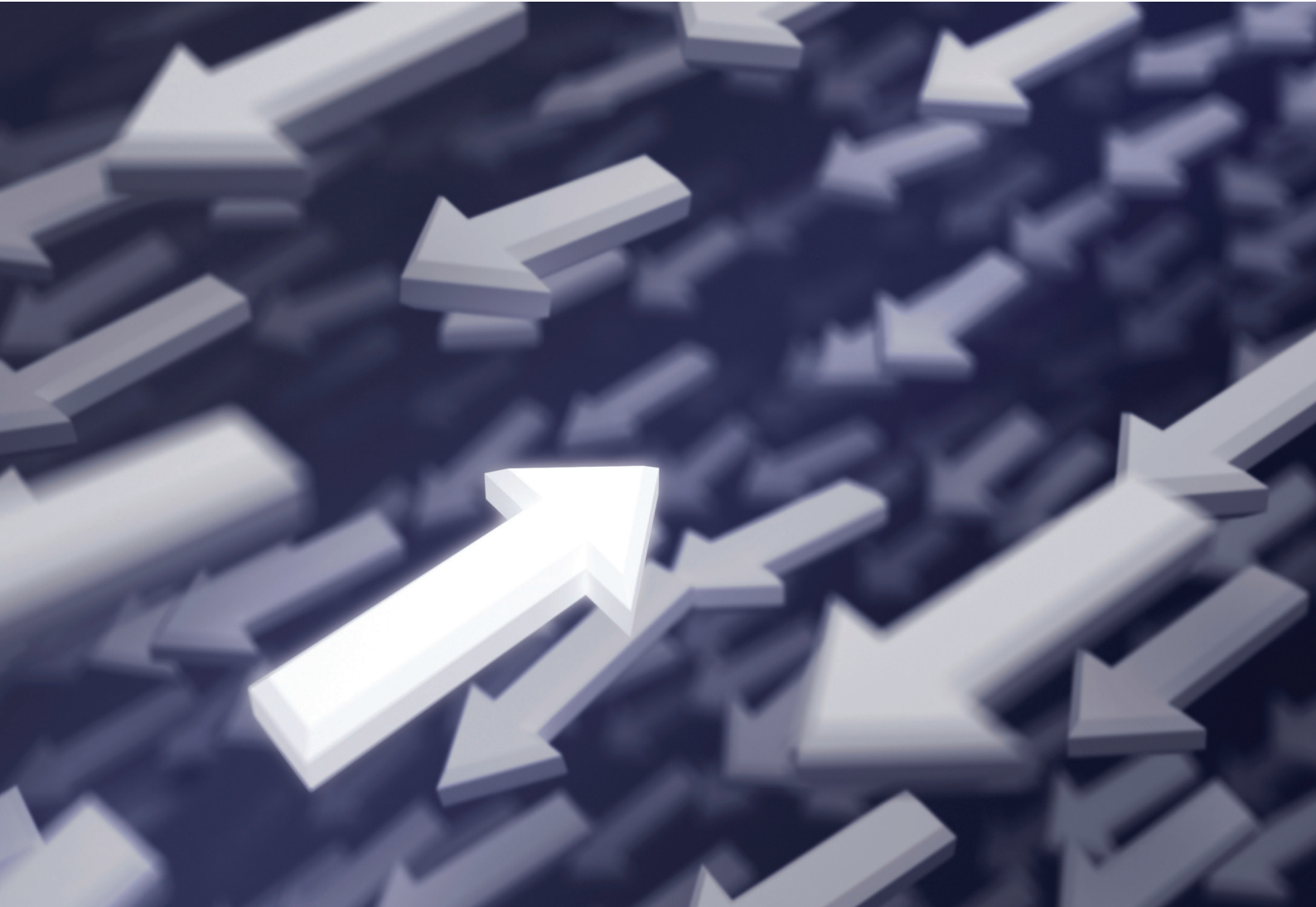




RICS professional standards and guidance,  
England, Wales & Northern Ireland

## Surveyors acting as advocates

Client guide, February 2017



# Surveyors acting as advocates: client guide

RICS professional statement and guidance note,  
England, Wales & Northern Ireland

2nd edition



**Published by the Royal Institution of Chartered Surveyors (RICS)**

Parliament Square  
London  
SW1P 3AD  
UK

[www.rics.org](http://www.rics.org)

No responsibility for loss or damage caused to any person acting or refraining from action as a result of the material included in this publication can be accepted by the authors or RICS.

Produced by the RICS Dispute Resolution Professional Group.

© Royal Institution of Chartered Surveyors (RICS) February 2017. Copyright in all or part of this publication rests with RICS. Save where and to the extent expressly permitted within this document, no part of this work may be reproduced or used in any form or by any means including graphic, electronic, or mechanical, including photocopying, recording, taping or web distribution, without the written permission of RICS or in line with the rules of an existing licence.

Typeset in Great Britain by Columns Design XML Ltd, Reading, Berks

# Acknowledgments

RICS would like to thank the following for their contributions to this professional statement and guidance note:

**Lead author**

Rowan Planterose (DAC Beachcroft LLP)

**Working group**

Guy Fetherstonhaugh QC HonRICS (Falcon Chambers)

Richard Honey MRICS (Francis Taylor Building)

Milton McIntosh MRICS (Excello Law)

Matt Molloy FRICS (MCMS Ltd)

Nigel Sellars FRICS (RICS)

# Contents

|   |           |
|---|-----------|
| <b>Acknowledgments</b> .....                                  | <b>ii</b> |
| <b>RICS professional statements</b> .....                     | <b>1</b>  |
| Principal message .....                                       | 3         |
| PS 1 Application of professional statement .....              | 3         |
| PS 2 Principal duties .....                                   | 3         |
| PS 3 Acting as a surveyor-advocate, and<br>instructions ..... | 3         |
| PS 4 Other duties.....  | 5         |
| PS 5 Conduct as to statements of case, and<br>submission..... | 5         |
| PS 6 Conduct as to evidence.....                              | 5         |
| PS 7 Conduct in relation to the tribunal.....                 | 5         |



# RICS professional standards and guidance

## Surveyors acting as advocates – RICS professional statements

This is a professional statement, which RICS members must act in accordance with.

Sections within professional statements that set specific mandatory requirements for members use the word 'must'. Members must not depart from specific mandatory requirements.

Sections within professional statements that set an expectation or recommend best practice advice use the word 'should'. Where members depart from these, they should do so only for justifiable good reason. Where, in the professional judgement of the member, the departure may have a material impact on the surveyor's advice, the client must be informed in writing of the departure and the reason/s for the departure.

Any content that does not use the word 'must' or 'should' is information.

RICS considers that professional statements are technical standards for the purposes of Rule 4 of both the *Rules of Conduct for Members 2007* and the *Rules of Conduct for Firms 2007* (as amended from time to time).

Members should note there may be legal and/or disciplinary consequences for departing from professional statements. When an allegation of professional negligence is made against a surveyor, the court is likely to take account of relevant RICS professional statements in deciding whether or not the surveyor acted with reasonable competence. Failure to act in accordance with professional statements may, accordingly, lead to a finding of negligence against a surveyor. In the opinion of RICS, a member acting in accordance with relevant professional statements should have at least a partial defence to an allegation of negligence.

In some cases there may be existing national standards that take precedence over professional statements. These can be defined as professional standards that are prescribed in law or federal/local legislation, or are developed in collaboration with other relevant bodies. It is the duty of members to be aware which standards apply.

Members should be up to date and have knowledge of professional statements within a reasonable time of their coming into effect. It is the member's responsibility to be aware of changes in case law and legislation since the date of publication.

## Document status defined

RICS produces a range of professional standards, guidance and information documents. These have been defined in the table below. This document is a professional statement.

### Publications status

| Type of document                 | Definition   | Status  |
|----------------------------------|--|---|
| <b>Standard</b>                  |  |   |
| International standard           | An international high-level principle-based standard developed in collaboration with other relevant bodies.  | <b>Mandatory.</b>   |
| <b>Professional statement</b>    |  |   |
| RICS professional statement [PS] | A document that provides members with mandatory requirements or a rule that a member or firm is expected to adhere to.<br>This term also encompasses practice statements, Red Book professional standards, global valuation practice statements, regulatory rules, RICS Rules of Conduct and government codes of practice. | <b>Mandatory.</b>   |
| <b>Guidance and information</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).<br>Usual principles apply in cases of negligence if best practice is not followed. |
| RICS guidance note [GN]          | Document that provides users with recommendations or approach for accepted good practice as followed by competent and conscientious practitioners.   | Recommended best practice.<br>Usual principles apply in cases of negligence if best practice is not followed.   |
| RICS information paper [IP]      | Practice-based information that provides users with the latest technical information, knowledge or common findings from regulatory reviews.  | Information and/or recommended best practice.<br>Usual principles apply in cases of negligence if technical information is known in the market.                       |
| RICS insight                     | Issues-based input that provides users with the latest information. This term encompasses thought leadership papers, market updates, topical items of interest, white papers, futures, reports and news alerts.  | Information only.   |
| RICS economic / market report    | A document usually based on a survey of members, or a document highlighting economic trends.   | Information only.   |
| RICS consumer guide              | A document designed solely for use by consumers, providing some limited technical advice.  | Information only.   |
| Research                         | An independent peer-reviewed arm's-length research document designed to inform members, market professionals, end users and other stakeholders.  | Information only.   |

## Principal message

When acting as a surveyor-advocate you owe duties to your client. However, you also owe an overriding duty to the tribunal to act properly and fairly as set out in this professional statement.

## PS 1 Application of professional statement

**1.1** The start date of application of this PS is 1 June 2017. This PS applies where you agree (whether in writing or orally) to act as a surveyor-advocate before any tribunal in England, Wales or Northern Ireland; it does not apply where you are acting as an advocate by virtue of legal qualifications, and of rights of audience gained through an authorised or duly recognised body (such as the General Council of the Bar, Law Society, etc.). You **must** have regard at all times to the applicable law, rules, directions, orders or procedures relevant to a particular tribunal, and comply with these in those circumstances when they apply.

**1.2** This PS does not apply to the provision of professional advice prior to the commencement of any formal proceedings before any tribunal, nor does it apply to those surveyors who may assist an advocate. It does, however, apply to all instructions to act as a surveyor-advocate whenever given and from the time so given, and in particular governs the preparation of any documents containing submissions to the tribunal.

**1.3** Where you act as a surveyor-advocate and consider that there are special circumstances which render it inappropriate or impractical for the assignment to be undertaken wholly in accordance with the PS, the fact of, and reasons for, the departure **must** be given in writing to your client; alternatively you may wish to decline instructions or withdraw from a case. Any surveyor who does depart from the PS may be required to justify to RICS the reasons for the departure. RICS is entitled to take disciplinary measures if it is not satisfied with the reasons given and/or the manner in which the departure has been notified or evidenced. In the event of litigation, a court may require you to explain why you decided to act as you did.

## PS 2 Principal duties

**2.1** As a surveyor-advocate you **must**:

- (a) take personal responsibility for the conduct and presentation of your client's case, and act in the best interests of your client
- (b) advance the case you are presenting by all fair and proper means

- (c) act promptly, diligently and competently in all respects
- (d) not allow your integrity or professional standards to be compromised
- (e) not deceive or mislead the tribunal or any opposing party
- (f) take reasonable steps to ensure that the tribunal has before it all relevant decisions and legislative authorities; and
- (g) have adequate and appropriate professional indemnity insurance cover.

## PS 3 Acting as a surveyor-advocate, and instructions

**3.1** You may act only in matters where you have:

- (a) the experience, knowledge and expertise appropriate to the case; and
- (b) the resources to carry out the assignment to the required timescale and to the appropriate standard.

**3.2**

- (a) You **must** not act (or where you have already accepted instructions, you **must** cease to act):
  - (i) in any matter where to act (or to continue to act) would involve you in a breach of the law or where your ability to act (for the client) properly is compromised
  - (ii) in a matter in which there is a risk of a breach of confidential information entrusted to you (or to a partner or fellow employee) by another client, or where the knowledge you possess of one client's affairs might give an undue advantage to a new client. It is permissible to act (or to continue to act) in these circumstances if the original or previous client's consent to act is given, or the original or previous client's permission is given to the use of pre-existing information and knowledge; and
  - (iii) in a matter where a fellow employee or partner has an interest of which you are (or become) aware and it impairs your ability to act properly.
- (b) Conflicts of interest
  - (i) Where not yet instructed and where a conflict of interest exists between you, or your firm, and any of the parties to the proceedings, or where a risk that such a conflict may arise exists, you **must** raise this with your prospective client as soon as it becomes apparent and you **must** advise your



prospective client in writing if you consider that you should, given all the circumstances of the case, decline the instructions. Similarly, where already instructed, you **must** advise the client in writing if you consider that you should, given all the circumstances of the case, terminate the instructions. You may act (or continue to act if already instructed) if the client or prospective client has given informed consent in writing. 'Informed consent' requires:

- that the client or prospective client has given permission in the knowledge that you or your firm have a potential or actual conflict of interest
  - that all relevant issues and risks have been clearly drawn to the attention of the client or prospective client; and
  - that you have a reasonable belief that these issues have been understood by the client or prospective client.
- (ii) Where a conflict of interest exists, or a risk that such exists, between two or more clients or prospective clients in relation to a matter, you or your firm may act (or continue to act if already instructed) if the client or prospective client has given informed consent in writing (as set out in (i) above).
- (iii) You **must** have an effective system and controls in place to identify and assess potential conflicts of interest.
- (iv) RICS has published a guidance note on conflicts of interest for dispute resolvers. It is also shortly to publish a professional statement on conflicts of interest for surveyors acting as expert witnesses or advocates, with which surveyor advocates should comply so far as is relevant to them.

**3.3** Providing advocacy services for an organisation by which you are employed is permissible.

**3.4** Prior to accepting instructions you **must**:

- (a) advise your prospective client in writing that this PS applies and make a written offer to supply a copy of the PS. (Where a copy of the PS is later supplied, the copyright notice on page 1 of this document **must** be adhered to); and
- (b) notify your prospective client in writing that your firm operates a Complaints Handling Procedure (CHP) (if applicable) which can be provided on request.

**3.5** You **must** confirm to your prospective client in writing and in good time whether you accept instructions. Your acceptance should cover your terms of engagement (including the basis upon which your fees will be charged), and any specific mandates given as to important or contentious matters. You **must** then ensure that all such

documents, together with communications from your client, are kept by you as a proper record of your instructions. Any change or supplement to the terms that may be made from time to time should be added to your records.

**3.6** You and your client may enter into an agreement that makes the fee for your services conditional upon the outcome of the case before the tribunal provided you have advised your client in writing of the nature, effect and operation of the agreement, and any risks to the client that might be associated with it. If you are to act in a case in a dual role as surveyor-advocate and expert witness (see further PS 3.9), you **must** also follow the requirements of *Surveyors acting as expert witnesses: Practice Statement 10.1* (declaration of fee basis) for your expert witness role.

**3.7** You **must** only cease to act on reasonable notice and where you are satisfied that:

- (a) instructions have been withdrawn or terminated; or
- (b) your professional conduct is being impugned; or
- (c) there is some other good reason for so doing.

**3.8** You **must** not:

- (a) cease to act without having first explained to your client your reasons for doing so, or having taken all reasonable steps to do so, unless to do so would breach the law
- (b) pass an instruction to another surveyor-advocate or other professional without the client's consent; or
- (c) terminate an instruction accepted (and for which a fixed hearing date has been secured), nor break any other professional engagement in order to attend a social engagement, unless the client, and where required the tribunal, consents.

**3.9** A dual role: surveyor-advocate and expert witness

You **must** only act in a dual role as surveyor-advocate and as expert witness where:

- (a) neither the rules nor the customs of the particular tribunal prohibit you from so acting; and
- (b) other relevant factors make it appropriate (e.g. the disproportionality of retaining two persons in separate roles).

**3.10** In those exceptional circumstances where you intend, or are invited, to act in a dual role as surveyor-advocate and as expert witness you **must**:

- (a) consider both whether it is permissible to do so and also whether it is appropriate; and
- (b) promptly communicate to your client the results of such considerations, setting out in writing the likely advantages and disadvantages, as you see them, of acting in a dual role in the particular circumstances of the case, so as to enable the client to decide whether you should indeed act in such a dual role. In such communication you **must** detail:

- (i) the possible impact on your impartiality as expert witness, and any possible impact in terms of the perception of that impartiality by others; and any possible impact on your advocacy submissions
- (ii) whether or not you will be able to fulfill both roles properly at all times; and
- (iii) whether or not it would be disproportionate in all the circumstances, or otherwise in the client's best interests, for a separate person to be retained to undertake one of the roles.

**3.11** Having complied with PS 3.10 above, you may only act in both roles if the client instructs you so to act.

**3.12** Where you confirm instructions to act in such a dual role, you **must** clearly distinguish between those two roles at all times, whether in oral hearings or in written presentations.

## PS 4 Other duties

**4.1** If at any time you consider that it would be in the best interests of your client to be represented by a lawyer-advocate or other representative (adopting an advocacy role), you **must** immediately advise the client of this. You **must** also advise your client without delay where you consider instructions unacceptable or insufficient, or if you realise you may not be able to fulfil the terms of the engagement and your duties.

**4.2** You **must** not attempt to advise any client on, or advocate, matters beyond your professional competence.

**4.3** Whether or not the relationship between surveyor-advocate and client continues, you **must** keep confidential all information about your client's affairs of which you learn while acting as a surveyor-advocate, save as to that which you are required to disclose by law; that which you are permitted to divulge by your client; and that which **must** be shared with colleagues in your organisation for the proper pursuit of the client's instructions. You **must** not use such information to the detriment of your client, or to the advantage of yourself or another party.

**4.4** You **must** keep the client informed of progress and of any cost implications in the matter, unless otherwise agreed.

## PS 5 Conduct as to statements of case, and submissions

**5.1** You **must** not prepare a statement of case, submissions or other similar documents, unless properly arguable.

**5.2** You **must** not allege fraud or any other dishonest or dishonourable conduct unless you have clear instructions to do so and credible evidence exists to support such an allegation.

**5.3** You **must** not make any statements calculated solely to malign a person.

## PS 6 Conduct as to evidence

**6.1** You **must** not mis-state facts to advance a client's case or for any other reason.

If a client admits to you that he or she has misled the tribunal, you **must** cease to act further unless the client agrees to reveal the truth to the tribunal.

**6.2** You **must** take all reasonable steps to ensure that all documents required by a tribunal to be disclosed are properly so disclosed.

**6.3** When dealing with a witness, you:

- (a) **must** not rehearse or coach a witness
- (b) **must** not encourage a witness to give untruthful or partially truthful evidence
- (c) **must** not, except with the consent of the representative for the opposing side, or of the tribunal, communicate (directly or indirectly) with a witness in connection with the case during the course of the witness's evidence
- (d) **must** not ask questions calculated solely to malign a witness
- (e) **must** not make assertions that impugn a witness whom you have had the chance to cross-examine unless in such cross-examination you have afforded the witness an opportunity to answer the allegation; and
- (f) **must** put your case to an opponent's witness if you intend to challenge his or her evidence and give that witness an opportunity to answer.

## PS 7 Conduct in relation to the tribunal

**7.1** You have a duty to assist the tribunal, including not making statements to it that you know to be untrue or misleading in any way and, unless there is justifiable reason not to do so, complying at all times with directions of the tribunal.

**7.2** You **must** not give any expert (opinion) evidence to the tribunal while in your capacity as a surveyor-advocate, unless acting in a dual role and permitted by the tribunal to do so.

**7.3** You **must** draw the tribunal's attention to all relevant legal decisions and legislative provisions of which you are aware, whether supportive of your client's case or not. In the event that an advocate on the other side omits a legal decision or provision, or otherwise makes an erroneous reference to such, you **must** draw the tribunal's attention to this.



## Confidence through professional standards

RICS promotes and enforces the highest professional qualifications and standards in the development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to the markets we serve.

We accredit 125,000 professionals and any individual or firm registered with RICS is subject to our quality assurance. Their expertise covers property, asset valuation and real estate management; the costing and leadership of construction projects; the development of infrastructure; and the management of natural resources, such as mining, farms and woodland. From environmental assessments and building controls to negotiating land rights in an emerging economy; if our members are involved the same professional standards and ethics apply.

We believe that standards underpin effective markets. With up to seventy per cent of the world's wealth bound up in land and real estate, our sector is vital to economic development, helping to support stable, sustainable investment and growth around the globe.

With offices covering the major political and financial centres of the world, our market presence means we are ideally placed to influence policy and embed professional standards. We work at a cross-governmental level, delivering international standards that will support a safe and vibrant marketplace in land, real estate, construction and infrastructure, for the benefit of all.

We are proud of our reputation and we guard it fiercely, so clients who work with an RICS professional can have confidence in the quality and ethics of the services they receive.

### United Kingdom RICS HQ

Parliament Square, London  
SW1P 3AD United Kingdom

**t** +44 (0)24 7686 8555

**f** +44 (0)20 7334 3811

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

#### Media enquiries

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

### Europe

[excluding UK 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)

### Middle East

Office G14, Block 3,  
Knowledge Village,  
Dubai, United Arab Emirates

**t** +971 4 446 2808

**f** +971 4 427 2498

[ricsmenea@rics.org](mailto:ricsmenea@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)

### Americas

One Grand Central Place,  
60 East 42nd Street, Suite 542,  
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 2925 0068

[ricsbrasil@rics.org](mailto:ricsbrasil@rics.org)

### Oceania

Suite 1, Level 9,  
1 Castlereagh Street,  
Sydney NSW 2000. Australia

**t** +61 2 9216 2333

**f** +61 2 9232 5591

[info@rics.org](mailto:info@rics.org)

### North Asia

3707 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)

### ASEAN

10 Anson Road,  
#06-22 International Plaza,  
Singapore 079903

**t** +65 6635 4242

**f** +65 6635 4244

[ricssingapore@rics.org](mailto:ricssingapore@rics.org)

### Japan

Level 14 Hibiya Central Building,  
1-2-9 Nishi Shimbashi Minato-Ku,  
Tokyo 105-0003, Japan

**t** +81 3 5532 8813

**f** +81 3 5532 8814

[ricsjapan@rics.org](mailto:ricsjapan@rics.org)

### South Asia

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)