

# Understanding informed consent

- 1 These supporting materials are intended to be helpful to RICS-regulated firms and RICS members but do not constitute formal RICS guidance. These materials are not intended to, nor should be construed as, providing a comprehensive guide to all required and/or appropriate actions.
- 2 These supporting materials are relied upon at your own risk.
- 3 The appropriate course of action will largely depend on the type and size of the relevant firm and, to this end, these supporting materials should be used flexibly in the context of the scenario in question.
- 4 Some aspects of the supporting materials may not apply or be relevant to a particular firm.
- 5 It is for the RICS-regulated firm or RICS member to determine whether further detail and checks beyond those laid out in these materials are appropriate.

## 1.1 What is informed consent?

Informed consent occurs when a party who might be adversely affected by a conflict of interest acknowledges the existence of that risk but still agrees to instruct an RICS-regulated firm or RICS member to proceed with the assignment.

The professional statement sets out how to use informed consent. It states that the party can only give informed consent if the person(s) explaining the position to them:

- is entirely transparent about any material factors; and
- is sure that the party affected understands what they are doing (including the risks involved and any alternative options available) and is doing so willingly.

If an actual or potential conflict of interest is identified, the professional statement prohibits RICS members and regulated firms from proceeding with an assignment, unless informed consent is obtained from the affected parties. Caution should be exercised when deciding whether to seek informed consent from clients, as often this means there is an increased risk in engaging in the professional assignment.

## 1.2 Other factors to consider

- Where a conflict of interest or a significant risk of one exists, the RICS member or regulated firm should only consider proceeding with the work (and seek informed consent in order to proceed) if they are satisfied that all of the relevant clients' (or other parties') interests will be served by them doing the work (as opposed to another firm doing it).
- If there is reason to believe that the affected party does not have sufficient understanding of the issues to make an informed decision the instruction should be declined. Clarity can be sought from an independent and suitably-qualified professional (e.g. a lawyer, or an accountant) about the situation before instructing

the RICS-regulated firm or RICS member to proceed despite a conflict of interest. If having sought additional advice the query has not been resolved satisfactorily, the RICS member or regulated firm should not proceed.

- A decision to proceed with a professional assignment by obtaining informed consent should be logged in the record maintained for that professional assignment.
- If informed consent is obtained in a meeting or by telephone, written communication should be sent as soon as possible afterwards, noting the content and conclusion of the discussion. This should not only reflect that consent was obtained, but that informed consent was obtained, as defined in the professional statement.
- It should be remembered that there are situations where informed consent will not, or may not, be enough, e.g. a contentious assignment or where the appointment is subject to a specific statutory or regulatory regime. The professional statement provides more details.

Appendix A of the professional statement provides an example of the type of document that can be used to obtain informed consent from affected clients and other parties. However, it is for the RICS member or regulated firm to decide what type of document to use in each context to achieve informed consent.

### **1.3 Steps involved in seeking informed consent**

See Figure 1 (overleaf) for an illustration of the steps involved in seeking informed consent. When obtaining informed consent the RICS member or regulated firm should consider and discuss the following with the affected parties:

Before proceeding with an assignment, the RICS member or regulated firm needs to be satisfied that the affected party has demonstrated that they understand:

- that there is a conflict of interest or a significant risk of a conflict of interest
- that the facts known by the RICS member are material to the conflict of interest
- what the conflict of interest is or may be; and
- that a conflict of interest may affect the ability of the RICS member to advise or act in the interests of a client.

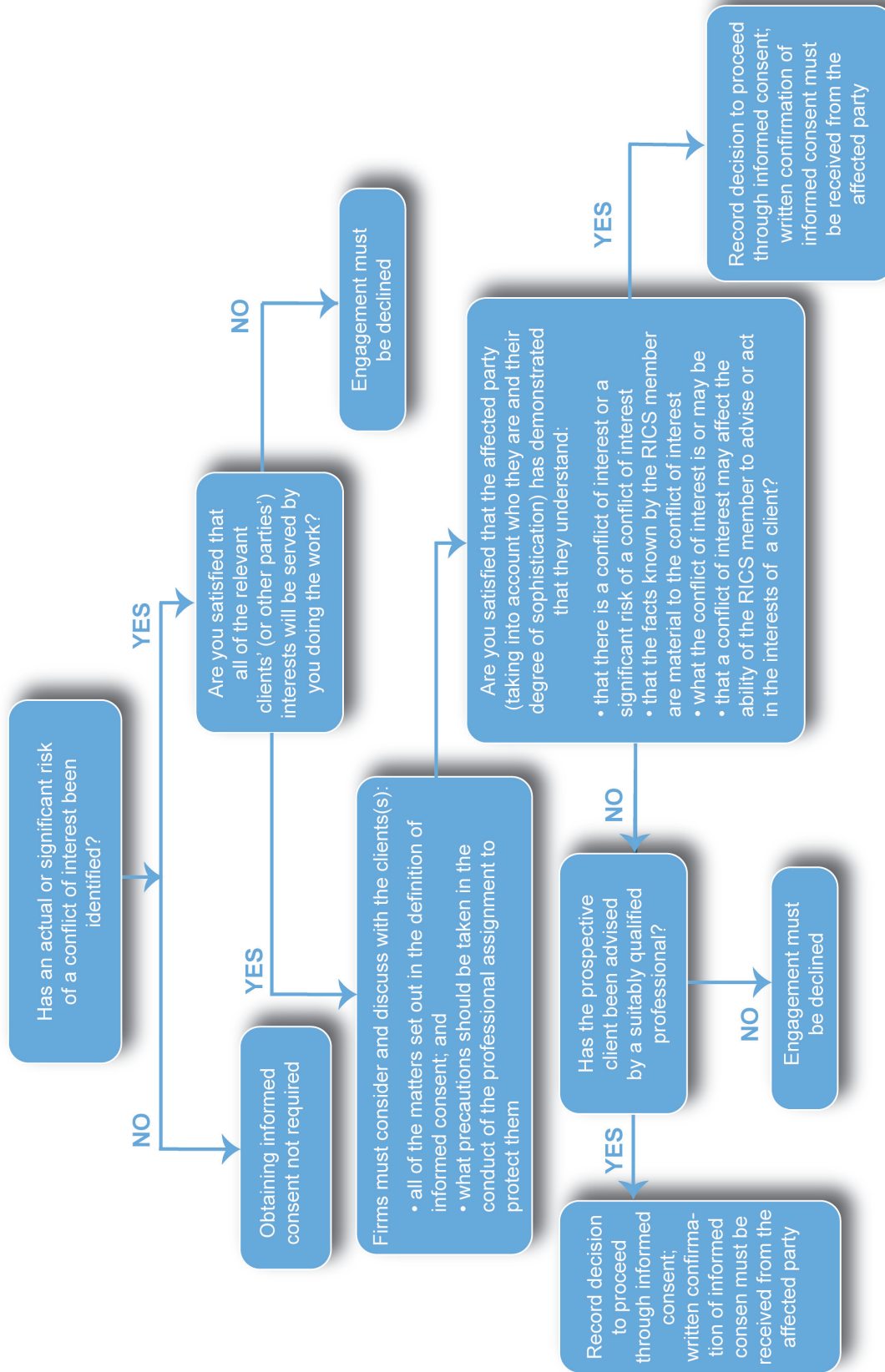


Figure 1: Informed consent decision tree