



CPD Foundation

Conflicts of Interest
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What is a Conflict of Interest?

- What is the central duty of a Professional?
 - To advise and represent clients objectively and independently without regard to the consequences to any third party or the professional
- A conflicting interest is an interest which detracts from the professional's ability to discharge that duty. It may be:
 - An "Party" Conflict
 - An "Own Interest" Interest
 - A "Confidential Information" Conflict

What was the problem?

- Perception of “double dipping” / prejudice to consumers
- Adverse Press
- Questions in Parliament
- Potential threat to confidence in Profession

RICS response (1)

- Regulatory objectives of RICS:
- Royal Charter:
 - “to secure the advancement and facilitate the acquisition of that knowledge which constitutes the profession of a surveyor”
 - “to maintain and promote the usefulness of the profession for the public advantage in the United Kingdom and in any other part of the world.”
- Per RICS:
 - “To assure competence and thereby enhance members’ professional status through providing confidence to consumers and markets”

RICS Response (2)

- Existing Rule:

"Members shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with their professional obligations".

- Regulation

- Enforcement v Education
- Rules v Guidance

- The effect of Regulation should not be to disadvantage Members in competitive markets

RICS response (3)

- Working Group formed June 2015
- Consultation Summer 2016
- Professional Statement published 1 March 2017
- UK Commercial Property market investment agency Professional Statement on Conflicts of Interest to be launched Monday 22 May 2017
- Both effective 1 January 2018

What is an RICS Professional Statement

- “A document that provides members with mandatory requirements or a rule that a member or firm is expected to adhere to.”
- The term also encompasses practice statements, Red Book professional standards, global valuation practice statements, regulatory rules, RICS Rules of Conduct and government codes of practice.
- Global and all disciplines

Structure of the Professional Statement

- Introduction
- Professional Statements on:
 - Conflicts of Interest
 - Confidential Information
- Definitions
- Supporting Guidance Notes:
 - General Commentary Notes
 - Supporting Commentary Notes

Conflicts of Interest (1)

1.1 An RICS member or regulated firm must not advise or represent a client where doing so would involve a Conflict of Interest or a significant risk of a Conflict of Interest; other than where all of those who are or may be affected have provided their prior Informed Consent.

Informed Consent may be sought only where the RICS member or regulated firm is satisfied that proceeding despite a Conflict of Interest is:

- (a) in the interests of all of those who are or may be affected and
- (b) is not prohibited by law,

and that the conflict will not prevent the member or regulated firm from providing competent and diligent advice to those that may be affected.”

Conflicts of Interest (2)

- Systems , management and records
- Professional Statements 1.2, 2.2 and 2.3/ Guidance note 1
 - Identify and manage conflicts
 - Keep records of decisions
 - Implement systems (by 1 January 2018) “appropriate to the size and complexity of their business”
 - Individuals are not required to ‘vet’ their firm’s systems, but they are required to know their firm has considered them

Confidential Information

- 2.1 RICS members and regulated firms must maintain confidentiality of Confidential Information unless disclosure is required or permitted by law, or the RICS member or regulated firm concerned can demonstrate that the relevant party consented to the disclosure before it was made.
- 2.2 Every RICS member working independently or within a non-regulated firm or within a regulated firm must provide to every client all the information that is material to that client's professional assignment of which that RICS member has knowledge.
- Definition of Confidential Information

Informed Consent

- Acting with a conflict of interest is permitted with Informed Consent
- RICS considered the alternative of an absolute prohibition
- Informed Consent means what it says. Affected clients should:
 - Understand the conflict and what its consequences might be
 - Give consent freely and unambiguously
 - In writing
- Can a client ever be asked to consent to an Own Interest Conflict?

Information Barriers

- What can they do?
 - Facilitate acting with a Conflict and Informed Consent
- What can they not do?
 - Become a regular business tool
 - Overcome a Conflict on their own
- Where should the risk lie?

Other issues

- How to manage personal conflicts
- Will it overcome a Conflict if separate but related firms act?

UK Commercial Property Market Investment Agency Professional Statement

- Effective 1 January 2018
- Absolute prohibition on dual agency (double dipping)
- Special rules for Related Firms

Thanks, and Questions



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