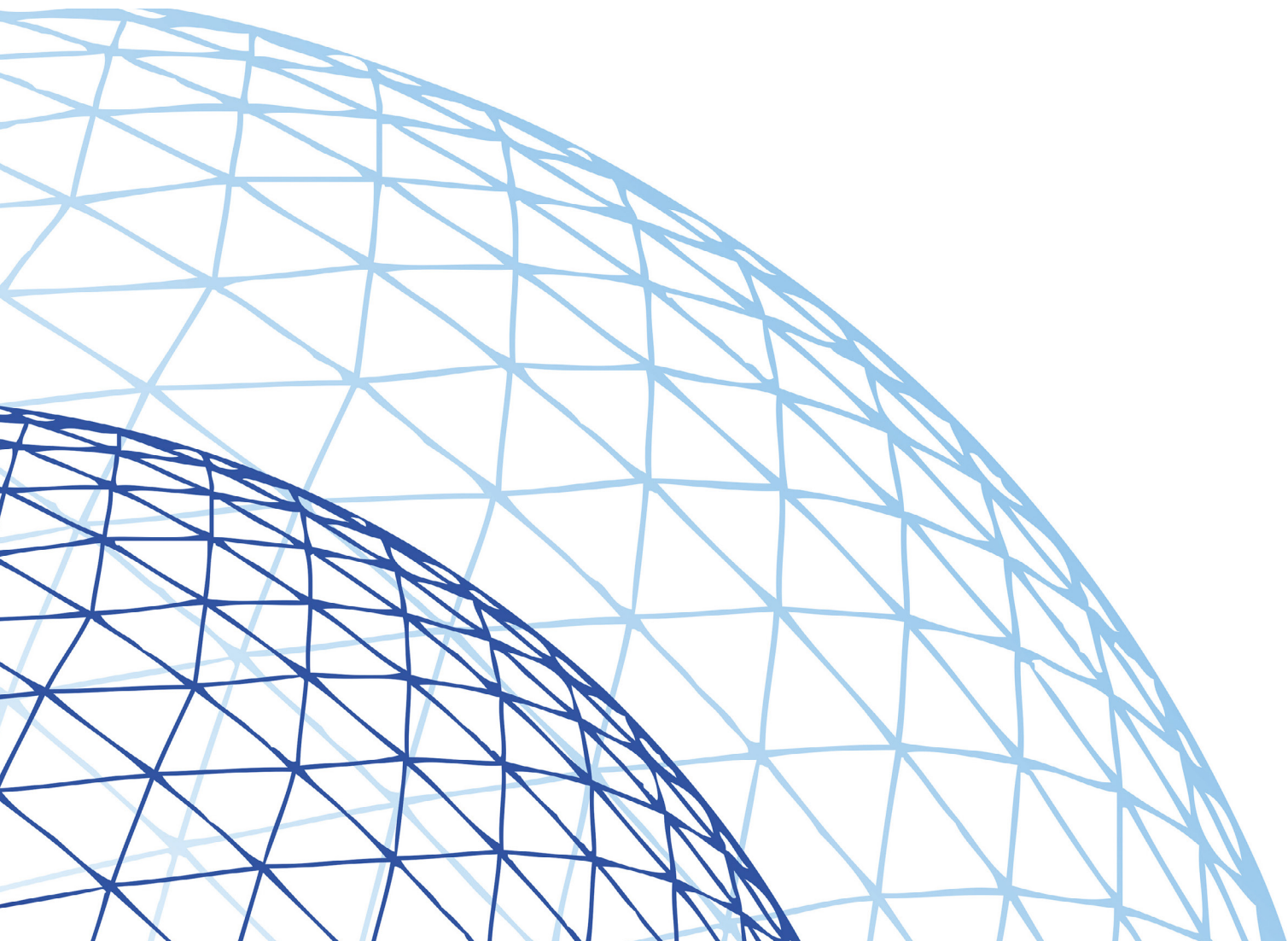




Supplement 1 to the Sanctions Policy: Sanction Guidelines

Version 6 with effect from 1 October 2019



Supplement 1 to the Sanctions Policy: Sanction Guidelines

1 Introduction

What are the Sanction Guidelines?

These guidelines provide further guidance 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 Sanction (if any), and list mitigating and aggravating factors that may be applicable to a particular type of Rule breach.

The mitigating and aggravating factors specified in these guidelines are not exhaustive.

What do they apply to?

The guidelines apply to Regulatory Compliance Orders, Single Member decisions and hearings by the Disciplinary and Appeal Panels. They do not apply to Fixed Penalties.

2 Rules of Conduct for Members, Rule 3 – Ethical Behaviour

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

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

Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> • 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 [ADR] • Immediate remedial action/revised controls • Consequent staff training/discipline • Low reputational risk for other Regulated Members/RICS due to satisfactory consumer redress 	<p>For example:</p> <ul style="list-style-type: none"> • Lack of integrity • Financial gain [secret profit] • Loss/detriment to client • False/misleading statements made • Concealing facts from RICS • Failure to correct behaviour promptly • Non-compliance with RICS practice or professional statement • Statutory breach [e.g. in the UK this could be section 21 of <i>Estate Agents Act 1979</i>] • Adverse publicity for profession including prosecution/judicial criticism

2.2 Consider any personal mitigation, for example:

- health
- family/personal issues
- insight or
- co-operation.

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

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

3 Rules of Conduct for Members, Rule 7 – Solvency

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

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

Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> • Steps taken to minimise loss to clients and/or creditors • Steps taken to assist employees [if applicable] • Compliance with ethical standards • Circumstances beyond Regulated Member’s control 	<p>For example:</p> <ul style="list-style-type: none"> • Lack of integrity • 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

3.2 Consider any personal mitigation, for example:

- health
- family/personal issues
- insight or
- co-operation.

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

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

4 Rules of Conduct for Members, Rule 8 – Information to RICS

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

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

Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> • Regulated 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 	<p>For example:</p> <ul style="list-style-type: none"> • Lack of integrity • Regulated 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 • Regulated Member deliberately misdirected/failed to collect or open correspondence • Regulated Member failed to provide correct or up to date address • Delay in submitting information previously

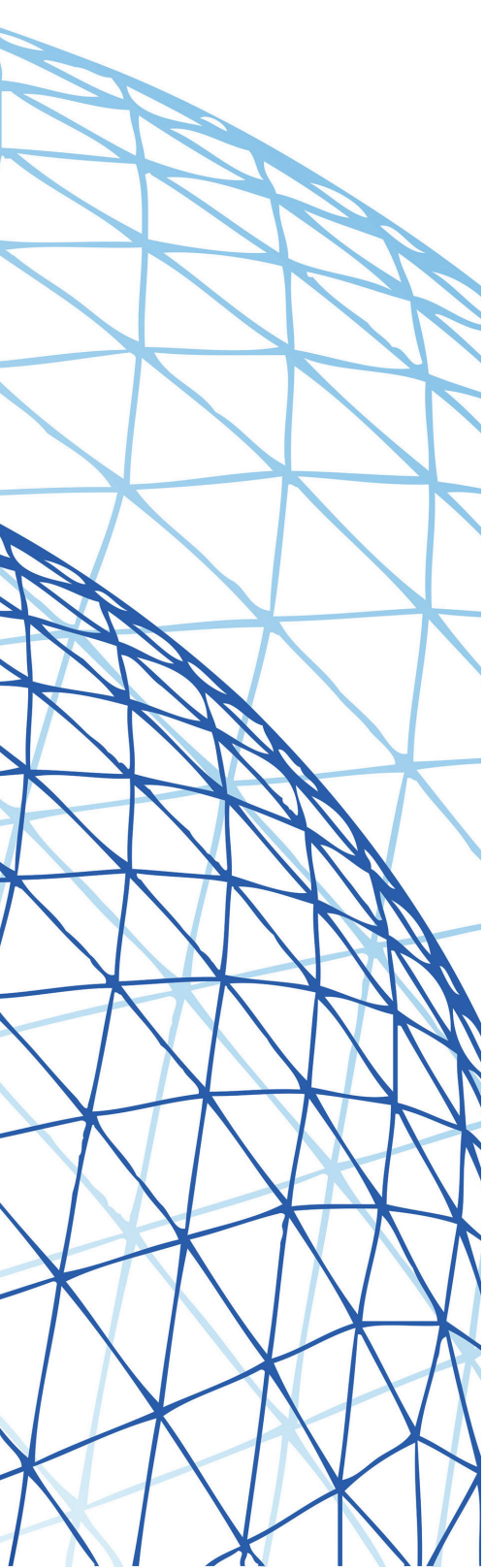
4.2 Consider any personal mitigation, for example:

- health
- family/personal issues

- insight or
- co-operation.

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

Consider sanctions	Consider proportionality
Decide which Sanctions [if any] you wish to impose	Give reasons



5 Rules of Conduct for Firms, Rule 6 – Training

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

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

Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> • Procedure in place 	<p>For example:</p> <ul style="list-style-type: none"> • Majority/large proportion not received training • Complaint from RICS employee about insufficient time to complete CPD requirement • Carries out high risk work in a specialist area and lack of training increases the risk to the public

5.2 Consider any mitigation, for example:

- co-operation.

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

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

6 Rules of Conduct for Firms, Rule 7 – Complaints Handling

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

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

Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> • Has got a complaints-handling procedure [CHP] in place • Fully CHP compliant • Reference to CHP in terms of engagement made • Dealt with client’s matters promptly • Firm agreed to ADR approved by the Regulatory Board 	<p>For example:</p> <ul style="list-style-type: none"> • No CHP • Initial CHP non-compliance • No reference to CHP in terms of engagement • Does not reply to client • Does not co-operate with RICS staff Regulated Member • Delays in dealing with client affairs • Firm will not refer matter to independent redress mechanism approved by the Regulatory Board

6.2 Consider any mitigation, for example:

- co-operation or
- complaint has been resolved.

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

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

7 Rules of Conduct for Firms, Rule 8 – Clients’ Money

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

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

Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> No loss to clients/ steps taken to minimise/rectify loss[es] Minimal monies held Remedial action taken Isolated incident[s] Reimbursement of deficit[s]/ overdrawings[s] Improved security arrangements and procedures implemented Misappropriation reported to police/ insurers/RICS Prompt reimbursement of misappropriated funds/overdrawings Administrative misappropriation 	<p>For example:</p> <ul style="list-style-type: none"> Loss to clients No remedial action taken No/insufficient remedial action Ongoing breach of Rule[s] Ongoing deficit[s]/ overdrawings[s] Weak security arrangements and procedures Misappropriation not reported to police/ insurers/RICS No/delayed reimbursement of misappropriated funds/overdrawings Intentional misappropriation

7.2 Consider any mitigation, for example:

- co-operation or
- professionalism of Firm’s accountant (where relevant).

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

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

8 Rules of Conduct for Firms, Rule 9 – Professional Indemnity Insurance

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

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

Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> • No uninsured claims • Small number of clients • Professional Indemnity Insurance [PII] expired very recently • Cover always maintained when surveying services provided (now in run-off cover period) • Formal declination: <ol style="list-style-type: none"> a. Evidence of formal declination 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 	<p>For example:</p> <ul style="list-style-type: none"> • Uninsured claims and notified circumstance • High number of clients • Significant period elapsed since PII expired • Surveying services performed when PII not maintained • Vulnerable client [e.g. vulnerable individual rather than large commercial client]

8.2 Consider any mitigation, for example:

- co-operation or
- complaint has been resolved.

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

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

9 Rules of Conduct for Firms, Rule 10 – Advertising

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

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

Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> • First offence • Attempts to resolve breach • Genuine error/mistake 	<p>For example:</p> <ul style="list-style-type: none"> • Frequency or number of complaints • Consequence of breach • Whether breach caused offence or annoyance • Breach of any Code • Whether advertising is/was misleading • Whether reliance is placed on the advertising • Breach of trust

9.2 Consider any mitigation, for example:

- co-operation.

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

Consider sanctions	Consider proportionality
Decide which Sanctions [if any] you wish to impose	Give reasons

10 Rules of Conduct for Firms, Rule 11 – Solvency

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

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

Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> • Steps taken to minimise loss to creditors • Steps taken to assist employees (if applicable) • Compliance with core values • Circumstances beyond Firm’s control 	<p>For example:</p> <ul style="list-style-type: none"> • Loss to clients • Criminal Proceedings • Unsatisfied judgements • 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

10.2 Consider any mitigation, for example:

- co-operation.

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

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

11 Rules of Conduct for Firms, Rule 13 – Use of Designation

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

11.1 Consider mitigating and aggravating factors and the weight attached to each:

Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> • Complications/delay outside of Firm’s control in relation to having its business literature amended to comply with Rule 13 • Short delay in having business literature amended • No detriment to client 	<p>For example:</p> <ul style="list-style-type: none"> • Refusal to acknowledge requirements, e.g. a Firm appreciates that it is a ‘Regulated Firm’ but refuses to display ‘Regulated by RICS’ on its letterhead • No attempt to comply, or long delay in rectifying • Detriment to client

11.2 Consider any mitigation, for example:

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

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

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

12 Rules of Conduct for Firms, Rule 14 – Information to RICS

Consider the seriousness of the breach (including risk to clients/public interest). Below are some of the mitigating and aggravating factors that could be taken into account.

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

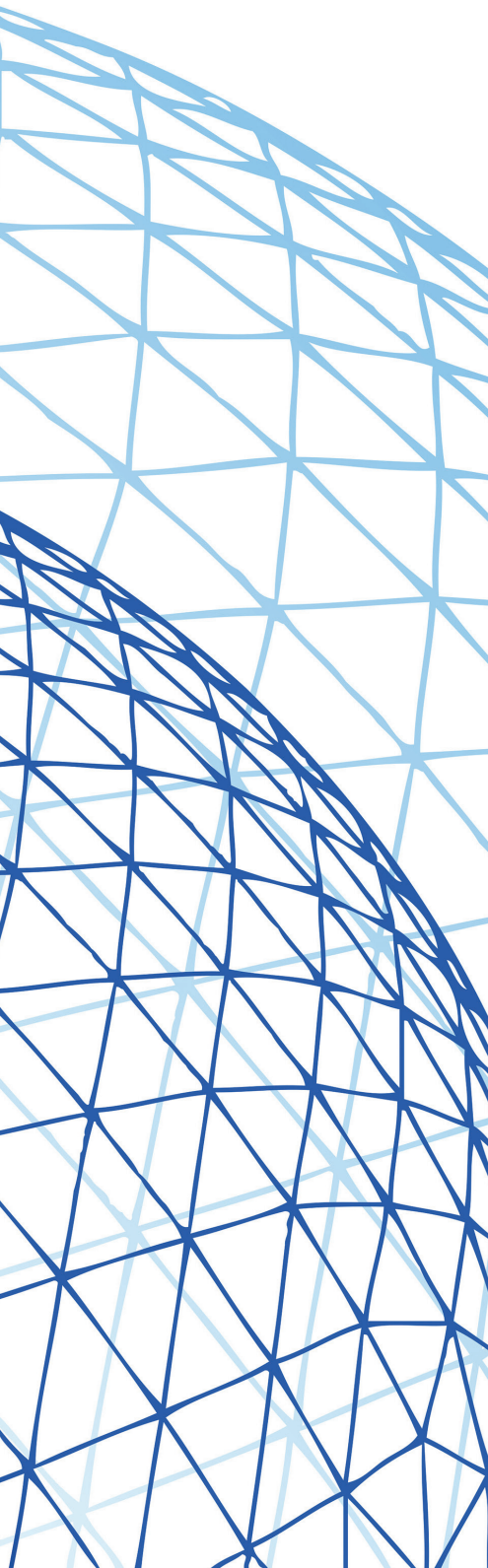
Mitigating factors	Aggravating factors
<p>For example:</p> <ul style="list-style-type: none"> • Firm is not in receipt of information/not easily available • Information of low importance • Attempts made to produce information • Requests limited • Only just overdue/ short length of time since first requested • No evidence that Firm has received request • Has correspondence been sent to correct address? • No delay in submitting information previously 	<p>For example:</p> <ul style="list-style-type: none"> • 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 • Firm deliberately misdirected/failed to collect or open correspondence • Firm failed to provide correct/up to date address • Delay in submitting information previously

12.2 Consider any mitigation, for example:

- co-operation.

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

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





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