



**BUSINESS** Steering clear of conflicts of interest will stop you from becoming a ...

## SERVANT OF TWO MASTERS

Managing conflicts of interest is a fundamental ethical challenge for the surveying profession, and one that arises on a daily basis for firms large and small. But some firms still do not have appropriate processes in place, reveals Eve Salomon, Chair of RICS' Regulatory Board. "It's one of the first things that our members should think about when they're tendering, or given an instruction," she says. "When we inspect members' files for routine monitoring, we can find they are not doing proper mitigation."

Conflicts of interest may take many forms. They can be professional, whereby a surveyor or practice is approached to act on a transaction on which they have already been engaged by another party, or asked to provide a valuation as security for a loan from a bank when they already have a fee-earning relationship with the borrower. They could be personal – a friend might work for a contractor on a tender list – or the surveyor might have a financial interest in the transaction. Patrick Crowther MRICS, managing director of Crowther Overton-Hart in Sussex, was once asked to survey a house he was considering buying himself. "That was an open-and-shut case, you just say 'no way'."

The problem with conflicts of interest cuts to the heart of what it means to be a chartered surveyor, says Salomon. "Acting where there's a conflict puts pressure on the core principles of the profession: to act impartially and in the client's best interests. If the two are competing, you can't give a client a dedicated, impartial service."

It is no longer enough to act in an ethical manner – surveyors must be seen to do so and to be able to prove it. "People expect professionals and public figures to be cleaner than clean. Standards of probity have always been there, but now they can be measured and assessed more readily by

anybody," Salomon adds. In response, RICS is undertaking a review of its guidelines to protect members and the public interest – conflicts of interest account for a very small number of the complaints RICS receives but Salomon expects this to increase as awareness grows.

Not all conflicts are immediately obvious. Crowther Overton-Hart routinely carries out a database check for any link to previous jobs as part of the quotation process, and each quotation is signed off by one of the firm's two directors. Identifying conflicts among its 10 staff is a case of keeping an ear to the ground. "The key is to have the right policy in place but not rely solely on that," says Crowther. "It's about having a clear focus on what's happening day to day, without spying on everyone."

The larger the organisation, the more conflicts may arise – and the greater the importance of a quality database and robust processes, says Eric Forgie FRICS, senior director at Bilfinger GVA. Large firms with multiple departments and offices will send company-wide emails with details of new instructions: "No single party is going to know everything, so you have to go group-wide, inviting anyone to say whether they or the firm has acted for these parties in any form within the last five or 10 years."

### LET'S BE CLEAR

If a potential conflict does surface, complete transparency is essential. But even if all parties agree that the surveyor should still take the job, they should still think carefully, warns Salomon. "Even when it's properly managed, the perception that there's a conflict of interest can stick – to the surveyor and to the transaction. If the press gets hold of it, it not only raises questions over the integrity of that firm, but about the profession as a whole."

Ethical walls are commonly used to avoid a conflict of interest, particularly within medium and larger firms, by making a clear separation between conflicted teams. However, impregnable barriers can be hard to enforce, no matter how robust your firm's policy is, especially in the era of integrated data management and communication. This means a barrier policy may not always be sufficient to remove the conflict, especially where major commercial interests exist.

Professionals are expected to be able to use their own judgement on ethical issues. However, clients' own internal policies are becoming much stricter and increasingly

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preclude any conflict, says John O'Neill FRICS, a partner in the valuation and advisory team at Cushman & Wakefield, who often discovers his agency colleagues are already involved in a project. "Banks in particular are subject to a lot more restrictions now, so you've got to have it all on the table from day one. If there's any doubt at all, it's better to walk away."

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**EVE SALOMON** RICS Regulatory Board

Any failure to deal with conflicts will be followed up through RICS' disciplinary processes and taken very seriously, warns Salomon. "There are regulatory ramifications, but there could also be professional indemnity ramifications, legal ramifications and ultimately reputational ramifications. That's four different things that can hit you if you get it wrong."

Given the potential repercussions, acting with a material conflict of interest is not worth even the most lavish fee – and turning it down may be the best investment you ever make. As Crowther points out: "I don't think it does any harm for a client to know that you're protecting their interests ahead of your own."

**FOR MORE INFORMATION** about handling conflicts of interest, visit [rics.org/ethics](http://rics.org/ethics). RICS is preparing further conflicts guidance, and updates will be published on [rics.org](http://rics.org)

**HOW TO DEAL WITH CONFLICTS OF INTEREST**

- Client consent is not enough: even if both parties agree for you to represent them, consider whether they are able to understand and manage a potential conflict. It is your job to determine if there is a conflict and, if so, decline the instruction.

- Write everything down. Keep a clear audit trail of conflict checks and written correspondence. Make sure to document phone calls as well.

- All professionals should have a defined process. Set

up a database at an early stage to save you trawling through old paperwork as your workload multiplies.

- Apply the "Daily Mail test". If the situation was reported in the press, could you mount a convincing defence?



LEGAL 101...

## Health and safety check



**CHARLES BRIEM** construction law expert and senior associate, HBJ Gateley

A revised approach to health and safety in the UK construction sector means there are now greater demands on companies to ensure high standards.

The Construction Design and Management (CDM) Regulations 2015 came into force on 6 April, introducing new rules that affect clients, consultants and contractors. In a subtle shift in liability, the changes place greater responsibility on clients for the conduct and decisions of the people they employ to oversee health and safety procedure.

A new role has also been introduced, which requires a "principal designer" to be employed on all new projects and existing projects that will continue beyond 6 October 2015.

**How will liability be affected?** Clients are now required to prove they have taken all reasonable steps to ensure health and safety procedures are observed on site, even when they delegate responsibilities to a professional team or contractor. If the wrong party is appointed, responsibility for accidents may rest with the client.

Anyone who engages the services of construction professionals or contractors must ensure that they are competent, that the roles of the project team members are clear, and that there are effective and working communication channels in place.

They must also allow for adequate health and safety resources and welfare facilities for the duration of the construction work.

Professionals and contractors themselves need to demonstrate their expertise and adapt to any new policies and procedures that clients bring in to adhere to the new rules.

**How will this affect existing roles?** Clients are also now required to appoint a "principal designer" who will plan, manage and monitor the preconstruction phase and coordinate health and safety matters. This effectively abolishes the previous role of CDM coordinator.

This new role comes with additional responsibilities, and a crucial difference is that holders must come from the ranks of designers. This means that existing CDM coordinators will not necessarily be suitable for the role, and where necessary clients and their team must ensure that they manage the transfer from an existing CDM coordinator to a new principal designer correctly.

**Get your house in order** The onus is now on clients to be satisfied about the competence and health and safety procedures of those they employ. Ignorance will be no defence, and if clients are found to have fallen short of the expected standards, they may be blocked from continuing a project until they can demonstrate they have changed the way they work. [gateleyuk.com](http://gateleyuk.com)