

RICS Professional Regulation and Consumer Protection department  
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Professional ethics guidance note:  
Part 2 case studies

Suggested response to ethical issues and dilemma outlined in Part 10 of Guidance Notes on Professional Ethics

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| Problem 1 | Valuers' associates                              |
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General advice:

It is not easy to define "solutions" to problems like these. Sometimes several options can be given. More than one solution may be appropriate in a given context. The practitioner must follow his or her convictions and professional judgement. The acid test, however, is whether the chosen option reflects the principles set out in the RICS Guidance Notes on Professional Ethics, and complies with RICS Rules of Conduct. These suggested responses offer avenues for thought only, and discussion.

Introduction

The following represents a discussion of the nature of the ethical issues, dilemmas, factors and considerations comprised in the identified problem scenario. A standard framework has been devised that treats similarly all the Examples of Ethical Issues and Dilemmas in Section 10 (10.1.1 – 10.1.7), page 5 of the RICS Guidance Notes on Professional Ethics. The framework employed for analysis of each scenario is as follows:

- A. Problem
- B. History and creation of problems
- C. Departure from good practice
- D. Ethical dilemmas for resolution
- E. Solutions that preserve business integrity and relationships

Problem 1 – Valuers' Associates

A prospective site purchaser and developer (D) has identified Valuers Associates (VA), which is marketing a site for client/vendor (A), as a possible provider of management service once the site is acquired. Naturally, VA would receive a fee from the vendor for selling the site but has calculated that D's fee for management and sub-letting would be far in excess.

Scenario

Here, we are looking at a possible conflict of interest situation, and there is a risk to business integrity, and commercial relationships.

History and creation of problems

The purchaser, D, seems to believe that VA would make an efficient manager of the anticipated development, with marketing skills to encourage lessees and to act as an

effective agent for D, were he to become landlord. In this, D may have acted innocently, seeing the arrangement as logical and economical in the appointing of agents with good ability. However, has VA acted unwisely in allowing negotiations to reach this point without warning D that it could not enter into simultaneous contracts with both vendor and purchaser of the site?

#### Departure from good practice

Even if the contracts were not to be contemporaneous,<sup>1</sup> knowledge by VA of the possibility that it could enter, even at a later stage, into an agreement to manage and engage in sub-letting on the part of the purchaser could induce it to influence the offer price it recommended to the vendor. Moreover, the fact that agreement to act as manager and agent for D for a larger fee than that paid to it by the vendor, favourably disposes VBA towards D rather than A, in whose best interests VA should act, through its Terms of Business and moral obligation. The thorough knowledge of codes of conduct expected of a competent and honest practitioner should have led VA to proceed very cautiously. The scenario, though, leads one to suppose VA has realised it is poised on the edge of a precipice and has paused to consider its action.

#### Ethical dilemmas for resolution

For the avoidance of doubt “client” includes past and prospective clients, in this context:

The foundation of the dilemma surrounding this problem is conflict of interest, which has three aspects:

- (i) **Client/client conflict:** the vendor (A) wishing to sell the site for the highest price consistent with market rate, local land values, any special value attaching to the site and aspirations for investment capital, and the purchaser (D) with concern for the lowest reasonable offer the purchaser will accept consistent with his own valuation of the site and plans for its development (but see Rules 19 of Rules of Conduct. **Solutions that preserve business integrity and relationship**, below).
- (ii) **Client/Member<sup>2</sup> conflict:** central to negotiation of price is Valuers Associates’ primary duty to A in return for a fee but which now has an expectation of a fee from the purchaser (and a higher fee, besides) that it will gain by possibly acting against the interests of the client/vendor
- (iii) **Inter-client/Member conflict:** in which a Member cannot act impartially in the competing interests of two clients<sup>3</sup>

The situation in (i) above, as depicted here, is normal in business negotiations and is often the subject of a ‘zero sum’ or distributive process in which there is a negative correlation between the goal attainments of the parties<sup>4</sup> so that, for example, a proportion of gain for the vendor on selling price is an equal loss for the purchaser and vice-versa. Ordinarily, it is not a conflict of interest occasioned by the action of a professional but in this scenario there are overtones suggesting that it would be.

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<sup>1</sup> i.e. if the contract for selling the site were to be completed before that for management and sub-letting were struck up.

<sup>2</sup> meaning a Member of RICS

<sup>3</sup> op.cit.s.11.1.4

<sup>4</sup> ‘The Nature of Negotiation’, Joe and Sue Carpenter (1999) in Negotiation, Lewicki, Roy, J, Saunders, David M and Minton, John, W, (1999), 3<sup>rd</sup> edition, (Boston: McGraw Hill)

In (ii) the Member has abrogated discretion towards his client and could, if disclosing privileged information concerning A to D, be guilty of breach of confidentiality.<sup>5</sup>

#### Solutions that preserve business integrity and relationships

Rule 19 of the Rules of Conduct (conflict between the interests of clients) states that where a conflict arises or may arise between the interests of two or more clients of a firm, a Member shall consider whether or not he or his firm is prepared to act or continue to act for any or all of those clients and, if he decides to act or continue to act, he shall:

- (a) disclose to each client the possibility and nature of the conflict, the circumstances surrounding it and any other relevant facts;
- (b) advise them in writing to seek independent advice on the conflict, and
- (c) inform each client in writing that neither he personally nor his firm can act or continue to act for him unless thereafter either:
  - (i) the clients request him to do so unconditionally; or
  - (ii) subject to specified conditions that the Member has put in place arrangements for handling the conflict which the clients have approved in writing as acceptable to them.

Rule 18 of the Rules of Conduct (conflict between the member's interest and a client's interest), states that where a conflict arises or may arise between a Member's interests or those of any associate of his and the interests of his client, a Member shall consider whether or not he or his firm is prepared to act or continue to act for that client and, if he decides to act or continue to act, he shall:

- (a) disclose to the client at the earliest opportunity the possibility and nature of the conflict, the circumstances surrounding it and any other relevant facts;
- (b) advise him in writing to seek independent advice on the conflict; and
- (c) inform the client in writing either that he and his firm are not prepared to continue to act for the client in this capacity or that he personally or his firm cannot act or continue to act for him unless thereafter:
  - (i) the client requests him to do so unconditionally; or
  - (ii) subject to specified conditions that the Member has put in place arrangements for handling the conflict which the client has approved in writing as acceptable to him.

#### RICS Guidance to the Rules of Conduct

Whilst the Institution imposes this minimum standard of action by Members in respect of conflicts of interest, there may well be circumstances in which professional judgement dictates that it would be prudent to decline to act. Underpinning this Rules is the principle that Members must not allow any personal interest (financial or otherwise) to interfere, or be seen to interfere, with the exercise of their independent professional judgement. If any conflict (actual or potential) arises it must be dealt with in accordance with these Rules and if it is appropriate in all the circumstances to act or continue to act, full and prompt disclosure must be made and evidenced in

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<sup>5</sup> op.cit.11.1.7

writing. Guidance on this subject is available in the Guidance to the Rules of Conduct.

Members are reminded that there will be statutory provisions dealing with conflicts of interest. For example, in the United Kingdom the requirements of the Estate Agents Act 1979<sup>6</sup> and the Order and Regulations introduced thereunder may be applicable.

Thus the advice given by RICS Rules of Conduct is that a Member encountering conflicts of interest (described in parts (ii) and (iii) in D. Ethical dilemmas for resolution above), should urgently consider withdrawing from instructions or, if uncertain whether this is appropriate, inform his client of the facts accordingly so that s/he may seek independent advice. In application to this scenario, this indicates that VA should cease to act for A or at least disclose the approaches of D to A so that the vendor can decide whether he wishes to continue to retain VA to sell the site.

With regard to admission of fees and benefits, Rule 22 of the Rules of Conduct dealing with **Transparency of fees and benefits** states that a Member shall disclose to his client the nature and, where known, the basis or amount of any fee, commission or other benefit (other than that agreed with his client) that he stands to gain as a result of his appointment by the client.

#### Commentary

It is a fundamental principle of professional practice and of agency law that a professional adviser or agent should not make a secret profit. Under agency law the agent is under a fiduciary duty to account to his clients for any such profits. As a general principle, Members are not prohibited from taking a financial interest in matters upon which they are instructed (*although there is a danger that such an interest might interfere, or be seen to interfere, with the exercise of the Member's independent judgement*).<sup>7</sup> Indeed some clients may positively wish them to do so as an expression of confidence. Nor are they prohibited from accepting trade discounts. They are, however, required by their duty of good faith to disclose any such benefits to the client.

When considering their terms of engagement, Members should consider whether there are any benefits which they may obtain and notify the client accordingly.

In the situation depicted here, more than legitimate profit, commission or the benefits of discount that accrue to a member are involved because fees for management and sub-letting would be expected to continue (through contract) for an extended period and that they should eventually exceed the fee for selling the site is not surprising.

It is important to know whether an ordinary person would consider the second came into being only as a consequence of the first and whether there was an intention on the part of VA to make a secret profit. VA would be well-advised to inform the client/vendor of the circumstances as a matter of professional ethical behaviour.

If VA chooses to inform A of the approaches received by the purchaser for management of the site, s/he can seek advice and is free to withdraw or continue with the arrangement if all parties agree. This could only be done with the most stringent of conditions and supervision.

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<sup>6</sup> 1979, ch.38; in particular ss.15. – (1)-(6), Interests on clients' money; 18.-(1)-(7), Information to clients of prospective liabilities; and 21.-(1)-(6), Transactions in which an estate agent has a personal interest.

<sup>7</sup> Italics to emphasise the relevance of this advice to the scenario in question

## Problem 2 – Dodgy work sheets!

Quantity Surveyors Partnership is engaged by a small client to assist with the construction of an office extension.

The contractor appointed by a separate contract between the client and the contractor is one with whom QSP have worked on numerous occasions and have an associated development company for whom QSP have occasionally undertaken consultancy.

Variations to the office project arise and the contractor submits day work sheets and subcontract invoices which QSP (because of their involvement on other work) know cannot be correct.

### Scenario

In working on an office extension project with a known contractor, Quantity Surveyors Partnership (QSP) is suspicious that, under the guise of project variations, the client is being improperly charged for time and subcontractor invoices. However, QSP enjoys an occasional working relationship with a development company associated with the contractor. Friction between QSP and the contractor could redound upon this relationship and business opportunities lost. QSP is thus in a bind.

### History and creation of problems

Variations to contracts are not unusual. They normally occur when unforeseen circumstances arise, even with the best of planning. It is the duty of QSP to deal with the variations correctly so as to avoid slipshod contractual agreements and poor contract management.

### Departure from good practice

Principally a matter of good business practice rather than failed ethical procedures, inattention to basic administration has resulted in a dichotomy for QSP in which the possibly unethical behaviour of a business associate must be brought into question at the risk of damaging another valuable relationship.

### Ethical dilemmas for resolution

It is reasonable for any debtor to be able to question its creditor's invoices and indents for payment and to request proof for derivation of charge. However, if the contractor is attempting to deceive, this information cannot be produced. The dilemma for QSP is whether to cancel the present contract and risk harm to the relationship with the development company, or authorise the payments with insistence upon a more regularised system of contract cost estimation and contract in future.<sup>8 9</sup>

### Solutions that preserve business integrity and relationships

QSP must weigh the benefits and losses of continuing in association with this contractor. However, QSP is at liberty to avoid further dealing with the contractor it suspects of improper practice, provided, for example, it could show valid reasons in

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<sup>8</sup> An option of reserving right to sanction if matters do not improve can be declared but would be in the judgement of those dealing with the situation at first hand.

<sup>9</sup> A difficulty with this option is that it could be viewed as giving approval to irregular practice that is counter to the general spirit of RICS codes of conduct. However, QSP is engaged unavoidably in damage limitation and it must chart the best course through the hazards (see also Part F, General Advice herein).

any future competitive tendering exercise for preferring a different organisation.<sup>10</sup> The development company should therefore have no occasion to sever relationships, as the awarding of contracts to a different contractor for future work should be seen as fair.

### Problem 3 – Middle East contract

Professional Service Partnership (PSP) has an on-going assignment in the Middle East. When the new partner-in-charge arrives on site, he finds that a number of his key staff have personal connections with the government and contractors. It is strongly suspected that such relationships involve the taking or giving of substantial benefits without informing PSP head office. There is a major long-term contract involving the host government and local contractors that was negotiated before his arrival. The contract has been approved by head office and awaits his signature. What should the partner do?

### Scenario

We do not know whether the partner-in-charge was party to the contract negotiations, but s/he certainly was unaware of personal connections between key staff of Professional Services Partnership (PSP), the host government and contractors. In view of the fact that commission of works by a government is likely to be large in scope and with significant financial implications, PSP will be interested in maintaining the good business relationships with the government that it has enjoyed through previous assignments and to continue these into the future. However, the partner-in-charge is faced with a *fait accompli* in being expected to sign the contract, possibly under some psychological pressure because of his/her responsibility towards both company and client, and, inevitably, will violate professional codes of conduct in so doing, unless able to renegotiate ethically sound terms that would avoid vitiating the entire commercial scheme.

### History and creation of problems

Key staff in PSP appear to have engaged in corrupt practice of which the company was unaware. On first examination, it is probable they have breached the terms of their contract of employment by acting in their personal interests rather than those of the company. We do not know if they received inducements from the client or contractors to help secure the new assignment but, naturally, they would be under such a suspicion until investigations are carried out.<sup>11</sup> Further, unless the key staff involved in the current contract negotiations are entirely different from those in previous contracts, it is conceivable that other agreements connected with the on-going assignment were similarly affected and that a history of corrupt practice may be revealed.

### Departure from good practice

PSP has a duty to ensure that its staff receives directions about probity in business matters, to circulate a policy document among them and to make them aware of the consequences of departing from its provisions. Those engaged in developing relationships with external organisations and personalities or in positions of responsibility for preparing contracts, discussing costs and terms, and indeed those key members likely to work in close collaboration with clients, contractors or agents, whether in preparation for a contract or its operation, are placed in special positions of trust. A company should take steps to ensure it is comfortable over the integrity of

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<sup>10</sup> There is an unwritten moral justice that a company in this position of QSP should be allowed to protect itself against malpractice provided, as in this instance it can do so without accusation.

<sup>11</sup> The RICS Guidance Notes of Professional Ethics, s11.1.1

those employees.<sup>12</sup> A company must also check the credentials of new staff to ensure there is no history of irregular practice on their record or in the opinions of referees.<sup>13</sup> That there is evidence of irregularity in the present situation signifies that PSP has not shown sufficient care in selection of staff or monitoring of procedures, neither has it ensured that only sufficiently well-regarded staff are given authority to deal with matters applied to the substance of their work.<sup>14</sup> With senior and executive staff, a system of disclosure of other connections and interests in the same or a related sector of the industry is advisable, as those at the top of their careers and influence frequently build legitimate associations with other organisations, or can become shareholders.<sup>15</sup> All such precautions would be normal in a well-regulated organisation able to give assurance over ethical standards applied to its business, clients and employees.<sup>16</sup>

#### Ethical dilemmas for resolution

The authority of the partner-in-charge to sign the contract appears not to be in question but PSP is silent as to whether s/he has authority **not** to sign. S/he is now in a bind because signature in possession of present knowledge would make the partner complicit in gross irregularity; no truthful explanation offered for unwillingness to sign could avoid disclosure of suspicious actions by key staff and the negligence of the company to have regularised practice and procedures within its administration. The new contract is therefore at risk with serious consequences for both agreements already entered into and those entertained in future.

#### Solutions that preserve business integrity and relationships

One course of action is immediate withdrawal from the assignment, instant dismissal of the key staff concerned and, at the same time, elimination of future business potential with the client. However a company wishing to prosper for the sake of its directors, shareholders and employees could be said to have no other obligation than to follow its registered objects of business; in fact there is a real, though sometimes weakly-expressed, moral obligation on the part of the company to the welfare of these groups. Business does not consist of challenges and decision-making polarised into 'rightness' or 'wrongness'. **Just** compromises can be reached with great care while having regard for the law. In the RICS Guidance Notes on Professional Ethics, it is recognised that Members may have to adjust behaviour in response to particular situations while accepting responsibility for departing from the rules of conduct and be prepared for consequences at law.<sup>17</sup> In such a situation, a Member should be prepared to give reasons for such departure and keep careful, chronologically arranged records of actions taken.

If the partner-in-charge wishes to salvage the situation, the following might be contemplated. A stay of 48 hours before signing the contract could be requested. This may not be regarded by the client as unusual as often details require verification, even at the last minute. Additionally, in certain cultures, it is often regarded as discourteous to rush into business closure and there is first an elaborate exchange of pleasantries. In this 'breathing space', a brief but urgent investigation of the roles and actions of the suspect staff would be undertaken both at the host location and, via telephones, Telex, Internet or other means, at the company headquarters.

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<sup>12</sup> *ibid.*s.8.1.3

<sup>13</sup> *ibid.*s.8.1.3

<sup>14</sup> *ibid.*s.8.1.4

<sup>15</sup> *ibid.*s.11.1.4

<sup>16</sup> *ibid.*s.2.5

<sup>17</sup> Introduction to Guidance Notes on Professional Ethics

It should also be remembered that it is a normal part of culture in some societies to use personal contacts in order to secure favourable agreements; in fact, it is believed this guarantees reliability. In such a sense, the key staff may not have committed an offence in the eyes of the client, though excusing them in the view of the company would be more difficult. PSP would then be able to take the option of replacing staff key to the operations of the contract with trusted others,<sup>18</sup> leaving disciplinary action over the original staff at its disposal in a separate arena. The client may or may not object to the change but transparency in the relationship, though risking client dissatisfaction, would be ethically appropriate for a company operating within the RICS codes of conduct.<sup>19</sup> Whether this were to jeopardise business relationship with the client in the future would be subordinated to the need to comply with codes of conduct. Care would need to be exercised in explaining that the culture in which PSP operates does not permit collusion over business in such fashion and understanding left to the degree of internationalism adopted by the host country. Assuming it is considered appropriate to explain your actions to the client, again this is a matter of judgement.

A final but no less important consideration would be that of the law. It should be quickly established whether the key staff have breached their contracts of employment so as to be summarily dismissed,<sup>20</sup> the company having regard for the consequences of an appeal against this action; whether irregularities in the staff's dealing with clients and contractors contravene public law in the country where the company is registered and the host country; whether the company can sue privately if the staff have received pecuniary advantage against the interests of the company. The law applying in the country where the contract is signed is significant. It is possible in some circumstances to declare the law applying to the contract to be the law of the supplying party's country, though the client's legal experts may insist it is the law of the host country. Further, certain contract terms may be illegal in a host country (for example arbitration clauses, so that difficulties would arise in any future dispute over the operation of the contract). Therefore, legal advice should be sought as to whether the actions of the key staff constitute an offence in the host country if that is where they were considered to have been committed.

#### Problem 4 – Terrible landlord!

CS Consulting operate a number of managed houses in multiple occupation as agent for a major client. The local authority have indicated that, under statutory powers, they wish to see conditions in these properties improved, particularly with respect to fire precautions. The landlord instructs CSC to use delaying tactics to defer the implementation of the improvements. What should the consultants do?

#### Scenario

CS Consulting (CSC) is being asked by its client to forestall local authority instructions, that have the force of statute, to improve aspects of health and safety provisions in houses that it manages as agent. By inference, this could include clouding the issues in response to local authority enquiry and general economy with the truth over implementation of safety measures. The client therefore risks prosecution and CSC may not evade an action simply because it was acting under

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<sup>18</sup> possibly the partners or directors assuming direct control

<sup>19</sup> *ibid.*s.2.5: "The definition of Professional Ethics endorsed by the (RICS) Working Party is: 'giving of one's best to ensure that clients' interests are properly cared for, but in doing so the wider public interest is also recognised and respected.'"

<sup>20</sup> i.e. without a disciplinary procedure being followed in the form of verbal and written warnings as laid down by association rules or, in their absence, statute.

instructions from the agent, since a company belonging to a professional organisation has a duty to inform itself as to law and regulation.<sup>21 22</sup>

#### History and creation of problems

If the local authority has recommended improvement of fire safety precautions to the properties, does this signify previous neglect and CSC's role as agent in not drawing such matters to the attention of the client/landlord? Regulations and quality standards are introduced constantly and, sometimes, it is difficult for landlords to keep up. It is of course, the duty of the agent to be aware, and advise accordingly. Nonetheless, the scenario suggests the landlord's aversion to any expense that he can shun, even when provisions are mandatorily imposed. CSC may not have been sufficiently robust in emphasising to the client the ethical rules by which it operates in its professional capacity.

#### Departure from good practice

Failure to advise clients about health and safety directions so as to avert statutory compulsion, violates RICS ethical Rules of Conduct<sup>23</sup> is generally unprofessional in an agent and could lead to a claim for negligence. The client/landlord must not be allowed to feel in any way that the agent is a 'soft touch' over regulations and CSC should assist the client to understand the need to maintain safety standards.

#### Ethical dilemmas for resolution

CSC faces a conflict in that the client's instructions are at odds with legal requirements and is being asked to operate outside the law. Harm to the business relationship might well result from CSC's refusal to comply with its client's wishes. Withdrawal from the management contract would have the consequence of financial loss for its unexhausted period. It is improbable the client would sue for breach under the circumstances, but not impossible.

#### Solutions that preserve business integrity and relationships

CSC should inform the client/landlord that it will engage in illegal activity over the compulsion orders concerning fire safety in the properties it manages. If the client will not undertake to comply with the local authority direction, CSC will have no alternative but to sever the management contract, regardless of consequences. Better by far would be successful persuasion of the client by CSC that the ramifications of delaying implementation of the compulsion orders are extremely serious for both client and property manager, with severe penalties to be expected from prosecution. In terms of economic risk and general prudence it would be constructive to point out that the costs of improving fire safety might well be less than legal sanction and associated court costs.

#### Problem 5 – Cheap and Cheerful

Cheap and Cheerful plc: "We cut corners to provide services at low fees. We consider winning commissions more important than the quality of service provided". Would you instruct this firm?

#### Scenario

Cheap and Cheerful plc offers itself as a 'bargain basement' service that appears to relegate standards to the bottom division of the professional league for the sake of volume and rapid turnover of business.

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<sup>21</sup> The RICS Guidance Notes on Professional Ethics , s.6.1.2; 6.1.3

<sup>22</sup> See also *ibid.*s.3.2 concerning self-regulation of RICS

<sup>23</sup> *ibid.*s.11.1.2

#### History and creation of problems

This company is trying to undercut the market for surveyors, albeit with an unmeritorious advertising slogan. There are precedents in the consumer and professional market for 'no frills' services (though without advancement of low professional standards as if a virtue). Partly this has been as a reaction to self-protectionism and monopoly among professions apparent in the past that is now largely broken.

This de-regulation has also relaxed rules on advertising for many professionals including chartered surveyors. There may in fact be a debate on whether the supposed high standards of traditional services ever were real or more a matter of self-perpetuated mystique and whether they were altogether necessary for the consumer/client.

However, the issue is whether a "cheap and cheerful" professional service must not fall below minimum standard, however "basic" there core service might appear.

#### Departure from good practice

The foregoing raises questions of the importance of standards for the sake of trust and accountability in business and of reassuring the public and industry about professionalism in practice. Cheap and Cheerful seems to hold professionalism in low regard. Does this company have an organisation wide ethics management, audit and improvement system?<sup>24</sup> Is there a partner or director responsible for ethical compliance?<sup>25</sup> Does it have a complaints procedure in accordance with RICS Regulations that can also evaluate and manage complaints on unethical practices?<sup>26</sup> Has it developed and published a code or statement of ethical conduct?<sup>27</sup>

Cheap and Cheerful plc slogan appears disreputable. Does it have concern for health and safety matters in its business operation?<sup>28</sup> Are its financial records in good order?<sup>29</sup> Does it engage in fair competition?<sup>30</sup> Has it regard for environmental protection?<sup>31</sup> Does it respect the local community and consider the impression it creates among the public and fellow professionals?<sup>32</sup>

RICS has, in many areas, laid down minimum standards of service and behaviour: most particularly in Practice Statements and compliance with these is mandatory.

#### Ethical dilemmas for resolution

RICS regulations lay down requirements on advertising, including details on the content and accuracy of attestations in literature and graphic display.<sup>33</sup>

A distinction can be drawn between conduct and competence. Users seriously contemplating business with Cheap and Cheerful plc should appreciate that, there may be issues of competence as well as conduct, here, although the advertisement does not expressly say one would not receive services of training and qualified staff.

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<sup>24</sup> *ibid.*s.7.1.1

<sup>25</sup> *ibid.*s.7.1.2

<sup>26</sup> *ibid.*s.7.1.3

<sup>27</sup> *ibid.*s.7.1.4

<sup>28</sup> *ibid.*s.11.1.2

<sup>29</sup> *ibid.*s.1.1.8

<sup>30</sup> *ibid.*s.11.1.9

<sup>31</sup> *ibid.*s.11.1.15

<sup>32</sup> *ibid.*s.11.1.16

<sup>33</sup> *ibid.*s.11.1.14

A potential client would have to consider whether awarding a commission to this company would be fraught with uncertainty, balancing risk of irredeemable bad practice or incompetence with economic or other imperatives for rapid results, or possibly some other (dubious) agenda in which the client accord standards low priority.

At one's most generous, liberal and forgiving, it could be thought just conceivable that Cheap and Cheerful plc made a brash attempt to oversell itself and the bizarre claim to unprofessionalism was part of a strategy to attract attention.<sup>34</sup>

Solutions that preserve business integrity and relationships  
Preservation, or even introduction, of business integrity with Cheap and Cheerful plc looks to be beyond the realm of possibility and a relationship with the company, as represented, would involve palpable dangers to any responsible client. There would be no risk in bypassing this company when seeking professional practitioners to provide the services of a surveyor.

#### Problem 6 – Chateau Margaux

SD Consulting have just completed a large, complex project for a client. Alternative suppliers were considered, and one selected which SDC has not used before. Contracts were negotiated and the project completed over a twelve month period. The final handover was celebrated with the supplier hosting a lavish dinner attended by the consulting team and key client management. The team leader complimented the host on the wonderful Chateau Margaux 1982. The next day a case of the wine was delivered to her home. What should the consultant do?

#### Scenario

SD Consulting has just completed a large value contract for a client using a supplier with which it has had no previous relationship that has celebrated completion by hosting a dinner party for the consulting team and key client management. In addition, the supplier subsequently has sent a gift of wine to the consulting team leader based on her complimentary remark at dinner about its excellence. The team leader is at liberty to accept the gift but knows (we are to suppose) that to do so would violate her professional codes of conduct<sup>35</sup> and therefore faces an ethical dilemma. She must balance the risk of returning the wine against that of offending the supplier and vitiating the opportunity for further business relationships.<sup>36</sup> She may question the motives behind making the gift. Further, she may suspect her chance remark was interpreted as a request which, if fulfilled, would favourably dispose her towards the awarding of future contracts to the supplier.

#### History and creation of problems

This scenario leads us to suppose the contract was awarded as a result of competitive tender or similar process as appropriate to national or EC rules concerning scale of contract cost. In this there is no suspicion of irregularity. Extension and acceptance of a dinner invitation are innocent acts, but could they be interpreted here as inducement on the part of the host to obtain further commissions?

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<sup>34</sup> This is so-called 'negative advertising' in which a product or service is deliberately disparaged by the promoter to create an innovative approach reckoned actually to attract buyers because they are incredulous at the damaging statements.

<sup>35</sup> The RICS Guidance Notes of Professional Ethics, s.11.1.1

<sup>36</sup> We do not know if SD Consulting has been satisfied with the operation of the contract and, therefore, whether a future relationship is contemplated. The company has not used these suppliers before.

We do not know if SD Consulting expressed any terms for acceptance and participation in the celebration.

#### Departure from good practice

Invitations to competitive tender can include statements of ethical terms of business and the expected conduct of relationships during the contract term. This will be an important consideration in global business deals. Certainly, in the contract negotiations, SD Consulting should have taken the opportunity to outline best practice and involve those responsible in the company for issue of policy, ethical compliance and audit of procedure in meetings at the earliest stage.<sup>37</sup> Further, SD Consulting may have neglected to provide training in ethical management of contract negotiations that would have equipped personnel in this instance either to resist the advances of the supplier or to make terms for acceptance of them clear,<sup>38</sup> or included monitoring and audit in its staff performance and personal appraisal systems.<sup>39</sup> It can inform staff of corporate standards in business dealing through internal publication of codes of conduct.<sup>40</sup>

#### Ethical dilemmas for resolution

An unconditional acceptance of the wine may be seen to compromise the team leader and can make her appear beholden or 'bought off' with respect to future business with the supplier. Ideas of unfairly influencing her future decisional behaviour could have been contemplated.<sup>41</sup> Perceptions are important, here.

#### Solutions that preserve business integrity and relationships

Accepting hospitality from business associates does not necessarily violate RICS codes of conduct provided the terms of acceptance are expressed, namely that it cannot be taken into account in the awarding of future contracts, nor would be regarded in any sense as extra payment for favour. To avoid the offence that such a statement could cause, it would be preferable to state that the gesture would be reciprocated at another time, perhaps at Christmas or another public, sporting or musical event, when hospitality is extended to multiple associates and therefore is unpreferential.<sup>42</sup> The team leader should be cautioned about making chance complimentary remarks that can be misinterpreted, albeit with innocent and honest intent, though it is impossible to guard against this eventuality totally at social occasions. However, better understanding of the ethical basis of the relationship between the two companies might have prevented the error of judgement by the supplier.

A compromise acceptance of the gift could be effected by donating the wine to SD Consulting's office hospitality or staff benefit stores. However, might the supplier still believe the act of giving the gift had secured some ulterior purpose? An additional difficulty is the value of the gift, and its delivery to the team leader's home, rather than openly to the office.

#### Problem 7 – Save that tree!

A client instructs her professional advisers to take every available measure to help prevent a proposed housing development on playing fields overlooked by her house.

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<sup>37</sup> *ibid.*ss.7.1.2; 7.1.5 and s.7 generally.

<sup>38</sup> *ibid.*s.8.1.4;

<sup>39</sup> *ibid.*ss.8.1.2;

<sup>40</sup> *ibid.*s.7.1.5

<sup>41</sup> A parallel situation could exist if the gender of giver and recipient of the gift were reversed, with subtle variations of role and intent.

<sup>42</sup> *ibid.*s.11.1.1

One of the key factors in enabling the development to proceed, is the removal of a mature oak tree at the site entrance in order to improve junction visibility. Within the practice, there is a young Chartered Surveyor who has very strong views on protecting the environment. He has been working with the client on this commission and suggests that he should invite some of his friends from the local airport extension campaign to come and occupy the tree and should use the opportunity to gain publicity for the firm and the services which you are able to provide. What would be your instructions?

#### Scenario

This is a familiar situation in the conflict between construction and conservation in today's rural society. Here, an idealistic Chartered Surveyor is assisting his company's client to resist a building development but has engaged in forms of public protest leading, possibly, to civil disobedience that do not arise from his professional duties towards either client or practice. Moreover, he has presumed that any publicity gained from this action can be used to promote the practice and its services.

#### History and creation of problems

The distinction between professional duty and freedom to act according to conscience or private conviction is a matter for the practice partners or directors to draw with the employee.

#### Departure from good practice

Does the Chartered Surveyor concerned misunderstand his role as a chartered surveyor, if we can imagine his proposed actions are in any way consistent with professional behaviour? There is an ongoing obligation on the practice to ensure behaviour continues to comply with codes of conduct through monitoring and audit or procedures, performance review and personal appraisal. A clear indication should have been given of the overarching imperative to comply with ethical rules when the member of staff was newly appointed,<sup>43</sup> at which juncture the opportunity either for the employee to declare personal interests that might clash with the business of the practice, or for the practice to make its own enquiry on the matter, could have been taken.

Moreover, professionals who do not work within the parameters of the law may be subject to criticism and even discipline by their employers and professional bodies.

The Chartered Surveyor concerned has (or will have) offended against the code of conduct regarding political and social behaviour.<sup>44</sup> Using the occasion to advertise or promote the practice does not directly contravene RICS code of practice rules in their present form of expression but is likely to bring the practice and the profession into disrepute for manifest opportunism and is against the general spirit of ethical behaviour for which the rules provide. However, specific constraints on advertising demand that it should be fair and not misleading<sup>45</sup> and it could be said that association of the practice with public protest takes unfair advantage of media exposure against those surveyors who do not use such means and, further, it misleads in that it is no part of the legitimate service of the practice or profession to engage in public demonstration for or on behalf of itself or its clients.

#### Ethical dilemmas for resolution

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<sup>43</sup> *ibid.*s.8.1.3

<sup>44</sup> *ibid.*s.11.1.17

<sup>45</sup> *ibid.*s.11.1.14

The issue here is simple in that the surveyor concerned has confused his personal convictions with professional responsibility and is risking the reputation of the practice. It is assumed the practice does not wish to enlist in the public protest and prefers to dissociate itself with the actions of its surveyor in creating and escalating the demonstration. The client's views may be significant in that she could feel the public protest will fuel her argument and it would be an important matter for determination whether she approves of, or even encourages, the action. Loss of business caused by withdrawing from instructions if the practice disapproves of its client's methods must be measured against the loss of reputation to the profession if it were seen encouraging unprincipled actions.

#### Solutions that preserve business integrity and relationships

The young Chartered Surveyor must be given an opening in which to relinquish his activist role and revert to entirely professional practice, having been given an explanation of his errors, their effects and likely breach of ethical rules. In the event of his failure to agree, the practice must decide whether removing him to another commission is sufficient to curtail his unprofessional activity, or whether disciplinary procedure should be applied, with the eventual prospect of dismissal.

#### Problem 8 – You scratch my back, and I'll scratch yours.....

You have quoted a fee of £5,000 for a survey of a commercial property. The potential client advises you that a competitor had quoted £4,500, and suggests the job is yours, if you match that quote.

#### Scenario

A potential client is engaging in a 'Dutch auction' in attempting to persuade you to lower your fee to match that of a competitor so as to gain a commission.

#### History and creation of problems

How was your original fee of £5,000 reached? In reducing your quote, to match your competitors, is there a danger that you will not be able satisfactorily to carry out the survey? What if the competitor then lowers his quote to £4,000. Where will this end?

#### Departure from good practice

To submit to 'Dutch auction' pressures or attempting to win favour by compromising on fees could violate RICS rules of ethical conduct governing fair competition<sup>46</sup> and could, even remotely suggest amenability to bribes.<sup>47</sup>

#### Ethical dilemmas for resolution

You will be tempted to win a commission by adjusting your fee to oust a competitor and gain preference, especially if business is poor. For the modest sum mentioned in this problem the survey is likely to be small in scope and would not take long. Could you recognise that, having cut costs, this may affect the "rules" for future commissions with this client? What will prevent your gain on this occasion turning into loss on another?

#### Solutions that preserve business integrity and relationships

Are you satisfied as to the basis of your original quotation? Quoting fees that do not properly reflect a professional person's use of time, and expertise as required, may not be of long-term benefit to your practice, either professionally or commercially. However, the RICS, in response to OFT requirements, no longer promotes "scale fees". This suggests a degree of competition, is desirable, but it must be tempered

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<sup>46</sup> *ibid.*s.11.1.9

<sup>47</sup> *ibid.*s.11.1.1

by professional considerations. Of course, it would be desirable if the potential client selects a surveyor according to fairness and not manipulation. The fee stated in any estimate ideally should reflect a surveyor's costs and if the potential client **honestly prefers the services you offer**, your full fee should be accepted and the commission granted on that basis. Perhaps the potential client would be impressed by such attestation and surmise that s/he would find it among all surveyors through a uniform code of behaviour!

Note applicable to all problems:

General advice:

"Solutions" to problems based on ethical principles of ethical behaviour cannot be definitively expressed. Sometimes several options can be given. More than one solution may be appropriate in a given context. The practitioner must follow his or her convictions, and professional judgement. The acid test, however, is whether the chosen option reflects the principles set out in the RICS Guidance Notes on Professional Ethics, and complies with RICS Rules of Conduct. These are the standards against which the Member will be judged if his or her decision is challenged.