



RICS professional standards and guidance, UK

# Conflicts of interest - UK commercial property market investment agency

1st edition, May 2017



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

Parliament Square

London

SW1P 3AD

UK

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

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This guidance was produced by the RICS Commercial Property Professional Group.

ISBN 978 1 78321 189 0

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Typeset using Typefi.

# Acknowledgments

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Simon Wainwright (Managing Director, J Peiser Wainwright)

and

The Investment Property Forum (IPF)

Nick Knight (CBRE)

Mark Morgan (Morgan Williams)

# Contents

<b>Acknowledgments</b> .....	<b>ii</b>
<b>RICS professional standards and guidance</b> .....	<b>1</b>
<b>Glossary of terms</b> .....	<b>3</b>
<b>1 Introduction</b> .....	<b>4</b>
Effective date .....	4
Application in the UK .....	4
<b>2 Dual agency</b> .....	<b>5</b>
Related firms .....	5
<b>3 Multiple introductions</b> .....	<b>6</b>
<b>4 Incremental advice</b> .....	<b>7</b>

# RICS professional standards and guidance

## 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 judgment 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.  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].  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.  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.  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.

# 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 for Members* and *RICS Rules of Conduct for Firms* 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 following RICS ethical standards:

- 1 Act with integrity.
- 2 Always provide a high standard of service.
- 3 Act in a way that promotes trust in the profession.
- 4 Treat others with respect.
- 5 Take responsibility.

For more information on RICS ethical standards see [www.rics.org/uk/regulation1/compliance1/ethics--professional-standards/](http://www.rics.org/uk/regulation1/compliance1/ethics--professional-standards/)

**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:

- (i) the firms are separate legal entities
- (ii) there are no directors, partners or employees in common between the firms
- (iii) there is no direct or indirect fee sharing between the firms and
- (iv) 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.



## 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.

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