

**The Faculty of
Party Wall Surveyors**



FPWS



**GUIDE TO
CODE OF
CONDUCT**

July 2017 Edition

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Introduction

This Guide to the Faculty's new Code of Conduct is designed to assist the membership in interpreting the various rules and enable them to achieve standards of best practice. It is not designed to be a document that exhaustively cover or itemise all the possible scenarios that would, or could, constitute a breach of the Code of Conduct. The Code of Conduct is replicated below, with the guidance provided in blue beneath each rule.

Overarching Provision

1. Corporate and Non-Corporate Members shall conduct themselves at all times in a manner that befits their professional status and membership of the Faculty, and shall not engage in behaviour that may reasonably be regarded as prejudicial to the interests of the Faculty or its other members.

The above is a catch-all provision. Providing comprehensive examples of the types of conduct that do not befit one's "professional status and membership of the Faculty" would be an impossible task, except to say that one would probably immediately identify such conduct when encountering it.

Bye Laws

2. Corporate and Non-Corporate Members shall comply with the bye-laws of the Faculty, where applicable.

Breach of the Bye-Laws does not in itself immediately constitute misconduct. Some Bye-Laws carry their own sanction, such as failing to pay the annual membership fee on time (Bye-Law 4.6.3) whilst some of the Bye-Laws are merely designed to formalise the internal working of the Faculty.

Conflicts of Interest

3.
 - (1) Corporate and Non-Corporate Members shall avoid conflicts of interest (whether real or apparent) at all times when acting as a party wall surveyor. Appointments or selections should not be accepted where there is a known conflict of interest (real or apparent).
 - (2) Where a conflict of interest subsequently becomes apparent or arises, Corporate and Non-Corporate members shall immediately inform their appointing owners and, where appropriate, any other appointed surveyors.

Party wall surveyors act in a 'quasi-judicial' capacity and therefore they should act impartially and with integrity. Whilst not expressly forbidden by the Act, undertaking a statutory appointment as a party wall surveyor in conjunction with other roles such as the project architect or project manager could possibly be, or appear to be, incompatible and should be avoided. For example, employees, or those who regularly work under a contract for services of an appointing owner should not act as their employer's party wall surveyor. Essentially, if you could exploit, or appear to exploit, the functions of your statutory role inequitably, for financial gain, or for other benefit, then this could be considered as a conflict of interest.

Party wall surveyors from the same firm or company should also avoid accepting appointments (or selections) for the same matter from both building owner and adjoining owner. Similarly, a third surveyor should avoid working for the same firm or company as one of the party appointed surveyors.

*Party wall surveyors will often select third surveyors who are known to them, and whom they trust to have the suitable experience, competence and integrity to deal with a referral as and when required. However, third surveyors who have business connections with a party appointed surveyor should not be selected. Similarly, if the third surveyor is known to any of the appointing **owners**, in either a personal or business/professional capacity, he should not be selected.*

Honesty and Integrity

4. Corporate and Non-Corporate Members shall conduct themselves with integrity at all times. In doing so, members shall:
 - (1) seek to resolve disputes under the Act both fairly and expeditiously.
 - (2) not undertake, and charge for, work that is not reasonably deemed necessary for the resolution of the parties' dispute.
 - (3) not charge excessive costs.
 - (4) not misuse or misappropriate appointing owner's funds.
 - (5) not instruct or refer work to others where it is not in an appointing owner's best interests in pursuance of the Act.
 - (6) not instruct or refer work to others for commission, discount or other similar such arrangement.
 - (7) where appropriate, promptly pay any creditors such as other professionals or tradesman instructed in relation to party work.
 - (8) respect confidentiality and the privacy of others insofar as practically possible.

To quote the Court of Appeal in **Gray v Elite Town Management (2016)**, “the statutory procedure is intended to be a simple, inexpensive dispute resolution mechanism”. The Faculty endorses that view, and remains concerned that some party wall surveyors are increasingly being seen by both the general public and commercial developers alike as expensive red tape, the cost of whom is often out of proportion to the notifiable works proposed. Surveyors should therefore remain mindful of, and manage, any costs as they accrue ensuring that they remain ‘reasonable’ as required by the Act.

With respect to surveyors’ costs, the following observations should therefore be noted:

- (i) it is noted that the hourly rates of party wall surveyors, particularly in London and the South East of England, continue to rise at an alarming rate, and that these rates are often far higher in comparison to other professionals involved in other areas in the construction industry. It is difficult to understand why this should be so;
- (ii) a surveyor’s costs must ultimately be “reasonable” irrespective of the hourly rate charged. In many cases, particularly residential ones, if the costs of the surveyors are not proportionate to the actual cost of the notifiable works, then those costs would not under any common sense judgment be considered reasonable. Often, the notifiable works (and therefore the cost of them) will form a very minor part of the overall works proposed. Party wall surveyors’ costs should therefore reflect that, and be in proportion both to the extent and the cost of the notifiable works;
- (iii) where a party wall surveyor has kept an accurate time sheet of the work done, this does not mean that the cost of doing all that work will necessarily be ‘reasonable’ and should be paid by either of the parties. Party wall surveyors should ‘act effectively’ and efficiently;
- (iv) in simple residential works, it will often be preferable to agree a fixed fee for the making and serving of the primary award that authorises the works and regulates their execution, and the agreed surveyor route should also be used where possible for such works (provided it is made clear that the agreed surveyor will be the sole arbiter in the matter);
- (v) if surveyors’ costs are to be included in an award, then a surveyor has a duty to ensure that the costs of his opposite number are also reasonable. In particular, the costs claimed by adjoining owner’s surveyors are sometimes simply accepted in full by the building owner’s surveyor, and inserted into an award without any questioning as to the reasonableness of those costs. Such a practice is inequitable, and only those costs which both surveyors agree are reasonable should be included in an award. It should be remembered that a surveyor’s signature on an award is effectively an endorsement that the costs cited in that award have been agreed by that surveyor as being ‘reasonable’ in accordance with section 10(12)(c) and 10(13) of the Act.

The Faculty also notes that it is the practice of some party wall surveyors to make unsolicited approaches to potential adjoining owners and inform them that building works are proposed for the neighbouring property that may involve notifiable works under the Act, and to then seek a statutory appointment as an adjoining owner's surveyor, often in advance of any notices being served. Such approaches to adjoining owners usually occur following a search of local authorities' planning applications, and surveyors who engage in such a practice are often regarded as being akin to ambulance chasing lawyers. The Faculty certainly does not endorse such an approach, believing that it is more likely than not to create disputes between neighbouring owners. However, whilst the Faculty would prefer its members not engage in such approaches, it does not seek to prohibit them from obtaining work in this manner, provided that any such pre-emptive approach to an adjoining owner must explain, in the clearest of terms that:

- (i) an adjoining owner may consent in writing to a notice and allow the works to continue without the need for surveyors to be appointed and an award to be made;*
- (ii) consenting to a notice does not affect an adjoining owner's rights under the Act should a dispute relating to the works subsequently arise, and at that subsequent time if necessary, a surveyor of the adjoining owner's choosing can be appointed;*
- (iii) once an appointment form is signed agreeing to a surveyor's appointment, that appointment cannot be rescinded, as per section 10(2) of the Act.*

The author of any pre-emptive letter which does not fully explain the above may be deemed to be in a serious breach of the Faculty's Code of Conduct.

With respect to acting 'expeditiously', the following should be noted:

- (i) The Act's processes are clearly intended to be implemented efficiently and in a timely manner. The various timescales within the Act are indicative of such. As a general guide, the majority of awards should be completed within a matter of a few weeks at most, particularly those involving relatively straightforward works within a residential setting. Larger, commercial developments or complex residential proposals may often require longer time scales due the complexity of the works and/or the number of adjoining owners.*
- (ii) The Faculty has received complaints with respect to surveyors who do not respond, or take a very long time to respond, to their appointing owner's queries. This is also unacceptable. If a party wall surveyor cannot act effectively, and attend promptly to matters, whatever the reason, then he/she should not accept a statutory appointment in such a matter. The Faculty recommends a*

guideline timescale of 14 days maximum to deal with queries from appointing owners should be dealt with, although it is hoped that most queries could be dealt with more quickly than that.

Impartiality and due regard to appointing owners.

5.

- (1) Corporate and Non-Corporate Members appointed or selected under section 10 of the Act should act, and be seen to be acting, impartially.
- (2) Whilst maintaining impartiality, party appointed surveyors should nevertheless act with due regard to the interests of the party who appointed them.

Party wall surveyors should act impartially. With respect to third surveyors, this will mean being open and transparent in all the communications they have with the parties or their appointed surveyors.

*Acting impartially in a 'quasi-judicial' role means keeping appointing owners adequately informed. Matters relating to the Act's procedures should be clearly explained to an appointing owner, ideally from the outset, so that the parties have an understanding of what is involved in the process of making an award, and what they can and cannot expect from that process. Similarly, surveyors should take consideration of their appointing owner's concerns and desires, and act upon them where appropriate and provided that it is in the interest of resolving the dispute. However, doing so is of course fundamentally not the same as receiving instructions and acting upon them as if they were the agent of the appointing owner. **Ultimately, the Act is there to enable building works to be undertaken whilst simultaneously protecting owners' property rights, and surveyors should bear that in mind when resolving the statutory dispute.** They should not act upon an adjoining owner's instructions where they have been provided, for example, in an attempt to thwart the proposed works, or to perpetuate historic disputes between neighbours.*

Competence

6. Corporate and Non-Corporate Members shall carry out their work with due skill, care and diligence and with proper regard for the professional and technical standards expected of them as competent party wall surveyors.

A party wall surveyor does not need to be a qualified or chartered construction professional to be appointed as a party wall surveyor. The Faculty does not require its members to be chartered construction professionals, as there are a number of people who have vast experience in the construction

industry without being chartered and who make excellent party wall surveyors. Conversely, many chartered construction professionals do not have the requisite knowledge to make competent party wall surveyors. What is required of members is to be able to demonstrate relevant building construction knowledge and experience in conjunction with a good working knowledge of the Act's procedures.

Diligence

7. Members shall apply themselves diligently, and in doing so shall carry out their work in a timely manner and with proper regard for the standards of service expected of them and as required by the Act.

Whilst many clauses in awards are 'standard' every award should be bespoke to the parties and the project in question, and should not be served without diligent regard to correct gender, grammar, pluralities, reference to third surveyors in two-surveyor awards only, and should be thoroughly proof read for such potential errors. Members should remember that the only material legacy that we leave is the award itself, and that this not only demonstrates the competence of the surveyors, but also represents the standing of the Faculty and the profession as a whole.

Courtesy and Respect

8. Corporate and Non-Corporate Members shall at all times act and correspond in a courteous and respectful manner with all owners, surveyors, and other professionals.

Showing courtesy and respect is merely one aspect of dispute resolution. Surveyors should be mindful that their primary function is to resolve the statutory dispute that has arisen between the parties, and not to escalate it with, for example, discourteous, imperious, peremptory or otherwise disrespectful behaviour. Nevertheless this should be balanced against the need, where necessary, to be assertive or steadfast in upholding the requirements and standards of their primary statutory function.

Advice and Assistance

9. Corporate and Non-Corporate Members, when undertaking their statutory functions, work with other surveyors within a spirit of impartial collaborative cooperation.

Acting within the spirit of collaborative cooperation with a fellow surveyor and not being unnecessarily adversarial or confrontational is an essential part of dispute resolution. Where members of the Faculty are each appointed or selected under the Act it is expected that they will co-operate with each other to the extent necessary to achieve their statutory function, by undertaking every reasonable endeavour to

resolve the dispute and make an award. Time spent 'intellectual jousting' or gaining one-upmanship at the expense of appointing owners should be avoided.

Advertising

10.

- (1) Advertising shall be factual and relevant, and must not contain untrue or misleading information.
- (2) Corporate and Non-Corporate Members shall ensure that the personal details of clients / appointing owners remain confidential and shall not be disclosed in any advertising without prior permission.

Companies' or firms' adverts should clearly set out which personnel are members of the Faculty, and should not give the impression that all the surveyors, or even the business itself, are members of the Faculty.

Advertising should also not give the impression, expressly or implicitly, that the business concerned is endorsed by the Faculty, or that it is connected with the Faculty in any way other than by way of its personnel being members of the Faculty. Stating, implying, or giving the impression that personnel are members of the Faculty should be treated in the same way as the 'Use of the Faculty Logo' in section 11 below.

Use of Faculty Logo

11. Subject to Rule 13 below, Corporate Members are entitled to use the Faculty's logo on their company's or firm's website(s) and/or stationery, but this is permitted solely on the basis that:

- (1) the same website expressly states which personnel are Corporate Members of the Faculty, and
- (2) such a statement must be sufficiently prominent.

12. Non Corporate Members are not entitled to use the Faculty's logo at all.

The guidance given in relation to advertising equally applies to use of the Faculty's logo. See section 10 above.

Use of Faculty's Post Nominals

13. Only Corporate Members shall use the post nominals MFPWS, FFPWS, HonMFPWS or HonFFPWS respectively, and strictly in accordance with their requisite membership status.

The guidance given above in relation to advertising and the Faculty's logo also applies to the use of the Faculty's post nominals.

Continuing Professional Development ('CPD')

- 14.
- (1) Members shall undertake a minimum of ten hours relevant activities per membership year for CPD purposes. At least five of these hours must be hours accredited by the Faculty.
 - (2) The Faculty reserves the right to make enquiries of members to ensure compliance with CPD. Members, when requested, shall therefore provide the Faculty's designated CPD co-ordinator with details of CPD undertaken in any particular membership year (currently 1st July to 30th June).
 - (3) For the avoidance of doubt Non-Corporate Members and Honorary members do not have to comply with the aforementioned CPD requirements.

The Faculty requires CPD compliance amongst its members. Failure to keep up to date with such compliance may result in disciplinary action being taken. The purpose of CPD compliance is to ensure that members' competence and knowledge is maintained and kept up to date, thus ensuring that they are kept fully cognisant with best practice and up to date with any recent case law, so that the public is best served. Accordingly, members should be able to produce a record of their CPD hours completed upon request.

Attendance at any regional forum, seminar, conference or any other event provided or organised by the Faculty, whether as a speaker or a paying attendee, will provide CPD hours that the Faculty regard as 'accredited', as will articles written for the Faculty newsletter.

Other non-accredited CPD hours should be party wall related, and, for example, may include the reading of relevant articles or webinars, or attendance at party wall related events provided by other chartered registration bodies, the Pyramus & Thisbe club, or legal providers. It should be noted that the aforementioned list is non-exhaustive. If in doubt as to whether any particular matter could constitute

relevant CPD hours, members are encouraged to contact the Faculty's Professional Standards department for further clarification.

For the avoidance of doubt 'members' does not include Honorary Fellows or Honorary Members. Additionally, members who do not practise in any way whatsoever as party wall surveyors (i.e. lawyers) do not have to comply with these CPD requirements.

Professional Indemnity Insurance ('PII')

15. Practising members are required to maintain appropriate PII for party wall work purposes and commensurate with the level of party wall work that they undertake.

Notification

16. Corporate and Non-Corporate members shall:
 - (1) notify the Faculty if convicted of a criminal offence.
 - (2) notify the Faculty if found guilty of any complaint or disciplinary action relating to their professional activities.
 - (3) notify the Faculty if they become bankrupt; if they or their company enter into insolvency proceedings; or if they are disqualified as a company director.
 - (4) notify the Faculty if they become the subject of any county court judgments against them, either personally or as a company director or partner of a firm.

Membership Subscription Fees

17. Annual Subscription Fees shall be paid by the annual renewal date.

Please see Bye-Law 4.6 "Entry Fees and Subscriptions". A failure to pay the annual membership subscription by the due date (currently 1st July) will result in automatic suspension of the membership and the imposition of an administration surcharge. Failure to pay the annual membership subscription and the administration surcharge within a month of the due date (i.e. currently by 1st August) will result in that membership automatically expiring unless the member can provide adequate evidence of extenuating circumstances. Once this occurs, it should be noted that the process to become a member will begin afresh.

Other Sums

18. Corporate and Non-Corporate Members shall pay any other sums due to the Faculty within twenty-eight days of the date of the invoice.

Complaints

19.
 - (1) Corporate and Non-Corporate Members shall have in place an internal Complaints Handling Process ('CHP') for the purposes of any party work that they may engage in.
 - (2) Corporate and Non-Corporate Members shall therefore deal at first instance with any complaints regarding their conduct via their own internal CHP, if requested to do so.
 - (3) The aforementioned CHP shall include the Faculty as the final appealing body for such complaints.
 - (4) For the avoidance of doubt, Corporate and Non-Corporate members' CHP are to be used where the complainant is either their appointing owner, any other owner who is a party to the matter, the other party appointed surveyor or the third surveyor.

It is important that members have an internal CHP that is readily available to both appointing owners to use if called upon, and not just the owner who has appointed them. The final point of referral for such complaints should be the Faculty. However, it should be noted that where other organisations (i.e. the RICS) also provide for a particular final point of referral then parallel complaints procedures will need to be maintained so as to avoid any conflicts between the relevant organisations. This will mean that those members who belong to more than one professional body will need to provide the option of which, or all, of the professional bodies the complainant appeals to in the event that their complaint is not resolved via the member's internal CHP.

The Faculty shall only have jurisdiction as a final point of referral over complaints directly relating to surveyor's statutory functions in pursuance of section 10 of the Act. For any complaints not directly related to surveyor's statutory functions, members are encouraged to use other CHP's that nominate other bodies as the final point of referral.

Further, the Faculty recognises the statutory independence of a party wall surveyor, and will not therefore entertain complaints until the statutory process is completed, or where applicable, until such time as the appeal of an award to the courts has been concluded.

Disciplinary Matters

20. Corporate and Non-Corporate Members shall co-operate fully with any investigation that the Faculty's Disciplinary Panel may conduct into a member's conduct.

It should be noted that the impartial role of the Faculty's Disciplinary Panel is equally to protect members from spurious, vexatious or ill-founded complaints as well as to rightly discipline members who fall below the required standards. As a body whose core principles are underpinned by education and the dissemination of good practice, the process of disciplining members may not necessarily be punitive, but may also involve assisting them with raising their competence through broadening their experience or raising their qualifications.
