



Deciding whether to take disciplinary action

Regulatory decision making at RICS

Introduction

Purpose and status of the guidance

1. RICS is the global professional body for the surveying profession. We are responsible for regulating the professional conduct of members and firms in order to protect the public, to uphold their confidence in the surveying profession, and to uphold professional standards. We expect our professionals to comply with all published RICS standards and we work to ensure that members and firms meet these requirements.
2. RICS' disciplinary processes consider information, concerns and complaints about the professional conduct and/or competence of members and regulated firms. If we are alerted to, or find evidence of, a potential breach of RICS standards, we will first consider the information – this helps us to decide whether there may be evidence that a member or firm has fallen short of our standards. At the end of an investigation, if we think these standards have not been met, we can decide to resolve any issues by giving advice, through more training for the professional or firm, or we may decide that we need to take disciplinary action to protect the public and reputation of the wider profession.
3. Decisions about whether to take disciplinary action are made by members of staff who are authorised to make these decisions under delegated powers. This guidance aims to help authorised decision-makers to decide the appropriate and proportionate action to take at the conclusion of an investigation. Although each case is decided on its own merits with an objective analysis of the facts, the purpose of this guidance is to encourage consistent and transparent decision making. Decision-makers should also refer to relevant RICS standards, rules and guidance.
4. This guidance also looks at the types of practice or behaviour that may result in a decision by RICS to take disciplinary action against a firm or member. Any examples provided within this document are guidance only – they are not exhaustive. However, they do indicate potential thresholds for the kinds of cases that are likely to result in disciplinary action. As such, complainants, members and firms may also find this guidance to be of assistance in understanding how decisions are made.
5. This guidance is a 'living document', which will be reviewed from time to time as appropriate.

Overarching principles

6. RICS is committed to promoting inclusion, equality and diversity. RICS takes its responsibilities seriously to ensure that procedures and processes operate in a manner that is fair, transparent, objective and free from unlawful discrimination. We make reasonable adjustments where these are needed by a complainant, witness or member.
7. We are committed to ensuring that our processes are compatible with the principles of the Human Rights Act 1998. This guidance is intended to reflect that commitment. We apply the principles of Article 6 of the Act, which safeguards the right to a fair hearing.
8. In undertaking our regulatory function, we aim to meet the following five principles of better regulation, determined by the Better Regulation Commission:
 - proportionality – ensuring that all actions, interventions, remedies and solutions are legitimate, necessary and proportionate
 - accountability – ensuring that decisions and processes are transparent, can be justified and are subject to public scrutiny
 - consistency – ensuring a common sense and joined up approach to promote fairness
 - targeting – ensuring targeted and unambiguous regulation, focussed on risk and
 - transparency – ensuring clear definitions, effective consultation and communication is used at all times.

Decision makers

9. The disciplinary process adopted by RICS is formally set out in the Disciplinary, Registration and Appeal Panel Rules ('the Disciplinary Procedure'), the current edition being that of 1 April 2009, Version 7 with effect from 1 January 2017).
10. Decision-makers have a responsibility to ensure that decisions are made in a consistent, proportionate and transparent manner. This means that in reaching decisions to take regulatory action we will ensure that the action is legitimate, is necessary, is the least onerous way of achieving the purpose and is reasonable, balancing the public interest with the interests of those affected by it. In order to be transparent we publish our processes, relevant guidance, policies and, where appropriate, our decisions. We keep those who make complaints informed of our investigations and decisions. We also provide reasons for decisions we make.
11. Decision-makers must remain impartial, declaring and avoiding any conflicts of interest they may have, and must provide clear reasons for the decisions they have reached.
12. If a decision-maker is unsure as to whether they have the authority to make a relevant decision, they will seek advice from their direct line manager or from an RICS solicitor.
13. Decisions are subject to internal monitoring, assurance and audit to ensure their quality, fairness and consistency.

Decisions about referring for consideration of interim measures

14. In some circumstances, we may consider that it is necessary to apply to the Conduct and Appeals Committee to put in place interim measures. Interim measures are a serious step for a Panel to take as it temporarily suspends or restricts a member or a firm's registration while an RICS investigation is ongoing. We will refer a matter to a Disciplinary Panel to consider imposing interim measures where the alleged breach of RICS standards is of such seriousness, of such concern or of such urgency that it appears

necessary to restrict the activities of the member and/or firm in order to protect the public or the public interest.

15. The Disciplinary Panel, which is usually held in private when considering interim measures, will not seek to make any findings of fact or reach a decision as to the overall outcome of the investigation. They will consider whether any interim action is needed, pending the conclusion of the overall investigation. For interim measures to be imposed, the Panel will need to be satisfied that there is some credible evidence which demonstrates that the professional or firm may be liable for disciplinary action (Rule 18, Disciplinary, registration and appeal panel rules, 1 April 2009, Version 7 with effect from 1 January 2017). They will also need to be satisfied that interim measures are necessary, having regard to the seriousness of the concern, the sufficiency of the available information/evidence, the public interest, and the interests of the professional.
16. Some examples of the types of areas where we may seek interim measures include trading without appropriate professional indemnity, a deficit on a firm's client account that a firm cannot or does not replace immediately, and allegations of fraud and serious convictions where the public interest or reputation of the profession is at stake.
17. The Disciplinary Panel will consider and assess the risk that the interim measure is intended to address and consider the most proportionate method by which to achieve this aim. For example, where several complaints have been received about a member or firm relating to an isolated area of work, the Panel may consider it appropriate to impose interim measures that allow the member or firm to continue to practise providing that they do not undertake work in the area complained of. Alternatively, where a member has been convicted of defrauding vulnerable clients, it may be necessary to suspend the member until the conclusion of the case.

Decisions about whether to take disciplinary action

18. Throughout the life of an investigation, we will consider evidence or information as it is received and assess how it impacts on the case. Based on the available evidence, if it is apparent that there is insufficient, credible evidence to support the allegation or it appears that the allegation relates to minor unintended breaches of the Rules of Conduct, we will consider there to be no realistic prospect of establishing a liability to disciplinary action, and will close the case. Alternatively, if we consider that the evidence obtained is sufficient to satisfy the threshold for seriousness, and the Realistic Prospect Test (Rule 6, Disciplinary, registration and appeal panel rules, 1 April 2009, Version 7 with effect from 1 January 2017), we will decide whether disciplinary action should be taken.

(Please also see below the sections '**Assessing Seriousness and Public Interest**' and '**Realistic prospect of establishing a liability to disciplinary action**' for further guidance.)

19. In the interests of fairness and transparency, we ensure that the relevant member or firm has sufficient information to understand the nature of the decision and what the decision-maker is basing their decision on. We will give the member an opportunity to respond to or comment on the allegations before a decision is made as to whether disciplinary action should be taken.

Evidence

20. In considering the evidence, the decision-maker will take a fair, open-minded and objective approach in assessing whether there is sufficient evidence to establish that a member or firm had breached (or is breaching) the Bye-Laws, Rules of Conduct and/or professional standards. They will take into account the credibility of the source of the evidence, the credibility and cogency of the evidence itself (for example, if the evidence is supported by corroboratory, independent, video or expert evidence), and will consider the weight that a Panel is likely to give it.

- 21.** Where there is a 'conflict of evidence' (for example, where one person gives a version of events that is directly contradicted by another version of events), the decision-maker will carefully consider the nature of the evidence and take into account whether there is any corroborating evidence or other matters that might support one version of events over the other. It is important to recognise that the decision-maker cannot, however, decide who is, in fact, telling the truth and cannot make findings of fact - such findings are matters that fall to the Disciplinary Panel to determine during a hearing. The decision-maker must consider the evidence in a fair, balanced and objective manner.
- 22.** Decision-makers carefully consider any information from a court or tribunal that criticises a member in order to decide whether there is evidence of a breach of RICS' standards. Decision-makers will bear in mind that, if they refer an allegation to a Disciplinary Panel that is based on a member or firm having been subject of a criminal conviction, disqualification order or if a member has given a disqualification undertaking, then the Panel will be bound by the decision of the court. A Panel is not bound by findings of other bodies and will have to make its own decision on the evidence before it.

Realistic prospect of establishing liability to disciplinary action

- 23.** RICS can only take disciplinary action if we reasonably conclude that there is a realistic prospect that a Disciplinary Panel, on the balance of probabilities, will find the facts of an allegation proven, and that misconduct/serious professional incompetence will be established. In making this decision, the decision-maker will also consider whether there is a realistic prospect of establishing that the member or firm is liable to disciplinary action. This assessment is known as the 'Realistic Prospect Test'.
- 24.** In assessing whether the Realistic Prospect Test is met, the decision-maker will need to be satisfied that there is a realistic or genuine possibility (as opposed to a remote or fanciful one) that RICS will be able to establish its case. The decision-maker will take into account the strength of the evidence that there has been a breach of RICS standards as well as the seriousness of the alleged breach. Case law from other professions suggests two important principles:
- To amount to 'misconduct' the allegation has to be more than 'mere negligence' – a negligent act or omission has to be particularly serious to amount to misconduct and a single act or omission is less likely to cross the threshold than multiple acts or omissions.
 - Incompetence is a standard of professional performance that is unacceptably low and is usually demonstrated by a 'fair sample' of the firm's/member's work, i.e. incompetence is unlikely to be demonstrated by a single example, unless particularly serious.
- 25.** If the decision-maker decides that the Realistic Prospect Test has not been met, the case will be closed without disciplinary action, although RICS may provide advice to the member or firm about their future practice. Some examples of cases that are unlikely to meet the Realistic Prospect Test are:
- complaints of a single incident of poor service
 - complaints about a single incident, single mistake or omission unless it is particularly serious
 - bankruptcy of a member or liquidation of a firm without evidence of misconduct or a failure to take steps to safeguard client money.

Assessing seriousness and public interest

- 26.** Where the Realistic Prospect Test is met, the decision-maker must decide whether disciplinary action is necessary. RICS does not take disciplinary action in order to 'punish' a member or firm – our overarching responsibility is to act in the public interest, and a decision to take disciplinary action must be appropriate and proportionate in order to protect the public, i.e. it must be in the public interest to proceed with disciplinary action. In doing so, the decision-maker must have regard to the public interest and the seriousness of the allegation. (Rule 8, Disciplinary, registration and appeal panel rules, 1 April 2009, Version 7 with effect from 1 January 2017.)
- 27.** What constitutes the public interest is well established, and includes the need to protect the public, to uphold the reputation and standards of the profession and to ensure that public confidence in RICS and its members and regulated firms is maintained. When the decision-maker assesses seriousness of the allegation and the issue of proportionality, they will consider the wider public interest, as well as the individual or firm that would be affected by the decision. If the decision-maker considers that the alleged misconduct or incompetence is not so serious so as to justify disciplinary action, this is not intended to minimise the distress or loss the complainant may have suffered.
- 28.** It would be unusual for a single act or omission, or a single act of negligent work (unless it is particularly serious), to require disciplinary action. For example, a matter that was a simple oversight but with no negative or unprofessional intent is unlikely to require disciplinary action. In such cases, pursuing disciplinary action may be considered disproportionate in the circumstances. Sometimes RICS can decide that an effective and proportionate course of action is to give advice to the member or firm about their practice that will protect the public in future.
- 29.** Whether something is sufficiently serious and whether it is in the public interest for RICS to take disciplinary action will depend on the facts of each case. The decision-maker should take into account relevant factors, such as:
- any mitigating factors (for example, whether the member or firm 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)

(Sanctions Policy – Guidance to RICS Disciplinary, Registration and Appeal Panel Rules, Version 7 with effect from 1 January 2017; Supplement 1 to the Sanctions Policy – Penalty Guidelines, Version 5 with effect from 1 August 2014.)
 - any aggravating factors (for example, whether the member or firm was dishonest, demonstrated lack of insight or there were any similar previous complaints)

(Sanctions Policy – Guidance to RICS Disciplinary, Registration and Appeal Panel Rules, Version 7 with effect from 1 January 2017; Supplement 1 to the Sanctions Policy – Penalty Guidelines, Version 5 with effect from 1 August 2014.)
 - the need to protect the public from incompetent or unethical practitioners
 - the need to ensure that public confidence in the profession of RICS chartered surveyors and RICS regulation of members and firms is upheld
 - whether a failure to take disciplinary action risks damaging public confidence
 - whether the member or firm 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.

- 30.** Some examples of cases where we are unlikely to take disciplinary action, even though the Realistic Prospect Test has been met are:
- the breach was less serious, and the member or firm has accepted full responsibility, and taken all reasonable steps to rectify the situation to the extent that RICS can be confident that future repetition of the breach is unlikely, e.g. retraining
 - the breach was a serious act or omission but was not deliberate, had a limited impact, any client received redress, the mistake did not occur in a high risk area of practice and no other complaints have been received or
 - the misconduct complained of was not particularly serious, occurred some years previously and there have been no similar complaints since.

Decision-maker outcomes following completion of the investigation

- 31.** Once the decision-maker has considered the tests set out above to decide whether any disciplinary action should be taken, they can decide to:
- take no further action or
 - take the following disciplinary action:
 - i. make a Consent Order with the agreement of the member/firm or
 - ii. refer to a hearing before a Disciplinary Panel or
 - if the member has received a conviction with a custodial sentence, refer the case directly to a hearing before a Disciplinary Panel to be considered on the papers alone (see Rule 43A Disciplinary, registration and appeal panel rules, 1 April 2009, Version 7 with effect from 1 January 2017.)

Types of disciplinary action

Consent order

- 32.** The decision-maker may consider that the matter is suitable to be concluded by way of a Consent Order. A Consent Order is a document that will be drafted by RICS, setting out various terms that the member or firm is asked to agree to comply with. Consent Orders can include terms (or requirements), for example, to undergo training, stop doing certain types of work or change the way that they carry out types of work. Other terms can include that the member or firm will implement new standard operating procedures, undertake health and safety assessments, to pay a fine and/or pay costs to RICS.
- 33.** The Consent Order will set out the relevant rules of conduct where there is evidence of a breach along with the terms of the order. The terms of the Consent Order should:
- have an identified purpose, i.e. to address risk, ensure the member or firm is meeting professional standards, to follow up and monitor, and/or to fine the member or firm
 - be SMART – specific, measurable, achievable, realistic and time-related
 - include appropriate clarification, definition or explanation of any terms.
- 34.** Consent Orders may be suitable in cases where the decision-maker considers that the rule breach concerned is not so serious that a public disciplinary hearing is necessary and the firm or member admits the breach and is willing to cooperate with RICS to rectify the matter.

35. If the member/firm does not agree to enter into a Consent Order the decision-maker will consider whether to refer the matter to a disciplinary panel. If the member/firm agrees to a consent order and then fails to comply with the terms, a decision-maker will consider the failure and any other identified breaches of the standards and, where appropriate, will commence an investigation to determine whether further disciplinary action should be taken. The decision-maker has the power to refer the case to a Panel where the member or firm has breached any of the terms of the Consent Order (Rule 13, Disciplinary, registration and appeal panel rules, 1 April 2009, Version 7 with effect from 1 January 2017).
36. Some examples of cases where consent orders are likely to be appropriate are:
- the member or firm recognises and accepts responsibility for the breach, has apologised to the affected parties and agrees to undergo further training in the area of practice complained of.
 - the breach was in relation to one particular area of work and the member or firm agrees not to undertake any further work in that area and
 - the member or firm has implemented a new way of working that will avoid the risk of further repetition of the breach and they agree to provide evidence of continued compliance to RICS on a periodic basis.

Disciplinary Panel

37. For the most serious cases, the decision-maker can refer the matter to a Disciplinary Panel hearing. Matters that are referred to a Disciplinary Panel can take the form of either a public hearing, where evidence from live witnesses may be heard and parties can appear and be represented, or a hearing 'on the papers' where, in specified circumstances, the Disciplinary Panel makes a decision in private based on documentation and written submissions of all parties. Parties do not appear at hearings 'on the papers'.
38. The Disciplinary Panel presides over the hearing and is responsible for determining the outcome of the case. The Disciplinary Panel will comprise one Chairperson and two other panellists, at least one of whom is a non-member of RICS. The Disciplinary Panel may be advised by an independent, suitably qualified and experienced legal assessor. The Disciplinary Panel have a wide range of disciplinary sanctions available to it if it finds an allegation proven, for example – it can issue a caution, reprimand, fine, impose conditions or undertakings, or expel a member/firm from RICS.
39. In determining that a matter is to be referred to a Disciplinary Panel hearing, the decision-maker must be satisfied that the Realistic Prospect Test is met (please see above for further guidance on '**Realistic prospect of establishing a liability to disciplinary action**'), that the breach is sufficiently serious and that it is in the public interest for a hearing to take place (please see above for further guidance on '**Assessing seriousness and public interest**').
40. A referral to a Disciplinary Panel is likely for cases where the alleged breach is serious and the member or firm disputes that they have breached the standards or does not accept responsibility for the alleged breach. Examples of cases that may be appropriate to refer to a hearing include:
- allegations involving elements of dishonesty or lack of integrity
 - clients have been charged for work to be carried out that was unnecessary or was purposely of poor quality in order to increase profit
 - a large number of complainants have been seriously affected by the same breach or
 - a member or firm disputes the evidence of an eyewitness who states they observed a serious breach.

Fixed penalties

41. The Disciplinary Registration and Appeal Panel Rules allow for certain case to be resolved through imposition of a Fixed Penalty fine or caution on a member or firm without the need for a full investigation process. These cases are allegations of a breach of the rules for members and firms in relation to providing information to RICS, or a breach of the Continuing Professional Development (“CPD”) rule in relation to members, or the registration of fees rule for firms (Part C, Sanctions Policy – Guidance to RICS Disciplinary, Registration and Appeal Panel Rules, Version 7 with effect from 1 January 2017) If the decision-maker is satisfied that the information or allegation received shows that the member has failed to comply with the CPD requirements for a third or subsequent time then the Disciplinary Registration and Appeal Panel Rules also allows them to refer the matter for consideration by a Disciplinary Panel (Rule 21, Sanctions Policy – Guidance to RICS Disciplinary, Registration and Appeal Panel Rules, Version 7 with effect from 1 January 2017).

Table of case examples:

42. Decision-makers should review Annex A and B to this document along with the lists below, for examples of the types of case where failure to meet standards may lead to disciplinary action. Decision-makers are reminded that these are to provide guidance only and they must consider each case on their own merits with an objective analysis of the facts.

Examples of cases more likely to lead to disciplinary action:

- caution or conviction relating to dishonesty or violence, or for a racially aggravated or sexual offence
- caution or conviction for a health and safety matter or for an offence committed in the course of surveying practice
- weak controls in place to protect client money from risk, even if no loss has occurred
- mistake or poor service that has caused a very large loss to the client or loss to a large number of clients
- valuation standards failures where there are a number of failures observed at the same visit or a repetition of failures across different visits.

Examples of cases less likely to lead to disciplinary action:

- caution or conviction in relation to minor driving offences
- complaint of a single incident of poor customer service
- complaint about a member that relate solely to a member's opinion or judgment
- Bankruptcy of a member or liquidation of a firm without evidence of misconduct or a failure to take steps to safeguard client money
- complaints that have been resolved by the member or firm, or by an Ombudsman Service.

Annex A: Examples of the types of case where failure to meet standards may lead to disciplinary action being taken against a member.

Ethical behaviour (Rule 3)	Cautions / convictions involving: - Dishonesty - Violence - Terrorism - Racial aggravation - Sexual offences	Cautions / convictions involving: health and safety matters or offences committed in the course of surveying practice	Found to be dishonest or expelled for misconduct by another regulatory body
	Weak financial controls in place that put client money at risk, or misuse of client money	Failure to document any conflict check or proceeding to act where a clear conflict has been identified	Choosing not to put PII run-off in place when a firm of which the member is a director, partner or sole trader ceases trading
Competence (Rule 4)	Client suffers large loss due to persistent error or as a result of a failure to act on an error being brought to member's attention	Surveyor unable to demonstrate appropriate experience or training where work requires high level of skill and care	
	Failures that expose members of the public to unacceptable risks to health and safety	A number of valuation standards failures at the same visit or across different visits	
Service (Rule 5)	Work carried out without proper regard for standards of service and customer care affecting a number of clients	Complaints handling procedure does not include an approved ADR mechanism	The firm fails on more than one occasion to provide a complaints handling procedure to clients when notified of dissatisfaction
Continuing Professional Development ('CPD') (Rule 6)	Member does not meet the requirements of the Regulatory Board's CPD policy		
Solvency (Rule 7)	The member became insolvent and did not take appropriate action to safeguard client money	The member became insolvent and has been disqualified as a director	
Information to RICS (Rule 8)	Failure to provide information to RICS when asked to do so for example by refusing to provide a copy of a PII certificate when requested	Failure to inform RICS when a regulated firm of which they are a sole trader, partner or director ceases to trade	Failure to provide RICS with information required under the Rules for Registration of Schemes, Rules for Registration of Firms, or Designated Professional Body Rules
Co-operation (Rule 9)	Failure to respond to or cooperate with RICS during an investigation, for example by refusing to provide documents requested by an investigator	Rudeness or aggression towards RICS staff particularly those carrying out review visits	

Annex B: Examples of the types of case where failure to meet standards may lead to disciplinary action being taken against a firm.

Professional behaviour [Rule 3]	Firm does not have an appropriate any conflict checking procedure	Firm benefitted significantly from taking on instructions where a conflict of interest exists	Firm has been convicted of health and safety or bribery and corruption offences
Competence [Rule 4]	Client suffers large loss due to persistent error or as a result of a failure to act on an error being brought to firm's attention	Firm provides surveyors that are unable to demonstrate appropriate experience or training where work requires high level of skill and care	A number of valuation standards failures at the same visit or across different visits
Service [Rule 5]	Complete lack of service provided after fee has been taken	Work carried out without proper regard for standards of service and customer care affecting a number of clients	
Training and Continuing Professional Development ('CPD') [Rule 6]	Firm persistently failed to ensure that surveyors keep up to date with CPD	Firm makes it difficult for surveyors to gain necessary CPD	
Complaints handling [Rule 7]	Firm does not have a complaints handling procedure in place	Complaints handling procedure does not include an approved ADR mechanism	The firm fails on more than one occasion to provide a complaints handling procedure to clients when notified of dissatisfaction
Clients' money [Rule 8]	Weak financial controls in place which put client money seriously at risk	Failure to rectify weaknesses in client money controls when identified	Failure to account to clients for commission on General Insurance Mediation work
Professional indemnity insurance [Rule 9]	Firm does not ensure that professional indemnity insurance cover in place meets standards approved by the Regulatory Board	Firm chooses not to put PII run-off in place when it ceases trading	
Advertising [Rule 10]	Firm publishes misleading advertising material	Firm publishes advertising material that contains untruthful material	
Solvency [Rule 11]	Firm goes into liquidation with a report of misconduct by an insolvency practitioner	Firm goes into liquidation and fails to take appropriate steps to safeguard client money	
Arrangements to cover the incapacity or death of a sole practitioner [Rule 12]	Firm fails to have any, or any suitable, arrangements in place and does not rectify this when asked to do so		
Use of designations [Rule 13]	Firms uses designations in a manner which does not comply with the Regulatory Board's policy and does not rectify when asked to do so	Firm does not display designations and does not rectify when asked to do so	
Information to RICS [Rule 14]	Failure to provide information to RICS when asked to do so for example by refusing to provide a copy of a PII certificate when requested	Firm fails to provide Annual Return	Failure to provide RICS with information required under the Rules for Registration of Schemes, Rules for Registration of Firms, or Designated Professional Body Rules
Co-operation [Rule 15]	Failure to respond to or cooperate with RICS during an investigation, for example by refusing to provide documents requested by an investigator		



Confidence through professional standards

RICS promotes and enforces the highest professional qualifications and standards in the valuation, development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to markets and effecting positive change in the built and natural environments.

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