

The standards we expect

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Enforcement is an essential responsibility if the profession is to uphold its standards. Luay Al-Khatib outlines the RICS disciplinary process

The surveying profession is in the privileged position under the royal charter of having the authority to regulate itself ? which is a good thing, because surveyors benefit from having a one-stop professional body in the form of RICS.

Fulfilling this responsibility depends on setting, assuring and, where necessary, enforcing the standards of the profession in an effective manner.

Understandably, there is interest in our disciplinary regime and how it works, not only from members of the profession but also from other stakeholders, such as the public, parliamentarians and journalists. They quite rightly want assurance that our disciplinary system makes the right decisions, which must be proportionate, efficiently implemented and effective.

Two commonly held misconceptions about regulators are that they are either heavy-handed, vindictive and only interested in catching out professionals for trivial misdemeanours; or that they are in cahoots with the profession and therefore reluctant to take robust action against wrongdoing.

Regulatory board

It is precisely to avoid either of these pitfalls that RICS has developed a disciplinary regime similar to that of other professional and statutory regulators. It is supervised by the independent [RICS Regulatory Board](#) , which convenes disciplinary decision-making panels that hear cases in public and publish their decisions.

We continue to invest in our system to ensure it remains fit for purpose. Ultimately, disciplinary action is reserved for situations where there appears to be sufficient evidence that a practitioner presents a risk to the public and clients or to public confidence in the profession. This can be a result of a serious failure in professionalism, competence or the mandatory client protections RICS requires, such as security of client money.

Complaints

Our membership totals around 125,000 professionals and trainees and nearly 11,000 businesses, and in any given year we receive around 1,300 complaints against individual practitioners and RICS-regulated firms. Our assurance programme also results in around 250?300 cases each year being referred to our investigations team due to serious or repeated failure to meet the profession?s standards.

Every complaint is carefully considered and risk-assessed by our investigations team to determine whether there is a potential breach of the profession's standards, and whether it is serious enough to warrant disciplinary action. This process is critical, and is undertaken by experienced investigators with oversight from legally qualified staff.

Out of the 1,300 complaints, around 300 cases need formal investigation. The remainder tend not to be subject to further scrutiny, most commonly because an investigation would be disproportionate, we do not have regulatory authority in the matter, or the issue brought to our attention is best resolved outside the disciplinary process.

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Such resolution is often achieved through the regulated firm's formal complaint-handling procedure or, failing this, through an external alternative dispute resolution process – both mandatory protection mechanisms required of all our regulated firms.

We operate a formal review process for anyone who wishes to challenge a decision we have made, and there is an external, independent complaints reviewer who can consider situations where our service has fallen below the standards that we, and those involved, would expect.

When we receive a complaint, we assess it in detail. This is just the first stage in a series of checks and balances that we apply to all cases we investigate. Once the views and supporting evidence of relevant individuals have been collected, the case is then assessed by the head of regulation to decide whether the evidence supports a referral to a disciplinary panel. Where appropriate, a consent order is sometimes put in place.

A consent order is a course of corrective action agreed between RICS and the firm or member, and can be an appropriate way to ensure that measures will be taken to put a failure right, and reduce the likelihood that it will happen again. We can then monitor to ensure the regulated party complies with the order.

This is a way of avoiding the cost and time associated with taking the matter to a disciplinary panel. In 2015/16, we agreed 81 consent orders to bring professionals or firms back up to standard. These are generally not published.

Disciplinary panel

Referring a firm or member of the profession to a disciplinary panel is a serious step and is not taken lightly. In considering whether to refer a case, the factors can include the following:

- Is there evidence of a pattern of repeated failure to meet the appropriate standard, and is this likely to continue?
- Is there evidence of a serious failure to meet a reasonable standard, which has had a detrimental impact on the client or wider public?
- Did the practitioner or firm make reasonable steps to mitigate the chance of the error or misconduct occurring or being repeated?

- Is it in the public interest, overall, to refer the matter to a disciplinary panel?

The most serious cases must be considered by a disciplinary panel. Out of 300 complaint investigations, an average of 60 are referred to a disciplinary panel annually, once third-year CPD compliance breaches are excluded.

Disciplinary panels comprise 3 individuals and always include at least 1 independent, non-RICS qualified, member. These independent non-surveyor panel members have a range of skills, including legal and wider regulatory expertise.

They are administered by staff separate from the RICS enforcement team that presents the case, to ensure independence in the constitution and dealings of the panel. These panels are convened with the aim of considering evidence and the views of all parties.

Having heard the arguments and evidence, the panel members reach a decision about whether an alleged breach of standards by an individual or firm occurred. If the panel decides that the allegations are proven, they go on to consider whether there is liability for disciplinary action and, if so, what the sanction should be.

In making this decision, the panel refers to the RICS sanctions policy, which is the guidance issued by the RICS Regulatory Board to support proportionate and consistent [disciplinary outcomes](#) .

The majority of the cases brought by RICS have resulted in disciplinary action across the range of available sanctions. However, it is from time to time inevitable that a panel will take a different view to RICS, given the complex range of factors and difficult judgments that need to be made in each case.

In the past 2 years, 8% of cases were 'not proven'. We consider this to be a healthy sign of independent judgment, rigorous decision-making and a properly functioning, impartial process. It is also worth noting that a panel's decision may be formally appealed and challenged through the courts.

Where a case is proven, the panel may also order the member or firm to make a contribution towards our costs. This aims to mitigate the cost to the wider profession of RICS having to take disciplinary action against the few who fail to meet the standards the profession has set.

Conversely, the panel has the power to award costs against RICS where it believes that the action should not have been brought. Costs have been awarded against us in a very small number of cases ? only 2 in the past 2 years. This is largely due to the careful checks and balances in the disciplinary process, which aim to ensure that only appropriate cases, supported by sufficient evidence, are referred to a panel for consideration.

Regulatory trends

Inevitably, there can be public speculation about disciplinary cases, partly because these throw a spotlight on the small number of members who fall seriously short of the standards of the profession. It is an important feature of professional self-regulation that such matters are dealt with transparently, and for this reason panel hearings are open to the public.

However, the only information we can publish is that which the panel orders. This ensures openness, fairness and consistency, which are yet more important in an era of digital communications.

The disciplinary process is a sensitive one and, for better or worse, has become more adversarial and legalistic in nature. Although this trend is also being seen across other regulators and tribunal services, it brings additional costs into the process for the regulators and the regulated alike.

We are making every attempt to minimise costs to the profession, and continually look to identify areas where we can work more efficiently. The total cost of running regulatory operations, governance, policy and communications in 2015/16 was ?6.9m, of which 21% was spent on disciplinary operations in total.

Our work to enforce and uphold the standards of the profession responsibly through our disciplinary process is widely recognised by members, clients, insurers and the public. This in turn helps to build demand for the profession, which continues to grow.

The profession's success is, in part, thanks to the fact that we put our money where our mouth is and commit to upholding the standards we have set. In the rare cases where disciplinary action is required, it is implemented with careful attention to proportionality, fairness and furthering the public interest.

Although vitally important, the disciplinary process is only part of what we do. Our assurance work is valued by the profession ? more than 90% of those we review each year tell us that the assurance audit was useful to their practice ? and helps to ensure hundreds of firms and members are meeting the right standard.

Outside the regulatory arena, our work supports the profession in raising the bar and furthering the public interest by leading, educating and promoting the value of the work surveyors do. This has never been more important as property, the built environment, infrastructure and land-use challenges are high on the public agenda.

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Further information

- This feature is taken from the [RICS Building control journal](#) (February/March 2018)
- Related categories: [Ethics and professional conduct](#)