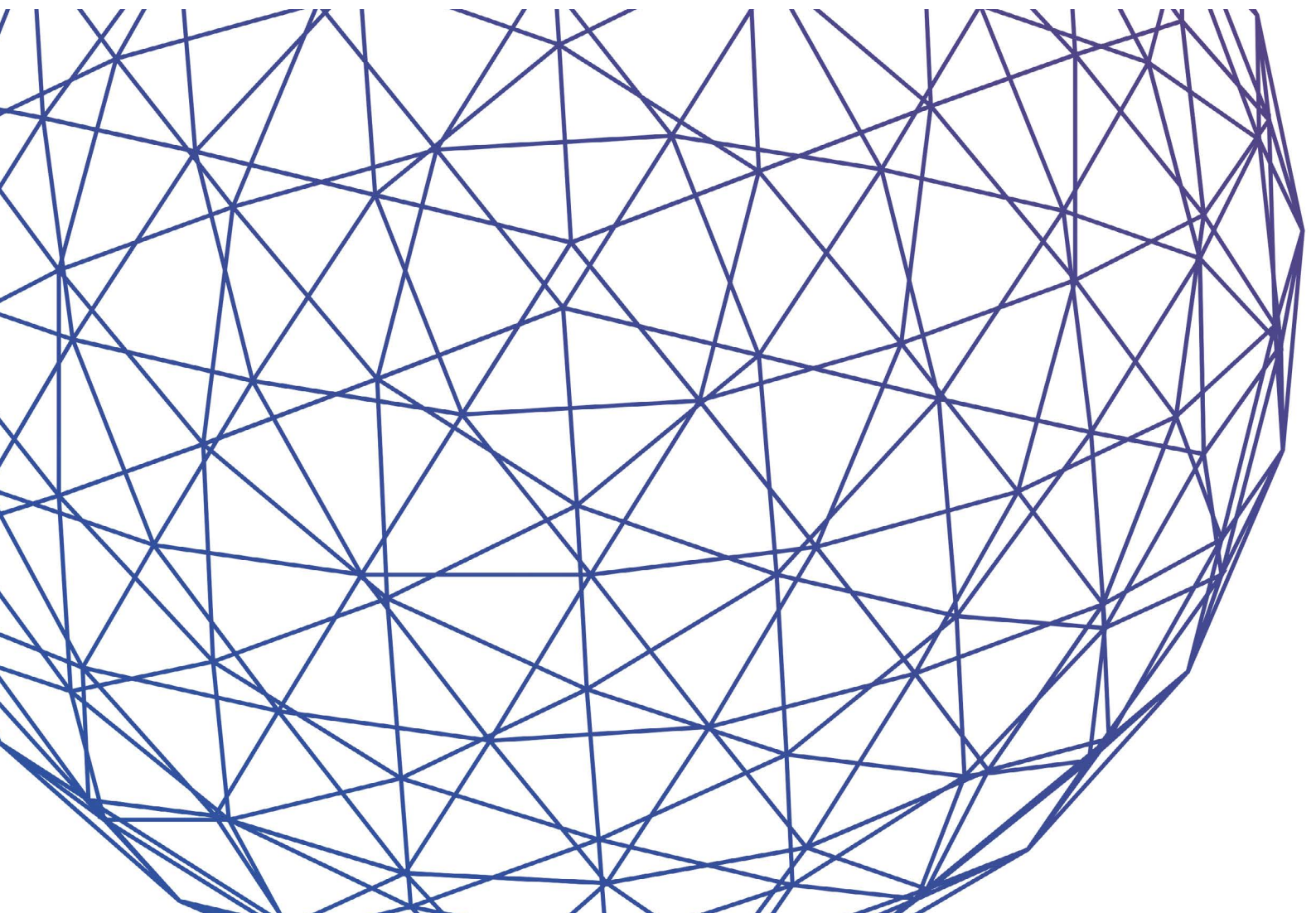




## Sanctions Policy – Guidance to RICS Disciplinary, Registration and Appeal Panel Rules

01 January 2008

Version 7 with effect from 01 January 2017



## Part A Introduction

This Sanctions Policy sets out the Regulatory Board's approach to the circumstances in which disciplinary sanctions can be applied to a Member or a registered Firm under RICS' Disciplinary Rules. The Policy should be referred to by the Head of Regulation, Disciplinary or Appeal Panels when issuing Fixed Penalties, agreeing Consent Orders or imposing sanctions.

### 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 disciplinary 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 assisted, where possible, through 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 £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
  - Consent Orders
  - Sanctions which may be imposed by a Disciplinary or Appeal Panel (the 'Panels').

### 3. Status of this Policy

- 3.1 Those making decisions on the application of RICS' disciplinary 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 shall override the requirement for the 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 2000 (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 Consent Orders and Panel hearings. They do not apply to Fixed Penalties.

### 6. Overriding principles

- The principle of proportionality - the penalty 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 Member or Firm and other Members or Firms from future non-compliance.
- Sanctions are not intended to be punitive but may have a punitive effect.

### 7. What are the relevant factors when considering the seriousness of a breach and possible sanction?

- Whether the breach involved wrong doing/blame, or recklessness
- Whether the Member or Firm was dishonest
- Whether the breach was deliberate or intentional
- The extent to which the Member or Firm 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 Member or Firm facilitated wrongdoing by a client or other person
- The Member or Firm's level of experience in practice
- The Member or Firm'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 Member or Firm sought to conceal the breach
- Whether previous advice or warnings about risks conduct or practice had been ignored
- Whether the Member or Firm 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 Member or Firm for any failings
- Whether the Member or Firm notified RICS of the breach
- Any admission and/or regret expressed
- Any steps taken by the Member or Firm to compensate his client
- Willingness to assist RICS
- The extent to which the Member or Firm has cooperated with the investigation
- Ill health or other personal circumstances.

### 8. Are there any mitigating or aggravating factors not listed above which are applicable to specific breaches?

- 8.1** Yes – this is not intended to be an exhaustive list.

- 8.2** Supplement 1 to the Sanctions Policy: Penalty 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 penalty**

- 9.1** In every case it is crucial that reasons are given for the decision made in relation to penalty. 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 Member or Firm 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 Member or Firm 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 Member or Firm 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 Consent Orders

Consent 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 Member or Firm concerned to enter into a Consent Order.

## **12. What is a Consent Order?**

- 12.1** A Consent Order is a formal written agreement between RICS and the Member or Firm, requiring:
- the Member or Firm to take or refrain from taking certain actions within a specified period of time
  - the Member or Firm to pay a fine and/or costs where appropriate.

## **13. Reasons for making a Consent Order**

- 13.1** RICS may enter into a Consent Order with a Member or Firm 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 Member or Firm admits the breach and is willing to co-operate with RICS to rectify the matter.

## Part E

### 14. Disciplinary and Appeals Panels

**14.1** What are the penalties that the Disciplinary Panel can impose?

- 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. Caution

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

### 16. Reprimand

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

### 17. Undertakings

**17.1** In some cases a Panel may decide to impose undertakings on the Member or Firm as well as imposing another penalty such as a caution, reprimand or fine. The Panel may do this in order to ensure that the Member or Firm refrains from continuing/repeating the conduct or action causing the contravention. Alternatively, the Panel may require the Member or Firm 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 Member or Firm has criticised a person without good reason.

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

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

**17.3** 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 Disciplinary Panel.

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

### 18. Fines

**18.1** For the level of fines which the Panels may impose, please refer to Supplement 2 to the Sanctions Policy: Fines, Costs and Administration Fees and also to the list at page 6.

**18.2** For the avoidance of doubt the Panel does not have the power to order the Member or Firm 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 Member or Firm has refused to do so, the Panel may require repayment of this sum by the Member or Firm to the insurance scheme to ensure that the profession as a whole does not bear the cost of this failure.

## **19. Conditions on a Member's continued membership or Firm's registration**

- 19.1** Conditions should be specific, measurable, achievable, realistic and time bound.
- 19.2** If a Panel imposes conditions it should state whether a breach of these conditions by the Member or Firm will lead to automatic expulsion or removal, or whether further disciplinary action is appropriate.

## **20. Expulsion**

- 20.1** In the absence of extenuating circumstances, the following are examples of instances likely to result in a 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 co-operate 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 2007 within 10 years of receipt of a caution for breach of the same Rule.
- 20.2** This is not an exhaustive list and each case must be considered on its own facts. Panels are given discretion to apply the most appropriate sanctions in any particular case whilst bearing in mind this Policy.

## **21. Sanctions in respect of Rule 6 of the Rules of Conduct for Members 2007 [CPD]**

- 21.1** The policy for CPD breaches is as follows:
- 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 Disciplinary Panel with presumption of expulsion.

## **22. Can the Disciplinary Panel impose more than one penalty?**

- 22.1** The Disciplinary Panel may impose more than one of the penalties listed at page 6. Where the Member is expelled or the Firm's registration is removed, the Disciplinary Panel may impose a fine, undertaking or conditions to be applied if the Member or Firm seeks to be reinstated at a later date.

## **23. What are the penalties which the Appeal Panel can impose?**

- 23.1** If the Appeal Panel allows an appeal by the Member/Firm or a review by the Honorary Secretary, and varies either the Disciplinary Panel's finding or penalty, it may impose the same range of penalties as the Disciplinary Panel. It may vary the penalty imposed to one of greater or lesser severity than that previously imposed.
- 23.2** In addition, the Appeal Panel may refer the matter back to the Disciplinary Panel for a new hearing or re-consideration.



## **24. When will the penalties take effect?**

- 24.1** Penalties imposed by the Disciplinary Panel will take effect at the conclusion of the hearing unless the Panel directs otherwise.
- 24.2** 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.

### **25. Consent Orders and Panel hearings**

- 25.1** In the case of a Consent Order or Panel hearing, the Head of Regulation or Panel may make an order they consider just and reasonable for the payment of costs.

### **26. Cost of Panel hearings**

- 26.1** Where the Member or Firm is found by a 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 hearing; those associated with convening the Panel; and the cost of any legal or professional advice and representation.
- 26.2** The Member or Firm may seek to recover costs from RICS if a 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.
- 26.3** When it decides whether to make an award of costs against RICS a Panel will consider all the relevant facts including the conduct of RICS and the Member or Firm throughout the proceedings including the investigation. The case law relating to costs against a regulator is consistent with this approach.
- 26.4** 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.
- 26.5** There is no right of appeal against an order for costs made by a Disciplinary Panel.



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We accredit 125,000 professionals and any individual or firm registered with RICS is subject to our quality assurance. Their expertise covers property, asset valuation and real estate management; the costing and leadership of construction projects; the development of infrastructure; and the management of natural resources, such as mining, farms and woodland. From environmental assessments and building controls to negotiating land rights in an emerging economy; if our professionals are involved the same standards and ethics apply.

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We are proud of our reputation and we guard it fiercely, so clients who work with an RICS professional can have confidence in the quality and ethics of the services they receive.

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