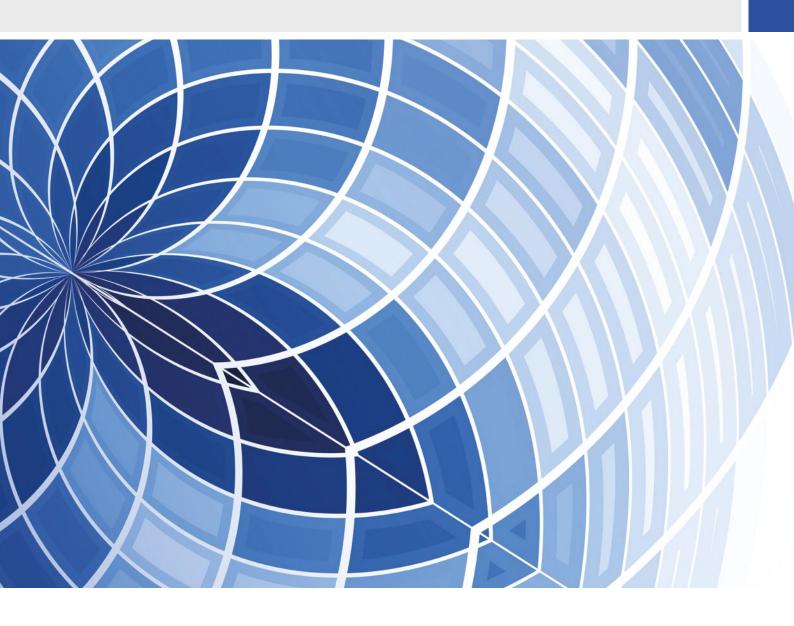


Supplement 1 to the Sanctions Policy – Penalty Guidelines

O1 January 2008

Version 5 with effect from 01 August 2014



Introduction

What are the Penalty Guidelines?

These guidelines provide further guidance in addition to that contained in the Sanctions Policy.

They are designed to supplement the guidance set out in the Sanctions Policy, and do not replace or override it.

This document sets out guidelines about some specific Rules where further information may be helpful. They do not cover every Rule and are not intended to do so.

The guidelines provide a framework to assist the decision maker in deciding upon the most appropriate level of penalty (if any), and list mitigating and aggravating factors which may be applicable to a particular type of Rule breach.

What do they apply to?

The guidelines apply to Consent Orders and hearings by the Disciplinary Panel and Appeal Panel. They do not apply to Fixed Penalties.

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Rules of Conduct for Members, Rule 3 - Ethical Behaviour

Consider the seriousness of the breach (including risk to clients/public interest)



Consider mitigating and aggravating factors and the weight to attach to each



Mitigating factors

Aggravating factors

For example:

- · Lack of financial gain
- No actual loss to clients
- Errors of omission not commission
- Full disclosure to RICS
- Apology/recompense/willingness to use alternative dispute resolution
- Immediate remedial action/revised controls
- Consequent staff training/discipline
- Low reputation risk for other members/RICS due to satisfactory consumer redress

- Financial gain (secret profit)
- · Loss/detriment to client
- False/misleading statements made
- Concealing facts from RICS
- Failure to correct behaviour promptly
- Non-compliance with practice statement
- Statutory breach (e.g. in the UK this could be section 21 of Estate Agents Act 1979)
- Adverse publicity for profession including prosecution/judicial criticism

Consider personal mitigation

for example:

- Health
- Family/personal issues
- Co-operation

If Member has a previous record, the relevance of this and any failure to respond to previous consent orders should be considered – it may increase the seriousness.

Consider penalties Consider proportionality Decide which penalties (if any) you wish to impose Give reasons

Rules of Conduct for Members, Rule 7 - Solvency

Consider the seriousness of the breach (including risk to clients/public interest)



For example:

Consider mitigating and aggravating factors and the weight to attach to each



Mitigating factors

- Steps taken to minimise loss to clients and/or creditors
- Steps taken to assist employees (if applicable)
- Compliance with ethical standards
- Circumstances beyond Member's control

Aggravating factors

- Loss to clients and/or creditors
- Criminal Proceedings
- Unsatisfied judgments, individual voluntary arrangements (duration and dividend to be taken into account), Bankruptcy Order (any restrictions imposed)
- · Promises of payment not honoured
- Rash or hazardous speculation

Consider personal mitigation

for example:

- Health
- Family/personal issues
- Co-operation

Consider penalties	Consider proportionality
Decide which penalties (if any) you wish to impose	Give reasons

Rules of Conduct for Members, Rule 8 - Information to RICS

Consider the seriousness of the breach (including risk to clients/public interest)



Consider mitigating and aggravating factors and the weight to attach to each



Mitigating factors

virtigating ractors

For example:

- Member is not in receipt of information/not easily available
- Information of low importance (in terms of risk to the public interest)
- Attempts made to produce information
- Requests limited
- Only just overdue/short length of time since first requested
- No evidence that Member has received request

Aggravating factors

- Member is in receipt of information/ easily available
- Information of high importance (in terms of risk to the public interest)
- No response to request for information
- Requested several times
- Well overdue/significant length of time since information first requested
- Has Member provided correct/ up to date address or deliberately misdirected/failed to collect or open correspondence?
- Delay in submitting information previously

Consider personal mitigation

for example:

- Health
- Family/personal issues
- Co-operation

If Member has a previous record, the relevance of this and any failure to respond to previous consent orders should be considered – it may increase the seriousness.

Consider penalties

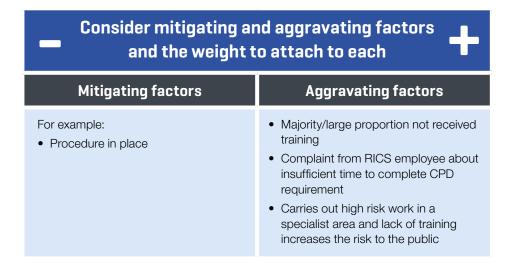
Consider proportionality

Decide which penalties (if any) you wish to impose

Give reasons

Rules of Conduct for Firms, Rule 6 - Training

Consider the seriousness of the breach (including risk to clients/public interest)



Consider personal mitigation

for example:

Co-operation

Consider penalties	Consider proportionality
Decide which penalties (if any) you wish to impose	Give reasons

Rules of Conduct for Firms, Rule 7 - Complaints Handling

Consider the seriousness of the breach (including risk to clients/public interest)



Consider mitigating and aggravating factors and the weight to attach to each



Mitigating factors

Aggravating factors

For example:

- Has got a complaints handling procedure (CHP)
- CHP fully compliant
- Reference to CHP in terms of engagement made
- Dealt with client's matters promptly
- Firm agreed to an Alternative Dispute Resolution (ADR) approved by the Regulatory Board

- No CHP
- Initial CHP non-compliant
- No reference to CHP in terms of engagement
- Does not reply to client
- Does not co-operate with RICS staff member
- Delays in dealing with client affairs
- Firm will not refer matter to independent redress mechanism approved by the Regulatory Board

Consider personal mitigation

for example:

- Co-operation
- · Complaint has been resolved

If Firm has a previous record, the relevance of this and any failure to respond to previous consent orders should be considered – it may increase the seriousness. Previous advice from the RICS must also be considered.

Consider penalties	Consider proportionality
Decide which penalties (if any) you wish to impose	Give reasons

Rules of Conduct for Firms, Rule 8 - Clients' Money

Consider the seriousness of the breach (including risk to clients/public interest)



Consider mitigating and aggravating factors and the weight to attach to each



Mitigating factors

ctors Aggravating factors

For example:

- No loss to clients/steps taken to minimise/rectify loss(es)
- · Minimal monies held
- Remedial action taken
- Isolated incident(s)
- Reimbursement of deficit(s)/ overdrawing(s)
- Improved security arrangements and procedures implemented
- Misappropriation reported to police/ insurers/RICS
- Prompt reimbursement of misappropriated funds/overdrawings
- Administrative misappropriation

- Loss to clients
- No remedial action taken
- No/insufficient remedial action
- Ongoing breach of Rule(s)
- Ongoing deficit(s)/overdrawing(s)
- Weak security arrangements and procedures
- Misappropriation not reported to police/insurers/RICS
- No/delayed reimbursement of misappropriated funds/overdrawings
- Intentional misappropriation

Consider personal mitigation

for example:

- Co-operation
- Professionalism of Firm's accountant (where relevant)

Consider penalties	Consider proportionality
Decide which penalties (if any) you wish to impose	Give reasons

Rules of Conduct for Firms, Rule 9 - Professional Indemnity Insurance

Consider the seriousness of the breach (including risk to clients/public interest)



Consider mitigating and aggravating factors and the weight to attach to each



Mitigating factors

Aggravating factors

For example:

- No uninsured claims
- Small number of clients
- Professional Indeminity Insurance (PII) expired very recently
- Cover always maintained when surveying services provided (now in run-off cover period)
- Formal declinature
 - a. Evidence of formal declinature provided
 - b. Explored possibility of Assigned Risks Pool
 - c. Possibility of non-compliant cover explored
 - d. Take into account market conditions e.g. hardening, softening, rising, falling
- Letter(s) of indemnity from client(s)
- Risk management procedures

- Uninsured claims and notified
- High number of clients

circumstance

- Significant period elapsed since PII expired
- Surveying services performed when PII not maintained
- Vulnerable client (e.g. vulnerable individual rather than large commercial client)

Consider personal mitigation

for example:

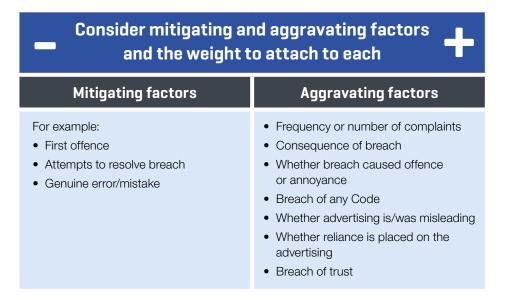
- Co-operation
- · Complaint has been resolved

If Firm has a previous record, the relevance of this and any failure to respond to previous consent orders should be considered – it may increase the seriousness. Previous advice from the RICS must also be considered.

Consider penalties Consider proportionality Decide which penalties (if any) you wish to impose Give reasons

Rules of Conduct for Firms, Rule 10 - Advertising

Consider the seriousness of the breach (including risk to clients/public interest)



Consider personal mitigation

for example:

• Co-operation

Consider penalties	Consider proportionality
Decide which penalties (if any) you wish to impose	Give reasons

Rules of Conduct for Firms, Rule 11 - Solvency

Consider the seriousness of the breach (including risk to clients/public interest)



Consider mitigating and aggravating factors and the weight to attach to each



Mitigating factors

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For example:

- Steps taken to minimise loss to creditors
- Steps taken to assist employees (if applicable)
- Compliance with core values
- Circumstances beyond Firm's control

Aggravating factors

- Loss to clients
- Criminal Proceedings
- Unsatisfied judgments
- Where insolvency of an individual, individual voluntary arrangements (duration and dividend to be taken into account), Bankruptcy Order (any restrictions imposed)
- Promises of payment not honoured
- Rash or hazardous speculation

Consider personal mitigation

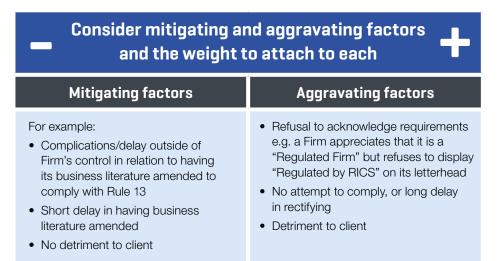
for example:

Co-operation

Consider penalties	Consider proportionality
Decide which penalties (if any) you wish to impose	Give reasons

Rules of Conduct for Firms, Rule 13 - Use of Designation

Consider the seriousness of the breach (including risk to clients/public interest)



Consider personal mitigation

for example:

- Co-operation
- Financial difficulties, e.g. the Firm may not be able to afford to have its business literature updated or amended

Consider penalties	Consider proportionality
Decide which penalties (if any) you wish to impose	Give reasons

Rules of Conduct for Firms, Rule 14 - Information to RICS

Consider the seriousness of the breach (including risk to clients/public interest)



Consider mitigating and aggravating factors and the weight to attach to each



Mitigating factors

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For example:

- Firm is not in receipt of information/ not easily available
- Information of low importance
- Attempts made to produce information
- Requests limited
- Only just overdue/short length of time since first requested
- No evidence that Firm has received request
- Has correspondence been sent to correct address?
- No delay in submitting information previously

Aggravating factors

- Firm is in receipt of information/easily available
- Information of high importance
- No response to request for information
- Requested several times
- Well overdue/significant length of time since information first requested
- Evidence that Firm received request
- Has Firm provided correct/up to date address?
- Delay in submitting information previously

Consider personal mitigation

for example:

Co-operation

If Firm has a previous record, the relevance of this and any failure to respond to previous consent orders should be considered – it may increase the seriousness.

Consider penalties

Consider proportionality

Decide which penalties (if any) you wish to impose

Give reasons



Confidence through professional standards

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