

## Ethics and party wall practice

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Every practitioner is subject to an element of professional custom – 'this is the way we've always done it', which could evolve into bad practice. Readers of RICS Party wall legislation and procedure guidance note seventh edition, which came into effect on 1 December, might see the regulatory sections given increased prominence and regard this as a new imposition. In reality, party wall surveyors are regulated to the same standard as every RICS member.

Bad practice can have a powerful negative impact if left unchallenged. It can unwittingly be followed by inexperienced practitioners, while others may seek to exploit a myth that they have special status to commercial advantage.

This is exemplified by reading RICS disciplinary cases. The 2018-19 RICS Appeal and Disciplinary Hearing against Mr Philip Antino resulted in expulsion due to gross misconduct. The complaint that led to these proceedings was directly linked to Antino's practice, with the appeal hearing considering the right of RICS to regulate members operating under the Party Wall etc. Act 1996.

Professional bodies' clear authority to control party wall practitioners who are members of a regulatory scheme was confirmed in *Woodman-Smith v Architects Registration Board* [2014] EWHC 3639 (Admin). The error here centred on the need to issue formal terms of business to owners at the commencement of an instruction.

All the basic legal requirements of the government's Provision of Services Regulations 2009 still apply and fully bind a party wall practitioner in an identical manner to every other UK trading business. Although party wall practitioners operate under a specific statutory code for the administration of the legislation, they have not been exempted from the general expectations of these regulations.

The following are some points of professional practice to remember to avoid any wrongdoing or RICS Regulatory issues.

### Security of expenses

The custom is to identify parties as an 'owner' rather than 'client'. This does not remove any protection enjoyed by that party as a client under RICS Regulation. Should an RICS member hold a financial deposit under section 12(1) of the 1996 Act this is regulated and protected in accordance with the obligation for client account money. Section 12(1) funds should never be deposited into a member's private bank account; they should be ringfenced and separate with all necessary safeguards as per RICS client account requirements.

### Appointments

The guidance note focuses on the statutory specifics of the party wall appointment. This does not remove wider business obligations; terms of business should be available to appointing parties.

### Aggressive or heated meetings

Neighbour disputes can become highly emotive. Practitioners should be professionally trained to defuse potentially aggressive meetings. RICS members should be conscious that they could be voice- or video-recorded in any meeting without their knowledge or consent. A member exposed to an

unexpected confrontation may wish to record fully the context of the meeting immediately, in the anticipation that words gestures or meaning could be used against them by a vindictive party.

An RICS member is at times required to be clear and professionally robust stating for instance: 'The works you are undertaking contravene my client's rights of ownership and if you do not cease they will take necessary legal action.' You should never get involved in physical threats or abuse. The case transcript for Antino gives examples of inappropriate behaviour.

Crucially, all members should consider whether they are conflicted from taking an appointment at the outset and any such perceived situation is best avoided.