RICS Practice Standards, UK

Conflicts of interest for members acting as dispute resolvers

1st edition, guidance note

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Conflicts of interest for members acting as dispute resolvers

RICS guidance note

1st edition incorporating Scottish addendum

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Acknowledgment

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In preparing this guidance note, the working party has been heavily influenced by the traffic light system from the International Bar Association (IBA) *Guidelines on Conflicts of Interest in International Arbitration* (IBA 2004) and adopted many of the principles set out in this publication. However, this system has been adapted and upgraded to ensure that it is appropriate for property and construction-based disputes where the parties' representatives and the dispute resolver are often not lawyers.

This guidance note uses a traffic light system as a readily understandable approach to guide users through an analysis of when an involvement should be disclosed, and when it may be such as to amount to a conflict of interest. Some working examples of this approach are set out in the information paper which has been provided for the sake of convenience in Appendix 2 to this guidance note. This paper, which will be updated from time to time, is intended to provide assistance rather than actual guidance, and is not at this stage a formal part of the guidance note.

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RICS guidance notes

This is a guidance note. Where recommendations are made for specific professional tasks, these are intended to represent 'best practice', i.e. recommendations which in the opinion of RICS meet a high standard of professional competence.

Although members are not required to follow the recommendations contained in the note, they should note the following points.

When an allegation of professional negligence is made against a surveyor, a court or tribunal may take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the member had acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

It is for each surveyor to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this note, they should do so only for a good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice. Also, if members have not followed this guidance, and their actions are questioned in an RICS disciplinary case, they will be asked to explain the actions they did take and this may be taken into account by the Panel.

In addition, guidance notes are relevant to professional competence in that each member should be up to date and should have knowledge of guidance notes within a reasonable time of their coming into effect.

Document status defined

RICS produces a range of standards products. These have been defined in the table below. This document is a guidance note.

Type of document	Definition	Status
RICS practice statement	Document that provides members with mandatory requirements under Rule 4 of the Rules of Conduct for members	Mandatory
RICS code of practice	Standard approved by RICS, and endorsed by another professional body that provides users with recommendations for accepted good practice as followed by conscientious practitioners	Mandatory or recommended good practice (will be confirmed in the document itself)
RICS guidance note	Document that provides users with recommendations for accepted good practice as followed by competent and conscientious practitioners	Recommended good practice
RICS information paper	Practice based information that provides users with the latest information and/or research	Information and/or explanatory commentary

1 Introduction

1.1 This guidance note seeks not merely to provide advice to surveyors who are appointed to resolve disputes on dealing with conflicts of interest and involvements; it also seeks to inform the disputing parties and others involved in the wider process as to the relevant considerations.

1.2 Although over the years there have been relatively few appointments where it has been demonstrated that the appointee had a conflict of interest, there have been some high profile cases where a conflict of interest was found to exist. Either way, conflict of interest can become an area of tension and consequently the object of this guidance note is to assist all those parties involved in a dispute to understand the main principles and considerations and be aware of when an involvement may become a conflict of interest.

1.3 A surveyor will typically be chosen to resolve a dispute because of the particular expertise that he or she will be able to provide in considering the issues that have arisen. Parties to a dispute are entitled to expect that this expertise will be founded upon such experience as will enable the surveyor properly to evaluate the subject matter of the dispute. This experience will have taken the form of numerous involvements and connections with other parties, properties and markets. Such involvements are, of course, to be welcomed, because of the role they play in broadening and deepening the surveyor's expertise, and hence his or her ability satisfactorily to resolve the dispute.

1.4 Even where the involvement in question is with one of the parties to the dispute or with the subject matter of the dispute, it may continue to have a beneficial role to play. In some circumstances, however, the surveyor may be so intimately connected with one of the parties to the dispute or the subject matter of the dispute as to call into question his or her ability to be impartial as dispute resolver. In such circumstances, the surveyor is said to have a conflict of interest, which will prevent him or her acting as dispute resolver, unless the parties expressly agree that he or she should do so.

1.5 This tension between the need for relevant experience, which is clearly beneficial, and the overriding obligation to avoid conflicts of interest, together with a clear transparent process, is the focus of this guidance note. While each case should be judged on its merits, this guidance note includes an information paper that introduces a traffic light approach, providing examples to assist in the assessment of whether or not an involvement might constitute a conflict of interest. As this guidance note seeks to emphasise, this assessment calls for rigour as well as flexibility, particularly where the pool of possible appointees is small, or where a party objects to an appointment on insufficient grounds in order to gain tactical advantage.

2 Scope and application

2.1 This guidance note is designed primarily to assist those who are appointed, either by the President of RICS or directly by the parties to a dispute, to act in any dispute resolution capacity. It is also intended to assist the parties themselves and those acting for them by making them aware of the procedures likely to be followed

2.2 These notes are primarily based upon the law and practice in England, Wales and Northern Ireland, however the law in Scotland is not significantly different. The Scottish Addendum, which can be found at Appendix 4 of this guidance note, outlines the considerations that should be borne in mind by those involved in disputes to which Scots law applies. The law and practice outside the United Kingdom will differ, and local precedent must be followed as appropriate.

2.3 It is, however, hoped that the approach adopted in this guidance note will provide a firm foundation for the understanding of the broader subject of involvements and conflicts of interest on a worldwide basis.

3 Glossary of terms

3.1 In this guidance note the following expressions bear these meanings:

Appointing party	The party responsible for appointing the dispute resolver. This may be the parties to the dispute themselves or, if they cannot agree, any other appointing party/body identified by their contract or statute (which may include the President of RICS or his or her appointed agents).
Dispute resolver	A surveyor appointed, privately or by RICS, to resolve a dispute, whether as arbitrator, independent expert, mediator, adjudicator or in any other capacity.
Involvement	A connection between the dispute resolver and one of the parties or the subject matter of the dispute.
Conflict of interest	An involvement between the dispute resolver and one of the parties or the subject matter of the dispute that raises justifiable doubts concerning the impartiality of the dispute resolver.
DRS	RICS Dispute Resolution Services
Parties	Individuals or organisations engaged in a dispute. In the context of this guidance note, this may include the landlord, tenant, developer, owner occupier, or other entity directly involved/named in the context of the dispute.

4 The overriding principle

4.1 The overriding principle of this guidance note is that every dispute resolver should be, and be seen to be, impartial at the time of accepting an appointment and remain so during the entire proceedings until the final decision has been given or the dispute has otherwise finally terminated.

4.2 It is a fundamental principle of justice that each of the parties is treated equally and fairly and that the parties perceive this to be the case.

4.3 The authorities on the subject show that the courts regard two types of partiality (or bias) as obstructive to justice, because they create a possible conflict between the interest of the dispute resolver and the interest of the parties to the dispute.

4.4 The first is where the dispute resolver would have a direct (usually pecuniary) interest in the case, which would realistically be affected by its outcome. In such a case, the existence of bias is presumed (with the result that this category is usually called 'actual bias'), and gives rise to automatic disqualification. A very minor pecuniary interest (for example, a negligible shareholding), will not usually count.

4.5 The second is usually referred to as presumed or unconscious or apparent bias arising from an involvement, and is found where the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the dispute resolver was biased.

5 Independence and impartiality

5.1 The fact that dispute resolvers should be impartial does not necessarily mean that they must also be independent of the parties or the subject matter of the dispute (typically, a property). This is in contrast to litigation, where the independence of the dispute resolver is taken for granted. Arbitration and most other forms of dispute resolution are consensual, and lack of independence, unless it gives rise to justifiable doubts about the impartiality of the dispute resolver, is not of critical significance.

5.2 Although independence is often grouped together with impartiality, with the two concepts sometimes being used interchangeably, there is a critical difference between them, which underpins the approach in the red, orange and green lists in appendix 2. As explained in section 9, under that system, parties are guided through situations where it would be inappropriate for the dispute resolver to accept an appointment because of a clear conflict of interest (red); situations where it would be appropriate to accept, because there can be no possible conflict (green); and other situations where there is an involvement that might amount to a conflict, where the decision whether to accept the appointment should be taken with caution (orange).

5.3 The parties rightly expect a dispute resolver to understand the subject matter of the dispute. Parties often choose to have a dispute resolved by a surveyor rather than a court because they are looking for technical knowledge and experience to assist in the proper evaluation of their dispute. Surveyor dispute resolvers take evidence from the parties and will be in a better position to assess the weight to be given to that evidence if they are experienced in the type of property (or type of dispute), in question. For the independent expert, who does have an investigatory role, the need for knowledge of the subject matter of the dispute and, where relevant, the market is essential. This experience with the market will take the form of a number of involvements that may in some cases be said to amount to a lack of independence. Provided, however, that the dispute resolver does not allow his or her judgment to become affected by the lack of independence (i.e. they remain impartial), there is no need for the dispute resolver to be disqualified. Better a dispute resolver who is acquainted with the subject matter of the dispute, even if dependent in some way, than an independent dispute resolver who has no relevant knowledge or experience.

5.4 Accordingly, while parties are usually keen to ensure that their dispute resolver is independent, they are not entitled to insist upon this. Such concerns over independence may sometimes lead to attempts to exclude from consideration a large number of prospective appointees on the grounds that they have, or have in the past had some connection, no matter how remote, with one of the parties or the subject matter of the dispute. In some specialist fields, the appointing party could find that it was being asked to disregard every specialist. The appointing party cannot be placed in that position if it is to perform its intended function under the terms of the contract.

5.5 DRS or (once appointed), the dispute resolver, will be astute to detect any deliberate attempt to manipulate the appointment process or seek to undermine the appointment of a dispute resolver at any stage of the process for tactical advantage that does not reflect a genuine reason for objection.

6 Routes to appointment

6.1 The President of RICS or an appointed agent is frequently called upon to appoint dispute resolvers to settle disputes between parties where the nature of the dispute falls within the province of the profession. The greatest number of applications for such appointments relate to the periodic review of rents paid under leases of commercial property. Other important areas are the nomination of adjudicators for disputes under construction contracts, and the appointment of rural practice arbitrators under statute.

6.2 Surveyors may also be appointed as dispute resolvers either by private agreement between the parties in dispute, or via other formal appointing parties (such as the Law Society or the Chartered Institute of Arbitrators). In these cases, there may be other systems in place to detect whether there is any conflict of interest, which should obviously be followed. Where there is no such system, the surveyor dispute resolver is advised to follow the guidance set out in Appendix 1, which deals with the procedure applicable to an appointment by the President of RICS.

6.3 Under a private appointment, the non-waivable issues under the traffic light system may be relaxed by agreement, although parties who are public companies or in the public sector, or who operate within the confines of the public interest, may wish to exercise caution in relaxing the provisions of this guidance note.

7 RICS appointment procedure

7.1 The main stages of the RICS appointment procedure can be summarised as:

1 application

2 approach to the prospective appointee

3 checks by the prospective appointee

4 disclosure by the prospective appointee

5 review by DRS; and

6 appointment.

Appendix 1 sets out the processes and considerations required at each stage.

8 Dealing with possible conflicts after the appointment has been made

8.1 Once the appointing party has made an appointment, its jurisdiction in the matter is at an end unless the contract (or, in a relatively few cases, statute), itself provides to the contrary.

8.2 The duty upon the dispute resolver to disclose a matter that might be relevant to the question of conflict of interest continues after appointment. Accordingly, if the dispute resolver becomes aware of such a matter, it should be disclosed to the disputing parties immediately. The disclosure should be in writing, and should be copied to both parties, with an invitation for the parties to comment.

8.3 Throughout the process, either or both of the parties may raise a matter that they believe constitutes a conflict of interest. This should be done as soon as the party in question becomes aware of the matters said to constitute the conflict.

8.4 A possible cause of a conflict of interest arising after the appointment of a dispute resolver is where a property or interest in property has been sold to another party. In such circumstances, the parties to the dispute and their advisers should ensure that no conflict of interest arises at that point, and that the dispute resolver is informed as soon as the situation arises or is identified as a possible issue.

8.5 In the event of a potential conflict of interest being raised by either of the disputing parties, the dispute resolver should:

- obtain full details of the objection in writing; and
- notify the other party in writing and invite their comments.

8.6 Once the dispute resolver has received the parties' comments concerning the matter disclosed or raised under sections 8.2 or 8.3, further enquiries might be necessary in order for the dispute resolver to establish, for example, how long the party raising the matter has known about the alleged conflict (which may be relevant to the question of whether the right to object has been waived).

8.7 Assuming that the party maintaining the objection is entitled to do so, the dispute resolver should then apply the overriding principle (see section 4), to decide whether the matters disclosed or raised constitute a conflict of interest that would require the appointment to be terminated.

8.8 Any doubt as to whether a dispute resolver should disclose certain facts or circumstances should be resolved in favour of disclosure.

8.9 When considering whether or not facts or circumstances exist that should be disclosed, the dispute resolver should not take into account whether the dispute is at the beginning or at a later stage.

8.10 It is to be emphasised that the mere fact of disclosure should not indicate to the parties that the dispute resolver considers either that a conflict of interest exists, or conversely that the dispute resolver believes that there is no such conflict. Those are matters that the dispute resolver can only finally decide having weighed up the parties' reactions to the disclosure.

8.11 If the dispute resolver decides that a conflict of interest exists, unless both parties agree in writing that the appointment should continue, the dispute resolver should, as appropriate, seek the agreement of the parties to an orderly resignation and a reappointment through DRS or some other appointing party.

8.12 If the parties do not agree that the dispute resolver should resign, then the dispute resolver should consider taking legal advice as to the best way forward, having regard to costs and time.

8.13 The parties should heed the warning given at the end of section 5 of this guidance note regarding deliberate attempts to manipulate the appointment process or to undermine the appointment of a dispute resolver at any stage of the process.

9 Practical application of the guidance

9.1 The information paper in appendix 2 to this guidance note lists a number of practical examples based upon situations taken from the commercial, construction and rural sectors as to what situations may or may not constitute conflicts of interest. These lists are not exhaustive and cannot cover every situation, but are intended to provide assistance in assessing whether or not a conflict of interest may or may not exist as opposed to an acceptable involvement.

9.2 The examples given have been categorised in order of severity, adopting, but with appropriate amendments, the traffic light system used by the *International Bar Association Guidelines on Conflicts of Interest in International Arbitration*.

9.3 The red list is in two parts and consists of a 'non-waivable' list and a 'waivable' list. In both cases, situations are listed that, depending upon the facts of a given case, give rise to justifiable doubts as to the dispute resolver's impartiality; i.e. in these circumstances, conflict of interest exists from the point of view of a reasonable third person having knowledge of the relevant facts. The non-waivable red list includes situations deriving from the overriding principle that no person can be a judge in his or her own cause. In theory, parties may agree even to waive non-waivable conflicts, but extreme caution should be exercised by all concerned in such circumstances for obvious reasons.

9.4 The waivable red list encompasses situations that are serious but not as severe. Because of their seriousness, unlike circumstances described in the orange list, these situations should be considered waivable only if and when the parties, being aware of the conflict of interest situation, nevertheless expressly state their willingness to have such a person act as the dispute resolver in that particular case.

9.5 The orange list sets out some specific involvements, which, depending on the facts of a given case, in the eyes of the parties may give rise to justifiable doubts as to the dispute resolver's impartiality, but where this is not the only overriding factor for consideration. The dispute resolver should disclose such situations and the parties are deemed to have accepted if, after disclosure, no timely objection is made.

9.6 The green list contains some specific involvements where no appearance of, and no actual, conflict of interest exists from the relevant objective point of view. The dispute resolver is not normally required to disclose such involvements.

9.7 The borderline between these categories is often narrow and will depend on the individual circumstances of the case and the particular market sector in which they fall, and/or the specific requirements of the dispute resolution clause.

Appendix 1 RICS appointment procedure

A1.1 Application

A party applying to the President for the appointment of a dispute resolver is required to complete a form obtainable on application to the DRS. The details to be inserted on the form include:

- the name and address of the property
- the identities of the parties
- relevant information on the enabling contract; and
- any special requirements concerning the dispute resolver that the dispute resolution agreement specifies.

It is the responsibility and duty of both sides to the dispute to provide as much information as is relevant and necessary in assessing the potential for a conflict of interest, such as the identity of related parties and other relationships, which may not be capable of identification by a simple reference to the names of the parties to the dispute and the address of the property. It should be stressed that where a party deliberately or inadvertently makes misleading or inaccurate representations to support its case on appointment, RICS may exclude that material altogether.

The RICS President's role in appointing a dispute resolver is, on the face of it, a straightforward one. He or she is concerned to select a member with the appropriate expertise who is not precluded from taking the appointment due to a lack of impartiality. If, in a dispute, the parties cannot agree a settlement, it is not uncommon for a dispute resolution clause to identify a period during which they attempt to agree upon the identity of such a person, but if this fails, they delegate the task to the President. Ideally, therefore, the President should be entirely free to exercise his or her discretion as regards both the requirement of expertise and that of impartiality. (Other appointing parties may have different procedures.)

In recent years, there has been an increasing tendency for the parties to attempt to influence the President's decisions by stating that specified surveyors or all surveyors from specified firms would not be acceptable, sometimes without stating reasons for the objection. Delays and difficulties are being caused because the system is being misused in some cases, whether through ignorance of the proper principles to be applied, failure to complete the application form fully and accurately, or for tactical reasons. None of these outcomes are acceptable and, therefore, applicants and respondents are required to make detailed and carefully considered representations with all the relevant information included.

Any unsupported statements or representations are unlikely to be considered or have much weight attached to them. Blanket objections or lists of dispute resolvers to be excluded without suitable and sufficient information and reasoning are unlikely to be considered, or may not be brought to the attention of the President.

A1.2 Approach to the prospective appointee

Once the application form has been received and the appointment fee paid, the DRS will select a suitably qualified surveyor, based upon the information provided, and write to inform the prospective appointee accordingly.

The DRS has little information available to decide for itself whether a conflict of interest might exist, and relies upon appointees to carry out their own investigations.

The prospective dispute resolver is supplied by the DRS with details of the dispute, including the names and addresses of the parties and their representatives, and is requested to disclose to the President matters that may be relevant in deciding whether the appointment should be made. More specifically, the prospective appointee is asked to disclose any involvement, in particular an involvement they or their firm has (or has had in the relevant past), with the property, a nearby property or a party to the dispute. If such an involvement exists, the prospective appointee is asked to state whether this involvement is believed to constitute a conflict of interest.

The 'relevant past' will vary depending upon the circumstances of the case. In the first instance five

years may be considered appropriate but a longer or shorter period may be relevant.

The process of disclosure of involvements and possible conflicts is therefore a critically important part of the application process. This is dealt with in A1.4, disclosure by the prospective appointee, and A1.5, conclusion.

A1.3 Checks by the prospective appointee

A dispute resolver should make reasonable enquiries to investigate any potential conflict of interest, as well as any facts or circumstances that may cause his or her impartiality to be questioned. That is not because a dispute resolver is liable for a conflict about which he or she knows nothing – for of course he or she is not. Rather, if and when the facts amounting to a conflict emerge, the dispute resolver will rightly be criticised for the failure to have made the enquiries that would have allowed the parties to make alternative arrangements at an earlier, less costly, stage. This also demonstrates why the applicant and respondent to a dispute should carefully consider the extent and nature of the information that should be provided to ensure the prospective appointee can complete their investigations as fully as possible.

The investigations should include:

- current and historic relationships between the prospective appointee, the subject matter of the dispute and/or the property
- where the dispute concerns value, whether the dispute resolver has instructions regarding a comparable property, which would conflict with the proposed appointment
- whether the capacity in which the dispute resolver is invited to act conflicts with an existing appointment; e.g. where a dispute resolver is invited to act as arbitrator on a rent review and the dispute resolver already holds an existing appointment as independent expert. This may lead to a situation where the independent expert's determination is considered in detail in the arbitration dispute
- current and historic relationships between the prospective appointee and the parties to the dispute
- current and historic relationships between the prospective appointee and the named representatives; and
- more remote relationships, such as those involving the prospective appointee's employer or partners, or organisations associated with the parties.

The mere fact that such relationships (or 'involvements') may exist is not reason enough for their existence to be disclosed: the prospective appointee should then apply the overriding principle (see section 4), and consider whether the involvement is such as to give rise to justifiable doubts as to the dispute resolver's impartiality.

A1.4 Disclosure by the prospective appointee

The authorities show that most of the alleged conflict problems that arise (particularly in arbitration), do so because of a failure to disclose something that may have appeared to the prospective appointee to be trivial. Once an undisclosed involvement is discovered, however, the failure to disclose may itself be regarded as further evidence of the bias arising from the involvement of which the complaint is made, thus compounding and worsening what might originally have been regarded as insignificant had it been disclosed in the first place.

The prospective appointee should therefore disclose involvements to the President after making the checks described in A1.3. The definition of involvement is wide ranging and is not restricted to matters that might give rise to conflict of interest. Many involvements are not conflicts of interest. The decision as to whether an involvement may, or may not, give rise to the possibility or appearance of bias, or will in any way affect the potential appointment, is a matter for the President. Under no circumstances should the prospective appointee make any contact with the parties or their representatives at this stage.

It is important to note that for these purposes an involvement of a partner or member of staff should be regarded as just as important as involvements of the potential appointee him or herself. A potential appointee should, therefore, have an appropriate system for undertaking involvement checks within his or her organisation that is reliable and efficient.

The nature of this system will depend on the size and type of the practice. It is also important to have a system to prevent conflicts arising subsequently by partners or other members of staff accepting instructions from parties, or in connection with nearby properties that might give the appearance of creating bias.

Disclosure of an involvement to the President does not mean the surveyor will not be appointed, but consideration will be given to the likelihood of such an involvement giving rise to a perceived conflict of interest. Where a surveyor wilfully fails to disclose an involvement, or accepts an appointment and subsequently purports to resign on the basis that instructions accepted after appointment give rise to a conflict, the President may conclude that the surveyor is not suitable for future appointments.

A1.5 Review by the President

Upon receipt of the details from the prospective appointee, the President will have regard to the overriding principle set out in section 4. The President will not knowingly appoint a person with a pecuniary or other interest in the outcome of the dispute. A remote or indirect pecuniary interest will not, however, disqualify an appointee. The President will not appoint someone whose appointment would raise a real possibility of bias in the eyes of a reasonably minded person. The test is not what the party to the dispute or its representative believes, or what in fact would happen or has happened. Once he or she has made him or herself aware of all the relevant facts, the President should consider whether a reasonably minded person could perceive a real possibility of bias if the member in question were to be appointed. If the factors are evenly balanced, it is likely that the President will err on the side of caution in deciding whether to appoint.

The President may take the view based upon the information supplied by the prospective appointee that the member concerned could not be seen to be impartial. In such circumstances, the President will seek another prospective appointee.

Alternatively, the President may take the view that the matters disclosed are remote and should not raise a real possibility of bias in the eyes of a reasonably minded person. In this situation the appointment is made without disclosure to the parties.

In the further alternative, the President may pass on the prospective appointee's disclosure to the parties or their representatives, inviting comments within a reasonable period of time. At that stage the President will consider and give due weight to any objections but he or she will not be bound by them, and the final decision as to the appointment will be his or hers alone.

A1.6 Appointment

Once appointed, in the interest of best practice, the appointee may consider it appropriate again to disclose all involvements to the parties. This is particularly so with any involvements with the parties themselves. However, the appointee should not allow a party to use this information in an attempt to persuade him or her to resign. By this stage, assuming he or she had been furnished with all the facts, the President will have been satisfied that the appointee is suitable. Only the parties, by agreement, the appointee, or the courts can decide otherwise. Nevertheless, such a procedure can be useful as a final check to ensure that nothing has been overlooked that could be put right at this early stage thereby avoiding a more unsatisfactory and expensive problem arising later on in the timetable of the dispute resolution process.

Appendix 2 Hierarchy of conflicts with examples under each category

This is an information paper, and not a formal part of the RICS guidance note 'Conflicts of interest'. It is therefore intended to provide assistance to dispute resolvers and parties and their representatives on the questions of when an involvement may need to be disclosed, and when an involvement may be an actual or perceived conflict of interest. It is to be stressed that the examples set out below are neither exhaustive nor prescriptive.

This is the first edition of this information paper. Further editions will be issued as and when the need arises. RICS members should ensure that they consult the latest edition.

A2.1 Non-waivable red list

A2.1.1 The dispute resolver is a representative of a party in the dispute or there is some other direct relationship.

A2.1.2 The dispute resolver has a controlling influence over one of the parties.

A2.1.3 The dispute resolver has a significant financial interest in one of the parties or the outcome of the case.

A2.1.4 The dispute resolver has given advice or provided an expert opinion on the dispute to a party or an associate of one of the parties.

A2.1.5 A close family member of the dispute resolver has a notable financial interest in the outcome of the dispute.

A2.1.6 The dispute resolver or a close family member of the dispute resolver has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

A2.1.7 The dispute resolver has a close family relationship with one of the parties, or with a member or any person having a similar controlling influence over one of the parties, or an associate of one of the parties or with an advisor representing a party.

A2.1.8 The dispute resolver has a controlling influence over an associate of one the parties, if the associate is directly involved in the matters in dispute.

A2.1.9 A close family member of the dispute resolver has a significant financial or controlling interest in one of the parties or an associate of one of the parties.

A2.2 Waivable red list

A2.2.1 The dispute resolver regularly acts for one of the parties to the dispute.

A2.2.2 The dispute resolver is a member of the same firm as the representative of one of the parties.

A2.2.3 The dispute resolver's firm currently has, or has had, a significant commercial relationship with one of the parties or an associate of one of the parties.

A2.2.4 The dispute concerns a rental valuation, and the dispute resolver, or his or her firm, is acting on a comparable property that may be taken up as evidence on the subject property.

A2.2.5 The dispute concerns a rental valuation, and the dispute resolver, or his or her firm, has an interest in a comparable property that may be taken up as evidence on the subject property or stands to benefit from the outcome of the dispute.

A2.2.6 The dispute concerns a rental valuation, and the dispute resolver is invited to act in a capacity that would conflict with an existing appointment, such as where an arbitrator or independent expert is appointed elsewhere as an adviser to one of the parties and where the resolution of the subject dispute would be perceived as materially affecting those other appointments.

A2.2.7 Where a dispute resolver is already appointed as an independent expert and is then invited to become an arbitrator on a case that is linked to or is subject to the arbitrator's decision on the other case when he or she is acting as the independent expert.

A2.2.8 The dispute resolver advises the appointing party or an associate of the appointing party.

A2.2.9 The dispute resolver has a close family relationship with one of the parties or with a member or any person having a similar controlling influence in one of the parties, or an associate of one of the parties, or with an advisor representing a party.

A2.2.10 The dispute resolver or his or her firm represents a party or an associate to the arbitration on a regular basis but is not involved in the current dispute.

A2.2.11 The dispute resolver holds significant shares, directly or indirectly, in one of the parties or an associate of one of the parties that is privately held.

A2.2.12 A close personal friendship exists between a dispute resolver and an adviser of one party, as demonstrated by the fact that the dispute resolver and the adviser regularly spend considerable time together unrelated to professional work commitments or the activities of professional associations or social organisations.

A2.3. Orange list

A2.3.1 The dispute resolver has within the relevant past served as an adviser for one of the parties or an associate of one of the parties, or has previously advised or been consulted by the party or an associate of the party making the appointment in an unrelated matter, but the dispute resolver and the party or the associate of the party have no ongoing relationship.

A2.3.2 The dispute resolver's firm has within the relevant past acted for one of the parties or an associate of one of the parties in an unrelated matter without the involvement of the dispute resolver.

A2.3.3 The dispute resolver's firm is currently rendering services to one of the parties or to an associate of one of the parties without creating a significant commercial relationship and without the involvement of the dispute resolver. As an example, where the dispute resolver's firm manages the property where one of the parties is a tenant, this should not give rise to a blanket objection as it would not normally be regarded as a conflict of interest unless it can be shown that such a position does or could be perceived to exist.

A2.3.4 A firm that shares revenues or fees with the dispute resolver's firm renders services to one of the parties or an associate of one of the parties before the dispute resolver.

A2.3.5 The dispute resolver was within the relevant past a partner of, or otherwise associated with, another adviser on the same dispute or property.

A2.3.6 A close family member of the dispute resolver is a partner or employee of the firm representing one of the parties, but is not assisting with the dispute.

A2.3.7 The dispute resolver had been associated within the relevant past with a party or an associate of one of the parties in a professional capacity, such as a former employee or partner.

A2.3.8 A close personal friendship exists between a dispute resolver and an adviser having a controlling influence over one of the parties, or an associate of one of the parties, or a witness or expert.

A2.3.9 The dispute resolver has publicly advocated a specific position regarding the specific case that is being determined, whether in a published paper or speech or otherwise. This does not apply to general professional papers or speeches considering aspects of a market place or technical issues associated with it. (See Green list at A2.4.1)

A2.3.10 The dispute resolver has a controlling influence over an associate of one of the parties where the associate is not directly involved in the matters in dispute in the reference.

A2.3.11 The dispute resolver, and any person having a controlling influence over one of the parties, or an associate of one of the parties, who have worked together as advisers or in another professional capacity, including as dispute resolvers in the same case.

A2.3.12 The dispute resolver currently serves, or has served within the relevant past, as dispute resolver in another dispute on a

related issue involving one of the parties or an associate of one of the parties.

A2.3.13 The dispute resolver is asked to act as arbitrator where he or she has acted as independent expert in the relevant past on a related dispute.

A2.4 Green list

A2.4.1 The dispute resolver has previously published a general opinion (such as in a law review article or public lecture), concerning an issue which also arises in the dispute (but this opinion is not focused on the case that is being determined).

A2.4.2 The dispute resolver's firm has acted against one of the parties or an associate of one of the parties in an unrelated matter without the involvement of the dispute resolver.

A2.4.3 A firm in association or in alliance with the dispute resolver's firm, but which does not share fees or other revenues with the dispute resolver's firm, renders services to one of the parties or an associate of one of the parties in an unrelated matter.

A2.4.4 The dispute resolver has a relationship with another dispute resolver, or with the adviser or one of the parties, through membership of the same professional association or social organisation.

A2.4.5 The dispute resolver has been considered for private appointment on the subject dispute, but this was not taken up.

A2.4.6 The dispute resolver holds an insignificant amount of shares in one of the parties or an associate of one of the parties, which is publicly listed.

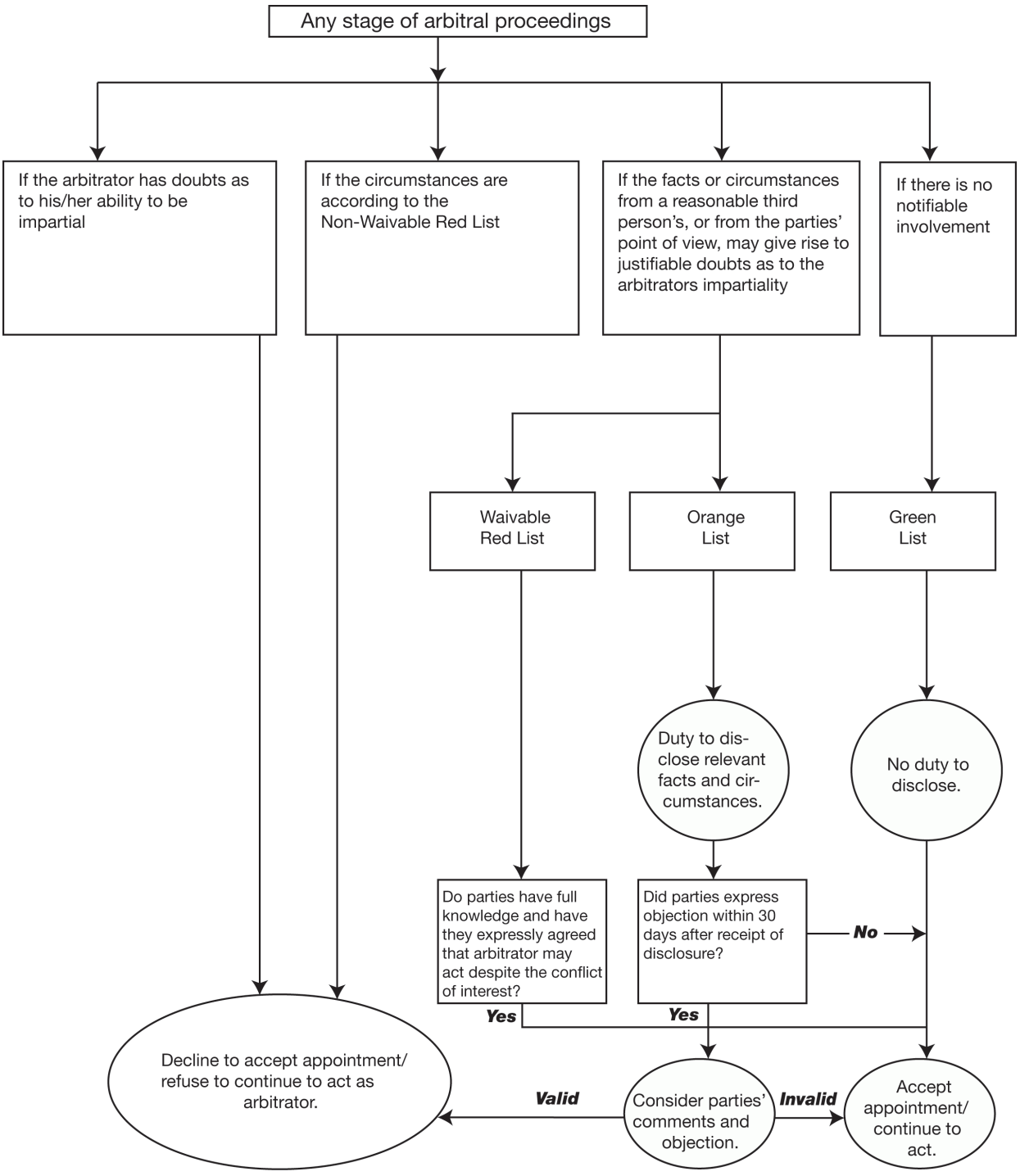
A2.4.7 The dispute resolver has in the past served as adviser against one of the parties or an associate of one of the parties in an unrelated matter.

A2.4.8 An adviser in the dispute resolver's firm is a dispute resolver in another dispute involving the same party or parties or an associate of one of the parties.

A2.4.9 The dispute resolver's firm is currently acting against one of the parties or an associate of one of the parties in other areas.

A flow chart is attached to these guidelines for easy reference to the application of the lists. However, it should be stressed that this is only a schematic reflection of the very complex reality. The specific circumstances of the case must always prevail.

Appendix 3 IBA Guidelines on conflicts of interest in international arbitration



Appendix 4 Scottish Addendum

The main guidance note applying to England, Wales and Northern Ireland applies equally to Scotland subject to the following:

1. Where there is reference to the President of RICS, this should be substituted with Chairman of RICS Scotland.

2. Where a dispute resolver is acting as an arbitrator (whether by RICS appointment or by agreement), the provisions of the *Arbitration (Scotland) Act* 2010 ('the Act') apply, and the guidance note should be read with particular regard to the following:

   a. Impartiality

   Where there is reference to impartiality, this should be read as 'impartiality and independence' (Rules 8 and 24 of the Act).

   b. On-going duty to disclose any conflicts of interest

   This requirement is similar in Scotland (Rule 8 of the Act).

   c. Resignation of the arbitrator

   In Scotland, this is governed by Rules 15 and 16 of the Act.

3. For the avoidance of doubt, the term 'appointment' throughout the guidance note shall encompass 'appointment', 'selection' or 'nomination'.

4. The examples in the Hierarchy of Conflicts set out at Appendix 2 of the main guidance note (which merely has the status of an information paper) should be construed, where appropriate, in accordance with the above.

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