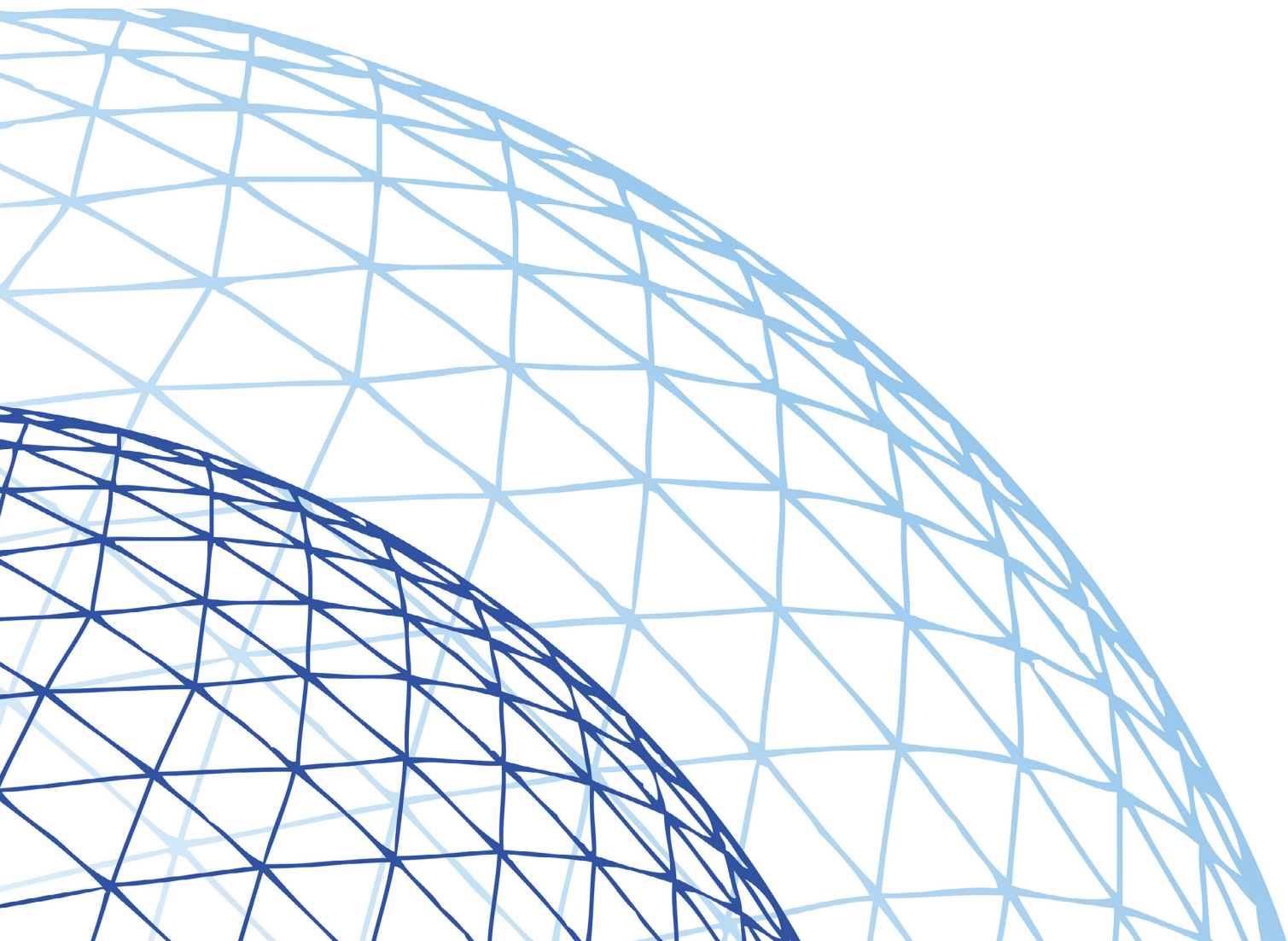




## Sanctions Policy: Guidance to RICS Disciplinary, Registration and Appeal Panel Rules

Version 8 with effect from 1 October 2019



# Sanctions Policy: Guidance to RICS Disciplinary, Registration and Appeal Panel Rules

## Part A Introduction

This Sanctions Policy sets out the Regulatory Board's approach to the circumstances in which Regulatory Sanctions can be applied to a Regulated Member under RICS' Disciplinary Rules. The Policy should be referred to by Head of Regulation and the Regulatory Tribunal when issuing Fixed Penalties, agreeing Regulatory Compliance Orders or imposing sanctions, in accordance with RICS Bye-Laws, Regulations and Regulatory Tribunal Rules.

In these rules:

- Regulated Member means a Member or a Registered Firm, or an individual or firm subject to an RICS disciplinary procedure, Disciplinary Panel or Appeal Panel.
- Regulatory Sanction means a sanction referred to in B5.4.2 of RICS' Bye-Laws.

### 1 Policy approach

- 1.1** The Regulatory Board has developed this Policy, together with its four supplements, to ensure that a fair and consistent approach is taken against Members and Firms that face disciplinary action.
- 1.2** The Policy provides general guidance on how regulatory sanctions should be applied and is designed to inform anyone with an interest in the RICS disciplinary process. It supports the Board's intention that Members and Firms that are disciplined are provided, where possible, help and guidance to bring them back into compliance with RICS' rules as well as having in place robust and stringent sanctions for the more serious of rule breaches.
- 1.3** Where money is mentioned in this Policy or one of its supplements it will be in GBP (pound sterling). When appropriate it will be converted to local currency using current exchange rates.

### 2 What does this Policy cover?

- 2.1** This Policy applies to:
  - Fixed Penalties
  - Regulatory Compliance Orders

- Regulatory Sanctions, which may be imposed by a Disciplinary or Appeal Panel (the 'Panels') or a Single Member of the Regulatory Tribunal.

### **3 Status of this Policy**

**3.1** Those making decisions on the application of RICS' Regulatory Sanctions are expected to comply with this Policy. However, the circumstances of every case are different, and each case must be considered on its own individual facts. It is accepted that there may be cases in which a different approach is required. Where a decision is taken to depart from the Policy, an explanation must be provided and recorded.

**3.2** No provision in this Policy will override the requirement for Head of Regulation or Panels to take account of the individual circumstances of each case when making a decision.

### **4 The Human Rights Act 2000**

**4.1** RICS is committed to ensuring its processes are compatible with the principles of the *Human Rights Act* 1998 (HRA) and this Policy is intended to reflect that commitment.

### **5 Review**

**5.1** This Policy will be reviewed from time to time as appropriate.

## Part B General considerations

The following general considerations apply to Regulatory Compliance Orders, Single Member decisions and Panel hearings. They do not apply to Fixed Penalties.

### 6 Overriding principles

- The principle of proportionality – the sanction must be proportionate to the breach and all the circumstances.
- The need to demonstrate to society and to other Members or Firms that RICS takes firm action in order to protect the public interest and promote regulatory compliance.
- The need to act in the public interest by protecting the public, the reputation of the profession and to declare and uphold proper standards.
- The necessity to deter the Regulated Member and other Members or Firms from future non-compliance.
- Regulatory Sanctions are not intended to be punitive but may have a punitive effect.

### 7 Relevant factors when considering the seriousness of a breach and possible sanction

- Whether the breach involved wrongdoing/blame or recklessness.
- Whether the Regulated Member was dishonest.
- Whether the breach was deliberate or intentional.
- The extent to which the Regulated Member has benefitted or stood to benefit from the breach.
- The risk of loss, or size of damage, to the public or consumers.
- Whether the breach involved a vulnerable client or consumer.
- Whether the Regulated Member facilitated wrongdoing by a client or other person.
- The Regulated Member's level of experience in practice.
- The Regulated Member's disciplinary or complaints history.
- Whether there have been any relevant court or tribunal findings including findings of dishonesty.
- Whether the breach was an isolated failure or repeated or ongoing.
- Where relevant, the length of time over which the breach occurred.
- The number or frequency of the breach(es).
- The duration of the breach(es).
- Whether the Regulated Member sought to conceal the breach.
- Whether previous advice or warnings about risks, conduct or practice had been ignored.
- Whether the Regulated Member was under external pressure.

- Steps taken to rectify breaches and to put things right, or to avoid a repeat of the breach in the future.
- Responsibility taken by the Regulated Member for any failings.
- Whether the Regulated Member notified RICS of the breach.
- Any admission and/or regret expressed.
- Any steps taken by the Regulated Member to compensate the client.
- Willingness to assist RICS.
- The extent to which the Regulated Member has cooperated with the investigation.
- Ill health or other personal circumstances.

## **8 Other mitigating or aggravating factors applicable to specific breaches**

**8.1** There are other mitigating or aggravating factors that can be taken into account – paragraph 7 is not intended to be an exhaustive list.

**8.2** *Supplement 1 to the Sanctions Policy: Sanctions Guidelines* sets out examples of factors relevant to some specific rules where further information may be helpful. They do not cover every rule and are not intended to do so.

## **9 Reasons for sanction**

**9.1** In every case it is crucial that reasons are given for the decision made in relation to the sanction. These should be recorded together with any facts that are taken into account.

## Part C Fixed Penalties

### 10 What is a Fixed Penalty and when are they applicable?

**10.1** A Fixed Penalty is a caution and/or a fine payable by the Regulated Member for a breach of the rules. A Fixed Penalty is only applicable to a breach of the following rules:

- *Rules of Conduct for Members*, Rule 6 – Continuing Professional Development (CPD)
- *Rules of Conduct for Members*, Rule 8 – Information to RICS
- *Rules of Conduct for Firms*, Rule 14 – Information to RICS
- *Rules for the Registration of Firms*, Rule 10.1a – Fees.

**10.2** Please refer to *Supplement 2 to the Sanctions Policy: Fines, Costs and Administration Fees* for further details about the imposition of a Fixed Penalty fine, the level of fine and how this is calculated.

### 11 Modification of a Fixed Penalty

**11.1** A Fixed Penalty Reviewer may modify a Fixed Penalty. Where this occurs, a caution may be overturned and/or a fine reduced down a category, or to £0.

**11.2** If the Regulated Member has paid a Fixed Penalty but is referred to the Disciplinary Panel because of a continuing breach of the rules, the Panel should have regard to the fact that RICS has received payment for the Fixed Penalty when it is considering imposing any fine.

**11.3** If the Regulated Member has not paid the Fixed Penalty and continues to be in breach of the rules, and is referred to the Disciplinary Panel, then the Panel should have regard to the fact that the Fixed Penalty has not been paid when considering the level of any fine it may decide to impose.

## Part D Regulatory Compliance Orders

Regulatory Compliance Orders may be suitable for use in respect of breaches of any of RICS' Rules of Conduct. There must be mutual agreement between RICS and the Regulated Member concerned to enter into a Regulatory Compliance Order.

### 12 What is a Regulatory Compliance Order?

**12.1** A Regulatory Compliance Order is a formal written agreement between RICS and the Regulated Member, requiring:

- the Regulated Member to take or refrain from taking certain actions within a period of time
- the Regulated Member to pay a fine and/or cost where appropriate.

### 13 Reasons for making a Regulatory Compliance Order

**13.1** RICS may enter into a Regulatory Compliance Order with a Regulated Member if it believes that certain conditions apply:

- the rule breach concerned is not so serious that a public disciplinary hearing is necessary to protect the public or the public interest
- the Regulated Member admits the breach and is willing to cooperate with RICS to rectify the matter.

## Part E Regulatory Sanctions

### 14 Disciplinary and Appeal Panel

**14.1** The Disciplinary and Appeal Panel can impose the following Regulatory Sanctions:

- caution
- reprimand
- undertakings as to future conduct
- fines (in accordance with *Supplement 2 to the Sanctions Policy: Fines, Costs and Administration Fees*)
- conditions on the Member's continued membership of RICS
- conditions on the Firm's registration for regulation
- expulsion of the Member from RICS
- removal of the Firm's registration for regulation.

### 15 Single Members of the Conduct and Appeal Committee

**15.1** A Single Member of the Conduct and Appeal Committee can impose the following Regulatory Sanctions:

- caution
- reprimand
- undertakings as to future conduct
- fines (in accordance with *Supplement 2 to the Sanctions Policy: Fines, Costs and Administration Fees*)
- conditions on the Member's continued membership of RICS
- conditions on the Firm's registration for regulation
- expulsion of the Member from RICS, but only in cases concerning CPD breaches and/or non-engagement.

### 16 Caution

**16.1** A caution is likely to be given in circumstances where the breach is minor and is unlikely to be repeated.

### 17 Reprimand

**17.1** A reprimand may be given where there has been/is a risk of public harm.

### 18 Undertakings

**18.1** In some cases, a Panel or Single Member may decide to impose undertakings on the Regulated Member as well as imposing another penalty such as a caution, reprimand or fine. The Panel or Single Member may do this in order to ensure that the Regulated Member refrains from continuing/repeating the conduct or action causing the contravention. Alternatively, the Panel or Single Member may require the Regulated Member to take a course of action such as apologise personally or publicly to a person. This may be appropriate, for



instance, in discrimination cases or where the Regulated Member has criticised a person without good reason.

**18.2** Where the standard of the Regulated Member's professional work has fallen short of that reasonably to be expected, or instructions have been accepted where the Regulated Member does not have the necessary competence, the Panel or Single Member may require:

- the Regulated Member to refrain from practising in a particular specialism or
- the Regulated Member to practise that specialism under supervision or
- the Regulated Member to refrain from practising a specialism until they have satisfied RICS of their competence in that field.

**18.3** A timescale for compliance with the terms of an undertaking will usually form part of the undertaking itself. Every undertaking will contain a statement that a breach of such undertaking will result in automatic referral to a Single Member of the Conduct and Appeal Committee or a Disciplinary Panel.

**18.4** A failure to comply with an undertaking may be considered to be conduct liable to bring RICS into disrepute.

## **19 Fines**

**19.1** For the level of fines that the Panels may impose, please refer to *Supplement 2 to the Sanctions Policy: Fines, Costs and Administration Fees*.

**19.2** For the avoidance of doubt the Panel or Single Member does not have the power to order the Regulated Member to compensate a client. Compensation is dealt with by the relevant independent redress scheme or the Courts. However, where the insurance policy maintained by RICS has paid an Ombudsman award because the Regulated Member has refused to do so, the Panel or Single Member may require repayment of this sum by the Regulated Member to the insurance scheme to ensure that the profession as a whole does not bear the cost of this failure.

## **20 Conditions on a Regulated Member's continued membership or registration**

**20.1** Conditions should be specific, measurable, achievable, realistic and time bound.

**20.2** If a Panel or Single Member imposes conditions, it should state whether a breach of these conditions by the Regulated Member will lead to automatic expulsion or removal, or whether further disciplinary action is appropriate.

## **21 Expulsion or withdrawal of registration from Regulation**

**21.1** In the absence of extenuating circumstances, the following are examples of instances likely to result in a Single Member, Disciplinary

or Appeal Panel making or upholding a decision to expel a Member or withdraw a Firm's registration:

- gross, persistent or wilful failure to comply with an RICS Rule of Conduct
- fraud, dishonesty or a lack of integrity
- conviction of a serious criminal offence (an offence for which the penalty could be a custodial sentence)
- gross incompetence or recklessness in relation to the conduct or management of professional activities
- persistent and/or serious failure to cooperate with RICS
- breach of a required undertaking previously given to RICS, or failure to give an undertaking without reasonable excuse
- deliberate discrimination
- gross mismanagement of finances
- misappropriation of clients' money
- third breach of Rule 6 of the *Rules of Conduct for Members* within 10 years of receipt of a caution for breach of the same Rule.

**21.2** This is not an exhaustive list and each case must be considered on its own facts. Panels and Single Members are given discretion to apply the most appropriate sanctions in any particular case while bearing in mind this Policy.

## **22 Sanctions in respect of Rule 6 of the Rules of Conduct for Members (CPD)**

**22.1** The policy for CPD breaches is as follows:

- first breach – Fixed Penalty (caution)
- second breach within 10 years of receipt of a caution – Fixed Penalties (caution and fine)
- third breach within 10 years of receipt of a caution – referral to Single Member or Disciplinary Panel with presumption of expulsion.

**22.2** The policy for CPD breaches does not preclude a member from referral to a Single Member or Disciplinary Panel by Head of Regulation for any breach of Rule 6 of *RICS Rules of Conduct*.

## **23 Can the Disciplinary Panel or Single Member impose more than one sanction?**

**23.1** The Disciplinary Panel or Single Member may impose more than one of the sanctions listed in paragraphs 14 and 15. Where the Member is expelled or the Firm's registration is removed, the Disciplinary Panel or Single Member may impose a fine, undertaking or conditions to be applied if the Regulated Member seeks to be reinstated at a later date.

## **24 What are the sanctions that the Appeal Panel can impose?**

**24.1** If the Appeal Panel allows an appeal by the Regulated Member or a review by the Secretary to the Profession, and varies either the Disciplinary Panel's finding or sanction, it may impose the same range of sanctions as the Disciplinary Panel. It may vary the sanction imposed to one of greater or lesser severity than that previously imposed.

**24.2** In addition, the Appeal Panel may refer the matter back to the Disciplinary Panel for a new hearing or reconsideration.

## **25 When will the sanctions take effect?**

**25.1** Regulatory Sanctions imposed by a Single Member of the Conduct and Appeal Committee will take effect following the expiry of 14 days from service of the Single Member's decision upon the Regulated Member, unless notification has been received from the Regulated Member pursuant to Rule 115 of the *Disciplinary, Registration and Appeal Panel Rules*; in which case the Regulatory Sanction imposed by the Single Member will not take effect and the matter will be dealt with by a Disciplinary Panel which will determine what, if any, Regulatory Sanction will be imposed.

**25.2** Regulatory Sanctions imposed by the Disciplinary Panel will take effect:

- at the conclusion of any appeal period if the Regulated Member does not seek to appeal or
  - at the conclusion of any appeal proceedings,
- unless the Panel directs otherwise.

**25.3** Decisions made by the Appeal Panel will take effect from the date the Panel specifies.

## Part F Costs

The way that RICS calculates costs is set out in *Supplement 2 to the Sanctions Policy: Fines, Costs and Administration Fees*.

### 26 Regulatory Compliance Orders and Panel hearings

**26.1** In the case of a Regulatory Compliance Order, Single Member decision or Panel hearing, Head of Regulation, a Single Member or a Panel may make an order that they consider just and reasonable for the payment of costs.

### 27 Costs of Single Member Decisions and Panel hearings

**27.1** Where the Regulated Member is found by a Single Member or Panel to be in breach of any rule, RICS will seek full recovery of the costs it incurred in relation to the investigation and hearing of the case, and will ask the Panel to make an award in its favour. These costs can include:

- the cost of investigating and preparing RICS' case for a Single Member decision or Panel hearing
- those associated with the services of the Single Member or convening the Panel and
- the cost of any legal or professional advice and representation.

**27.2** The Regulated Member may seek to recover costs from RICS if a Single Member or Panel finds that the case against them is not proved or they appeal successfully. Unlike litigation (where an award of costs normally follows the event) a finding that a case is not proved will not automatically trigger an award of costs.

**27.3** When a Single Member or Panel decides whether to make an award of costs against RICS, it will consider all the relevant facts including the conduct of RICS and the Regulated Member throughout the proceedings including the investigation. The case law relating to costs against a regulator is consistent with this approach.

**27.4** The Court of Appeal has said that normal costs rules do not apply and unless there is dishonesty or lack of good faith, a costs order should not be made against a regulator unless there is good reason to do so.

**27.5** There is no right of appeal against an order made by a Single Member of the Conduct and Appeal Committee. A Regulated Member may request that a matter be referred to a Disciplinary Panel to consider the case afresh, in accordance with the rules set out at Part VI of the *Disciplinary, Registration and Appeal Panel Rules*.

**27.6** There is no right of appeal against an order for costs made by a Disciplinary Panel.



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### Americas

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**Latin America**

ricsamericalatina@rics.org

**North America**

ricsamericas@rics.org

### Asia Pacific

---

**Australasia**

australasia@rics.org

**Greater China (Hong Kong)**

ricshk@rics.org

**Greater China (Shanghai)**

ricschina@rics.org

**Japan**

ricsjapan@rics.org

**South Asia**

ricsindia@rics.org

**Southeast Asia**

sea@rics.org

### EMEA

---

**Africa**

ricsafrica@rics.org

**Europe**

ricseurope@rics.org

**Ireland**

ricsireland@rics.org

**Middle East**

ricsmiddleeast@rics.org

**United Kingdom RICS HQ**

contactrics@rics.org

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