

Regulatory decision-making guidance

Version 4 with effect from 2 February 2022

1 Introduction

RICS is the global professional body for the surveying profession. It is responsible for regulating the professional conduct of Regulated Members in order to:

- protect the public
- uphold the public's confidence in the surveying profession and
- uphold professional standards.

'Regulated Members' are RICS Members, regulated non-Members and regulated Firms. RICS expects Regulated Members to comply with all published RICS standards and work to ensure that they meet these requirements.

If we receive concerns or intelligence about a Regulated Member, we may commence an investigation to see whether there is evidence of a Regulated Member falling short of RICS' standards. RICS' disciplinary process is formally set out in the [Regulatory Tribunal Rules](#).

Disciplinary action will only be taken where the conduct of a Regulated Member is sufficiently serious and it would be in the public interest to do so. There are a range of other options that RICS may take including engagement with the Regulated Member to help improve best practice, undertaking a visit of the Regulated Member, or recording the concerns to monitor patterns of behaviour.

It is important to recognise that we do not decide who is telling the truth and do not make findings of fact – such findings are for the Regulatory Tribunal to determine during a hearing.

2 How we manage concerns received about a Regulated Member

Our 'Managing Concerns' guidance explains how we decide whether to investigate a concern about a Regulated Member. Not all concerns will be referred for investigation and there are a range of other options we could take instead, as explained in the guidance.

If we decide that a concern meets the threshold for investigation, it will be referred to the Investigation Team. At this point, we will decide what action to take in accordance with Rule 3 of the [Regulatory Tribunal Rules](#). We may obtain further information to enable us to investigate the concern that has been raised. This could be from the person who has raised the concern, the Regulated Member, a third party or publicly available information.

On occasion, we may decide to close the investigation at this stage if we consider that:

- the concern would not give rise to a liability to disciplinary action and/or
- the concern is not serious and/or
- it would not be in the public interest to investigate.

We may decide that another regulatory intervention is more appropriate, such as engagement with the Regulated Member. Our 'Managing Concerns' guidance contains

examples of the type of cases we would be more likely to close and the factors we would consider for specific types of concerns.

3 Interim measures

We will refer a matter to a Regulatory Tribunal to consider imposing interim measures where the alleged breach of RICS standards is of such seriousness, concern or urgency that it appears necessary to restrict the activities of the Regulated Member in order to protect the public or the public interest. This is explained further in Part IV of the [Regulatory Tribunal Rules](#).

Interim measures are sought when it is necessary to temporarily suspend or restrict a Regulated Member's registration while an investigation is ongoing. Please see our [suspension guidance](#) for further information about the effect of suspension on a Regulated Member.

4 Evidence

In considering the evidence, we take a fair, open-minded and objective approach in assessing whether there is sufficient evidence to establish that a Regulated Member has breached (or is breaching) the Bye-Laws, Rules of Conduct and/or professional standards. We do not decide who is telling the truth and do not make findings of fact.

5 Allegations

After an objective review of the evidence, we will decide whether there is a case to answer. If so, we will write to the Regulated Member setting out our allegations. The allegations will state what the Member is alleged to have done / failed to do and explain the basis on which they may be liable to disciplinary action. The Regulated Member is provided with the evidence we have obtained and is invited to respond to the allegations. This is set out in Rule 4 of the [Regulatory Tribunal Rules](#).

We must act proportionately and not every case will result in allegations being raised. When deciding whether there is a case to answer, we will look at the case in the round and consider whether, on balance:

- there is sufficient evidence to demonstrate that the conduct occurred and
- the conduct could give rise to a liability to disciplinary action (i.e. that it falls within the scope of [Bye-Law](#) 5.2.2 or 5.3.2) and
- the conduct is serious.

[Bye-Laws](#) 5.2.2 and 5.3.2 set out the circumstances in which a Regulated Member may be liable to disciplinary action, which includes:

- conduct liable to bring RICS into disrepute
- serious professional incompetence

- a failure to adhere to RICS Bye-Laws or rules governing conduct
- a criminal conviction for which the Regulated Member could be imprisoned.

Seriousness and public interest considerations are explained further in section 7.

6 Realistic prospect of establishing liability to disciplinary action

After we have written to the Regulated Member setting out our allegations and we have considered their response, we will decide whether there is a realistic prospect of establishing that the Regulated Member is liable to disciplinary action. This assessment is known as the 'realistic prospect test' and is set out in Rule 5 of the [Regulatory Tribunal Rules](#).

When deciding whether there is a realistic prospect of establishing liability to disciplinary action, we will consider whether, on balance:

- there is sufficient evidence to demonstrate that the conduct occurred
- the conduct could give rise to a liability to disciplinary action (i.e. that it falls within the scope of [Bye-Law](#) 5.2.2 or 5.3.2) and
- the conduct is serious.

[Bye-Laws](#) 5.2.2 and 5.3.2 set out the circumstances in which a Regulated Member could be liable to disciplinary action. 5.2.2 and 5.3.2 set out the circumstances in which a Regulated Member could be liable to disciplinary action.

In assessing whether the realistic prospect test is met, we need to be satisfied that there is a realistic or genuine possibility that RICS will be able to establish its case. We take into account the strength of the evidence that there has been a breach of RICS Bye-Laws, Rules or Professional Standards and any response from the Member.

If we decide that the realistic prospect test has not been met, the case will be closed without disciplinary action, in accordance with Rule 6 of the [Regulatory Tribunal Rules](#). Should we subsequently receive evidence which was not previously available and is relevant to the actions of the Regulated Member, we will decide whether the evidence would materially have affected the decision if it had been available at the time it was made. We may re-open the case or open a new enquiry in these circumstances. This is set out in Rules 9 and 10 of the [Regulatory Tribunal Rules](#) and our Reconsideration Policy.

If, as part of our internal quality assurance processes, legitimate concerns arise about the accuracy, proportionality or transparency of a decision, it may require reconsideration. Reconsideration of a decision will be made by a senior member of staff acting under delegated authority as Head of Regulation.

If we decide that there is a realistic prospect of establishing that a Regulated Member is liable for disciplinary action, we will then consider whether we should take disciplinary proceedings. This is set out in Rule 7 of the [Regulatory Tribunal Rules](#) and explained further in section 7.

7 Assessing seriousness and public interest

After we have decided that there is a realistic prospect of establishing that a Regulated Member is liable to disciplinary action, we will then consider whether we should take disciplinary proceedings having regard to the seriousness of the allegation or information and the public interest. This is set out in Rule 7 of the [Regulatory Tribunal Rules](#).

What constitutes the public interest is well established, and includes the need to:

- protect the public
- uphold the reputation and standards of the profession and
- ensure that public confidence in RICS and its Regulated Members is maintained.

When we assess the seriousness of an allegation and the issue of proportionality, we consider the wider public interest as well as the individual or firm that would be affected by the decision. When we decide not to take disciplinary action, it does not intend to minimise the distress or loss the person who raised the concerns may have suffered.

Whether something is sufficiently serious and whether it is in the public interest to take disciplinary proceedings depends on the facts of each case. We take into account relevant factors, such as:

- any mitigating factors (e.g. whether the Regulated Member has acknowledged and rectified breaches, has shown insight or has taken steps to put things right or to reduce the risk of the breach being repeated; see Sanctions Policy: Guidance to RICS Regulatory Tribunal Rules and Supplement 1 to the Sanctions Policy: Sanction Guidelines)
- any aggravating factors (e.g. whether the Regulated Member was dishonest, demonstrated a lack of insight or there were any similar previous concerns raised; see Sanctions Policy: Guidance to RICS Regulatory Tribunal Rules and Supplement 1 to the Sanctions Policy: Sanction Guidelines)
- the disciplinary history of the Regulated Member (e.g. whether there is a pattern of behaviour; see Supplement 4 to the Sanctions Policy: Disciplinary History)
- the need to protect the public from incompetent or unethical Regulated Members
- the need to ensure that public confidence in the profession and regulation of Regulated Members is upheld
- whether a failure to take disciplinary action risks damaging public confidence
- whether the Regulated Member is still practising and
- the need to ensure that cases are dealt with proportionately and that regulatory resources are not unnecessarily diverted away from the protection of the public from the most serious offenders.

8 Types of disciplinary proceedings

There is a range of disciplinary proceedings available to us, as set out in Rule 8 and Part III of Regulatory Tribunal Rules. We will determine which type of proceedings is most appropriate based on the circumstances of each case. The disciplinary proceedings available to us are:

- agree a Regulatory Compliance Order with the Regulated Member – please see Rules 12-16 of the Regulatory Tribunal Rules
- refer the Regulated Member to a Single Member of the Regulatory Tribunal – please see Part VI of the Regulatory Tribunal Rules
- refer the Regulated Member to the Regulatory Tribunal – please see Part VII of the Regulatory Tribunal Rules
- impose a Fixed Penalty (in specific circumstances) – please see Part III of the Sanctions Policy: Guidance to RICS Regulatory Tribunal Rules.

When deciding which disciplinary proceedings to take, we will consider the following:

- Are the facts agreed between RICS and the Regulated Member?
- Has the Regulated Member fully admitted the allegations?
- How serious is the breach?
- How would the public interest be best served?
- What is the most proportionate outcome?

Further information regarding the different types of disciplinary proceedings and the sanctions that can be imposed can be found in our [Sanctions Policy: Guidance to RICS Regulatory Tribunal Rules](#).

9 Fines, costs and administration fees

[Supplement 2 to the Sanctions Policy: Fines, Costs and Administration Fees](#) sets out the details of fines and costs that may be imposed in accordance with the RICS' Regulatory Tribunal Rules. We have also issued [Guidance on costs orders imposed by RICS' Regulatory Tribunal](#).

10 Publication of disciplinary proceedings

We would normally publish disciplinary outcomes on our website, in accordance with [Supplement 3 to the Sanctions Policy: Publication of Regulatory/Disciplinary Matters](#).

Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

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