

The role of an independent expert

Expert determination in the UK, and in many other territories, is a process in which an independent third party, acting as an expert rather than judge or arbitrator, is appointed to decide a dispute (as an independent expert or ‘expert determiner’ – not to be confused with an ‘expert witness’). His/her appointment is by the contract between the parties, which often provides for a nominated appointment, e.g. by the RICS or some other nominating institution.

The duty of an independent expert is to make proper and reasonable investigation and to arrive at a non-negligent decision, tested by what may be expected from the body of professional opinion. He/she may choose, or be so required by contract, to receive, and may take into account, evidence and arguments from the parties to a dispute, but, unlike arbitration, cannot usually be bound by them.

The independent expert’s decision, known usually as a ‘determination’ (or ‘decision’) is usually stated to be final and binding. There is no right of appeal unless the expert has answered the wrong question and/or there is evidence of fraud or actual bias, or there are express contractual provisions permitting the parties to challenge the decision. There is some legal uncertainty as to whether a determination is final and binding in the absence of any express contractual term to that effect. Unlike arbitration the independent expert does not have a power to determine who pays the costs, unless the contract provides otherwise.

An independent expert should be able to:

- Base his/her determination upon his/her own knowledge and his/her investigations to discover the facts and all other information, including principles of law, relevant to his/her valuation or other issues in dispute;
- Settle his/her own contractual terms with the parties, e.g. as to remuneration, extent of inspection, assumptions; and
- Carry out the whole of the determination by him/herself.

The advantages of independent expert determination

A chartered surveyor acting as an independent expert must have in-depth knowledge of the subject matter of the dispute (otherwise he/she is not an expert) and is free to make his/her own investigations. As a result, the dispute can be determined quickly and ‘expertly’ and, usually, once and for all. Expert determination is particularly suited to disputes on discrete technical issues, including disputes of valuation or quality of work and/or materials.

Working knowledge

There is no governing applicable legislation in the UK but there is some case law governing the appointment, and conduct, of a surveyor acting as an independent expert. Independent experts who are members of RICS in the UK should have a working knowledge of the following items (as relevant to the nature of the particular dispute):

- Handbook of Rent Review (Kirk Reynolds QC and Guy Fetherstonhaugh QC, Sweet & Maxwell);

- RICS Valuation Standards (The ‘Red Book’) but only insofar as The Red Book does not conflict with the task entrusted to the independent expert in his/her contract;
- Surveyors acting as arbitrators and as independent experts in commercial property rent reviews (RICS guidance note) *;
- Surveyors acting as arbitrators and as independent experts in construction related disputes (RICS guidance note) *;
- Surveyors acting as expert witnesses (RICS practice statement and guidance note)
- Surveyors acting as advocates (RICS practice statement and guidance note); and
- Relevant case-law.

* Scottish editions also available.

Further reference

RICS practice standards –
www.rics.org/guidance
(downloads accessible to RICS members only)

Expert Determination by John Kendall (Sweet & Maxwell, 2008)

RICS Dispute Resolution Service (DRS)

Surveyor Court
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t + 44 (0) 207 334 3806
f + 44 (0) 020 7334 3802
e drs@rics.org
w rics.org/drs

The DRS offer a complete range of methods for resolving disputes including arbitration, expert determination, mediation, adjudication, enabling people to resolve property disputes quickly and effectively, without going to court. They also make appointments of Single Joint Experts. Application forms for a range of services are available via the RICS website.

RICS Scotland Dispute Resolution Service (DRS Scotland)

9 Manor Place
Edinburgh, Scotland
EH3 7DN
t + 44 (0) 131 240 0832
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e drsscotland@rics.org
w www.rics.org/site/scripts/documents_info.aspx?categoryID=253&documentID=439

The DRS Scotland offers a range of methods for resolving disputes enabling people to resolve property disputes quickly and effectively in Scotland, without going to court. Application forms for a range of services are available via the RICS website.

Republic of Ireland Appointments Service

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Society of Chartered Surveyors
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The DRS Oceania offers a range of dispute resolution training and appointment services. Application forms for a range of services are available via the website. For more information, please contact the office.

RICS Books

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Stocks a wide range of titles in the dispute resolution arena.

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