

REQUEST FOR THE APPOINTMENT OF AN ARBITRATOR OR INDEPENDENT EXPERT

When the Secretary of SAAVA receives an application for the appointment of an arbitrator or independent expert the President, whom failing the Vice President, will make the appointment from the available panel.

The aim of SAAVA when appointing an arbitrator or independent expert is to act independently and transparently. When we receive an application we will select potential appointees from our panel of arbitrators or independent experts. After checking to ensure the appointee is suitably qualified and free from conflicts of interest, the appointment will be made by President, whom failing the Vice President, of SAAVA and notified to the parties.

The Application

The application requires to be submitted on our template with the appropriate fee before it will be entertained. SAAVA aim to make an appointment within ten working days of receipt of a completed application.

Certain details are required to assist in the appointment process. We rely on information given in the application to select someone who will have the confidence of the parties. An incomplete, or incorrect, application can result in an appointment that may be inappropriate.

The application form is intended to elicit information about the parties, the property and the dispute. To ensure the appointment is made quickly and efficiently it is important that you complete all sections of the application form correctly and fully. Incomplete sections of the form may result in delays.

- **Information about the parties**

Details of the parties to the dispute are required.

SAAVA will take reasonable steps to establish that the appointed arbitrator or independent expert is free from conflicts of interest. It is therefore essential that you provide details of the landlord and tenant or other parties (including any parent and/or subsidiary companies or related entities) which a prospective appointee will need to consider in his or her conflicts checks.

The parties' professional representatives must be stated and we will forward all relevant correspondence to them. Communications from SAAVA may be sent by email and it is important that you provide email addresses if possible.

If you are aware of any persons who have conflict of interests, you may provide details separately. You must give proper reasons for each person objected to. The President or Vice President will carefully consider representations that go to the identity of the person to be appointed, but cannot be bound by them and will make his own decision as to whom is appointed.

- **The property**

SAAVA need to understand the nature and location of the property. This aids the selection of someone who is appropriately qualified and experienced in the matters likely to arise.

Parties are requested to provide the full postal address (including post code), together with a brief description of the property, its location and other relevant information.

- **Information about the dispute**

It is important that we understand the nature of the dispute and brief details should be provided.

- **The authority for the appointment**

In the event that the parties agree to refer a dispute to an arbitrator or independent expert to be appointed by SAAVA they should complete and thereafter sign or template application form.

Please note that SAAVA only acts in an administrative capacity and will simply make an appointment in accordance with the application made.

You must state whether you require an arbitrator or independent expert to be appointed.

As a matter of policy, SAAVA will forward the information contained in any to prospective appointees to help them decide whether or not they are able to take on the appointment. This is the basis on which your application is accepted.

Fees

SAAVA charge a fee of £150 inclusive of VAT for administering an appointment. The fee is non refundable whether or not the President or Vice President makes an appointment (e.g. if the matter is settled by agreement).

The fee may be paid by cheque which must accompany a hard copy of the application form.

The Process

The President or Vice President will check with potential appointees that they are suitably qualified, impartial and have no conflict of interest. In so doing, SAAVA will use the details of the parties and the dispute (as provided on the application form) as the basis for such inquiries.

Such information will be provided to one or more prospective appointees who will be required to disclose any involvements they may have had with the parties and/or the property within the last five years. The information you provide will be sent to one or two prospective appointees. This is to help them decide if they have sufficient knowledge and experience of the type of the property and dispute to deal with the case.

In terms of the Arbitration (Scotland) Act 2010 (the 2010 Act) any individual who is asked to be an arbitrator, but who has not yet been appointed, must without delay disclose any circumstances known to the individual (or which become known to the individual before the arbitration ends) which might reasonably be considered relevant when considering whether the individual is impartial and independent. The same procedure will be applied in respect of the appointment of an independent expert.

Disclosure is of vital importance in assessing the question of an arbitrator's or independent expert's independence. The intention is to flush out any potential problems with an arbitrator or independent expert at the onset of proceedings. Potential appointees will be asked to disclose any circumstances that give rise to justifiable doubts as to their independence. An

arbitrator after appointment has a further requirement to disclose during the course of the arbitration process any facts of a similar nature which may arise.

The duty of disclosure is broad. Any potential appointee cannot choose not to disclose information because he or she believes it does not affect his or her ability to act independently and impartially. They must put themselves in the shoes of the parties and ask whether, as a result of any facts or circumstances in existence, and taking account of the cultural and commercial background and any other factors which may affect the parties' perceptions, their independence might be questionable. The onus is upon the potential appointee to disclose such information, whether in relation to the dispute in question or in relation to any of the parties which could possibly be seen as affecting their independence, even if they do not believe that such independence is actually affected as a result of the circumstances.

"Independence" and "impartiality" are two distinct but interrelated concepts. An arbitrator or independent expert may fail to act impartially by favouring one of the parties or by having preconceived prejudices about the issue in dispute. An arbitrator or independent expert may fail to be independent because of a relationship with one of the parties, be it financial, professional or social, which gives the appearance of a personal interest in the result of the arbitration or expert reference. An arbitrator or independent expert must not only act impartially, but he must also be understood to be completely free of any relationship which may call into doubt their independence, other than as disclosed by the arbitrator or independent expert and accepted by the parties as not having a bearing on the proceedings. Independence is an objective notion.

The requirement for independence allows the President or Vice President to exclude those potential arbitrators or independent experts whose impartiality could reasonably be called into doubt rather than allow the proceedings to continue and run the risk of a challenge arising at a later stage after the potential impartiality may have become manifest.

A declared financial or business relationship between a potential appointee and one of the parties will be grounds for not making the appointment because of the potential for lack of independence or impartiality. The President or Vice President will take a practical view on whether the relationship in question could impact upon that person's impartiality. Past relationships will count for less than one based on a continuing financial or professional relationship but each declaration will be looked at on its own merits. Whether a remote or historic involvement should preclude an appointment is not however a matter for a potential appointee to decide – it must be declared.

A professional may be nominated. There will be cases where the proposed individual has not personally acted for either of the parties but is a partner or employee in a firm that has done so, and accordingly, such professionals will be called upon to make the requisite checks within their organisations and to declare any relationship between their firm and the parties.

An individual may have been appointed by one of the parties on a number of occasions in the past. Such practice does not automatically give rise to a likelihood of impartiality. An individual is unlikely to be disqualified on the basis that they have acted in a prior case involving one of the parties which arose from entirely different circumstances.

Because SAAVA rely upon the information provided failure by a potential appointee to make the requisite declarations or the provision of inaccurate information may lead to disciplinary action.

SAAVA will make an objective decision (sometimes after consulting with both parties) whether or not a conflict of interest arises. In this process SAAVA have adopted the International Bar Association traffic light system to assess the seriousness of any potential conflict declared by potential appointees. Declarations will be considered by the President or Vice President and categorised according to the following: -

Red

These are conflicts that bar the appointment of an arbitrator or independent expert and fall into two categories: those that can be waived and those that cannot. Conflicts that cannot be waived are where the potential appointee has a significant financial interest in one of the parties, or regularly advises one of the parties. Other conflicts can be waived if both parties agree. These include situations where the arbitrator or independent expert has a close family member with a significant financial interest in the outcome of the dispute.

In the event of such disclosures, the President or Vice President will always revert to the parties providing copies of the information provided by the potential appointee.

Orange

This identifies situations where the President or Vice President consider it may be necessary to put the disclosed information to the parties for consideration before the individual is appointed. That individual would only then be appointed if both parties made no objection within the allotted time. Please note that SAAVA will not always seek comment from the parties on disclosures made by potential appointees within this category.

Green

Declarations from potential appointees will be categorised as green where SAAVA feels there is no conflict, and so will have no duty to disclose anything to the parties before making the appointment.

After the appointment

The Secretary will write to the parties with a copy of the President or Vice President's appointment.

The appointee will write to the parties setting out the terms of his engagement.

After the appointment SAAVA has no further role in the dispute. In an arbitration the parties may have the right to remove the arbitrator as set out in the 2010 Act.

If you have any queries about the application, contact: -

The Secretary
SAAVA