (relating to, for example, experience, timescales, qualifications, requirement for a decision to include reasons, etc). Such lease provisions should be disclosed in the application form so that prospective appointees can consider such requirements prior to their acceptance of the appointment/nomination.
- 2.5 If the dispute relates to a specific property, the following information about the property must be provided, elicited from lease documentation where possible:
 - a) the full postal address, including the post code;
 - b) a brief description of the property (e.g. office, supermarket, residential premises, etc.), including use class if known; and
 - c) any other relevant information about the property that might aid the selection of an appropriately qualified and experienced surveyor.

3 Information about the parties and their representatives

- 3.1 The application form must contain accurate details in respect of the parties and their representatives, including email addresses.
- 3.2 Correspondence will be sent to the parties' representatives in the first instance.
- 3.3 Correspondence is by email or, where this facility is unavailable, by fax. It is therefore important you provide an email address for all parties if possible. Where a party is unrepresented, please ensure an email address and fax number is included.

4 Authority to Appoint

- 4.1** Please give details of the document which gives the Chairman of RICS Scotland the authority to make an appointment/nomination. This could be a contract or lease, a court order or the joint agreement of the parties.
- 4.2** A unilateral application can generally be made provided an agreement is in place which provides for this. If no such agreement exists, a joint applicant should be made by the parties. RICS will not become involved in a dispute as to whether the application is valid.

5 Conflicts of Interest

- 5.1** In your view there are any panel members that have a conflict of interest in this case, you should list them in the relevant box on the application form. You must state for each such person brief but clear reasons for this statement. Your attention is drawn to the decision in Eurocom Limited v Siemens PLC [2014] EWHC 3710 [TCC] to the effect that misrepresentation in this statement could vitiate the appointment process in its entirety, rendering any award made unenforceable.
- 5.2** Potential dispute resolvers selected by the Chairman are required to be impartial and independent (a) of the parties to the dispute, (b) of the property that is the subject of the dispute, and (c) of any circumstances relating to the dispute. Any potential conflicts of interest are identified and declared by the potential appointee at an early stage in the appointment process to ensure that the final appointee is acceptable to all parties.
- 5.3** The onus is on the potential appointee to declare any conflicts of interest in a particular dispute, and the Chairman is entitled to rely upon their professional judgment. Where a potential conflict of interest is disclosed, the RICS may notify the parties (or their representatives) to seek comments on the disclosure. If any party wishes to object to the potential appointment on the basis of the disclosure, they must provide full reasons for their position. The final determination is at the discretion of the Chairman.

- 5.4** Scotland is a small market, particularly when it comes to specialist areas within the surveying profession. It is not uncommon for surveyors appointed to act as dispute resolvers to have, or have had in the past, a working relationship with one or both of the parties to the dispute. The RICS is conscious of this and requires all members of the Chairman's panels to have regard to the Arbitration (Scotland) Act 2010 which sets strict requirements in respect of conflicts of interest, as well as to RICS Guidance Notes relating to conflicts of interest.

6 Fees

- 6.1** The RICS administration fee is non-refundable, regardless of whether or not the Chairman makes an appointment/nomination [for example, if the matter is settled by agreement and the application is withdrawn].
- 6.2** In submitting an application to the RICS, the referring party undertakes to ensure that the reasonable professional fees and/or expenses of the appointed/nominated surveyor are paid, including any fees and/or expenses arising where a negotiated settlement is reached before the award/determination is taken up. Parties are reminded that they may be jointly and severally liable under contract or statute for payment of such fees and/or expenses reasonably incurred.

7 Data protection

- 7.1** RICS takes the privacy and security of personal information very seriously. Details are held in a secure database with authorised access only. RICS 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 provided in application forms to contact parties with offers of products and services. Nor will RICS share information with third parties for the purpose of sending details or offers of products and services.

Section 1: Property

Address: _____

Town/city: _____ Post code: _____

Description: _____

Class/type use: _____

Section 2: Lease

[Please refer to section 2 of explanatory notes]

Date of lease: _____ Alleged date of review: _____

Amount of passing rent: _____

Arbitrator or Independent Expert

Preferred professional background of the dispute resolver

Special requirements (if any)

Please provide details of all special requirements stated in the lease that relate to the appointment and/or appointee, e.g. experience, qualifications, timescales, requirement for a decision to include reasons etc.

Agreement to Refer

[Please refer to section 4 of explanatory notes]

Which clause in the lease gives the Chairman power to appoint/nominate

Section 3: Parties

[Please refer to section 3 of the explanatory notes]

Current Landlord

Company Name: _____

Address: _____

Town/city: _____ Post code: _____

Original landlord: _____ Parent/subsidiary: _____

Current Tenant

Company Name: _____

Address: _____

Town/city: _____ Post code: _____

Original tenant: _____ Parent/subsidiary: _____

Landlord representative

Name: _____

Company Name: _____

Address: _____

Town/city: _____ Post code: _____

Telephone no: _____ Fax no: _____

Email address: _____

Referring party? Yes No

Tenant representative

Name: _____

Company Name: _____

Address: _____

Town/city: _____ Post code: _____

Telephone no: _____ Fax no: _____

Email address: _____

Referring party? Yes No

Section 4: Conflicts of Interest

[Please refer to section 5 of the explanatory notes]

Please indicate below whether in your view there are there any dispute resolvers who would have a conflict of interest in this case. Please provide for each such person brief but clear reasons for this statement.

Name	Firm	Reason

Section 5: Fees

[Please refer to section 6 of the explanatory notes]

RICS charges an administration fee of **£425.00** inclusive of VAT to make an appointment. This payment is non refundable whether or not the Chairman makes the appointment [e.g. if the matter is settled by agreement and the application is withdrawn].

You can choose to pay by the following:

Providing a cheque made payable to RICS. Please detail your name, the first line of the property in dispute and postcode on the reverse so that the payment can be allocated.

A card payment. One of our advisors will contact you to arrange payment. Please tick this box.

By using your bank or building society to pay the application fee.

RICS Bank account details:

Account number: **30786339**

Sort code: **56-00-45**

Swift Code: **NWBK GB2L**

You must provide your name and the postcode of the property in dispute. This will ensure that your payment is correctly allocated and your application is processed. Please email a copy of the remittance to **bacs@rics.org**

Debit my RICS trade account number:

Account holders will be invoiced by our finance department. To apply for an account please email **drsscotland@rics.org**

RICS is unable to accept credit or debit card details by email due to PCI compliance regulations.

Please be aware the applicant has responsibility to ensure that payment is complete. Applications are unable to be processed without full payment.

Application submitted by:

I/We undertake to ensure that the reasonable professional fees and costs of the dispute resolver nominated are paid, including any fees and costs arising where a negotiated settlement is reached before the decision is taken up.

Name: _____

Company: _____

Acting for Landlord or Tenant: _____

Date: _____

Submitting this application to RICS Dispute Resolution Services signifies you have read and understand the explanatory notes attached. This is the basis on which your application is accepted. Your application is accepted on the basis that the information you provide is both accurate and complete. Neither RICS nor the appointed party can accept liability in relation to the appointment, if the information provided is inaccurate or incomplete.

Please return the completed form by email or post:

RICS Scotland, Dispute Resolution Service, 125 Princes Street, Edinburgh EH2 4AD

t: 0131 240 0832 e: drsscotland@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.