

DISPUTE RESOLUTION SERVICE



ADR for Compulsory Purchase Disputes



Introduction

This RICS service - *Alternative Dispute Resolution for Compulsory Purchase Disputes* - is designed for use by Acquiring Authorities and land or property owners who are in dispute about a compulsory purchase matter.

An Acquiring Authority can compel the purchase of land or property in various situations, typically under legal powers granted by legislation.

For instance, if a new motorway is planned to pass through private land and the owner refuses to sell, the authority can force the sale. Similarly, a local authority may need to buy and demolish properties for new developments. If owners do not agree to sell, the authority can legally acquire the properties. In such cases, the authority typically compensates the owners, but disagreements over the compensation amount can often lead to disputes and court actions.

This ADR service cannot be used to prevent or overturn the issuing of a Compulsory Purchase Order (CPO). Its purpose is to swiftly and cost-effectively resolve disputes arising between Acquiring Authorities and claimants during the compulsory acquisition of land or property.. It helps settle issues like the property's value, the costs of acquiring and moving to a new property, and additional payments such as professional advice on compensation.

How is a dispute resolved?

Parties can choose to resolve their dispute via:

a. Independent Determination

The parties agree that the dispute will be decided for them by an experienced Independent Determiner who is also an expert in the subject matter.. The Independent Determiner will base their decision on an assessment of:

- i. the evidence submitted by each of the parties,
- ii. the results of their own investigations, and
- iii. application of their own knowledge and expertise.

b. Evaluative Mediation

The parties agree to negotiate a settlement of the issues in dispute with the help of an experienced Mediator who is also an expert in the subject matter. The Mediator will help them to engage in meaningful dialogue, explore the issues in dispute in detail, and keep them focused on achieving an amicable outcome.





Key benefits of the RICS ADR service:

- The service is simple and flexible so that parties can adapt the process to suit the size and complexity of their dispute
- It is specifically tailored to resolve compulsory purchase matters
- Parties can choose whether outcomes will be binding or non-binding
- It is cost-effective and significantly cheaper than litigation. Parties have a clear understanding, in advance, of what the procedure costs and how much they are likely to pay
- Parties retain control over the shape, timetable and outcome of the process
- RICS Independent Determiners and Mediators bring specialist sector knowledge and experience to the process
- The service is managed and run by RICS, which is impartial and has over 45 years of experience providing ADR services in the property sector.
- RICS will ensure that the Independent Determiner or Mediator appointed is free from any conflict of interest and is available to undertake the appointment as and when required by the parties.

A. How does independent determination work?

RICS will appoint someone who is an expert in CPO matters to act as an Independent Determiner. The Independent Determiner will consider the evidence and reach a decision. The decision is usually final and binding, but parties have the option to agree otherwise.

Independent determination is well suited to resolving disputes that are centered around a single question or issue such as the amount of compensation to be paid.

In relation to a claim for CPO compensation, an independent determiner - who has relevant expertise and experience in compulsory purchase valuation and is not instructed by either party but is independently appointed by RICS - can decide what is a fair and realistic amount of compensation.

The process is confidential between the parties and the Independent Determiner (unless the parties agree otherwise).

The Independent Determiner will decide the dispute based on:

- a. Evidence and argument submitted by the parties in writing (or in person at a joint meeting if held)
- b. The results of their own investigations and enquiries
- c. The application of their knowledge and expertise

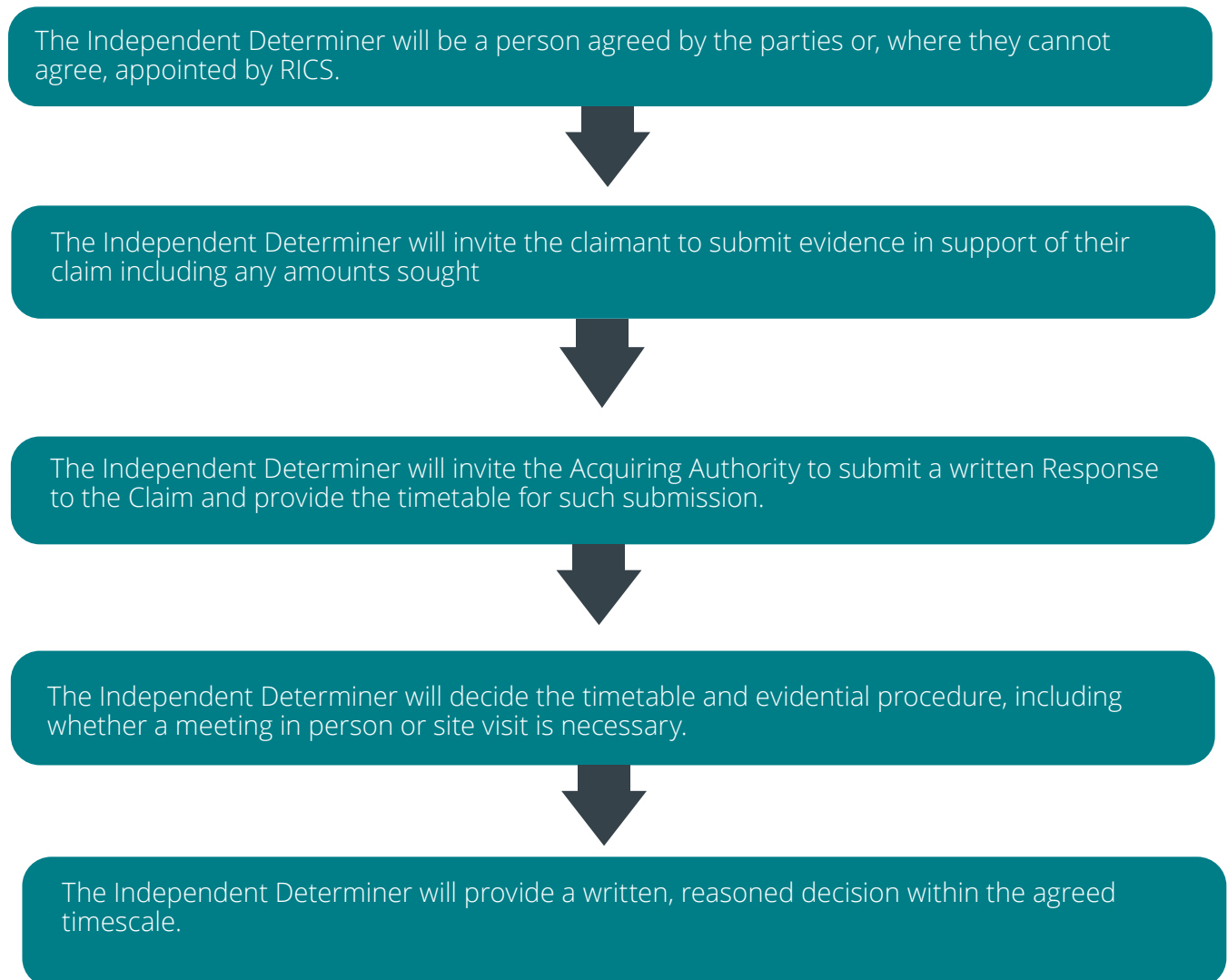
The Independent Determiner will invite both parties to make submissions to support their cases.

They will also make their own enquiries, including seeking clarification directly from the parties, if required.



Sample Procedure: Independent Determination

There is no standard “one size fits all” procedure. This is an indication of how a typical independent determination may run:



The Decision

The Independent Determiner’s decision will be in writing and include reasons.

The decision will normally be final and binding (unless the parties have previously agreed that it will not be).

B. How does mediation work?

RICS will appoint an impartial professional to act as mediator.

The mediator will be knowledgeable and experienced in CPO matters. The role of the mediator is to help the parties engage in a meaningful discussion, which is focused on achieving a mutually agreeable outcome to the dispute.

Mediation is well suited to disputes where there are multiple issues requiring resolution, or where the dispute is particularly complicated or impacted by peripheral matters, or where the claimant is a large business with more sophisticated wants and needs.



The benefits of mediation are that it:

- Allows the parties to explore options for an agreed settlement - the outcome is not imposed upon them
- Focuses both parties on working towards a practical solution
- Is not bound by procedural rules. The parties will agree with the Mediator how the mediation is to run, including the extent to which the Mediator will offer advice or guidance to the parties.
- Helps both parties identify the critical issue(s), which need to be resolved, and ensures that a prompt resolution of the dispute is not hindered by the parties spending unnecessary time and energy on issues that are not particularly relevant.

The mediation process is protected by the rules of confidentiality and privilege. This means that any matters discussed and revealed during the mediation process should not be disclosed to parties who are not involved in the mediation. Also, nothing said or uncovered in the mediation can be admissible in evidence in any legal proceedings that may follow in the future.

The mediation will conclude in any of the following circumstances:

- The parties settle all issues in dispute
- The agreed timetable has come to an end, and the parties fail to agree for the mediation to continue further
- One or both parties decide to withdraw from the mediation
- The parties decide to refer the dispute to independent determination or court/tribunal.

Sample Procedure: Mediation

There is no standard “one size fits all” mediation procedure. This is an indication of how a mediation may run. Once appointed, the Mediator will:

Agree the agenda and timetable for the mediation with the parties



Invite both parties to submit a written account of their relative positions and the arguments they would like to put forward



Set up and facilitate a meeting with the parties and work with them to narrow the issues and explore possible solutions



If required, provide the parties with reasoned, non-binding recommendations for settlement on all or part of the dispute.



N.B. The written settlement prepared at the end of a mediation is a legal contract between the parties. They are therefore bound to do what they have agreed to do and can be liable for breach of contract should they not do so.

Fees and Costs

Unless the parties have agreed otherwise, each party will bear their own costs and expenses.

The parties can agree whether one or both of them will be responsible for payment of the RICS application fee and the Independent Determiner or Mediator's fees.

Application fee

An application fee of £300 plus VAT is payable to RICS for processing the appointment of an Independent Determiner or Mediator.

This fee may be payable by the Acquiring Authority if their policy states that they shall bear such costs.

Where there is no such policy or agreement, the fee will be paid by the parties in equal shares in advance of the appointment being made.

Independent determination

The Independent Determiner will release their decision to both parties upon payment of their fees.

The fees payable to the Independent Determiner are £260 per hour (plus VAT) to a maximum of 12 hours, plus reasonable disbursements. Should the parties agree that more time is necessary, an hourly rate for additional hours will be agreed by the parties and the Independent Determiner.

Mediation

The fees payable to the Mediator are £260 plus VAT per hour to a maximum of 9 hours, plus reasonable disbursements. Should the parties agree that more time is necessary, an hourly rate will be agreed by the parties and the Mediator.



Delivering confidence

We are RICS. As a member-led chartered professional body working in the public interest, we uphold the highest technical and ethical standards. We inspire professionalism, advance knowledge and support our members across global markets to make an effective contribution for the benefit of society. We independently regulate our members in the management of land, real estate, construction and infrastructure. Our work with others supports their professional practice and pioneers a natural and built environment that is sustainable, resilient and inclusive for all.

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