

# RICS Practice Alert – Expert Witnesses

Issued by email February 2024

RICS is issuing this Practice Alert to all members and candidates globally. Its purpose is to remind members of their legal, professional, and regulatory obligations when providing expert witness services.

This Practice Alert is issued urgently in light of increased concern about the quality of expert witness functions being performed by RICS members. Immediate action is required to address the evident failure of some members to comply with mandatory standards, and to ensure that members providing expert witness services adhere unequivocally to the [RICS Practice Statement and Guidance for Surveyors Acting as Expert Witnesses](#).

The risk posed to a surveyor whose expert evidence is criticised or dismissed cannot be overstated. Lawyers conducting cross-examination may use this fact to challenge the credibility of the expert witness in subsequent cases. Once a surveyor's reputation is tarnished, it is difficult, if not impossible, to restore.

## What you need to do now

Complete the checklist below in respect of your current expert witness instructions.

1. To comply with RICS' mandatory professional statement and guidance, you must be able to answer "yes" to all questions with absolute certainty.
  - a) Is the subject matter on which you have been invited to give expert testimony entirely within the scope of your personal professional expertise?
  - b) Is the expert witness report you will submit to the client entirely your own work? If not, have you clearly indicated the extent to which any content is not your personal work?
  - c) Have you undertaken the necessary inspections and investigations, and reported all relevant facts that are within your knowledge to back up all statements made in your report?
  - d) Are you confident that you can give an honest and rational justification for all opinions expressed in your report?
  - e) If you were cross-examined, could you substantiate each statement in your report with supporting facts?

- f) Is your testimony prepared entirely to assist and inform the court/tribunal?
- g) Could you say on oath that you have not been influenced by a personal desire, incentives or other pressures to present your instructing client's case to the court/tribunal in the most favourable light as possible?
- h) Are you satisfied that your report is scrupulously impartial?
- i) If you or your firm have ever represented the client in a personal or professional capacity, are you certain that your report reflects your honest opinion and is not biased towards or against the instructing client?
- j) Can you confirm that the basis of your remuneration (and that of your firm) is not related to the outcome of the court/tribunal proceedings?
- k) Is the declaration at the foot of your report truthful in every respect?
- l) If you have ever had your evidence rejected or criticised by a court/tribunal, did you discuss this with your client and their counsel before accepting the instruction to prepare your report? Are you able to provide a credible explanation to them and the present court/tribunal about why your current report should be considered reliable?
- m) Have you complied with all the requirements for members set out in the current edition of RICS' [Surveyors Acting as Expert Witnesses](#)?

2. View the recording of the [RICS webinar for members acting as expert witnesses](#).
3. Explore expert witness training and qualifications to ensure you are providing services to the highest professional standard. See [RICS Expert Witness Certificate](#).
4. Ensure you have appropriate professional indemnity insurance (PII) for providing expert witness services.
5. If you find yourself in a position where you are under pressure to act in breach of RICS professional standards, you are obliged to draw this to the attention of RICS.

## Expert reports - supervision and accountability

In instances where less experienced surveyors, including trainees or students, assist in the creation of expert witness reports, they are only permitted to do so under the direct supervision of the experienced RICS member who is instructed as the expert witness. In such cases, the experienced RICS member must exercise caution to ensure that the court/tribunal is not misled regarding the origin of the work, distinguishing clearly between their personal contributions and those of any others.

## Expert witness qualifications

While you may be highly knowledgeable and competent in your primary profession, acting as an expert witness requires a distinct understanding of the law and practice.

Among other things, you need to understand:

- how an expert witness report should be structured
- how to conduct yourself in court or at a hearing
- how to deliver your expert evidence to a court/tribunal and
- how to manage examination and cross-examination.

A good way to acquire this knowledge, develop these skills, and protect yourself against inadvertently breaching RICS professional standards, is to [undertake specific training](#) and acquire RICS accreditation. You should also keep your skills up to date by attending regular, relevant CPD.

## RICS Practice Statement and Guidance

Every RICS member acting as an expert witness must take account of the current edition of RICS' [Surveyors Acting as Expert Witnesses](#). If you act as an expert witness, you must be satisfied - and be prepared to demonstrate to RICS - that you have complied with all statutory requirements and RICS standards. There may be disciplinary consequences for a failure to comply with the practice statement.

RICS professional standards also apply when you assist someone to draw up an expert report. If you have been asked to participate in the production of a report where the person ultimately signing it would not be able to answer yes to the questions listed in the checklist above, you are assisting with a breach of [RICS Rules of Conduct](#).

Note that RICS is currently updating its practice statement and guidance note for expert witnesses. The current edition remains in force until the new edition is formally published. In the interim, it is your responsibility to be aware of changes in case law and legislation since the last date of publication.

If an allegation of professional negligence is made against you in respect of your expert witness services, the court/tribunal will also consider the RICS practice statement when determining whether you acted with reasonable competence. Failure to comply with the practice statement may consequently lead to a finding of negligence against you.

Courts/tribunals are increasingly criticising expert witnesses for neglecting their duties. By way of example, a landmark decision by the UK Supreme Court (responsible for cases of significant public or constitutional importance) ruled in *Jones v Kaney* [2011] UKSC 13 that expert witnesses can be held liable for damages for negligence, overturning 400 years of immunity. This ruling aimed to raise standards and accountability among expert witnesses, emphasising the importance of upholding high professional standards.

## Further information and resources

Below are various RICS resources that you may find useful.

1. [RICS webinar – March 2024](#): view the recording of this comprehensive webinar on best practice for expert witnesses.
2. [RICS Podcast](#)
  - a) #41 - Issues faced by Expert Witnesses and the Courts
  - b) #42 - Dealing with Conflict of Interest in Dispute Resolution
3. RICS practice statements and guidance:
  - a) [Surveyors Acting as Expert Witnesses](#): comprehensive guide written for surveyors who provide expert evidence to be relied upon in civil proceedings before a wide range of tribunals.
  - b) [Conflicts of Interest for Members Acting as Dispute Resolvers](#): this guidance note provides advice on dealing with possible conflicts of interest for surveyors who are appointed to resolve disputes.
4. [RICS Dispute Resolution Service on LinkedIn](#): keep up to date on best practice, articles, events, and commentary.
5. RICS articles on rics.org:
  - a) [Surveyors as expert witnesses](#)
  - b) [Expert witnesses – training should be mandatory](#)
  - c) [Becoming an expert witness](#)
6. [RICS Expert Witness Training Programme](#): in-depth training on the core competencies essential for expert witnesses