

# **RATING SURVEYORS' ASSOCIATION**

## **Complaints and Disciplinary Procedures and Rules**

[Revised February 2022]

### **Preamble**

1. The disciplinary procedure of The Association is the formal way in which we deal with a member or members' unacceptable or improper behaviour or misconduct. Proceedings may be instigated following the receipt of a complaint made against a member or members of The Association or upon a member of the committee of The Association becoming aware or being made aware of conduct unbecoming or in breach of the rules of The Association.
2. These procedures and rules are to be read in conjunction with paragraphs 91 – 98 of the Rules of the Association and The Code of Conduct contained therein at Schedule 1.
3. It is envisioned that disciplinary proceedings will follow a four stage process;
  - Stage 1. We will first see whether the issue can be resolved in an informal way.
  - Stage 2. If this is not possible, we will commence formal proceedings involving the setting up of a Disciplinary Committee.
  - Stage 3. Implementation of the Disciplinary Committee's recommendations
  - Stage 4. An appeal against the committee's recommendations may be allowed in some circumstances.

### **Introduction**

4. These procedures refer to a member and that includes all categories which includes a Full Member, Honorary Member, Affiliate or Junior. It is a condition of all categories of membership of the RSA that individuals observe the highest standards of ethical conduct in connection with their activities. If any member acts unethically or displays serious incompetence they may be considered to be in breach of the Rules of the Association. If any member otherwise brings the RSA into disrepute through their behaviour, acts or omissions, whether or not related to their consulting activities, then they may be subject to the disciplinary procedures as set out here.
5. Contractual matters relating to the relationship between a surveyor and the ratepayer or client are outside the scope of these procedures. The Association will not consider any such complaint if, in its opinion, it relates solely to such a contractual relationship.
6. These rules and procedures do not extend to members subject to police or legal proceedings. In such circumstances expulsion or suspension without reference to these procedures may be appropriate at the discretion of the committee.
7. Any changes to the Disciplinary Procedures may be made by the majority vote of the Committee of the Association and will be indicated by a revision of the contents of the RSA website within a reasonable time after their adoption following their presentation to the elected Committee for ratification.

## **Making a Complaint against a Member or Affiliate**

8. An eligible complainant is a member of the RSA, a client of a member of the RSA, or any person who has cause for concern about the conduct of any category of member of the RSA and makes an allegation of a breach of the appropriate Codes of Conduct of the RSA Rating Consultancy Code of Practice or Rules of the Association.
9. Each complaint must be made in writing, supported by appropriate documentary evidence. It must be addressed to the President of the Association.
10. A complaint may be made by any person including any Member or Affiliate of the Association.
11. Each complaint will be recorded in a Complaints Register and acknowledged by the RSA within a reasonable time.
12. Complaints may – upon adequate proof - be upheld against any member who:
  - (a) acts unethically, displays serious incompetence or otherwise bring into disrepute the RSA through their behaviour; or
  - (b) is found to breach the Rules of the Association and The Code of Conduct; or
  - (c) is subject to a disciplinary sanction imposed by any other regulatory or professional body; or
  - (d) intentionally makes false or misleading statements to the Association or those performing the functions of the Association on its behalf or at its request. An offence would include anything impacting upon the individual's fitness to act as a rating surveyor or otherwise affecting the honesty, integrity or trustworthiness of the person concerned including the adverse consequences of insolvency or bankruptcy.

## **Procedure (Stage 1)**

13. When a complaint has been received the President (or duly appointed representative) shall review documents submitted and ask the complainant to comment and respond. The President (or duly appointed representative) will communicate to the complainer the representations received with a view to seeing if a resolution may be possible although the parties may need to further review and respond as necessary. The aim of this stage is to make every effort to see if by mediation between the parties an understanding can be reached and resolution achieved to the satisfaction of each party without the need to convene a Disciplinary Committee. If this is not possible and the complainer remains dissatisfied the complaint will proceed to stage 2 and a Disciplinary Committee set up.
14. Conclusion of this stage is expected within one month from the date of receipt of the complaint. In the event that this timescale cannot be met both parties will be contacted in writing and advised of the revised timescale.

## **Procedure (Stage 2)**

15. A Disciplinary Committee of the Rating Surveyors' Association (RSA) shall be a sub-committee of the Committee of the Association and its task is to promote confidence in governance and adherence to the Rules of the Association through the regulation of all

categories of membership of the Association by providing effective procedures for handling with complaints and disciplinary matters.

16. The Disciplinary Committee shall usually consist of five members including a chairperson, who shall be a member of the Committee of the Association. The other four members of the Disciplinary Committee shall be appointed once a complaint is received and declared to be validly made. The President and officers of the Association will select and agree upon the chair and persons making up the Disciplinary Committee. The members do not need to be members of the Committee.

17. The Disciplinary Committee shall normally consist of the at least two past-Presidents of the Association plus two current elected committee members, plus one other. One of whom shall be appointed by the RSA Committee as Chair of the Disciplinary Committee.

18. If it is not possible to select a suitable Chair of the Disciplinary Committee in accordance with these rules and procedures it may be necessary to appoint an external chair.

19. After Stage 1 is completed The President (or duly appointed representative) shall refer the complaint and all documents submitted with the complaint or which are known to the President to be relevant to it, to the person appointed to be Chair of the Disciplinary Committee. The complaint and responses are to be presented to the sub-committee.

20. The Disciplinary Committee shall then appoint one of its members or another person as an Independent Investigator for that Complaint. The person so appointed must be suitably professionally qualified and independent from the person or firm involved in the complaint and the complainant. If an independent member of the Disciplinary Committee cannot be appointed the Disciplinary Committee may after due consideration appoint a suitable independent external investigator.

21. The complainant shall not be part of any related Disciplinary Committee. No-one subject to a complaint shall be a part of any related Disciplinary Committee.

22. The member subject to a complaint, may within 7 days of being advised of the name of the person appointed to the Chair of the Disciplinary Committee or the Independent Investigator object with reasons to that person's appointment to investigate the complaint. The Disciplinary Committee, excluding the objected person or persons shall decide whether that objection should be upheld or not. If the committee deem appropriate a fresh appointment shall be made.

23. The Independent Investigator shall determine whether, on the basis of all the available evidence, the Complaint is arguable and justifies a formal investigation. The independent Investigator may require that the individual subject to the complaint, the complainant or any member provide such additional information or evidence he/she may require that is relevant to the matter. Such requests should be made giving the individual sufficient time to respond and not less than 7 days although failure to do so will not prohibit the Independent Investigator from reaching a final judgement within one month from being appointed.

24. Where the Disciplinary Committee receives a report from the Independent Investigator concluding that a valid complaint has been made and needs a determination it shall instigate a formal investigation. The procedure adopted by the Disciplinary Committee shall be determined at the discretion of its members. This may, but is not required to, include an oral hearing at which the member will be invited to attend. The Committee may draw any

necessary inferences from any failure to attend. All RSA members are expected to cooperate in all reasonable ways with the Disciplinary Committee in its investigation of complaints.

25. It shall be open to, but not incumbent on, the Disciplinary Committee to try to resolve differences between the Complainant and the member by whatever means it considers appropriate.

26. When the Disciplinary Committee has completed its formal investigation into the Complaint it will report its findings in writing within one month of the independent Investigator's report to the President of its decision with reasons which may be incorporated by reference to any other document. The decision will decide whether to uphold the Complaint in whole or in part or to dismiss the complaint. The Disciplinary Committee shall reach its decision by simple majority voting. In the event that the Disciplinary Committee is unable to reach a simple majority on any matter, the Chairman's vote shall be decisive.

27. Any member of the Disciplinary Committee and the Independent Investigator wishing to express their dissent from the decision may do so and that dissent and any reasons for it will be attached to the Decision.

28. The Decision of the Disciplinary Committee shall, subject to these rules, be binding on all members. It shall be communicated to the complainant and, to the member.

29. If the Disciplinary Committee takes the view that any matter arising during the investigation of a complaint should be reported to any other regulatory body, it may do so at any time once that view has been confirmed by its members during the Complaint proceedings.

### **Procedure (Stage 3)**

30. Implementation of the Disciplinary Committee's recommendations. The Disciplinary Committee may recommend dismissal of the complaint in full or in part. If it recommends the upholding of the Complaint in any respect, it shall be entitled to impose one of the sanctions set out within paragraph 97 of The Rules of the Association (and replicated below). In determining the sanction it may have regard to all matters brought to its attention even where those matters in themselves could not have substantiated on their own the subject matter of a successful complaint.

31. Sanctions available to the Disciplinary Committee are set out below:

32. A Reprimand. The Disciplinary Committee may reprimand and suggest a specific action be taken. This may take the form of a written reproach sent by the RSA Secretary on behalf of the Association. That reproach may consist of a communication that the complaint is upheld and that the member has been reprimanded. The Disciplinary Committee may determine that this be a public or private response.

33. Suspension. The Disciplinary Committee may suspend for a specified period of time, not exceeding 1 year, of the individual's right to remain a member/affiliate of the Association and may also require a specific action or actions be taken to permit the person to be re-admitted.

34. Expulsion. The Disciplinary Committee may recommend to the Committee of the Association expulsion from the Association. Any decision to expel shall have effect whether or not the person complained of has already sought to resign from the Association. Such prior resignation will not affect the function and decision of the Disciplinary Committee.

35. The decision of the Disciplinary Committee shall be communicated by the President (or their duly appointed representative) to the person subject to the complaint and the complainant.

36. The Disciplinary Committee shall recommend the extent of the publicity (if any) to be given to such of its recommendations as may be adopted by the Committee. It may recommend communication of its findings be forwarded to any appropriate regulatory or professional body.

**Procedure (Stage 4)** Appeals against the decision of a Disciplinary Committee.

37. An appeal may only be brought where the Disciplinary Committee has recommended the expulsion or suspension from the RSA. The appeal shall be by way of re-hearing before a fresh Disciplinary Panel but that shall have access to any recorded, written or verbal commentary received or given in relation to the initial hearing.

38. Any decision by the Disciplinary Committee shall be communicated in writing and shall indicate that an appeal must be brought within 14 days of the decision and otherwise shall not be entertained. Appeals shall be made in writing to the President of the Association.

39. The notice of appeal should state the grounds on which the member believes that the decision should be altered. The President may extend any time limit here he/she considers appropriate.

40. Any decision, against which an appeal may be brought, shall only come into effect when the time limit for any appeal has expired. Any validly made appeal shall suspend the effect of the sanction until a re-hearing has taken place. There shall be no publicity or disclosure even of preliminary conclusions until the appeal is re-heard and a fresh determination complying herewith is made or the application for an appeal is rejected, as appropriate.

41. In the event of a validly made appeal, the President and Committee of the RSA shall appoint a fresh Disciplinary Committee to consider the appeal and it shall determine the procedures to be adopted in determining the appeal.

42. On an appeal, the fresh Disciplinary Committee may recommend to the RSA Committee.

- (a) to set aside the findings of the Professional Conduct Committee, wholly or in part;
- (b) to vary any disciplinary sanction imposed by the Professional Conduct Committee;
- (c) To dismiss the appeal and uphold the original decision of the Professional Conduct Committee.

43. The decision of the Disciplinary Committee shall be communicated by the President to the person subject to the Complaint and the Complainant.

44. It may be appropriate to refer the matter subject to appeal to an entirely independent third party. In these circumstances the parties must agree as to who this might be and must

also agree as to how the cost of this appointment will be met. It is envisaged that the Association will not be liable for any costs incurred as a result of referral to a third party.

**Representatives appointed to investigate disciplinary matters.**

45. Every care shall be taken in the appointment of representatives investigating disciplinary matters to ensure those individuals and the firms they work for do not have a conflict of interest or a personal or professional interest in the matter, the complainant or person under investigation.

46. The members of the RSA Committee not otherwise conflicted from sitting are eligible to be members of the Disciplinary Committee. Should no member of the committee be eligible any member of the RSA may be appointed for the purposes of considering any complaint or disciplinary matter.

47. If any member of the Disciplinary Committee has any business or other relationship or conflict of interest with the complainant or the complained against then they shall not take part. It is the duty of that individual to declare such an interest before formal proceedings commence

48. The President of the Association or their duly appointed representative, the Chair of the Disciplinary Committee and the Association's Committee may at any time delegate their tasks under these Rules to other suitable persons whether within or outside the Association provided due notice is given to the complainant and the Member or Affiliate concerned and subject to the President or the Chairman as defined having responsibility to the Association's elected Committee for the actions or proposed actions of those alternatives.

**General**

49. In this document unless the context otherwise requires, words importing one sex shall include the other and words importing the singular shall include the plural and vice versa. Similarly, reference to professional bodies shall include incorporated or unincorporated bodies as necessary.

50. All rules or codes of conduct applicable to these procedures shall be those applicable, published or prevailing at the time of the alleged act (or inaction) complained of and no more recent amendments thereto or later revised versions shall be considered by any committee as being relevant to any allegations made at the time the allegation was said to have first occurred. Evidence as to the state of the regulations or other requirements shall be adduced by any committee as a part of its findings and recommendations.

51. Any communication shall, unless the contrary is proved, be deemed to be received within 7 working days of posting or sending.

53. These procedures and any amendment thereto shall take effect on the date specified by the Committee of the RSA (which cannot be retrospective) and published on its website and shall apply to existing and future complaints alike provided that nothing herein shall require previous steps taken in relation to a complaint or determination or action to expel or suspend.

## **Interpretation**

54. The RSA Committee shall have referred to it any matter that requires clarification, explanation or decision in connection with this procedure – these rules - and its decision shall be final. For this purpose it shall use its discretion to determine whether (or when) to take or not to take external advice.

ENDS