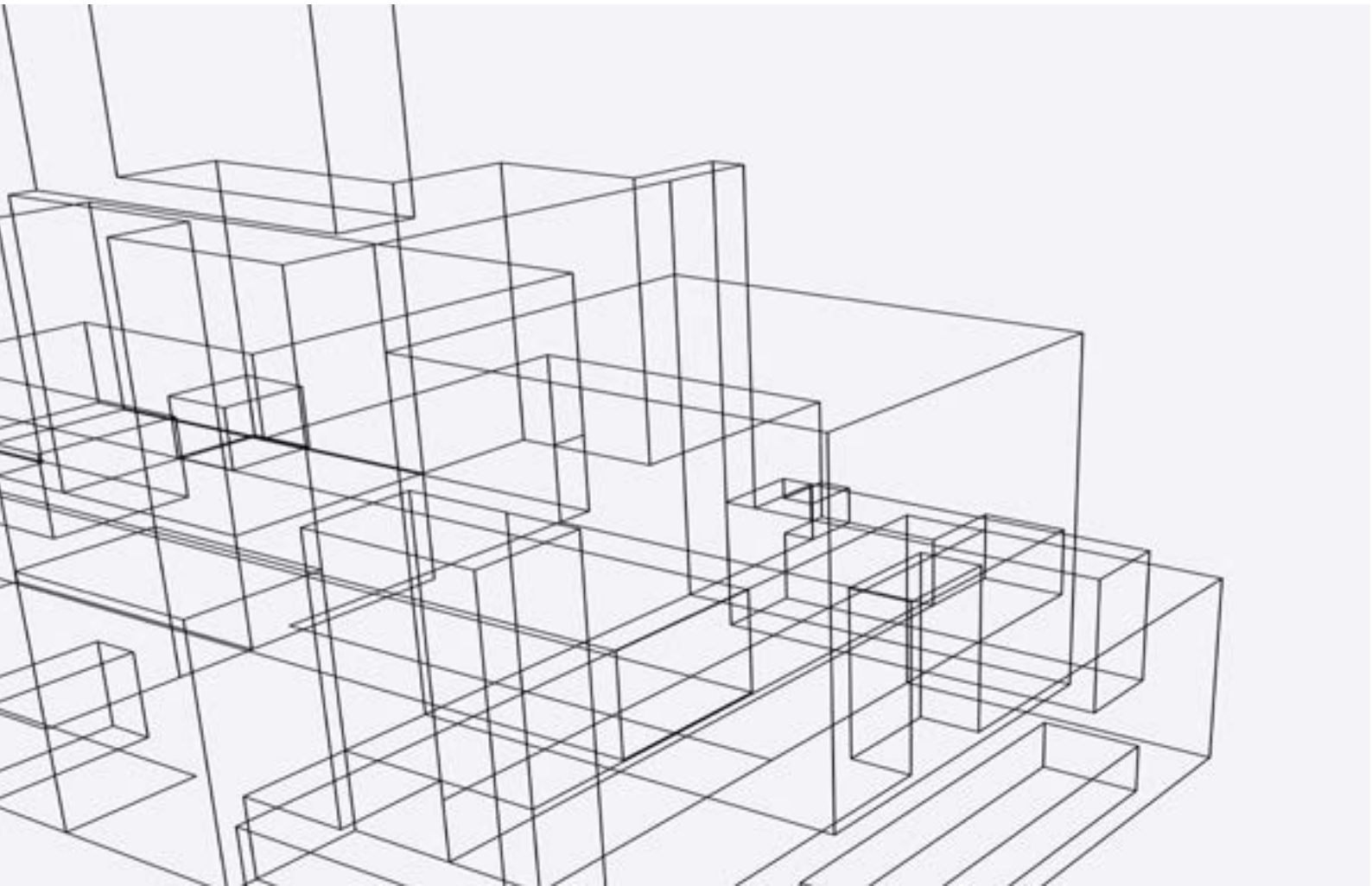




RICS professional standards and guidance, UK

Surveyors advising in respect of compulsory purchase and statutory compensation

1st edition, April 2017



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RICS professional statement, UK

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RICS professional standards and guidance

RICS professional statements

This is a professional statement, which RICS members **must** act in accordance with.

Sections within professional statements that set specific mandatory requirements for members use the word '**must**'. Members **must not** depart from specific mandatory requirements.

Sections within professional statements that set an expectation or recommend best practice advice use the word 'should'. Where members depart from these, they should do so only for justifiable good reason. Where, in the professional judgement of the member, the departure may have a material impact on the surveyor's advice, the client **must** be informed in writing of the departure and the reason(s) for the departure.

Any content that does not use the word '**must**' or 'should' is information.

RICS considers that professional statements are technical standards for the purposes of Rule 4 of both the *Rules of Conduct for Members 2007* and the *Rules of Conduct for Firms 2007* (as amended from time to time).

Members should note there may be legal and/or disciplinary consequences for departing from professional statements. When an allegation of professional negligence is made against a surveyor, the court is likely to take account of relevant RICS professional statements in deciding whether or not the surveyor acted with reasonable competence. Failure to act in accordance with professional statements may, accordingly, lead to a finding of negligence against a surveyor. In the opinion of RICS, a member acting in accordance with relevant professional statements should have at least a partial defence to an allegation of negligence.

In some cases there may be existing national standards that take precedence over professional statements. These can be defined as professional standards that are prescribed in law or federal/local legislation, or are developed in collaboration with other relevant bodies. It is the duty of members to be aware which standards apply.

Members should be up to date and have knowledge of professional statements within a reasonable time of their coming into effect. It is the member's responsibility to be aware of changes in case law and legislation since the date of publication.

Document status defined

RICS produces a range of professional standards, guidance and information documents. These have been defined in the table below. This document is a professional statement.

Publications status

Type of document	Definition	Status
Standard		
International standard	An international high-level principle-based standard developed in collaboration with other relevant bodies.	Mandatory.
Professional statement		
RICS professional statement [PS]	A document that provides members with mandatory requirements or a rule that a member or firm is expected to adhere to. This term also encompasses practice statements, Red Book professional standards, global valuation practice statements, regulatory rules, RICS Rules of Conduct and government codes of practice.	Mandatory.
Guidance and information		
RICS code of practice	Document approved by RICS, and endorsed by another professional body/ stakeholder, that provides users with recommendations for accepted good practice as followed by conscientious practitioners.	Mandatory or recommended good practice [will be confirmed in the document itself]. Usual principles apply in cases of negligence if best practice is not followed.
RICS guidance note [GN]	Document that provides users with recommendations or approach for accepted good practice as followed by competent and conscientious practitioners.	Recommended best practice. Usual principles apply in cases of negligence if best practice is not followed.
RICS information paper [IP]	Practice-based information that provides users with the latest technical information, knowledge or common findings from regulatory reviews.	Information and/or recommended best practice. Usual principles apply in cases of negligence if technical information is known in the market.
RICS insight	Issues-based input that provides users with the latest information. This term encompasses thought leadership papers, market updates, topical items of interest, white papers, futures, reports and news alerts.	Information only.
RICS economic/market report	A document usually based on a survey of members, or a document highlighting economic trends.	Information only.
RICS consumer guide	A document designed solely for use by consumers, providing some limited technical advice.	Information only.
Research	An independent peer-reviewed arm's length research document designed to inform members, market professionals, end users and other stakeholders.	Information only.

1 Mandatory professional behaviour and competence

Mandatory professional behaviour and competence expected of surveyors when advising in respect of compulsory purchase and statutory compensation matters (in the industry this is referred to as 'the compensation code' but in this document it is referred to as the 'compulsory purchase code').

Application and principal message	
1	You must be able to demonstrate a proper understanding of the statutes, statutory instruments, case law and government guidance in respect of the compulsory purchase code. [2.5]
2	You must ensure you are able to discharge your duties to the required standard and consider all matters material to the instruction. [2.6]
3	You must be aware of the changes in responsibility that will occur should your duties later involve acting as an expert witness, and how that may affect the carrying out of work prior to that change. [2.7]
4	Where you accept instructions to provide advice in respect of the compulsory purchase code, as soon as you become aware that judicial or quasi-judicial proceedings seem likely you must advise your client in writing of your ability or otherwise to comply with the RICS' practice statement Surveyors acting as expert witnesses (4th edition). [2.8]
Duty in providing advice	
5	Where information material to the advice being given is not available, or is not evidenced or corroborated to your satisfaction, you must clearly state this to your client and advise what assumptions have been made. [3.2]
6	You must endeavour to establish the material information and collect appropriate evidence during the period of your instruction. [3.2]
7	You must provide your client with balanced and professional advice that seeks to secure an equitable outcome for your client consistent with the requirement to agree fair and reasonable compensation, in accordance with the compulsory purchase code for a reasonable cost and within a reasonable timescale. [3.5]
8	On commencement of an instruction, you must provide your client with clear advice as to the basis on which, in your opinion relying on the information available, compensation is likely to be assessed in accordance with the compulsory purchase code. If your client is not prepared to proceed on the basis of what you consider to be a reasonable approach to the assessment of compensation, this must be identified and resolved. [3.6]
9	If you identify a material inaccuracy or change your view of a matter material to advice given, you must notify those instructing you without delay. [3.7]
10	Clients (on either side) can, and do, seek to influence surveyors. You must demonstrate your professionalism by maintaining a reasonable and balanced approach. [3.8]
Acceptance of, and changes to, instructions	
11	You must not accept instructions to provide advice in matters unless you have the: <ul style="list-style-type: none"> [a] requisite competence appropriate for the assignment and [b] resources to complete the assignment within the time scale and to the standard required. [4.1]
12	You must , prior to accepting instructions: <ul style="list-style-type: none"> [a] advise those instructing you in writing that this professional statement will apply and offer to supply a copy of the statement upon request; [b] ensure there is a written record, held by you, as to the matters on which advice is required, whether such written record is prepared on your initiative or those instructing; [c] confirm your terms of engagement to your client and [d] be satisfied no conflict of interest arises and take account of RICS' professional statements and guidance in respect of conflicts of interest. You must report any actual or potential conflict of interest to those instructing you as soon as it arises or becomes apparent. This applies both before and after instructions have been accepted. [4.2]

13	If your instructions are changed or supplemented, you must ensure there is a written record of this held as required in 4.1b above. [4.3]
Inspection	
14	Where an inspection of any property is required, it must always be carried out to the extent necessary to produce professionally competent advice having regard to its purpose and the circumstances of the case. [5.1]
15	A suitable record of the size, configuration, relevant features and condition of the property, which is representative of the circumstances at the compensation valuation date, must be prepared and where possible agreed with the other party. [5.2]
Reports	
16	In reporting your advice you must consider all matters material to the instruction. [6.2]
Fees	
17	Where a basis for calculating fees is proposed, the initiative will usually come from the claimant's surveyor, having received instructions from a claimant. You must demonstrate the basis for fees and disbursements is reasonable in relation to the complexity of the claim. [7.2]
18	When advising claimants you must ensure in all cases the basis on which you propose to charge fees, the arrangements for payment, and any subsequent changes are agreed with your client in writing. This agreement must be presented promptly to the acquiring authority. [7.3]
19	You must make clear to your clients, at the earliest opportunity and before time is incurred, that they bear ultimate liability for your fees on the agreed fee basis. You must advise your clients that they will be liable for any fees that are not borne by the acquiring authority. [7.5]
20	You must be clear with your clients and advise them when time is to be spent on matters that are not normally borne by the acquiring authority and do so before that time is incurred. [7.6]

2 Application and principal message

2.1 This professional statement applies when you provide advice regarding property interests in the UK that relates to the seeking or use of compulsory purchase or other statutory powers by or against your client, or where the seeking or use of such powers is contemplated. It also applies when you are advising a body that is relying on or seeking to rely on another body to seek or use compulsory purchase or other statutory powers to assist with a project.

2.2 This professional statement sets out the standards of behaviour and competence expected of members when acting in respect of the compulsory purchase code and applies whether members are working for or on behalf of acquiring authorities, any body with statutory powers, or affected parties. This includes work in contemplation of or under the shadow of compulsory purchase or the exercise of statutory powers to take rights over or in a property interest. This therefore applies when negotiating with any body that has the right to exercise compulsory purchase powers in pursuit of its functions.

2.3 The mandatory standards in this professional statement have been highlighted in bold in the main text and set out in section 1 above for ease of reference.

2.4 The standards set out in this professional statement are in addition to the latest global version of *RICS Valuation – Professional Standards* (referred to as the Red Book) where they apply.

2.5 Compulsory purchase is a complex area of practice. As a surveyor advising a client in respect of compulsory purchase or the exercise of statutory powers to take rights over or in a property interest, **you must be able to demonstrate a proper understanding of the statutes, statutory instruments, case law and government guidance in respect of the compulsory purchase code.** It is your responsibility to keep up to date with changes in case law, guidance and legislation, including secondary legislation.

2.6 The roles you may be called on to perform in a case involving compulsory purchase or the exercise of statutory powers are many and varied. **You must ensure you are able to discharge your duties to the required standard and consider all matters material to the instruction.** The roles that may arise include:

- Advising an acquiring authority contemplating the use of compulsory purchase powers or statutory powers or a commercial partner of such an authority, including land acquisition strategy, pre-powers negotiations, and estimates of potential compensation liability.
- Advising owners and occupiers under threat of compulsory purchase how to protect their position, including potential objection to any Order, preparations in advance of acquisition to protect compensation entitlement, and pre-powers negotiations. Appearing as an expert witness at Inquiry or before the Lands

Chamber of the Upper Tribunal or the Land Tribunal for Scotland (see also *Surveyors acting as expert witnesses* (4th edition), practice statement; *Surveyors acting as expert witnesses in Scotland* (1st edition). Separate guidance applies in Northern Ireland.

- Negotiation of compensation arising from compulsory purchase acting on behalf of the acquiring authority, an authority's commercial partner, or the owner or occupier of the property interest acquired.

Compulsory purchase and statutory compensation may involve elements of business valuation as well as property valuation and procedural matters. It is important you can provide the appropriate standard of advice in all aspects, or, that you clearly agree with your client in advance the limits of your duties, perhaps working in co-operation with other advisors to provide comprehensive advice.

2.7 You must be aware of the changes in responsibility that will occur should your duties later involve acting as an expert witness, and how that may affect the carrying out of work prior to that change.

2.8 This professional statement also applies to the provision of advice to assist a client to decide whether to initiate or defend judicial proceedings that fall within the scope of 2.1. **Where you accept instructions to provide advice in respect of 'the compulsory purchase code', as soon as you become aware that judicial or quasi-judicial proceedings seem likely you must advise your client in writing of your ability or otherwise to comply with the RICS' practice statements *Surveyors acting as expert witnesses* (4th edition); *Surveyors acting as expert witnesses in Scotland* (1st edition).**

2.9 The exercise of compulsory purchase and other statutory powers giving rise to compensation can have a very significant impact on all involved. It is especially important that surveyors advising acquiring authorities, commercial partners, owners and occupiers do so competently and responsibly. The aim of all parties, and in particular the surveyors acting for them, should be to agree a fair package of compensation, mitigation or, where appropriate, removal of the property interest from the use or threat of a future use of statutory powers as straightforwardly as possible. The conduct of both sides should be reasonable and take account of the constraints, challenges and impacts faced by the other.

3 Duty in providing advice

3.1 The compulsory purchase process and the assessment of statutory compensation requires objective judgement. It is your responsibility to ensure that you are competent to carry out the duties requested by your client and have a proper understanding of the relevant law and practice. If you do not, you should either decline the client's instruction and recommend a suitably experienced surveyor, or, where appropriate, seek support from a suitably experienced surveyor. It may be appropriate to seek support rather than declining the instruction if you are particularly familiar with the property or the client's business, or have particular experience in the type of valuation required. You should not seek to duplicate advice provided by another surveyor, or maintain an instruction unnecessarily.

3.2 Your duty is to use reasonable endeavours to verify the information on which you are instructed to advise, to base any advice given on those facts and to address all matters relevant to the advice sought, so far as is reasonably possible.

Where information material to the advice being given is not available, or is not evidenced or corroborated to your satisfaction, you must clearly state this to your client and advise what assumptions have been made.

You must endeavour to establish the material information and collect appropriate evidence during the period of your instruction. Where further information becomes available you should recommend to your client that your advice be updated at appropriate intervals.

3.3 The VAT status of the claimant should be established and taken into consideration.

3.4 Your professional duty is to your client. This duty applies until you carry out the role of an expert witness as defined in the practice statements *Surveyors acting as expert witnesses* (4th edition), or *Surveyors acting as expert witnesses in Scotland* (1st edition). You should be aware of the requirements of these practice statements and consider how they may influence your conduct and advice in matters prior to a role as an expert witness. Where an expert witness role appears likely to be required, you should consider, with your client, whether any such role should be carried out by the same person that gives advice leading up to the commencement of expert witness.

3.5 Compulsory purchase or the use of other statutory powers can be a stressful and emotional experience. **You must provide your client with balanced and professional advice that seeks to secure an equitable outcome for your client consistent with the requirement to agree fair and reasonable compensation, in accordance with 'the compulsory purchase code' for a reasonable cost and within a**

reasonable timescale. It is important you advise your client based on your knowledge and experience. You should not put forward a negotiating position or seek to pursue a course of action demanded by the client that cannot, in your professional opinion, be reasonably supported and, where necessary, evidenced. This applies whether you are advising a claimant, an acquiring authority, or an acquiring authority's commercial partner.

3.6 On commencement of an instruction, you must provide your client with clear advice as to the basis on which, in your opinion relying on the information available, compensation is likely to be assessed in accordance with the compulsory purchase code. If your client is not prepared to proceed on the basis of what you consider to be a reasonable approach to the assessment of compensation, this must be identified and resolved.

3.7 If you identify a material inaccuracy or change your view of a matter material to advice given, you must notify those instructing you without delay.

3.8 Clients (on either side) can, and do, seek to influence surveyors. You must demonstrate your professionalism by maintaining a reasonable and balanced approach. Poor conduct leads to wasted time and inevitably the dispute may widen to include fees.

4 Acceptance of, and changes to, instructions

4.1 You must not accept instructions to provide advice in matters unless you have the:

- (a) **requisite competence appropriate for the assignment and**
- (b) **resources to complete the assignment within the time scale and to the standard required.**

4.2 You must, prior to accepting instructions:

- (a) **advise those instructing you in writing that this professional statement will apply and offer to supply a copy of the statement on request**
- (b) **ensure there is a written record, held by you, as to the matters on which advice is required, whether such written record is prepared on your initiative or those instructing**
- (c) **confirm your terms of engagement to the client and**
- (d) **be satisfied no conflict of interest arises and take account of RICS' professional statements and guidance in respect of conflicts of interest. You must report any actual or potential conflict of interest to those instructing you as soon as it arises or becomes apparent. This applies both before and after instructions have been accepted.**

4.3 If your instructions are changed or supplemented, you must ensure that there is a written record of this held as required in 4.2(b) above.

5 Inspection

5.1 Where an inspection of any property is required, it must always be carried out to the extent necessary to produce professionally competent advice having regard to its purpose and the circumstances of the case.

5.2 A suitable record of the size, configuration, relevant features and condition of the property, which is representative of the circumstances at the compensation valuation date must be prepared and, where possible, agreed with the other party.

Bear in mind that the property may be demolished, altered or otherwise materially changed by the proposed works before compensation is settled. In some matters, the statutory undertaker will provide a record of condition for property and the surveyor will need to confirm that this is fit for purpose.

6 Reports

6.1 Your written advice should always be presented in an organised and referenced way, distinguishing, where possible, between matters of fact, expert observations and external influences.

6.2 In reporting your advice you must consider all matters material to the instruction.

7 Fees

7.1 This professional statement supersedes both the 2006 (1st edition) and 2014 (1st edition for Scotland) guidance notes *The Calculation of fees relating to the exercise of statutory powers in connection with land and property*. Members in Scotland **must** adhere to this professional statement and Appendix A of this professional statement.

7.2 Where a basis for calculating fees is proposed, the initiative will usually come from the claimant's surveyor, having received instructions from a claimant. You must demonstrate the basis for fees and disbursements is reasonable in relation to the complexity of the claim. Practitioners advising in relation to compulsory purchase require a detailed understanding of a complex area of law, a host of professional, technical and 'soft' skills, as well as knowledge of valuation and an understanding of the use and basis of occupation of the property to be acquired. As a consequence, it would be reasonable to have regard to the following:

- The work required is the correct measure.
- The work required may be increased by the circumstances of the claim, for example if entry dates are materially deferred requiring claim items to be updated or refreshed.
- Travelling costs (including the time spent) of a surveyor travelling long distances to carry out the case. For example, claimants will reasonably wish to employ experts who are already familiar with their property or business and that may lead to a better outcome for both parties. The number of times long journeys have to be made may also be relevant as once site inspections have been carried out, attendance on site may not be necessary and the overall cost of travelling may not be unreasonable in the context of the claim.

7.3 When advising claimants you must ensure in all cases the basis on which you propose to charge fees, the arrangements for payment, and any subsequent changes are agreed with your client in writing. This agreement must be presented promptly to the acquiring authority. Fees may be billed at regular intervals. At all times both the client and the acquiring authority should be made aware of any fee being billed. Surveyors are urged to avoid disputes at a later date by ensuring that these steps are taken.

7.4 A compulsory purchase or statutory compensation specialist, working with a local surveyor who knows the property and business well, may not be double counting and can frequently help identify issues to be addressed. The addition of other specialisms, such as minerals, planning, forensic accounting (and many others) can be invaluable. Such an approach should be discussed at an early stage.

7.5 You must make clear to your clients, at the earliest opportunity and before time is incurred, that they bear ultimate liability for your fees on the agreed fee basis. You must advise your clients that they will be liable for any fees that are not borne by the acquiring authority.

7.6 You must be clear with your clients and advise them when time is to be spent on matters that are not normally borne by the acquiring authority and do so before that time is incurred.

8 Bases for calculating fees that form part of the claim

8.1 A variety of bases are likely to be utilised for the reimbursement of fees, subject in all cases to agreement between the parties involved. Such bases may include, but are not limited to:

- time spent multiplied by an hourly rate (subject to an annual review where projects span a longer period of time)
- a predetermined 'fixed fee' arrangement where the scope of work can be clearly defined.

A claimant should be able to expect an acquiring authority to reimburse the full cost of professional advice incurred in the preparation and negotiation of a compensation claim provided such costs are reasonable and reasonably incurred. An acquiring authority should expect to reimburse reasonable fees on the basis that is contracted between the surveyor and the claimant and notified to the acquiring authority.

8.2 An acquiring authority has no statutory liability to reimburse professional fees for the preparation and negotiation of a compensation claim until a statutory liability to pay compensation arises (usually on service of a notice to treat or implementation of a General Vesting Declaration (GVD)). However, once such a liability does arise it can be retrospective and include costs reasonably incurred before the date of notice to treat or implementation of a GVD.

8.3 An acquiring authority or developer partner may choose to enter into an agreement to reimburse reasonable professional costs before a statutory liability arises. Government gives guidance on when such agreements should be considered. Surveyors acting for claimants or acquiring authorities and developer partners should ensure that any such agreement is clear on the basis on which fees will be reimbursed, when they will be paid and any conditions or limitations on the level of reimbursement. Such agreements should be in writing and it should be clear to whom the acquiring authority or developer partner is agreeing to make payment. This may also have VAT implications.

8.4 Where a basis of fees other than those identified at 8.1 above is adopted for the calculation of standard fees, give due regard to potential conflicts of interest (see *Conflicts of interest* global (1st edition) professional statement and the practice statement *Surveyors acting as expert witnesses*, (4th edition) and *Surveyors acting as expert witnesses in Scotland* (1st edition), guidance note.

9 Recording time

9.1 Surveyors should accurately record the time spent and the nature of the work carried out in relation to a compulsory purchase or statutory compensation claim. In many cases, the time spent working on a claim will form a significant factor in the assessment of the fee. Surveyors may be required to verify and justify the time spent working on a claim. The extent to which the record is accurate and comprehensive may be a significant factor when the reasonableness of the claim is assessed.

10 Disputes

10.1 Surveyors' fees can be included in a compensation claim and, for that reason; the law provides that if the parties are unable to agree, having exhausted all other avenues, the dispute should properly be referred to the Upper Tribunal (Lands Chamber).

10.2 Surveyors may be reluctant to advise clients to adopt this means of dispute resolution if the only disagreement is the surveyor's fee, which the acquiring authority should reimburse. Members are advised to consider an alternative dispute resolution procedure to resolve any dispute. RICS offers mediation through its Dispute Resolution Service.

Appendix A: Fees in Scotland

Surveyors in Scotland **must** adhere to the contents of this professional statement and this Appendix. This document derives from the 2012 guidance note *The Calculation of Surveyors' Fees Relating to the Exercise of Statutory Powers in Connection with Land and Property* (1st edition), for Scotland. Both this professional statement and the Appendix supersede the 2014 guidance note *The calculation of surveyors' fees relating to the exercise of statutory powers in connection with land and property* (1st edition), for Scotland.

1.1 Background and fee guidance

Until this 2014 Scottish guidance note was published, Ryde's Scale (1996) had been used in Scotland as the main basis for the calculation of appropriate reimbursement to a claimant by an acquiring authority for the surveyor's fee incurred in respect of handling a claim for compensation following the use of CPO powers. Ryde's Scale was formally abandoned outside Scotland in circa 2002.

With compensation cases where the member has a client i.e. the claimant, the fee is payable by the Acquiring Authority as part of the client's claim by way of s. 12 (6) *Land Compensation Act 1963*.

This Appendix offers appropriate guidance to members working in Scotland on the options currently available for an appropriate basis for calculating the surveyor's fees relating to the exercise of statutory powers in connection with land and property in Scotland.

1.2 Bases for calculating fees

In Scotland, a variety of bases are likely to be used to calculate the fee:

- 1 time spent multiplied by an hourly rate basis (subject to an annual review where projects span a longer period)
- 2 a pre-determined 'fixed fee' arrangement where the scope of work can be clearly defined.

It is strongly recommended that the hourly rate option is adopted whenever possible. Where a basis of fee other than those outlined in 1 and 2 above is adopted, it is recommended that great caution should be exercised and due regard given to potential conflicts of interest (see the global *Conflicts of interest* (1st edition), professional statement and *Surveyors acting as expert witnesses in Scotland* (1st edition), professional statement and guidance note).

Other bases in use include:

- 3 a percentage of the compensation received (provided that the matter is settled by negotiation and is not determined through legal proceedings where the surveyor involved is acting as an expert witness) and where relevant RICS requirements are in force
- 4 the charging arrangements agreed from time to time with the utility companies.



Confidence through professional standards

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We accredit 125,000 professionals and any individual or firm registered with RICS is subject to our quality assurance. Their expertise covers property, asset valuation and real estate management; the costing and leadership of construction projects; the development of infrastructure; and the management of natural resources, such as mining, farms and woodland. From environmental assessments and building controls to negotiating land rights in an emerging economy; if our members are involved the same professional standards and ethics apply.

We believe that standards underpin effective markets. With up to seventy per cent of the world's wealth bound up in land and real estate, our sector is vital to economic development, helping to support stable, sustainable investment and growth around the globe.

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