

Guidance for Regulated Members considering an Appeal



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Please read this note if you are considering lodging an appeal against a decision of the Disciplinary Panel – it is intended to assist you and applies to oral and paper hearings of the Disciplinary Panel. It should be read in conjunction with the relevant disciplinary rules, available here:

For concerns raised with RICS before 1 October 2019:

<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/media/disciplinary-registration-appeal-panel-rules-150518-mb.pdf>

For concerns raised with RICS on or after 1 October 2019:

<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/media/disciplinary-registration-and-appeal-panel-rules.pdf>

For concerns raised with RICS on or after 2 March 2020:

https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/rics-regulatory-tribunal-rules_2020.pdf

You should consider seeking legal advice before lodging an appeal.

Time Limits

The RICS Regulatory Tribunal team will send to you a letter which sets out the Disciplinary Panel outcome. This will be sent to the address held by RICS, so it is essential that you contact the Regulatory Tribunal team if you change your address.

If you decide to lodge an appeal, this must be sent, in writing using the prescribed form, within 28 days of 'service' of this outcome letter to the RICS Regulatory Tribunal team.

The 28-day period starts the day after the date of your outcome letter, including Saturdays and Sundays. If you need a copy of the form, please contact the Regulatory Tribunal Executive named on the outcome letter. Your completed form should be sent to that person as well.

Provide as much detail as possible in your grounds of appeal and provide copies of any new evidence which you seek to rely upon. You need to explain why this evidence was not identified or available before.

Any appeal form which is received outside the 28-day time limit will need to be considered by the Presiding Chair of the Regulatory Tribunal. The Presiding Chair will need to consider whether to allow the out of time appeal to proceed. The Presiding Chair will take into account the reasons why the appeal is being brought outside the time limit and any response from the RICS presenting officer.

The following principle will be applied by the Presiding Chair of the Regulatory Tribunal in considering whether to allow an appeal to be heard outside of the time limit:

The discretion to allow an appeal brought outside of the time limit to be heard should only be exercised in exceptional circumstances and where the person bringing the appeal has done everything they can to bring the appeal in a timely manner.

In recent cases considered by the High Court in England (which did not involve RICS but which appear similar in nature) the following circumstances have been rejected:

- A failure to seek legal advice in a timely manner;
- An inability to pay legal fees.

What is meant by ‘wrong’?

In considering an appeal, the Appeal Panel will ask itself: **was the decision wrong?** In order to assist the Appeal Panel and the RICS Presenting Officer, your grounds of appeal should provide as much detail as possible as to why you believe the appealed decision was wrong. It may assist you to consider the following:

- Was the sanction disproportionate, having regard to the background of your case and RICS’ Sanctions Policy? Was there a procedural irregularity which was so serious that it affected an important decision in the case or rendered the hearing unfair?
- Did the Disciplinary Panel make an important finding of fact which had no evidence to support it or upon which the conclusion could not have been drawn?
- Was there a failure to consider relevant evidence?
- Was there a misunderstanding of relevant evidence or the weight of the evidence?
- Are there sufficient reasons to support the decision reached by the Disciplinary Panel?
- Is the decision wrong in light of the new evidence which was not available to you at the time of the Disciplinary Panel hearing (see the section below on new evidence)?

Procedure at an appeal

If your appeal is to be considered, then an Appeal Panel will be convened.

The Appeal Panel conducts a review of the decisions which the Disciplinary Panel made and which are the subject of your appeal. An appeal is not a rehearing of the original case.

Unless the Appeal Panel determines that any new evidence is admissible, evidence which was not before the Disciplinary Panel will not be considered. This means that the Appeal Panel will not re-hear the case or parts of the case and will not hear from ‘live’ witnesses to decide if it agrees with the decision or not. Its role is to consider whether the Disciplinary Panel made a decision that was reasonably open to it to make.

The Appeal Panel will review the transcripts from the disciplinary hearing, as well as documents before the Disciplinary Panel and the relevant decisions.

The Appeal Panel will be slow to interfere with the decisions of the Disciplinary Panel. This is because the Disciplinary Panel is a specialist panel which has had the benefit of hearing and viewing the evidence first hand. The Disciplinary Panel is also regarded as a specialist panel which has reached reasoned judgments on liability to disciplinary action and sanction. As a result, the burden to show that the decision was wrong rests with the party bringing the appeal and the Appeal Panel will require good reasons for interfering.

New evidence

Similar to the 28-day time limit, there are strict rules which apply which relate to an application to admit new evidence in an appeal.

New evidence is any evidence or information which was not available to the Disciplinary Panel. It can only be considered by an Appeal Panel following an application being made for its inclusion. RICS may object to an application to include new evidence.

To assist you, there are several principles to consider from caselaw:

- the evidence is relevant; and
- you must be able to show that the evidence could not have been obtained with reasonable efforts in time for the Disciplinary Panel hearing; and
- you must be able to show that the evidence would have had an important impact on the decisions made by the Disciplinary Panel; and the evidence must be credible.

These principles are important to consider before you make an application to include new evidence – it is for you, the person bringing the appeal and making the application, to show that there are compelling reasons why the Appeal Panel must admit the new evidence.

Costs

If you are successful on all or part of your appeal, any costs award by the Disciplinary Panel may be revised by the Appeal Panel.

Please note that there is no right of appeal against a costs award alone.

If you are having difficulties with costs, you may instead want to contact the RICS Finance team on: creditcontrol@rics.org to discuss possible options.

The Appeal Panel does have the power to make an award in relation to the costs of the appeal hearing. As a result, in bringing an appeal, and reiterating the point above that the burden of showing that the decision of the Disciplinary Panel was wrong rests with you, the person bringing the appeal, there is a real risk of additional costs being awarded against you if you are unsuccessful.

Publication

You can make a request in writing to the Head of Regulation to reduce the minimum period of publication, pursuant to Rule 3.2 of Supplement 3 to the Sanctions Policy – Publication of Regulatory/Disciplinary Matters.

8 July 2020