

Singing for my supper: The RICS Panel Re-assessment

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I recently undertook the re-assessment to remain on the RICS President's Panel. I am pleased and relieved to have been successful and it occurred to me that it might be of interest to some if I gave a 'flavour' of what my experience was of the process. So here goes

By way of backstory, I was part of the 2019/2020 RICS Adjudicator Panel intake and, at that time, was enrolled on the full construction panel, as well as the Low Value Disputes panel. I undertook my re-assessment interview in April this year. In my time on the RICS President's panel, I have undertaken around 75 appointments which includes a few where the parties settled or I resigned.

As part of maintaining its paramount role as an Adjudicator Nominating Body, the [RICS Dispute Resolution Service](#) has a process for re-assessing all of its panel adjudicators every three or five years (depending on the relevant criteria for reassessment). There are numerous documents provided to candidates by the RICS about the re-assessment process and, as I'll come onto, a mock Decision which candidates now have to complete beforehand.

The RICS Criteria for Re-assessment sets down the essential requirements as follows:

"To remain on the Panel, you must satisfy the following requirements:

- *Recognition in the market, as reflected in your skills form and referees' reports, of your active involvement and expertise in your sphere of professional practice*
- *Proof of your knowledge, skills and experience required to remain on the Panel*
- *Completion of the Decision Writing workshop within 12 months prior to reassessment (including submission of the mock decision and receipt of feedback)*
- *Minimum of 40 hours of relevant CPD per calendar year in the last five years*
- *Successful completion of the online RICS Professionalism Module*
- *Successful completion of the Diversity and Inclusion e-learning*
- *Successful completion of the reassessment interview within six months**"

The Documents

The re-assessment documents are submitted online and reviewed by a panel of three and form the basis of an interview lasting between 45 minutes and an hour.

One of the key differences in this round of re-assessments was the introduction of the mock Decision exercise as a mandatory component of the process. As a candidate you are required to undertake a

mock Decision based on fictitious parties' submissions and submit it within the standard 28-day deadline. That Decision is then assessed by experienced practitioners, and you receive brief written feedback before your interview. The purpose of the exercise appeared to be to provide the assessors with a consistent benchmark against which candidates' reasoning, drafting style, structure and decision-writing skills could be evaluated. While the mock Decisions had already been marked and feedback prepared by separate reviewers before the interview took place, that feedback then formed part of the wider discussion at interview where appropriate. I was ready to be 'grilled' on my draft, but this was not necessary, however it may be otherwise if the feedback raised significant concerns regarding drafting or reasoning.

The anonymised Decisions

In addition to the mock Decision, the RICS requires the candidate to submit two anonymised decisions and suggests that: *"You should select decisions that challenged you and that you believe reflect your knowledge and practical abilities as an adjudicator."* So I interpreted this as not being allowed to make life easy for yourself and choosing two simple 'Smash and Grabs'!

The two choices I made for review were:

Decision 1: whether the parties concluded a binding Deed of Variation for ca. £1.5 million and if this payment was due. Party A said "yes", Party B said "no" and argued that nothing was due. The dispute required detailed consideration of the parties' submissions on principles of contract formation, principally - did a Deed come into being or, if not, did the parties conclude a simple and binding contract?

Decision 2: a 'true value' of the works dispute where Party A claimed a gross value of ca. £4 million and a substantial further net payment, but where Party B argued that Party A had been overpaid by ca. £1.3 million which should be repaid. The contract was formed based on Dayworks and this required a substantial amount of time on analysis of records of resources to assess quantum. Both parties also submitted detailed expert reports and several witness statements to support their positions.

Preparation for the Interview

As every student should know, the key to any exam or assessment is preparation. The topics were not a secret, but the questions were of course not known.

I knew that conflicts of interest would be raised in the interview so made sure I was up to date with the RICS Rules of Conduct as well as the IBA Guidelines on Conflicts of Interest in International Arbitration.

I also knew that my two Decisions would have been scrutinised by the panel and needed to be on top of them and ready for any question to justify what I had done and why. I'm sure I am not alone in having found this very demanding as both Decisions had been written some months ago and it almost felt as though they had been written by someone else! Anticipating what might be asked is not easy so I decided to join the 21st century and experiment with using AI to assist. This meant asking Co-pilot to review my Decisions, assume it was interviewing me and come up with examples of questions that would assess my competency as an adjudicator. I asked it to produce 20 questions and 20 model answers. Overall, I was pleasantly surprised by the results. AI came up with intelligent questions and answers in a remarkably short time and I found it useful as a way of jogging my memory and helping me think about the sort of questions that might come up. That said, whilst AI was useful for the interview preparation, I certainly wouldn't suggest relying on AI when writing a Decision; an adjudicator's Decision must be a product of their decision making process and, although we will all need to embrace AI in the future, the parameters for its use by tribunals are not yet clearly defined

enough.

Case Law and Current Trends in Adjudication

I made sure that I was up to date on the latest legal cases and any 'hot topic' trends in adjudication. In reality, this meant revisiting recent authorities, keeping an eye on commentary from practitioners and industry bodies, and generally trying to have a feel for the issues currently facing dispute resolvers, lawyers and the Technology and Construction Court.

The Interview

The day arrived and, with some trepidation, I clicked on the Teams link to rendezvous with my assessors. The panel consisted of three experienced and legally qualified practitioners who should remain anonymous. I will not list every question, but the following gives a taste of the process.

No surprise, I was questioned on hypothetical scenarios for conflicts of interest and bias and what procedures we at MCMS have in place to ensure nothing 'slips through the net'.

I was also questioned about my reasoning and understanding of contractual and quasi contractual remedies in relation to one of my Decisions. There were also a couple of 'constructive criticisms' of some of my drafting style in the Decision which we discussed. As a generality I consider that it is right to take on board well intentioned and constructive points rather than be argumentative. That said, where one perceives oneself to be on 'solid ground' then is it right to stand fast and even push back. I expect that the panel will not be impressed if you give the impression of being someone who lacks conviction and backbone.

Finally, I was asked about current law and what cases had 'caught my eye'. One issue that we discussed which should not be a surprise was the recent Crest Nicholson case and development of the relevance of adjudication and implication of the Building Safety Act.

After about 45 minutes of discussion, we said our goodbyes and I then had to wait for the verdict. I was very pleased (and relieved) when some days later I received the letter that confirmed I had been successful and would remain on the President's Panel.

Final Thoughts

The process is rigorous, but necessary in my view to maintain standards (including the skills, knowledge and right attitude) for adjudicators and to ensure continuation of confidence in the industry in nomination of adjudicators on the RICS President's Panel. My assessors were courteous and professional and at no time did I feel they were 'out to get me', on the contrary I am sure they wanted me to succeed. In conclusion, if you do the hard miles of preparation you will get through the process and you can then look forward to another five peaceful years before you do it all again!



