Keeping it simple

5 January 2016

A new arbitration service for the rural sector is explained by Martin Burns

---

For many years, arbitration has been the customary way to resolve disputes between rural landlords and tenants. The process is enshrined in statute, namely the Agricultural Holdings Act 1986 (AHA 86) and the Agricultural Tenancies Act 1995 (ATA 96). However, the process has been facing increasing criticism from users, who feel it has become too slow and expensive.

There is clear evidence of demand for more cost-effective and efficient ways for settling disputes, and some stakeholders have been actively promoting alternatives to arbitration. A major driver for change is the desire for cheaper and more informal determination of disputes than has been applied to date through arbitration under AHA 86 and ATA 95.

While there has been particular concern about the extent to which the costs of arbitration have increased, there is also disquiet about the ability of arbitrators to deal with parties whose actions add to delay and thus costs, with a growing desire for a defined programme and timetable.

In May, the AHA 86 was amended to provide for certain disputes to be determined by a third party acting as an independent expert. However, expert determination may not be the answer to all the problems. First, it can only be used if both parties agree, otherwise the default is a reference to arbitration. And in view of an independent expert?s duty to assemble information and potential liability in negligence to both parties, they may be justified in charging a higher fee than an arbitrator.

Arbitrators have statutory powers which enable them to deal with jurisdictional challenges and arguments about who pays for the proceedings, including inter-party costs and the arbitrator?s fees. An independent expert has no automatic authority to resolve questions about their jurisdiction or decide liability for costs without this being expressly provided by both parties.

In expert determination, there can be uncertainty around the precise procedure to be followed, and the extent to which the independent expert is empowered to move matters along swiftly. On the other hand, where there is no agreement between the parties, an arbitrator can decide the procedural and evidential timetable.

Different approach

In the light of the concerns about the state of arbitration and the inadequacies of expert determination to address them, RICS has developed the Simplified Arbitration Service, for rural rent review disputes, which makes the process more efficient and cost effective.

It takes into account the fact that rural disputes require a different species of arbitration, which

often involve levels of informality and conciseness not usually seen in commercial and construction sectors.

The service draws on the procedures applied by the courts for dealing with small claims actions such as:

- informality
- limits to amounts of expert evidence
- a timetable that is short and cost effective.

The service is underpinned by a customer charter. This reassures applicant and respondent parties that arbitrators on the RICS panel, and appointments services are subject to service level agreements. These include customer orientated performance targets, and that compliance is monitored by an independent governance board.

The purpose is to engender confidence by explaining the procedures for panel recruitment, retention and removal. It also gives a commitment that panels are comprised of high quality and experienced practitioners who will strive to adapt to individual circumstances and ensure disputes are resolved as quickly and informally as possible.

How it works

The Simplified Arbitration Service enables parties to jointly opt for a procedure that is quick, transparent, even handed and inexpensive.

1. The parties agree to abide by the procedural rules published by RICS.
2. An arbitrator is appointed by RICS and undertakes the process in accordance with the procedural rules.
3. The arbitrator:
   - receives and considers written submissions from both parties (including statements of case and skeleton arguments, rebuttal, lists of comparables, lists of agreed and non-agreed facts)
   - undertakes a site visit
   - holds a meeting/hearing with both parties.
4. A decision will be made by the arbitrator on whether there is any need for expert evidence. (The default position is that there will be no expert evidence or, if expert evidence is required by the arbitrator, such evidence will be limited).
5. Any expert(s) attending the meeting/hearing are examined by the arbitrator. (There is no process of examination and cross-examination).
6. The arbitrator publishes the decision within 10 working days following completion of the hearing/meeting, or such longer period agreed by the parties.
7. The substantive process should cover no more than three working days. In any case, the arbitrator only charges for three days work at ?1,000 per day (+VAT) as long as the parties abide by the Simplified Arbitration Service rules and any directions made by the arbitrator.
8. The costs of the arbitration are shared equally by the parties (i.e. ?1,500 per party).

Martin Burns is RICS Head of ADR Research and Development

Further information

- Related competencies include Conflict avoidance, management and dispute resolution procedures
- This feature is taken from the RICS *Land journal* (December 2015/January 2016)