

Trust me, I'm a chartered surveyor

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Cliff Hawkins examines where conflicts of interest may arise and suggests how these situations should be approached

Can you remember the day you qualified as a chartered surveyor? Many years of hard work had been rewarded with membership of RICS. From that point on your obligation as a professional would be to put your clients' interests ahead of your own. Conflicts of interest would need to be avoided or exclusively settled in your clients' favour regardless of the impact on you. Your personal integrity would allow no less.

Since then, I am sure that you have encountered multiple tests of your integrity in resolving conflicts of interest. Some are easy to identify and resolve, others are more esoteric and require careful thought. Your obligation as a chartered surveyor is to identify them all and deal with them appropriately.

Checking conflicts of interest

By now, you may be thinking that this is all a 'given'. You have robust systems in place to trap conflicts and deal with them. It may surprise you to know, however, that the 2013-14 [RICS Regulation](#) Annual review recorded that the most common failing of registered valuers at audit was 'lack of a robust/any system to check conflicts of interest and where one exists, failure to record result of checks'. So what can we do to improve the way we handle this issue?

There is a very simple test you can apply to virtually every situation where a conflict may arise. If you were to wake up in the morning and read a report of your dealings in the newspaper, together with all the speculation and innuendo that might accompany it, would you be able to successfully demonstrate that you had acted appropriately? A belief that you could 'tough it out' does not qualify as a justification, nor does an argument that while you knew a conflict of interest existed, your personal integrity did not allow it to influence you. Such defences are paper thin, and that is why you need good identification systems and diligent record keeping. The full consequences of weak systems may only become apparent when your reputation has been damaged or a client decides that you are to blame for their misfortune.

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One of the most common conflicts is acting for more than one client in the same transaction. While it is easy for individuals to avoid such situations, it is much harder for larger businesses, particularly those with multiple offices. The first requirement must be to operate a company-wide registration system for all new business opportunities. This should include

significant personal interests.

If a conflict is identified, there needs to be robust rules in place regarding declarations, transparency and resolution. There may be differences of opinion internally about whether a particular situation can be allowed to continue. For example, having two colleagues who sit next to one another competing in a transaction is clearly unacceptable. What view would you take, however, if they were in different room, on a different floor, or in another building in the same city? Does it make a difference if they socialise together on a regular basis?

Clearly, such situations are best avoided, but sometimes there are good reasons why a client might wish you to proceed. The important thing is that you do not end up in such a situation unknowingly. At the very least, you will need to declare the existence of the conflict to all relevant parties and secure their written agreement to proceed. Without written evidence, you will be vulnerable to action as a result of misunderstandings.

Think carefully

The principle of transparency is at the core of good practice. The more open you can be with all parties to a transaction, the less likely that you will be accused of a conflict. This sounds easy, but there are often situations where the conflict is not obvious at first glance.

A good example is when acting as both the introducer and adviser in respect of a property purchase. Investment agents charge very substantial fees, often 1% or more of the purchase price, following a successful introduction and purchase. It is fairly standard practice for a successful transaction to be accompanied by a report and valuation. For many years, I was asked by non-property colleagues why it was that surveyors seemed not to see the conflict in providing other services alongside or within such a large success-related fee.

As an example, suppose you have introduced an investment property to a client and agreed a purchase fee, payable on successful completion of the transaction. The client requires a valuation and a building survey in addition to a purchase report. If you provide all 3 services to the client, do you have a conflict of interest? I would argue that you do. You will only receive the purchase fee if the transaction proceeds, so if any of the other services contain unfavourable advice, there is a risk to that fee.

There are mitigating factors that could be seen as protective of the client's interest. One is undoubtedly personal integrity and another is risk to professional indemnity insurance. In addition, it may be different individuals within the same firm providing each service. However, would any of these arguments stand up in court?

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Perhaps the most problematic additional service in this example is the valuation. There may have been significant 'sharpening of pencils' during the bidding process and it is quite likely you were the highest bidder, possibly setting a new market level. Will the client still proceed if the valuation provided does not fully support the price they have agreed to pay? Are you conflicted in providing that valuation? If the valuation had been prepared by an independent surveyor without knowledge of the purchase price, would they have

produced a similar number?

I would suggest that any situation where more than one service is provided to a client on the same transaction, there must be some tension between the individual providers of those services. If one of those services involves a success-related fee, those tensions become more acute.

Of course, one simple solution is to adjust the fee to allow independent provision of the additional services by other firms. Multiple provision of services has, however, been market practice for many years and many firms will find the diversion of fees to a competitor unacceptable.

The [RICS UK Commercial Real Estate Agency Standards](#) contain very good practical guidance on handling conflicts. It states that the terms of both sales and acquisitions instructions should be in writing, including one-off purchase transactions arising from introductions. As a minimum, the client should be made aware of the potential conflicts and be given an opportunity to discuss them. This should be followed by a written agreement on the approach adopted.

A further complication in this example is whether the valuation contained in a purchase report should comply with the Red Book. Such situations are not specifically excluded by the Red Book and therefore it is my view that they are regulated valuations. That means they must be prepared and signed by a registered valuer. There are very specific requirements for Red Book valuations and declarations of conflict of interest are central to those requirements.

Sharpening skills

Transactions like this are only one example of the way in which conflicts may arise in unlikely places. All practising chartered surveyors are now required to undertake formal CPD training and record their activity via the RICS website. For firms, it should not be difficult to construct a training session that will test the ability of individual surveyors to think through conflict situations. The scope of such sessions could also be expanded to cover the Bribery Act. Here are just a few ideas to get you started:

1. You are instructed to sell a property and a potential purchaser suggests they will instruct you to provide new services for them, should they be successful.
2. You are instructed to sell a property and one of the potential purchasers is:
 - a) a personal friend
 - b) a client of the same office of your firm
 - c) a client of a different office of your firm
 - d) the firm's biggest client.
3. The local planning authority has recently declared its intention to introduce tough new restrictions on development and have asked you to assist in identifying specific sites to be preserved. You know a struggling local builder with a small land bank bought at historically high prices. That builder is:
 - a) your father
 - b) your cousin
 - c) an acquaintance from the pub
 - d) the president of a golf club you would like to join.

4. A client has asked you to advise on whether to proceed with a very high bid from a previously unknown buyer or lower bids from reliable purchasers. Should the higher transaction complete, it would significantly undermine the valuations you have given on other recent deals.

Of course, the property market has functioned well for very many years and market practices have become established. One of the key objectives of regulation is to provide confidence and reassurance to the end customer that the service provided is of the very highest quality and uninfluenced by bad practice. The principle of openness should be embedded in everything we do. By being open and seeking agreement to our actions from the client, we need never wake up in the morning and fear the newspaper headlines.

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Further information

- Related competencies include: [Conduct rules, ethics and professional practice](#)
- This feature is taken from the RICS *Property journal* (July/August 2015)
- **UPDATE:** [Conflicts of interest](#) (1st edition, global RICS professional statement) published on 14 March 2017 and is effective from 1 January 2018.