

Conflict resolution

5 January 2018

RICS members and regulated firms are encouraged to have procedures in place to deal with conflicts of interest by 1 January 2018, write William Glassey and James Morris

Conflicts of interest can be damaging to the integrity of the profession. Indeed, the public and press have expressed concern, and questions have been asked in Parliament regarding the way in which some surveyors have dealt with conflicts in the past.

In response to this criticism, and in an attempt to safeguard the integrity of the profession, RICS issued the [Conflicts of interest global professional statement](#) in March 2017.

The statement applies to all areas of RICS practice around the world, and all members and regulated firms must comply with the statement's mandatory requirements, which came into effect on 1 January 2018.

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It contains 2 rules, on conflicts of interest and confidential information respectively, followed by some definitions, and is supplemented by commentary providing more detail on the practical application of these.

The document does not, and cannot, provide an answer for every possible scenario in every branch of the surveying profession, but it does provide a clear framework of the principles that must be followed when assessing whether there is a conflict of interest, and what action should be taken if there is.

Doubt and duty

If in doubt, one should always return to the duty or duties the members or regulated firms owe and to whom, before considering whether it is appropriate to proceed. The statement does not place an absolute prohibition on acting when there is a conflict of interest or a significant risk of one, but allows RICS members or regulated firms to represent clients where all of the following apply:

- all those who are or may be affected have provided their prior informed consent
- it is lawful to do so
- it is in the interests of all those who are or may be affected
- it will not prevent the provision of competent and diligent advice.

There are three different types of conflict: a party conflict, an 'own interest' conflict, and a confidential information conflict.

- A party conflict is a situation in which the duty of an RICS member or a regulated firm to act in the interest of a client or other party in a professional assignment conflicts with a duty owed to another client or party in relation to the same or a related professional assignment.
- An 'own interest' conflict is a situation in which the duty of an RICS member or a regulated firm to act in the interests of a client in a professional assignment conflicts with the interest of that same member or firm, or the interest of any of the individuals in that regulated firm who are involved directly or indirectly in that or any related professional assignment.
- A confidential information conflict occurs between the duty of an RICS member to provide material information to one client and their duty or that of a regulated firm to another client to keep that same information confidential. It is important to note that the obligation to provide material information to a client is restricted to the individual member, so it depends on such information that they have rather than what the firm has.

If there is a conflict and it is possible to obtain informed consent from both parties, the use of information barriers should be considered. Information barriers are arrangements that are designed to prevent the flow of information between separate departments or individuals. In practice, they may consist of restricting access to electronic documents; and/or separating personnel so that they are located on separate floors of the same office or in different locations completely.

These arrangements may enable a client or other party to give informed consent to work when there is a party conflict, or help to resolve a confidential information conflict. However, on their own, information barriers are not a solution to a conflict of interest unless there is informed consent.

Professional principles

The statement does not outlaw commission or success-based remuneration in principle. The supporting commentary makes it clear that there is nothing wrong with these, but members must always consider carefully whether they give rise to an 'own interest' conflict or a significant risk of one.

RICS members have an obligation to identify and manage conflicts in accordance with the statement and keep records of decisions made, informed consent obtained, and any measures taken to avoid conflicts arising.

Regulated firms meanwhile must have, or implement, effective systems and controls appropriate to the size and complexity of their business to ensure compliance. Therefore, it is essential that both members and regulated firms have refined or put in place effective systems for managing conflicts of interest. The consequences of not having done so range from enforcement action from RICS to professional negligence claims.

William Glassey is a partner at [Mayer Brown](#) and technical author of RICS' [Conflicts of interest global professional statement](#) . James Morris is a senior associate at Mayer Brown.

Further information

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