



# What to expect from the RICS' disciplinary process

A guide for surveyors

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# Introduction

**In this booklet, we demystify the Royal Institute of Chartered Surveyors' procedure for investigating and prosecuting disciplinary issues, examining each stage and highlighting the key dos and don'ts. This should help surveyors, their brokers and insurers understand what to expect; hopefully easing at least some of the uncertainty at what can be a difficult time, both personally and professionally.**

## Overview of the process

### Investigations stage

An investigation will be triggered by someone complaining to the RICS or as a result of a RICS regulatory review visit (which may be unannounced). The first step for the RICS upon receipt of the complaint will be to evaluate the evidence received and decide whether there are any grounds to take the matter further.

A formal investigation will start if the RICS considers that (i) the evidence provided may support a finding of misconduct and (ii) that taking further action would be reasonable and fair when considering both the interest of the public and those of the surveyor.

Our experience suggests that professionals who engage with their regulator often achieve better outcomes. We have also been able to halt investigations in their tracks with a compelling response to allegations at the investigatory stage.

### Disciplinary hearing and sanctions

If the RICS considers that there is a case of potential professional misconduct to answer, the complaint will be referred to a disciplinary hearing. Depending upon the nature of the alleged misconduct the case can be heard by either a Single Member of the Regulatory Tribunal in private or a Panel.

Complaints will be referred to a Single Member in cases where:

- a Regulated Member fails to meet their Continuing Professional Development (CPD) requirements three or more times within a ten-year period
- a Regulated Member has been convicted of a criminal conviction which could result in a custodial sentence, or
- there is not a substantial dispute of the facts, the public interest does not require a hearing and the

case is not likely to result in expulsion or removal of registration (other than for CPD breaches).

By contrast panel hearings are conducted in public. If a finding of professional misconduct is reached, then the decision is likely to be published on the RICS website.

In addition to preparing written submissions or representing Regulated Members at the panel hearing, we have also supported Regulated Members negotiating a Regulatory Compliance Order by consent; something which is best done at as early a stage as possible to minimise stress and costs.

There are a number of sanctions which can be imposed both by a Single Member and by a Panel, ranging from fines, suspensions, orders requiring specific actions, and ultimately expulsion from the RICS.

### The appeal stage

Regulated Members can appeal decisions by making an application stating the grounds of appeal, within 28 days of the decision. The Appeal Panel's decision will be made at the appeal hearing or within 14 days following the hearing.

Decisions made by a Single Member can be disputed and those made by a Disciplinary Panel can be appealed. It is important for a Regulated Member to seek advice when appealing a decision as the application must specify the grounds of appeal and must be in the form prescribed by the RICS.

### The investigation stage

Complaints about a RICS Regulated Member or Firm's service and/or conduct should initially be made directly to the Regulated Member. A complaints procedure should be in place to attempt to resolve the procedure. If they are not resolved to the complainant's satisfaction, or there is a need for the complainant to remain anonymous, complaints can be made directly to the RICS professional standards team.

There are a number of ways in which an investigation may be triggered. While most complaints will come from members of the public, Regulated Members are under a duty to report other Regulated Members whom they reasonably believe may have breached RICS standards (byelaw B5.2.1(c) of the Royal charter and bye-laws). In addition to this, RICS may identify areas of concern on a regulatory review visit and refer this internally for investigation.

Upon receipt of the complaint, RICS will consider the evidence available in order to establish whether the actions complained of are likely to amount to professional misconduct. If not, no further steps will be taken, and the surveyor is unlikely to be told of the complaint.

However, if the RICS conclude there is a possibility of misconduct, the Regulated Member will be contacted and given a chance to respond to the allegations made against them. The information provided will be used to determine whether disciplinary action should be taken.

In some serious cases, the RICS may decide to temporarily suspend or restrict a Regulated Member's registration while carrying out the investigation. Examples of serious offences include trading without appropriate PI insurance, deficits in a firm's client account which are not remedied promptly, and allegations of fraud.

In addition to the above, the RICS will only advance its investigation if it is satisfied that the evidence provided in support of the complaint is sufficient to meet the threshold outlined in Rule 5 of the Regulatory Tribunal Rules, namely that *"there is a realistic prospect of establishing that the Regulated Member is liable to disciplinary action."* To satisfy the "realistic prospect test", RICS must be satisfied that the allegations if proven would amount to professional misconduct – that is to say that they are either serious and/ or repeated breaches of the code of conduct.

If the RICS is satisfied that the "realistic prospect test" has been met, it will decide whether to take disciplinary action. The potential next steps for the RICS would be:

- the award of a fixed penalty – this would take the form of a fine for minor breaches of RICS rules
- a Regulatory Compliance Order – this would impose conditions or requirements which a regulated member would have to comply with over a fixed period of time. However, these Orders can only be imposed with the written consent of the Regulated Member. Examples of conditions include undergoing training and developing new operating

procedures. Failure to comply with the order may result in further disciplinary action being taken, or

- a referral to a Single Member of the Regulatory Tribunal or to a Disciplinary Panel. We will consider the implications of this form of action in more detail in the next article in the series.

## The hearing process

If the RICS is satisfied that *"there is a realistic prospect of establishing that the Regulated Member is liable to disciplinary action"* it has two options available to it. It is able to either list the matter for consideration by a single member of the Regulatory Tribunal, or by a full panel constituted of three members of the Regulatory Tribunal. The Regulatory Tribunal is independent from RICS. A "Regulated Member" can be a RICS-Regulated firm or an individual professional.

### Single member

Complaints may be referred to a Single Member of the Regulatory Tribunal in specific limited circumstances. These are as follows:

- a Regulated Member fails to meet their Continuing Professional Development (CPD) requirements three or more times within a ten-year period
- a Regulated Member has been convicted of a criminal conviction which could result in a custodial sentence, or
- there is not a substantial dispute of the facts, the public interest does not require a hearing and the case is not likely to result in expulsion or removal of registration (other than for CPD breaches).

Referrals to a Single Member of the Regulatory Tribunal will be dealt with within 14 days of receipt of the referral and case files. These cases will always be heard in private. A Single Member can also choose to refer the complaint to a Panel if they deem it is in the interest of justice to do so.

The Single Member will provide a written decision to the Regulated Member which will be published 14 days after service. We will look at the various sanctions which can be imposed by Single Members in Article 4 of this series.

### Disciplinary Panel

All other referrals will be dealt with by a Regulatory Tribunal Panel (the Panel). The Panel will be constituted of 3 members including at least 1 chartered surveyor and 1 lay member and will be advised by an independent legal adviser on matters of law.



The Panel will give the Regulated Member notice of an oral hearing, 56 days before the hearing, or 28 days for a hearing to be heard on paper. The notice of hearing will formally set out the charge(s) against the Regulated Member.

At the same time the RICS presenting officer will also send the Regulated Member the documents upon which they intend to rely when presenting the case, including any witness statements, as well as a listing questionnaire which would allow the Regulated Member to indicate whether they admit or deny the charge.

Regulated Members would be well advised to seek legal advice at an early stage of the proceedings to ensure that they are in a position to respond within these timescales. As we have suggested previously, Regulated Members should also check if they have insurance in place that will cover the cost of this legal advice.

Disciplinary hearings are usually heard orally in public but a Regulated Member can make a written application for the hearing to be heard in private on the basis that there are exceptional circumstances which justify this. The RICS guidance does not provide examples of what constitutes exceptional circumstances but one such example where we would expect the hearing to be conducted partly or wholly in private would include the discussion of sensitive medical evidence.

At the hearing, the Regulated Member will be given the opportunity to be heard and they may be represented by a solicitor if they choose. It is important to attend the hearing as the Panel will proceed without the Regulated Member unless they have a good reason for being absent. A Regulated Member would be well advised to instruct a solicitor or barrister to represent them given the potential ramifications for a Chartered Surveyor's career and business of an adverse decision by the Panel, it is important to present the best possible case.

At the hearing the panel will build up a picture of what happened with the assistance of all the evidence put before it. First, the RICS's presenting officer will present their case on behalf of RICS. This may involve witnesses or experts being called which you (or your representative) will have the chance to cross-examine. The "burden of proof" lies with the RICS presenting officer. They will be required to prove the RICS' case on the civil standard of proof – the balance of probabilities.

After this, you will have the opportunity to present your defence to the charges and call any witnesses or experts. You can do this, or your representative can do this on your behalf. If you intend to rely on witness evidence, it is

preferable that they attend the hearing as less weight will be given to their testimony if they are not able to attend.

### After the hearing

Following the hearing, the Panel's decision will be sent to the RICS and the Regulated Member within 14 days. The Panel may make a costs order against the RICS or the Regulated Member depending on the outcome. The decision will be recorded on the Regulated Member's record and may also be published on the RICS website.

### Sanctions

As discussed, complaints can be referred to a Single Member or Panel of the Regulatory Tribunal. Consequently, the sanctions which can be imposed vary.

In every case, the investigating authority will need to be satisfied that:

- the facts alleged are proven
- the Regulated Member is liable to disciplinary action, and
- it is appropriate and proportionate to impose a sanction.

If the above criteria are satisfied, both a Single Member and a Panel can impose:

- a caution or reprimand
- undertakings as to future conduct
- fines
- conditions of membership/registration
- expulsion.

In addition, a Disciplinary Panel can make an order requiring the Regulated Member to take a specific action and specifying the consequences of failing to do so.

More than one of the above sanctions can be imposed.

In determining the appropriate sanction, the RICS will take account of aggravating and mitigating factors. A detailed list is set out in the sanctions guidance, but these include aggravating factors such as previous disciplinary findings, concealment of wrongdoing and dishonesty. They also include mitigating factors such as whether it was an isolated incident and whether the Regulated Member has demonstrated insight and remorse.

To attempt to lessen any sanction imposed, the Regulated Member should try to submit evidence demonstrating:

- any remedial steps taken after the complaint including attempts at resolution, additional training for staff, apologies and attempts at compensation
- steps taken to minimise any loss suffered by the complainant, alternatively evidence showing the complainant suffered no loss
- they did not receive any wrongful financial gain
- full compliance with and disclosure to RICS
- that the Regulated Member has a robust complaints handling procedure in place which has been followed and referred to during the initial complaints process
- any circumstances which were beyond the Regulated Member's knowledge or control
- any personal circumstances which may have affected the Regulated Member's conduct or performance.

The above is not a comprehensive list. It is important that Regulated Members take all complaints seriously and attempt to resolve them promptly.

The Regulated Member has 14 days from receipt of the decision of a Single Member to serve a notice disputing it, if they consider the decision to be wrong. After expiry of the 14 days, the decision will be deemed to be accepted by the Regulated Member.

Panel decisions will be deemed to take effect at the end of any appeal period. Our next and final article in the series will look at the appeal process.

Written by Laura Sponti.

## WHY RPC?

Ambitious in mindset. International by nature.

RPC is a law firm that works with relentless determination for you. Spanning sectors and crossing continents, our teams are united by an inclusive culture and driven by a commitment to responsible growth.

### RPC's Construction Disciplinary team

The Construction Disciplinary team has significant experience in assisting surveyors and their Insurers in navigating investigations by the RICS. The team has experience in assisting right through from the initial response to a complaint, through to disciplinary panel hearings and any appeals that arise out of those decisions.

Common scenarios where the team are instructed to assist include:

- handling regulatory investigations, including where there is the potential for a future civil claim

- concurrent civil proceedings – these need to be considered and resolved alongside the disciplinary investigation. The team's experience allows them to assist clients in achieving favourable outcomes in both sets of proceedings without one being compromised by the other
- where it has not been possible for the client to resolve the matter at the investigations stage and the regulator has referred it for a disciplinary panel hearing
- non-contentious work includes advising clients on how best to comply with their professional codes of conduct.

Our team also have vast experience advising clients in relation to regulatory obligations. We have acted in some of the biggest cases in the last decade in relation to fire safety.

We regularly advise our clients on regulatory compliance and policy wordings related to building requirements.

This has included:

- we have worked alongside the Royal Institute of Chartered Surveyors (RICS) to advise on numerous aspects of the Guidance they have been issuing to their members concerning fire safety, from survey and valuation to property management obligations. This includes assisting with the drafting of the Information Paper entitled "Cladding for Surveyors" and the EWS<sub>1</sub> Form
- we have also advised RICS on the approach it should take to the evolving advice issued by MHCLG/MLUHC and drafted the regulatory section for the Government-backed RICS training for those who will be undertaking EWS<sub>1</sub> assessments. We are therefore very familiar with the regulatory regime
- acting for a client regarding events post Grenfell. The case concerns potentially systemic issues with Building Regulations and the regulations of building products, so is of significant importance to the construction industry as a whole

If you receive any indication of a complaint or notice that you may be subject to an investigation by the RICS, please do not hesitate to contact one of the RPC team.

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