

T: [REDACTED]  
E: [REDACTED]

By e-mail

[REDACTED]  
Director  
RICS Scotland  
9 Manor Place  
Edinburgh  
EH3 7DN

In 2014 Scotland Welcomes the World



Your ref:  
Our ref: A8627523  
13 June 2014

Dear [REDACTED]

## COMPULSORY PURCHASE OF LAND: CALCULATION OF AGENT'S FEES

I refer to the recent publication of the RICS Guidance Note *The calculation of surveyors' fees relating to the exercise of statutory powers in connection with land and property*.

The issue of the calculation of agents' fees, and of Ryde's Scale in particular, is one that has been subject to discussion for a number of years. Whilst the contents of the Guidance Note is a matter for RICS, there is a community of interest in establishing a robust framework which both private and public sector surveyors can work within. In that spirit, it is to be hoped that the RICS Guidance Note:

- becomes widely accepted;
- is flexible enough to deal with untypical cases;
- avoids delay and associated cost by agreeing valuation instructions and remuneration bases upfront; and
- recognises that there is a third party involved in the agreement of fees, namely the acquiring authority, which is itself auditable and accountable for expenditure on fees.

I note that one issue not addressed in the Guidance Note which has also been the subject of some discussion is that of the point from which fees are payable. I understand that the position of Transport Scotland, and possibly of other acquiring authorities, is that this is generally from the date of vesting land associated with a Compulsory Purchase Order. This is on the basis that discussions in advance of this would be considered general advice.

It will be for acquiring authorities to consider the contents of the Guidance Note and come to a view on an individual case as to its relevance. However, the Scottish Government recognises that the calculation of such fees should in the first instance be based on the principle of quantum meruit.

I trust this information is helpful.

Yours sincerely

[Redacted]

[Redacted]

**Policy Manager**

cc [Redacted] Transport Scotland  
[Redacted] Chief Surveyor Scottish Government  
[Redacted] ACES (Scotland)  
[Redacted] Chief Valuer, VOA Scotland

[REDACTED]

**From:** [REDACTED]  
**Sent:** 19 September 2014 13:25  
**To:** [REDACTED]

**Cc:** [REDACTED]  
**Subject:** FW: Agents negotiating fees - shift from Ryde's to quantum meruit - District Valuer / TS workshop - 23 September 2014

**Tracking:**

**Recipient**

**Read**

[REDACTED]

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All,

Thank you for agreeing to attend the upcoming workshop with the Valuation Office Agency on agents negotiating fees on Tuesday 23 September 2014.

Please see attached agenda for the event. For your information the RICS guidance and Scottish Ministers response letter are contained within the original e-mail.



TS DV Workshop - agents fees -...

I would be grateful if you could consider the content in advance with a view to exploring and discussing the various topics at the workshop. As previously advised, to a certain extent we're moving into the unknown here and a full and frank discussion is required to help identify a best practice approach for all of Transport Scotland and the District Valuer to adopt and take forward.

For your information, nine representatives from the District Valuer will be in attendance, including the Chief Valuer, [REDACTED]

If you have any queries in advance please let me know.

I look forward to seeing you on Tuesday.

Regards

[REDACTED]  
From: [REDACTED]  
Sent: 20 August 2014 09:36

To: [REDACTED]

Cc: [REDACTED]  
Subject: Agents negotiating fees - shift from Ryde's to quantum meruit - District Valuer / TS workshop - 23 September 2014

All,

As you may be aware, there are upcoming changes to the way in which Transport Scotland assess agent's negotiating fees in relation to the acquisition of land. The proposed new mechanism will consider agent's fees on a quantum meruit basis and will have an implication for anyone involved in land or when dealing with agents.

The purpose of this e-mail is to set up a joint workshop between TS and the DV on Tuesday 23 September 2014 in BH to discuss some of the detail and difficulties associated with this shift and hopefully come up with a working practice to best take matters forward.

### Background

For some time now we have paid agents negotiating fees in accordance with Ryde's Scale 1996 +25%. If you have dealt with agent's in the past you will appreciate there has been considerable resistance to Ryde's with allegations it is not fit purpose. One of the most common arguments being that England & Wales abolished the use of Ryde's in 2003 following the oft cited *Matthews v Environment Agency* case from 2002, in which the Lands Tribunal found against the compensating authority in respect of the use of Ryde's scale.

Long story short but discussions between the Royal Institution of Chartered Surveyors (RICS) and the Scottish Government has been ongoing for some time now and an agreement has been reached in principle to move to quantum meruit. The District Valuer fed into these discussions and also recommended that Ryde's is no longer sustainable.

At the conclusion of discussions the RICS published the attached guidance note for its members on 1 May 2014.



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Following consultation with Ministers, the Scottish Government issued the attached letter to RICS that recognised;

“ It will be for acquiring authorities to consider the contents of the Guidance Note and come to a view on an individual case as to its relevance. However, the Scottish Government recognises that the calculation of such fees should in the first instance be based on the principle of quantum meruit.”



COMPULSORY  
PURCHASE OF L...

## Workshop

No concrete details or programme as of yet but a provisional date of Tuesday 23 September has been booked to hold a workshop with the DV which we anticipate will be at least a half day and possibly more. At this juncture grateful if you could note in your calendar and a formal request will be sent out in due course once we have confirmed attendees.

There are a number of issues which will likely be discussed including the timing of payments, what constitutes a “new” claim, the reasonableness of agents fees, how the DV will “police” the claims, what lines TS should use with agents as well as reaching an agreement with the DV over procedural matters. Not an exhaustive list by any means and an agenda will be sent out beforehand confirming the topics we’ll look to cover. There may also be scope to include separate items on the agenda but this will be time dependant.

Space will be limited on the workshop so I would be grateful if you could consider who would be best placed on your respective teams to feed into the discussion. Please bear in mind we will need to consider the full duration of an agent’s involvement in any given scheme right through from inception to construction completion and finalisation of compensation.

**The 3 Design teams** in MTRIPS will be affected most by these proposals and I would suggest 2 people from each team should attend. If you feel there is merit for more people to attend grateful if you could advise and this will be considered dependant on overall numbers.

█ – I’ve included you for your interests in Special Projects & the Forth. If you believe it would be of benefit for anyone else to attend as well grateful if you could let me know.

█ – I appreciate agent’s fees are not directly related to construction branch activities but given that at least part of the conversation will be in relation to agent’s time spent dealing with the contractor or consulting engineer whilst the scheme is in construction it would be beneficial to have a representative from your branch on board to provide comment.

█ – I am aware that bridges have been leading on several CPO’s and would be grateful if you could advise who is best placed in TRBO to contribute.

Grateful if you could consider the above and advise attendees as appropriate. Also happy to take on board any comments or issues in advance surrounding the shift to quantum meruit which you feel requires further discussion at the workshop.

All being well there will be scope to hold a more general presentation once we have identified the best way to take this forward.

P.S. If any extra incentive is required I’ve also heard a rumour that lunch will be provided.

Your assistance is appreciated.

Happy to discuss

Regards



[REDACTED]  
Project Administrator  
Design Team 1  
Major Transport Infrastructure Projects

T: [REDACTED]  
F: [REDACTED]

Transport Scotland  
Buchanan House  
58 Port Dundas Road  
Glasgow  
G4 0HF

For agency and travel information visit our [website](#)

Transport Scotland, the national transport agency  
Còmhdaidh Alba, buidheann nàiseanta na còmhdaidh

In 2014 Scotland Welcomes the World  
To find out more click here



T: [REDACTED] F: [REDACTED]  
E: [REDACTED]

[REDACTED]  
RICS Scotland  
9 Manor Place  
Edinburgh  
EH3 7DN

Your ref:  
Our ref:  
Date 22 May 2013

Dear [REDACTED]

### **RICS Guidance Note of Professional Fees for Compulsory Purchase (Draft)**

Thank you for letting us have sight of your draft Guidance Note, and giving us the opportunity to comment. Can I first apologise for the time that it has taken for us to put our thoughts on paper.

We appreciate that it is an RICS Guidance Note, and our contribution recognises we both have a community of interest in establishing a robust framework which both private and public sector surveyors can work with and will not need revision for many years. Our suggestions are made in that spirit and **the aims** are Guidelines that:

- are widely accepted;
- require infrequent updating;
- are flexible enough to deal with untypical cases;
- avoid delay and associated cost by following principles promulgated by the RICS elsewhere of agreeing valuation instructions and remuneration bases upfront;
- recognise that proper remuneration is essential to attract and retain good quality surveyors into this work; and
- recognise that there is a third party involved in the agreement of fees, namely the Acquiring Authority, which is itself auditable and accountable for expenditure on fees.

I will set out below some of the reasoning behind the suggested changes to the Guideline.

1. In the opening paragraphs we suggest removal of references to the history of Ryde's Scale, as it will rapidly become irrelevant and will soon make the Guideline appear out of date.
2. The next large paragraph has been split for readability.

3. We are aware from private and public sector valuers that disputes about fees revolve around a few well-worn issues: (Was the hourly rate excessive? Was the work necessary? Was the time spent appropriate? Was it appropriate to bring in an out of area valuer with added travel expenses?) Consequently we suggest the text removes as much scope for misunderstanding as possible by ensuring that as much of this is agreed up front as possible and in writing. Most of the changes reinforce [REDACTED] work in high-lighting these matters in the initial draft.

4. Our suggestions seek to ensure that the Guideline does not close off opportunities for valuers/claimants/acquiring authorities to agree fee bases to meet particular circumstance so there are paragraphs to allow fixed fee, percentage fee, hourly rates, and arrangements agreed with Utilities\* (Which the first draft did not mention\*).

5. Recording time – we have made substantial suggestions because we are acutely aware that the public sector payments will be audited so there is a need for a well-documented audit trail. If the guideline does not provide for this, then there will be considerable time spent, and unhappiness created when the Acquiring Authority goes back and asks for evidence of site visits, time sheets etc. By spelling it out upfront, we respectfully suggest there will be benefits in quicker and less acrimonious settlement of claims.

6. We are wholly supportive of the use of mediation where the only item of dispute is the fees.

Whilst our aspiration is that the Note will not need regular updates, there may be scope for a re-visit of the working of the Guidance after a suitable period.

It is our hope that these comments will be helpful to you as you finalise the draft.

I understand that a copy of the draft was also forward to colleagues in Transport Scotland. And this letter has been agreed with them. If there are no major changes when you engage with ACES, it may be helpful for the RICS to say that it has discussed the draft with the Scottish Government.

Yours sincerely

[REDACTED]  
**Policy Manager**

# DRAFT- May 2013

## The calculation of surveyors fees relating to the exercise of statutory powers in connection with land and property.

### A RICS Scotland Guidance Note

Published by RICS  
Surveyor Court  
Westwood Business Park  
Coventry CV4 8JE  
UK

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### **RICS Guidance Notes**

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Bases for calculating fees

Recording time

Disputes

# RICS Guidance Notes

This is a Guidance Note and it provides advice to RICS Members in Scotland on specific aspects of their practice. Where procedures are recommended for specific professional tasks, these are intended to embody ‘best practice’, i.e. procedures which in the opinion of RICS meet a high standard of professional competence.

Whilst Members are not required to follow the advice and recommendations that are contained in this Note, it is strongly suggested that members do rigorously follow its contents. Members should, however, note the following points:-

When an allegation of professional negligence is made against a Member, a court is likely to take account of the contents of any relevant Guidance Notes published by RICS in deciding whether or not the Member had acted with reasonable competence. In the opinion of RICS, a Member conforming to the practices recommended in this Note should have at least a partial defence to an allegation of negligence by virtue of having followed those practices. However, Members have the responsibility of deciding when it is appropriate to follow the guidance. On the other hand, it does not follow that Members will be adjudged negligent if they have not followed the practices recommended in this Note.

It is for each Member to decide on the appropriate procedure to follow in any professional task. However, where Members depart from the practice recommended in this Note, they should do so only for a good reason. In the event of litigation, a court may require them to explain why they decided not to adopt the recommended practice. Also, if you have not followed this guidance, and your actions are called into question in an RICS disciplinary case, you will be asked to justify the steps you did take and this may be taken into account.

In addition, Guidance Notes are relevant to professional competence in that each Member should be up-to-date and should have informed him/herself of Guidance Notes within a reasonable time of their promulgation.

## Background and fee guidance

Until now Ryde’s Scale (1996) has been used in Scotland to provide a basis for the ascertainment of the appropriate reimbursement to a claimant, by an Acquiring or Compensating authority, for surveyors’ fees incurred in respect of a claim for compensation following the exercise of compulsory powers. However, the scale has been formally abandoned outside Scotland since 2002 with a general RICS Guidance Note having been issued in 2006.

This Note offers updated guidance for Members working in Scotland on the choice and agreement of an appropriate basis of charge to be reimbursed by an Acquiring Authority as part of the compensation to be paid to a claimant. The initiative should come from the Member at the start of the case. The member should agree the basis of the reimbursement of the fees with the Acquiring Authority in advance, and in writing to minimise the scope for misunderstandings later. The Member can help the Acquiring Authority by demonstrating that the fees to be claimed will be reasonable, properly incurred and proportionate to the compensation involved and the complexity of the claim. While a

variety of fee bases are possible (see below), it is likely that an hourly charge basis, exclusive of reasonable expenses and VAT, will be adopted.

Practitioners advising in relation to compulsory purchase require a detailed understanding of a complex area of the Law of Scotland together with relevant Lands Tribunal cases, knowledge of property valuation and an understanding of the use and basis of occupation of the property to be acquired. Consequently, it is reasonable to consider the following:-

+ the fee should always be proportionate to the size and complexity of the claim and be commensurate with the time, effort, and expertise required to deal with the case;

+ if travelling costs (including the time spent) of a surveyor travelling long distances to undertake the case are claimed, the member must demonstrate that reimbursement is appropriate. If a claimant proposes to use an out of area Member it would be wise to agree the reimbursement of travel expenses with the Acquiring Authority before they are incurred. The Member will also be expected to make every effort to minimise those expenses in compliance with the general duty to mitigate the claimant's costs;

In compensation cases, the method of agreeing and the payment of professional fees are unusual. Normally, at the outset of a commission the Member will agree the fee basis with the client and at the completion of the instruction issue a fee note for payment by the client. However, with compensation cases whilst the Member has a client (i.e. the claimant), the fee is met by the Acquiring Authority as part of the client's claim through Rule 6 of S12 Land Compensation (Scotland) Act 1963 under "any other matter". For this reason, it is necessary for the fee basis to be agreed with two parties- both the client and the Acquiring Authority.

Accordingly, Members advising claimants must ensure that in all cases the basis upon which they propose to charge fees, the arrangements for payment, and any subsequent changes are agreed with both the client and the Acquiring Authority and confirmed in writing. Members are urged to avoid disputes at a later stage by ensuring that these steps are taken at the earliest possible date

## Bases for calculating fees

For the majority of claims it is anticipated that one of the following bases will be used to calculate the fee subject always to agreement between all the parties involved:-

- i) a predetermined 'fixed fee' arrangement where the scope of work can be clearly defined;
- ii) 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 the requirements set out in Surveyors Acting as Expert Witnesses: Practice Statement third edition) must be complied with); [DN: there may be scope to re-draft this paragraph to improve clarity]

iii) on a time spent multiplied by an hourly rate basis: and

iv) on the basis of the charging arrangements agreed from time to time with the Utility companies.

Not all of the above methods will be appropriate for every type of claim which is why it is vital that the basis for calculating fees is agreed at the outset of the commission with both the client/claimant and the Acquiring Authority.

It is recommended that an hourly rate basis is adopted, wherever possible. The hourly rate adopted by the parties will normally comprise the surveyor's normal rate for general valuation and negotiation and be inclusive of secretarial and other support services and overheads.

## Recording time

The Member's fee is part of wider claim in which there is a statutory onus on a claimant to prove actual loss. It will accordingly be necessary and helpful for Members to accurately record; the time spent on a compulsory purchase claim, the nature of the work and any required justification for the work carried out. This record should reduce the number of queries Acquiring Authorities have to make of the Member.

Remember that the Acquiring Authority will be subject to audit and will have to justify the reasonableness of the expenditure on fees. By agreeing a clear, comprehensive justification for the fees the Member will help speed the process of resolving the claim, or in the case of dispute provide robust documentation for the Lands Tribunal for Scotland or appointed Mediator to consider.

## Disputes

Surveyors' fees are an item which can be included in a compensation claim so CPO law provides that if the parties cannot reach agreement, having exhausted all other avenues, the dispute can be referred to the Lands Tribunal for Scotland.

Members may be reluctant to advise clients to use this means of dispute resolution if the only disagreement is the amount of the surveyor's fee which the Acquiring Authority should reimburse. Members are advised to consider agreeing with the Acquiring Authority to use an alternative dispute resolution procedure. RICS is willing, through its Dispute Resolution Service, to offer the option of mediation. However, if Members adopt the guidance offered in this Guidance Note then such disputes should be rare.

**Transport Scotland / District Valuer Workshop - Agents negotiating fees  
8W02/8W03 Buchanan House  
Tuesday 23 September 2014**

**Agenda**

10:15: Welcome – Tea/Coffee

10:30: Introduction from [REDACTED]

10:35: Start

- Overview / background to RICS guidance & the Scottish Ministers position

**Which fees will be considered for payment**

- Effective date and what constitutes a “new” case
- Fees paid only from vesting
- Pre-scheme works and discussions – no fee
- Fees under Section 140 notice
- Objections to draft orders
- Accommodation Works fees
- During construction

12:30 – 13:15: Lunch

**Implementation of quantum meruit**

- Initiating letter
- Experience, case complexity and fee
- Need for agent to agree with claimant and Acquiring Authority
- Travelling costs
- Out of area agents
- Different fee bases possible
- If hourly rate – diary showing time spent; when; what activity
- Control of fee levels and activities
- Dispute resolution

14:15 – 14:25: Break

**Other items**

- TS Guidance
- Land estimates
- Part 1 claims
  
- Summing up / Moving Forward

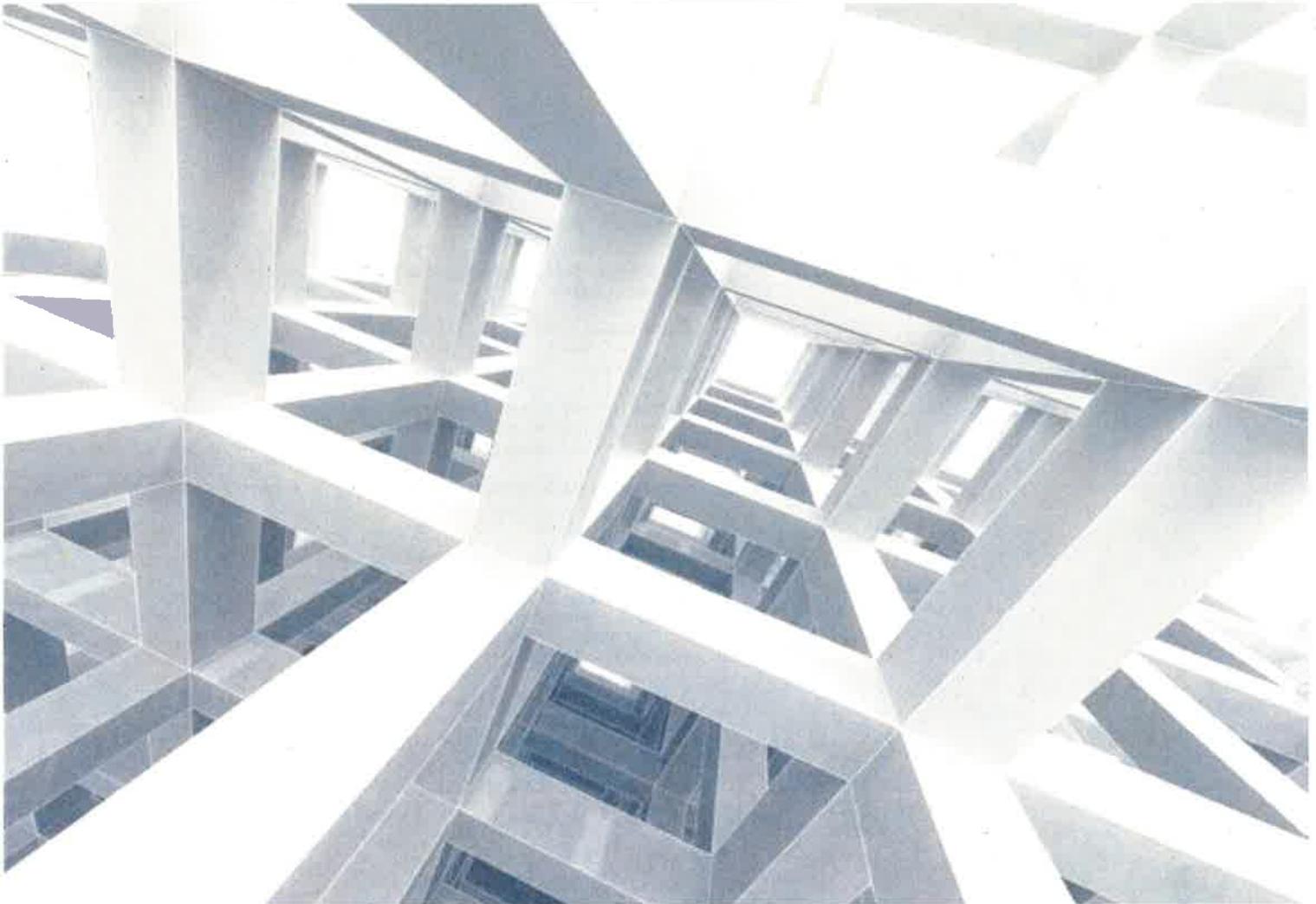
15:30 Close



RICS Professional Guidance, Scotland

# The calculation of surveyors' fees relating to the exercise of statutory powers in connection with land and property

1st edition



# The calculation of surveyors' fees relating to the exercise of statutory powers in connection with land and property

RICS guidance note, Scotland

1st edition



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## RICS guidance notes

This is a guidance note. It provides advice to RICS members in Scotland on the appropriate procedures to follow to calculate fees relating to the exercise of statutory powers in connection with land and property. *RICS Valuation – Professional Standards January 2014* defines a guidance note as:

‘Further material and information on good practice appropriate for particular types of circumstances. Where procedures are recommended for specific professional tasks they are intended to embody ‘best practice’ and are procedures which, in the opinion of RICS and IRRV, members should normally adopt in order to demonstrate the required level of professional competence.’

Where recommendations are made for specific professional tasks, these are intended to represent ‘best practice’, i.e. recommendations which in the opinion of RICS meet a high standard of professional and ethical competence.

Although members are not required to follow the recommendations contained in this guidance note, they should take into account the following points.

Where an allegation of professional negligence is made against a member, a court or tribunal may take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the member had acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

It is for each member to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this note, they should do so only for good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice. Also, if members have not followed this guidance, and their actions are questioned in an RICS disciplinary case, they will be asked to explain the actions they did take and this may be taken into account by the Panel.

In addition, guidance notes are relevant to professional competence in that each member should be up to date and should have knowledge of guidance notes within a reasonable time of their coming into effect.

This guidance note is believed to reflect case law and legislation applicable at its date of publication. It is the member’s responsibility to establish if any changes in case law or legislation after the publication date have an impact on the guidance or information in this document.

This guidance note seeks to establish a robust framework that chartered surveyors, in both the public and private sectors, can work within for many years to come and so any revisions will be limited. Equally, the aims of the guidance note incorporate being widely accepted by members, being sufficiently flexible to cope with atypical cases, avoid delay and associated costs, and recognising that members require to be properly rewarded for the quality of the advice sought and time taken (and thus to retain and attract high-quality members for the future). It also recognises that, uniquely, there is a third party involved, not just in the agreement of the fee, but also its payment and that that third party, i.e. the acquiring authority, is itself subject to strict auditable standards and so has to ensure that it is fully accountable for all expenditure on surveyors’ fees.

## Document status defined

RICS produces a range of professional guidance and standards products. These have been defined in the table below. This document is a guidance note.

Type of document	Definition	Status
<b>Standard</b>		
International Standard	An international high level principle based standard developed in collaboration with other relevant bodies	Mandatory
<b>Practice Statement</b>		
RICS Practice Statement	Document that provides members with mandatory requirements under Rule 4 of the Rules of Conduct for members	Mandatory
<b>Guidance</b>		
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)
RICS Guidance Note (GN)	Document that provides users with recommendations for accepted good practice as followed by competent and conscientious practitioners	Recommended good practice
RICS Information Paper (IP)	Practice based information that provides users with the latest information and/or research	Information and/or explanatory commentary

# 1 Introduction and scope

**1.1** Until the issue of this guidance note, Ryde's Scale has 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 compulsory purchase order (CPO) powers. However, the Scale was formally abandoned outside Scotland in c.2002 and an RICS guidance note was issued shortly thereafter.

**1.2** This guidance note offers updated guidance to RICS members working in Scotland on the options now available regarding the agreement of an appropriate basis of charge.

## **Transitional arrangements**

**1.3** This guidance note is effective from 1 May 2014. Any new CPO/compensation instructions accepted after this date are subject to this guidance note. Cases up to this date should be completed under any previously-agreed fee basis.

## 2 Fee guidance

**2.1** The initiative to agree fees should come from the member at the commencement of the commission. As with the acceptance of most types of instructions, it is good practice to agree the fee, or the basis of the fee, at the outset and accordingly this should be undertaken both verbally and in writing in conjunction with the client and ideally the relevant acquiring authority. This action should remove or, at least minimise, any scope for misunderstanding or dispute at a later time.

**2.2** The member should demonstrate to the acquiring authority that the proposed fee basis is reasonable and proportionate relative to the complexity of the claim. Equally, it should be borne in mind that while all compensation cases are complex some are more complex than others. Therefore, the member should ensure that the work is undertaken by a surveyor with experience commensurate to the instruction in hand. While a variety of fee bases are possible (see section 3), it is likely that an hourly charge basis, exclusive of reasonable expenses and VAT, will be appropriate in most cases. It is recognised that members undertaking work in this niche and highly complex area require a host of professional, technical and 'soft' skills and, as a consequence, it would be reasonable to have regard to the following:

- The fee should in all cases be proportionate to the size and complexity of the claim and be commensurate with the time, effort, and expertise required to deal with the case. For schemes involving a number of similar claims (e.g. Part 1 claims) a quantum reduction or cap may be appropriate.
- If travelling costs (including the time spent) of a surveyor travelling long distances to undertake the case are claimed, it will be necessary to demonstrate that reimbursement is appropriate. If a claimant proposes to use an out of area member, it would be wise to agree the reimbursement of travel expenses with the acquiring authority before they are incurred. The member will also be expected to make every effort to minimise those expenses in compliance with the general duty of claimants to mitigate costs.
- Where the claimant chooses to use a team of advisers, or has changed advisers, it should be

recognised that the ultimate fee amount may not fully cover the claimant's full outlay. Equally, members require to ensure that their fee allocation from the total fee is clear from the outset of the instruction.

**2.3** In compensation cases, the method of agreeing and the payment of professional fees is unusual. Normally, at the outset of a commission the member will agree the fee basis with the client and at the completion of the instruction a fee will be issued to the client and paid thereafter. However, with compensation cases, while 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 rule (6) of section 12 of the *Land Compensation (Scotland) Act 1963*. Thus, ideally, the fee basis needs to be agreed with two parties – the client and the acquiring authority.

**2.4** Accordingly, members undertaking this type of work should ensure that in all cases the basis on which they propose to charge fees, the arrangements for payment and any subsequent changes are agreed in writing not only with the client but also with the acquiring authority. Further, if members wish to avoid or reduce the possibility of a dispute at a later stage, they should adopt the contents of this guidance note and ensure that these steps are taken at the outset.

## 3 Bases for calculating fees

**3.1** For most cases, it is anticipated that one of the following fee bases will usually be used to calculate the member's fee, always subject to agreement between the parties involved:

- time spent multiplied by an hourly rate
- 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)
- a predetermined 'fixed fee' arrangement where the scope of the work can be clearly defined or
- on the basis of the charging arrangements agreed from time to time with the utility companies.

**3.2** The above bases are not meant to be proscriptive or exhaustive but indicative of the main fee base options available. Thus, not all of the above bases will be appropriate for every type of claim. Therefore, it is of the utmost importance that, whatever it may be, the basis for calculating the fee is agreed at the outset of the commission with both the client/claimant and the acquiring authority. However, it is strongly recommended that the hourly rate option is adopted, whenever possible.

**3.3** The hourly rate adopted and agreed by the parties will normally comprise the surveyor's normal rate for valuation and negotiation instructions with the work being undertaken by a surveyor having the appropriate experience commensurate to the commission and will be inclusive of secretarial and other support services and overheads but exclusive of reasonable expenses and VAT. Further, the member should recognise the length of time required (which quite often will be months if not years) to complete the instruction and thus may wish to consider agreeing a means of regularly reviewing the hourly rates in the agreement where cases are likely to be lengthy. In addition, the use of making applications for Advance Payments of Compensation should also be considered, as any such payment would include 90% of the surveyor's fee.

## 4 Recording time

**4.1** The member's fee is part of a much wider claim in which the statutory onus is on a claimant to prove actual loss. Thus, it will be necessary for members to take great care in every case to accurately record the time fairly and reasonably incurred and the nature of the work carried out in relation to a compulsory purchase claim. In many cases, the time spent working on a claim is likely to form a significant factor in the assessment of the fee. It will also be necessary for members to be required to verify and justify the time spent working on a claim. The acquiring authority may well wish to audit the documentation as:

- (a) transparency in this process is required and
- (b) the acquiring authority itself is subject to audit and thus requires to be satisfied that it is fully accountable for all expenditure incurred.

**4.2** By agreeing a clear and comprehensive justification for the fee basis, and thus the fee itself, members will assist in the timeous resolution of the claim or, if the claim is disputed, then the member can provide robust documentation for the relevant arbitration body to consider.

## 5 Disputes

**5.1** Surveyor's fees are an item that should be included in a compensation claim and for that reason CPO law provides that if the parties are unable to reach agreement, having exhausted all other avenues, the dispute should be referred to the Lands Tribunal for Scotland. However, it is hoped that by adopting the practices described in this guidance note such disputes will be rare. Members may be reluctant to advise clients to instigate a Lands Tribunal application if the only disputed item of the claim is the amount of the surveyor's fee, which the acquiring authority should reimburse. Thus, consideration is being given to investigating more suitable alternative dispute resolution mechanisms including use of the RICS Dispute Resolution Service and the appointment of a suitable and independent auditor.

### Scope of works

**5.2** Existing legislation/case law currently lags behind the more advanced acquisition and procurement procedures that many acquiring authorities in Scotland now adopt. This is especially so with regard to pre-scheme investigation works, which allow the acquiring authority to reach its justification(s) for its preferred scheme. In addition, design and build contracts now involve the contractor much more so in directly dealing with accommodation works at an early stage.

**5.3** Accordingly, defining the scope of the member's work (and its commencement) is important and this is directly related to the instigation of 'The Scheme'. Thus, members need to recognise that while clients/potential claimants may wish to engage an agent at an early stage as a consequence of preliminary investigation works (and there are many good reasons for doing so), acquiring authorities in Scotland are of the view that they are under no legal obligation to pay such fees incurred to the landowner – that obligation

only comes into force once vesting has occurred and gives rise to a valid claim. However, case law in certain circumstances does provide for the recovery of reasonable 'disturbance' costs that were incurred prior to vesting. In such cases, the trigger point for claiming fees remains the date of vesting, but if compensation is agreed for such disturbance costs incurred prior to vesting, then fees in respect of such items can then be included in the compensation. Thus, on accepting a CPO/compensation instruction, the member is advised to enter into early engagement with the acquiring authority to agree all aspects of the fee bases/arrangements.

**5.4** Equally, it would be unusual for objectors to CPOs to be able to recover the costs of objection and, in any event, fees incurred in connection with an objection are governed by separate rules. Nevertheless, it is recognised that material to the compensation negotiations would be, among other things, discussions regarding accommodation works.

**5.5** RICS Scotland considers that this blurring of pre-scheme and post-scheme activity potentially creates situations where affected property owners may incur non-compensatable fee expenses. This is in conflict with the compensation ethos that, as far as money can provide, the party should be left no better nor no worse off after the scheme than before the scheme. Accordingly, it is considered that a significant flaw exists in the current regime. This needs to be resolved for the benefit of the general public in accordance with the RICS Royal Charter. RICS Scotland will continue to press all authorities in Scotland that possess compulsory purchase powers, particularly Scottish Government, Transport Scotland and the Utility Companies, to that end.





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### RICS HQ

Parliament Square, London SW1P 3AD  
United Kingdom

#### Worldwide media enquiries:

e [pressoffice@rics.org](mailto:pressoffice@rics.org)

#### Contact Centre:

e [contactrics@rics.org](mailto:contactrics@rics.org)

t +44 (0)24 7686 8555

f +44 (0)20 7334 3811

United Kingdom  
Parliament Square  
London SW1P 3AD  
United Kingdom  
t +44 (0)870 333 1600  
f +44 (0)207 334 3811  
[contactrics@rics.org](mailto:contactrics@rics.org)

Europe  
(excluding United  
Kingdom and Ireland)  
Rue Ducale 67  
1000 Brussels  
Belgium  
t +32 2 733 10 19  
f +32 2 742 97 48  
[ricseurope@rics.org](mailto:ricseurope@rics.org)

Asia  
Room 3707-09  
Hopewell Centre  
183 Queen's Road East  
Wanchai  
Hong Kong  
t +852 2537 7117  
f +852 2537 2756  
[ricsasia@rics.org](mailto:ricsasia@rics.org)

Americas  
One Grand Central Place  
60 East 42nd Street  
Suite 2810  
New York 10165 - 2811  
USA  
t +1 212 847 7400  
f +1 212 847 7401  
[ricsamericas@rics.org](mailto:ricsamericas@rics.org)

South America  
Rua Maranhão,  
584 - cj 104  
São Paulo - SP  
Brasil  
t +55 11 3562 9989  
f +55 11 3562 9999  
[ricsbrasil@rics.org](mailto:ricsbrasil@rics.org)

Africa  
PO Box 3400  
Witkoppen 2068  
South Africa  
t +27 11 467 2857  
f +27 86 514 0655  
[ricsafrica@rics.org](mailto:ricsafrica@rics.org)

Ireland  
38 Merrion Square  
Dublin 2  
Ireland  
t +353 1 644 5500  
f +353 1 661 1797  
[ricsireland@rics.org](mailto:ricsireland@rics.org)

Oceania  
Suite 2, Level 16  
1 Castlereagh Street  
Sydney, NSW 2000  
Australia  
t +61 2 9216 2333  
f +61 2 9232 5591  
[info@rics.org.au](mailto:info@rics.org.au)

Middle East  
Office G14, Block 3  
Knowledge Village  
Dubai  
United Arab Emirates  
t +971 4 375 3074  
f +971 4 427 2498  
[ricsmenea@rics.org](mailto:ricsmenea@rics.org)

India  
48 & 49 Centrum Plaza  
Sector Road  
Sector 53,  
Gurgaon - 122002  
India  
t +91 124 459 5400  
f +91 124 459 5402  
[ricsindia@rics.org](mailto:ricsindia@rics.org)