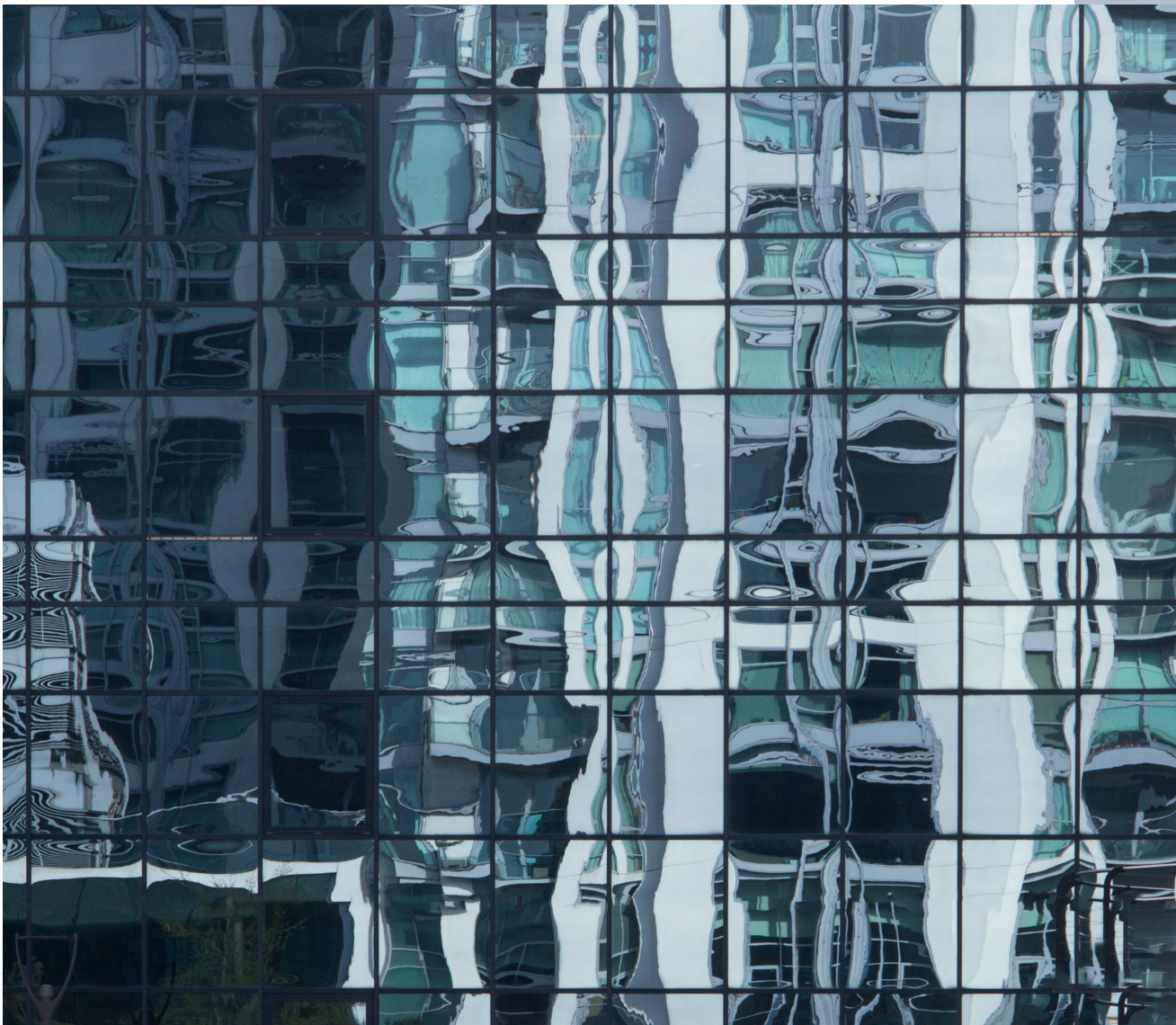


Guidance on costs orders imposed by RICS' Regulatory Tribunal



Guidance on costs orders imposed by RICS' Regulatory Tribunal¹ (the 'Tribunal')



Section 1 – Introduction

1. The purpose of the Guidance for Costs Orders ('the Guidance') is to assist all parties to proceedings. It is designed to manage regulatory risk, provide transparency of policies and procedures and ensure consistency in approach.
2. The guidance is for use by:
 - 2.1. The Regulatory Tribunal (including the Chair, where applicable) to provide clarification on the relevant procedure and their powers;
 - 2.2. Any regulated member bound by the regulatory procedures set out in the Regulatory Tribunal Rules, by virtue of RICS' Bye-Laws and Regulations, so that they are aware of the relevant procedures and the Tribunal's powers, prior to pursuing or defending any disciplinary matter;
 - 2.3. RICS staff when they are preparing a case on behalf of RICS.
3. The Guidance is a 'living document' which will be updated and revised when the need arises.
4. References to 'Regulated Members' in this document means an RICS regulated member or firm or regulated non-member, subject to the regulatory procedures set out in the Regulatory Tribunal Rules. Words importing the masculine gender include the feminine.
5. Nothing in this document should be treated as a source of legal advice to any user of the guidance. When appropriate, the independent Legal Adviser will advise the Tribunal on questions of law, including questions about the use of this guidance. Regulated Members are recommended to obtain independent legal advice.

¹Decisions made by RICS' Regulatory Tribunal, include decisions made by Single Members of the Conduct and Appeal Committee, Single Members of the Regulatory Tribunal and decisions made by a Registration Panel, Disciplinary Panel and Appeal Panel.

6. It is important to bear in mind that an award of costs is not a sanction, but a consequence of a finding that allegations are proved (in whole or in part) or an unsuccessful appeal.
7. When a Regulated Member is ordered to pay costs to RICS, this is intended to compensate RICS (and accordingly the membership as a whole) for the costs reasonably incurred by RICS in bringing the proceedings.
8. The Regulatory Tribunal Rules are available on the RICS website here:
<https://www.rics.org/uk/upholding-professional-standards/regulation/how-we-regulate/regulatory-governance-and-rules/our-regulatory-rules-and-procedures/>

Section 2 – Power to award costs

9. Rule 34 of the Disciplinary, Registration and Appeal Panel Rules (1 January 2017), Rules 92 and 119 of the Disciplinary, Registration and Appeal Panel Rules (1 October 2019) and Rules 92 and 119 of the Regulatory Tribunal Rules (2 March 2020), gives discretion to the Presiding Chair of the Regulatory Tribunal, Panel or Single Member of the Regulatory Tribunal to award costs payable by the Regulated Member to RICS and vice versa.
10. The Regulated Member will be sent a copy of a ‘Statement of Means’ form and will be asked to complete the form and provide supporting evidence of their means. This is to enable the Tribunal to take full account of their financial position before making any order for costs. Alternatively, if the Regulated Member attends the hearing, they can address the Tribunal as to their financial situation. A Panel will only take personal financial (or other) circumstances into account if it is provided with the information via the ‘Statement of Means’ form or evidence from the Regulated Member or their representative.

11. The fact that an allegation has been found not proved does not of itself constitute grounds for making a costs order against RICS. The Regulated Member or their legal representative may make an application for such costs at the hearing, or in advance if they are not going to attend or be represented. Any such application should be supported by evidence of time spent and hourly charge out rates, together with evidence of any disbursements claimed.
12. Where one or more of the allegations against the Regulated Member are found proved, the Tribunal has discretion to award such costs as it considers appropriate. The normal position is that a Regulated Member against whom an allegation has been found proved, should pay the reasonable and proportionate costs of RICS bringing the case. This is based on the principle that the majority of Regulated Members should not be required to subsidise the minority who, through their own failings, have found themselves subject to regulatory proceedings.
13. Before making any order in relation to costs, the Tribunal should invite both parties to make verbal submissions as to whether costs should be awarded and if so, the value of any costs to be awarded and to whom.
14. RICS will produce a costs schedule which provides a breakdown showing how the costs claimed have been calculated. This will include costs incurred up to the date that the costs schedule was produced and an estimate of the costs to be incurred from the date the schedule was produced up to and including the hearing. If the actual costs incurred are more or less than the estimate, RICS has the right to adjust its claim. The Regulated Member has a right to challenge any or all of the sum claimed.
15. The schedule will be included in the bundle of documents which will be considered by the Tribunal and is provided to the Regulated Member at least 48 hours prior to the date of the Registration, Disciplinary or Appeal Panel hearing or Single Member's decision.
16. If a firm is ordered to pay costs to RICS, the partners, members (in a limited liability partnership) or directors at the date of the order are jointly and severally liable for payment of the sum ordered.
17. The Tribunal will not ordinarily award costs to the Regulated Member, where none of the allegations against the Regulated Member have been found proved. However the Tribunal has discretion to direct RICS to pay the Regulated Member a contribution to the costs incurred by the Regulated Member in connection with the case in such amount as it thinks fit,

subject to the general principles associated with the award of costs as referred to in **Baxendale-Walker v The Law Society [2007] EWCA Civ 233**. RICS is likely to defend any costs claimed by a Regulated Member and it is not necessarily the case that costs will be awarded to a Regulated Member where allegations are not found proved. The Tribunal will consider how RICS has handled the case and will be guided by the appropriate authority, the current approach being that set out in the Court of Appeal decision in **Baxendale-Walker v The Law Society [2007] EWCA Civ 33**. The Tribunal will consider the guidance in that case, including the following extract from the judgment:

“In respect of costs, the exercise of its regulatory function placed the Law Society in a wholly different position from that of a party to ordinary civil litigation. Unless a complaint was improperly brought or, for example had proceeded as a “shambles from start to finish”, when the Law Society was discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs followed the event.”

Costs orders will therefore not normally be made against RICS unless the complaint should never have been brought or the case had been very badly handled throughout.

Section 3 – Relevant factors considered by the Tribunal

18. In deciding whether to award costs and the amount, if any, the Tribunal will take into various factors which may include those listed below:
 - 18.1. Whether the costs sought are appropriate and reasonably incurred in the context of the case;
 - 18.2. The conduct of the party seeking their costs during the investigation and the regulatory proceedings;
 - 18.3. The Regulated Member’s financial circumstances;

18.4. Where some or all of the allegations have not been proved:

- (i) Whether it was reasonable for RICS to have pursued the unsuccessful allegation(s);
- (ii) Any extra costs incurred by RICS as a result of pursuing the unsuccessful allegation(s) in terms of the case preparation and the Panel or Single Member's time in dealing with those allegations;
- (iii) Any extra costs incurred by the member in defending the unsuccessful allegation(s);
- (iv) The complexity, seriousness and interplay between the allegations found proved compared to those which were found not proved;

18.5. Any other factor/s which may be relevant in the particular case.

19. When deciding what, if any, order for costs should be made, the Tribunal will consider the Regulated Member's financial, personal and all other relevant circumstances of which they have been informed. Each case is specific to its individual facts and will be considered on that basis, although the Tribunal will seek to act proportionately and to achieve consistency in its approach. The Tribunal will remind itself that it has a discretion whether or not to award costs in accordance with the principles of reasonableness and natural justice.
20. Where the Tribunal is agreed that the sum of costs claimed is appropriate, the Tribunal shall award costs. Alternatively, where the Tribunal is agreed that the sum of costs claimed is unreasonable and/or disproportionate, the Tribunal shall exercise their professional judgement having regard to the relevant factors affecting their discretion. As part of the Tribunal's consideration, it will determine whether any reduction in the sum of costs claimed is appropriate by taking into account the Regulated Member's financial, personal and all other relevant circumstances of which they have been informed.

Section 4 – Financial and personal circumstances

21. The Tribunal will review the Regulated Member's financial circumstances to assess what amount they are able to pay. A number of factors might be relevant here. For example, the Tribunal will consider the Regulated Member's current income and their earning potential. The Tribunal will also take into account any savings and assets they have, as well as their regular liabilities and any other debts.

22. Relevant financial factors may include:
 - 22.1. current Income and likelihood of income in the future;
 - 22.2. existence and nature of assets;
 - 22.3. involvement with, or ownership of other businesses;
 - 22.4. amount of debt and any other liabilities, or likely future liabilities;
 - 22.5. amount and reasonableness of stated outgoings;
 - 22.6. insolvency (actual or pending).
23. As well as financial factors, the Tribunal will also consider the Regulated Member's personal circumstances. The Tribunal will look at their current health, family situation, ability to earn, whether they have any dependants and what, if any, impact our decision to recover money due may have on them.

Section 5 – RICS' claim for costs

See Sanctions Policy, Guidance to Regulatory Tribunal Rules, Part F Costs, found here:

<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/media/sanctions-policy.pdf>

24. RICS' claim for costs will typically include the reasonable costs of:
 - 24.1. Time spent by staff from the Investigation and Regulatory Enforcement teams in investigating the case and bringing the regulatory proceedings;
 - 24.2. Disbursements, for example, the cost of obtaining translations of foreign documents and expert witness fees;
 - 24.3. Hearing costs which comprise fees and expenses paid to members of the Regulatory Tribunal and the Legal Adviser, venue and catering costs.
 - 24.4. Photocopying and postage costs incurred in sending out the document bundles which are used during the hearing;
 - 24.5. The expenses of any witnesses called by RICS and/or the member to give oral evidence at the hearing. These costs may include the reasonable costs of their travel and meals.

Section 6 – Post hearing

25. Rule 152 of the Regulatory Tribunal Rules provides that a Regulated Member cannot appeal solely on the question of costs. If an appeal is made against the findings and/or orders made by a Panel, this may include an appeal against the costs awarded. Where an oral hearing takes place before an Appeal Panel, RICS will ordinarily seek the costs of dealing with the appeal in addition to any costs awarded by a Panel.
26. Where the party appealing (the appellant) withdraws their appeal, and the other party applies for their costs, the Appeal Panel has discretion to make any order for costs as it sees fit.

Section 7 – Payment of costs

27. Any order that a sum be paid to RICS must ordinarily be complied with within 28 days from the date the order is made by the Tribunal, unless a period less than 28 days is ordered.
28. Where the Regulated Member who is the subject of the order is a firm, the costs shall be paid by the persons who are specified persons in relation to the firm on the date of the order.
29. RICS will notify the Regulated Member in writing that payment of the costs owed to RICS must be paid within 28 days or such earlier date as ordered, specifying the due date for payment.
30. Where an order for costs is made against RICS, payment must be made within 28 days of the date the order becomes effective.
31. A Regulated Member may arrange terms of payment with RICS, via RICS' Finance department by contacting them on:
creditcontrol@rics.org
32. A Regulated Member can seek to defer the due date for payment provided any representations are submitted in advance of the due date for payment. Where a Regulated Member wishes to defer the due date for payment, written representations must be submitted to RICS' Finance Department. Upon receipt of any written representations, RICS will determine whether the due date for payment or the payment itself can be varied. RICS' decision is final.

Section 8 – Enforcement of a costs order

33. RICS is entitled to recover from the Regulated Member or his personal representatives, any costs which the Regulated Member has been ordered to pay even if membership has ceased, irrespective of how this has come about. Where a Regulated Member has been ordered to pay RICS' costs, an invoice for payment of the full sum will be sent to the Regulated Member.
34. If the outstanding sum remains unpaid after the due date for payment, RICS will take action to enforce the costs order. Where appropriate, RICS will commence legal proceedings in the civil courts to recover the debt and will seek the costs or doing so from the Regulated Member. Where proceedings are issued, RICS will also claim interest on the outstanding sum and will take appropriate enforcement action to ensure the sum is paid. RICS has been successful in recovering unpaid costs where it has been necessary to issue civil proceedings.
35. Following expulsion, an individual seeking readmission to membership must first pay all outstanding sums to RICS before their readmission application can be referred to a Registration Panel for consideration.

<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/media/rics-rules-setting-out-procedure-for-readmission-150518-mb.pdf>

14 July 2020