

NHS Resolution strengthen their Procedures

NHS Resolution have strengthened their procedural requirements for parties and their advisers submitting cases to them for dispute resolution. This is of particular importance to valuers acting on behalf of GPs appealing against their Notional Rent reimbursement or District Valuers representing the NHS in defending such appeals.

It must be remembered that NHS Resolution are adjudicators and whilst they have the ability to bring on board an Independent Adviser, they will not be preparing their own assessment of the current market rent for reimbursement. Their role is as an adjudicator to resolve a dispute between two parties. This is a role more akin to an Arbitrator (but outside of the Arbitration Acts) and is very different to the role of an Independent Expert which you may encounter in a commercial rent review. Whilst, the Adviser to NHS Resolution may well be taken from the RICS Presidents list of Surgery Experts the appointment is purely to advise NHS Resolution on each party's submission and it is not to undertake an Expert valuation.

The new procedural guidance of NHS Resolution is available on their website

<https://resolution.nhs.uk/resources/guidance-to-parties-on-premises-disputes/>

It aims at making the above very clear to ensure that both the District Valuer representing the NHS and the valuer representing the GPs submit a proper and full case inclusive of a full Statement of Agreed Facts and properly verified comparable evidence. Unlike a submission to an Independent Expert where that Expert will be required to fully expand, research and verify any information so as to produce their own opinion this is not true of the Independent Adviser. The Adviser, like an Arbitrator will not be undertaking such research nor verifying any poorly presented evidence. This means that where a party is professionally represented if a poor case is submitted with incomplete and unverified evidence it may at best have little weight and at worst be simply struck out.

There has been an element of lenience in the past where Independent Advisers have undertaken additional research and verification, but NHS Resolution have made it clear that this will not continue. It is now essential for Valuers to ensure that submissions are full and complete and if they want them to carry maximum weight presented as an Expert Report in compliance with the requirements of the RICS PS/GN for surveyors acting as expert witnesses.

Where presenting as an Advocate, valuers are aiming to influence opinion, presenting an argument that advances their client's case, rather than putting forward informed Expert opinion. Thus, they should give serious consideration to including separate Expert reports to cover areas where specialist opinion is required for example an opinion of the alternative use possibilities (e.g. a Planner) or alternative markets (e.g. an active local agent) or life cycle and performance of M&E services.

This article has been prepared by the appointed Independent Advisers listed below following full liaison with NHS Resolution.

John Hearle FRICS MCI Arb.

Rosemary Jones BSc (Hons) MRICS ACI Arb

Alex Stefanovic BSc FRICS FCI Arb

Geoffrey Wright BSc.(Hons) FRICS