

# Conflicts of interest – UK commercial property market investment agency

UK

1st edition, March 2017

Effective from January 2018

# CONFLICTS OF INTEREST – UK COMMERCIAL PROPERTY MARKET INVESTMENT AGENCY

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# RICS professional standards and guidance

## RICS professional statement

### Definition and scope

RICS professional statements set out the requirements of practice for RICS members and for firms that are regulated by RICS. A professional statement is a professional or personal standard for the purposes of *RICS Rules of Conduct*.

### Mandatory vs good practice provisions

Sections within professional statements that use the word 'must' set mandatory professional, behavioural, competence and/or technical requirements, from which members must not depart.

Sections within professional statements that use the word 'should' constitute areas of good practice. RICS recognises that there may be exceptional circumstances in which it is appropriate for a member to depart from these provisions – in such situations RICS may require the member to justify their decisions and actions.

### Application of these provisions in legal or disciplinary proceedings

In regulatory or disciplinary proceedings, RICS will take into account relevant professional statements in deciding whether a member acted professionally, appropriately and with reasonable competence. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS professional requirements into account.

RICS recognises that there may be legislative requirements or regional, national or international standards that have precedence over an RICS professional statement.

## Document status defined

The following table shows the categories of RICS professional content and their definitions.

### Publications status

Type of document	Definition
<i>RICS Rules of Conduct</i>	These Rules set out the standards of professional conduct and practice expected of members and firms registered for regulation by RICS.
International standard	High-level standard developed in collaboration with other relevant bodies.
RICS professional statement (PS)	Mandatory requirements for RICS members and RICS regulated firms.
RICS guidance note (GN)	A document that provides users with recommendations or an approach for accepted good practice as followed by competent and conscientious practitioners.
RICS code of practice (CoP)	A document developed in collaboration with other professional bodies and stakeholders that will have the status of a professional statement or guidance note.
RICS jurisdiction guide (JG)	This provides relevant local market information associated with an RICS international standard or RICS professional statement. This will include local legislation, associations and professional bodies as well as any other useful information that will help a user understand the local requirements connected with the standard or statement. This is not guidance or best practice material, but rather information to support adoption and implementation of the standard or statement locally.

# Glossary of terms

**Note\*:** Within this glossary, where the terms ‘acquisition’, ‘buyers’, ‘sale’ or ‘sellers’ are used, they are intended to include only those seeking to dispose of or acquire a freehold or leasehold interest in a commercial real estate investment in the open market and not assignments, lettings or surrenders.

**Acquisition\*:** obtaining either a freehold or leasehold interest in a commercial real estate investment.

**Agent:** either an RICS regulated firm or an RICS member of a non-RICS regulated firm acting as an intermediary between the parties buying and selling a commercial real estate investment. In the case of an RICS regulated firm, the term ‘agent’ refers to the whole firm, irrespective of whether or not they are RICS members.

**Buyers\*:** anyone seeking to acquire an interest in a commercial real estate investment.

**Client:** any company instructing an agent to act on its behalf for the buying or selling of a commercial real estate investment.

**Commercial investment agency:** the open market sale or acquisition of a commercial real estate investment.

**Commercial real estate investment:** buildings or land solely or partially used for business purposes and intended to generate a profit, either from capital gain or rental income.

**Conflict of interest:** where an agent acts for clients who have competing interests, or where an agent’s personal interest conflicts with that/those of their client.

**Dual agency:** where an agent has a contractual agency relationship with both the seller and the buyer at the same time.

**Incremental advice:** advice (e.g. planning, building surveying, valuation) related to a purchase or disposal that is incremental to an existing instruction to advise the buyer/s or seller.

**Information barrier:** the physical and/or electronic separation of individuals (or groups of individuals) within the same firm that prevents confidential information passing between them.

**Informed consent:** consent given willingly, in writing where possible, by a party who may be affected by a conflict of interest, that party having demonstrated to the RICS member or RICS regulated firm concerned that the party understands:

- that there is a conflict of interest or a significant risk of one
- the facts known by the RICS member or the regulated firm that are material to the conflict of interest
- what the conflict of interest is or may be and

- that the conflict of interest may affect the ability of the RICS member or an RICS regulated firm to advise or act fully in the interests of a client. (For more guidance on this see the global professional statement *Conflicts of interest*.)

**Multiple introductions:** where an agent has competing contractual relationships simultaneously with several buyers.

**Open market:** an unrestricted competitive market in which any buyer and seller is free to participate.

**Sale\*:** a freehold or leasehold disposal of a commercial real estate investment.

**Sellers\*:** anyone seeking to dispose of an interest in a commercial real estate investment.



# 1 Introduction

- 1.1** This professional statement provides RICS members and RICS regulated firms with mandatory requirements when acting on the open market sale or acquisition of a commercial investment real estate opportunity in the UK in order to avoid conflicts of interest prejudicial to their clients' best interests.
- 1.2** Conflicts of interest, if not properly identified and managed, act against the public interest, damage consumer confidence and threaten the integrity of the profession and those acting within it.
- 1.3** The *RICS Rules of Conduct* set out at the top level the requirement to avoid conflicts of interest. The global RICS professional statement, *Conflicts of interest*, 1st edition, March 2017 sets out the high level principles for the appropriate identification and management of conflicts across all areas of RICS practice and geographies.
- 1.4** This professional statement has been produced to address a specific risk identified in the feedback received from the *Conflicts of interest*, global, 1st edition consultation, to maintain transparency, public confidence and integrity in the UK commercial investment market. Additional reviews are taking place in other jurisdictions to ensure relevant standards are in place.
- 1.5** This professional statement supplements the global requirements, and is intended to provide additional mandatory requirements on the application of the global principles to open market commercial investment agency in the UK, taking account of the need for transparency in the particular way in which the relationships between buyers, sellers and agents operate.
- 1.6** This professional statement also provides best practice advice to help meet the RICS Rules of Conduct. More information is available at available at **Rules of conduct**
- 1.7** Section 1.3 of the global RICS professional statement, *Real estate agency and brokerage*, 3rd edition, August 2016 sets out further specific mandatory requirements in relation to conflicts of interest.

## Effective date

- 1.8** This professional statement takes effect from 1 January 2018. The obligations in this statement will apply to all new professional assignments taken on or after that effective date.

## Application in the UK

- 1.9** The mandatory requirements set out in this professional statement apply to all RICS regulated firms and members acting on the open market sale or acquisition of commercial real estate investment opportunities in the UK, irrespective of whether or not they are located in, or conducting that relevant business from, the UK or from another jurisdiction.

## 2 Dual agency

**2.1** This section sets out specific requirements relating to dual agency; where an agent has a contractual agency relationship with both the seller and the buyer at the same time.

**2.2** Section 2.2 of the global RICS professional statement *Real estate agency and brokerage*, 3rd edition, August 2016, states:

‘In jurisdictions where dual agency is accepted this should be only as an exception to the rule, and only if both contracting parties have given their express consent.

As a general rule you should not undertake dual agency.’

**2.3** The practice of dual agency within the UK commercial property investment market is not generally accepted. Consequently dual agency must not be undertaken under any circumstances.

**2.4** For the avoidance of doubt, RICS members working within non-RICS regulated firms are subject to the same criteria as regulated firms when undertaking dual agency in the UK under any circumstances.

### Related firms

**2.5** Where the buyer (or seller) is considered to be a related company of an agent, there is an increased risk that the agent would be unable to act for the seller (or buyer) as to do so could constitute dual agency thereby being prohibited under this rule.

**2.6** Firms **must** each consider whether their own business and ownership structures give rise to inherent risk of breach of this professional statement. However, Commentary Note 3 of the global RICS professional statement, *Conflicts of interest*, 1st edition, March 2017 sets out that it is anticipated that a conflict of interest, simply by way of business/ownership structure, will not arise as long as the following criteria are all satisfied:

- the firms are separate legal entities
- there are no directors, partners or employees in common between the firms
- there is no direct or indirect fee sharing between the firms and
- there is no access to information or common internal data sharing arrangements relating to the area of conflict.

**2.7** If any of the four criteria above are not satisfied, the firm **must not** act unless it can demonstrate that doing so does not give rise to a significant risk of breaching the related firms requirements of this professional statement. **IF** the firm continues to act, it **must** document in full how it has reached the decision that it can do so and demonstrate that written informed consent has been obtained.

## 3 Multiple introductions

**3.1** This section sets out specific requirements relating to multiple introductions in the UK; where an agent has competing contractual relationships simultaneously with several buyers for commercial real estate investment opportunities.

**3.2** Section 2.8 of the global RICS professional statement *Real estate agency and brokerage*, 3rd edition, August 2016, states:

‘Where you are asked to act for a buyer seeking properties similar to other clients for whom you are acting you should advise your new potential client of this in writing (email, letter or fax) before accepting instructions and ask for their written confirmation that they would still like you to act on their behalf.’

**3.3** An agent may make multiple introductions of a commercial real estate investment opportunity.

**3.4** When a client appoints an agent to act on their behalf in acquiring a commercial real estate investment, terms of engagement **must** be agreed in writing and **must** make it clear whether the agent is acting on an exclusive or non-exclusive basis.

**3.5** If the appointment is on an exclusive basis, other prospective buyers with whom there has been an ongoing dialogue concerning the purchase of the same property **must** be informed that the agent is no longer able to advise them.

**3.6** If the appointment is on a non-exclusive basis, the agent **must** obtain informed consent from the client(s), subject to the necessary information barriers being in place.

**3.7** On appointment, whether on an exclusive or non-exclusive basis, the selling agent (or the seller, if unrepresented) **must** be advised accordingly.

**3.8** No individual should act, or be responsible for the supervision of the instruction, for clients competing to purchase the same commercial investment real estate opportunity.

**3.9** Clear and robust information barriers **must** be put in place to maintain confidentiality.

## 4 Incremental advice

**4.1** This section sets out specific requirements relating to incremental advice; where an agent is approached by another party to provide advice (to include, but not limited to building surveying, planning and valuation) related to a purchase or disposal that is incremental to an existing instruction (for example, where the agent is acting for the seller in relation to a disposal but is approached separately by the buyer, or its lender, to provide a valuation).

**4.2** RICS regulated firms and RICS members working within non-RICS regulated firms **must only** provide incremental advice in the following circumstances:

- information barriers **must** be in place between the team dealing with the existing instruction and those providing incremental advice to another party and they **must** maintain confidentiality at all times
- where the agent has an exclusive instruction to purchase, informed consent **must** be obtained from the client before providing incremental advice to another prospective buyer/s
- where the agent has a sale instruction, the client **must** be notified before incremental advice is provided to a prospective buyer, although informed consent is not required.

## Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

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