

BOARD OF SURVEYING AND SPATIAL INFORMATION

Surveying Act 2002 Sections 12 and 13

Aide Memoire

Over time various definitions have been given for the phrases of negligence, incompetence and delay. These words have been distilled to have a particular meaning in relation to professional undertakings.

A professional, be it a surveyor or any other professional, owes a duty to the client to undertake professional activity with competence and diligence. There are other requirements in respect of the relationship between the professional and the client, however the comments set out below relate particularly to the way in which a professional activity may have been undertaken in a way that is incompetent and lacking in diligence.

Negligence or lack of professional skill could lead to a claim by the client in a Court for damages. However, if the negligence or lack of professional skill (incompetence) is so gross or if it has been exacerbated by other activity then the negligence may be considered to be a wanton disregard of the client's interests and because of that the behaviour may be professional misconduct.

The usual example given in the way an activity may proceed from being merely negligent to being professional misconduct is where for instance an activity has been undertaken and it is clear that the activity is negligent and then the professional who undertook the activity then lies to the client this then can be considered to be professional misconduct.

The case law in relation to other professional groups discloses that gross delay or incompetence is frequently the subject of deception in respect of the information provided to the client. The Courts have generally taken the view that where delay or incompetence has proceeded down the path to being exacerbated by deception of the client that this then goes beyond professional incompetence and becomes professional misconduct.

Professional misconduct is considered to be far more serious than professional incompetence. Having regard to the general understanding of professional incompetence and the need for protection of the cadastre and the public, Sections 12 and 13 of the Act were structured so that the conduct of a surveyor to be considered as professional misconduct needs to be "serious, grave and weighty" (as referred to in decisions in various Courts and Tribunals) before that finding is made.

The Act does not define professional incompetence, rather the term is to be considered in relation to the general understanding of that term and the common law definitions. Generally where work is undertaken by a surveyor that may lead to a finding of professional incompetence it would be where any incompetence or negligence has not been willful and has not been so gross or exacerbated to lead to being within the understanding of professional misconduct.

The Act does define professional misconduct in Section 13(4). The seriousness of professional misconduct is also demonstrated by the range of penalties set out in Section 13(1).

Professional misconduct is more serious than professional incompetence, however professional incompetence may become professional misconduct in some circumstances. If the professional incompetence has a deleterious affect on the cadastre then it is probable that the behaviour will be considered to be professional misconduct.