



# GUIDANCE ON SANCTIONS

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## 1 Who is this guidance for?

This guidance is for members of:

- Conduct committees
  - The Investigation Committee (IC)
  - The Disciplinary Committee (DC) works in tribunals; this guidance applies when a complaint is found proved either in whole or in part
  - The Appeal Committee (AC) works in panels; this guidance applies when a panel makes its own decision on a sanctions order.
- Regulatory Committees
  - The Audit Registration Committee (ARC)
  - The Investment Business Committee (IBC) and
  - The Insolvency Licensing Committee (ILC).
  - The Probate Committee (PC)

It explains the key decisions in the sanctions process and sets out, step-by-step, the approach these ICAEW committees must take whenever they make a sanctions order against a member, firm, affiliate or provisional member.

## 2 Purpose

This guidance provides a structured approach for committee members who make decisions on sanctions. ICAEW wants committee members to make their decisions and orders through a fair and reasoned process. It also wants the approach to sanctions and the sanctions imposed to be consistent and proportionate. Members who are the subject of complaints and those who represent them can see the range of penalties and orders likely to be imposed and know that the same approach will be used in each case.

The penalties available to the IC, DC and AC are set out in Disciplinary Bye-laws 16, 22, and 23 but the IC and regulatory committees do not have a full range of powers. In particular, the IC cannot exclude members from membership and the regulatory committees can only impose financial penalties.

Although this guidance is used by all committees that can impose penalties, it has been written as if it is directed to tribunals of the DC, members and defendants.

## 3 Sanctions policy

When a tribunal considers:

- whether to impose a penalty; and
- what penalty to impose

it should consider a number of factors, in particular the principles which underpin sanctions policy.

ICAEW's sanctions policy is closely linked to its general objectives to:

- uphold the good name of the profession, ICAEW and the title 'chartered accountant'; and
- maintain, in the public interest, the high standards required of members of the profession.

The key principles which apply to sanctions relate to:

- maintaining the reputation of the profession;
- correcting and deterring misconduct;
- upholding the proper standards of conduct in the profession; and
- protecting the public.

### 3.1 Maintaining the reputation of the profession

The Courts have emphasised that maintenance of the reputation of the profession is the primary justification for sanction. In *Bolton v The Law Society* (1994) Lord Bingham said:

'To maintain this reputation and sustain public confidence in the integrity of the profession, it is often necessary that those guilty of serious lapses are not only expelled but denied readmission.....Otherwise, the whole profession and the public as a whole, is injured. A

profession's most valuable asset is its collective reputation and the confidence which that inspires...'

He concluded:

'The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.'

### 3.2 Correction, deterrence and upholding the proper standards of conduct in the profession

ICAEW demonstrates its commitment to high standards and to maintaining those standards through the disciplinary process and by publishing details of the orders made. Although punishment is not, in itself, a purpose, a punishment **can** act as a deterrent. Not only must the individual be deterred by the imposition of a disciplinary order, but other people must see that a particular wrong-doing will not be tolerated. The Courts have held that, in some circumstances, it would be appropriate to use a sanction to send out a message. In this context, the sanctions order is more about deterrence than punishment.

### 3.3 Protecting the public

When a tribunal acts to protect the public, it should consider both members' clients and the wider public who may be at risk. In cases where the competence of the member is also an issue, when the tribunal considers sanctions, it needs to consider whether the public can be properly protected.

## 4 The process of determining a sanctions order

When a tribunal decides that a complaint has been proved or when a defendant admits a complaint, the tribunal must then decide what to include in its sanctions order. This list summarises the sequence of events.

The IC representative:

- outlines the relevant facts (when a defendant admits a complaint).
- tells the tribunal about any previous disciplinary record.
- makes an application for costs to be paid by the defendant.

The defendant or their representative explains any mitigating factors, relating to the facts of the complaint and to personal circumstances.

The tribunal

- considers any request that the defendant's name is not included in publicity.
- leaves the room and considers its decision in private.

### 4.1 Key decisions in the sanctions process

When the tribunal decides what to include in its sanctions order, it forms its view based on the particular facts of each case. This guidance provides a step-by-step approach to help the tribunal reach a decision which is consistent, proportionate and fair.

If a tribunal decides a penalty (for example, a financial penalty, exclusion or reprimand) is necessary, it identifies the relevant category of complaint (from those listed on pages 10-28) and the behaviour that most closely corresponds to the complaint. Although the list of complaints and behaviour is not exhaustive, new complaints are added to the guidance where identified.

For each type of complaint, there is a suggested starting point. The starting point is not 'the going rate' for that particular complaint. It simply indicates where a tribunal might start when it looks at all the factors relevant to deciding the penalty. Once the tribunal has agreed the most appropriate starting point, it takes into account any aggravating and mitigating factors before deciding, if appropriate, to reduce or increase the penalty. For each category of complaint, there are examples of mitigating and aggravating factors.

The tribunal works through the steps outlined in the tables and may decide on a more or less severe penalty than the one given as a starting point.

This structured approach is designed to help tribunals arrive at a penalty which is demonstrably

proportionate to the facts of the case. The penalty should fit the underlying facts of the complaint and it should be possible to explain the rationale for choosing it. The written record of decision (which we provide to the member and make public) sets out the tribunal's reasons.

Legislation enacted on 17 June 2016 'The Statutory Auditors and Third Country Auditors Regulations 2016 (SATCAR) requires that:

'In determining the type and level of sanctions to be imposed under this regulation, the competent authority must take into account all relevant circumstances, including–

- (a) the gravity and duration of the contravention;
- (b) A's degree of responsibility;
- (c) A's financial strength;
- (d) the amount, so far as can be determined, of profits gained or losses avoided by A;
- (e) the extent to which A has co-operated with the competent authority;
- (f) any previous contravention by A of a relevant requirement.'

The tribunal considers the following key points in its decision-making process.

The nature and seriousness of the conduct	Where the defendant's conduct sits on the scale of seriousness
The range of penalties available	These are set out in DBL22 (page 35) and in the table of disciplinary orders on page 37.
ICAEW's obligation to protect the public	
The need to decide on a penalty that is demonstrably proportionate and which takes into account both the interests of the public and those of the member	
Any facts which aggravate or mitigate the seriousness of the conduct	For example, whether it was deliberate and/or repeated over a period of time; whether a client or a group of clients was adversely affected by the conduct; whether the conduct was inadvertent; and whether it led to adverse consequences.
Whether a court has made a sentencing order against the defendant or whether another regulatory body has taken disciplinary proceedings	If it has, a tribunal must fully take into account any penalties that may have been imposed and any other consequences that may have resulted. This will not prevent a tribunal from making a further order but it must be satisfied that, in all the circumstances, it is appropriate and just for it to do so.
Whether there is a previous disciplinary record and whether any past disciplinary record is relevant	The previous misconduct may have happened so long ago or may have been unrelated to the defendant's professional work and should either be discounted or given little weight by the tribunal

<p>Any mitigating factors which are personal to the defendant</p>	<p>Did they report the conduct or events in question to ICAEW? Any corrective action taken by the defendant; prompt admission; expression of regret and the likely impact of any proposed penalty on a member/firm. A tribunal may consider any information about a member's personal circumstances which it believes may have a bearing on the level of penalty to be imposed. All defendants are advised to bring details of their financial means to the hearing. Mitigating factors may include events which have affected a member's ability to work, such as ill health or family tragedy.</p>
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These key tribunal questions are summarised on page 11 to help tribunals arrive at their *sanctions order*.

## 5 The sanctions order

The penalty (for example, a financial penalty, reprimand or exclusion) is only one part of the sanctions order. Once the tribunal has decided on the penalty, it considers a number of ancillary orders which it may include in its sanctions order. Ancillary orders are explained in more detail in paragraphs 5.1-5.7 below.

### 5.1 A requirement to take advice

In appropriate cases (for example poor work, or failure to deal with a client's affairs in good time), a tribunal may consider making an order that the defendant member seek advice from a specified source, at their own cost, and implement the advice obtained.

### 5.2 A waiver or return of fees

A tribunal may also consider making an order that fees charged by a defendant are waived, or that fees already paid are returned.

### 5.3 The repayment of commission

A tribunal may also consider making an order that the member or firm pay the complainant or the client a sum related to any commission the defendant has received or will receive. Such an order is likely to be appropriate in cases where the member or firm has been paid commission by agencies for work referred to them or for investment business advice or services that have been provided.

### 5.4 The complainant's expenses

If a complainant has given notice that they want to recover expenses, the tribunal may consider the request if it finds the complaint proved. However, a complainant may only recover those expenses incurred in either making the complaint in the first place, or in making representations to be considered by the IC. The maximum amount a tribunal can order a defendant to pay is £1,000. It is unlikely that a complainant will actually have incurred expenses in order to make a complaint.

### 5.5 Publicity

Members may ask that their name is not included in the published record of decision. Page 41 gives detailed guidance on the circumstances in which a tribunal might be prepared to make such an order.

### 5.6 Costs

Tribunals have the power to order that the costs incurred in investigating and considering a complaint be paid by a member or firm. The requirement to pay such costs is based on the principle that the majority of ICAEW members should not subsidise the minority who, through their own failings, find themselves within the disciplinary process. A summary of the costs incurred is sent to a member before the hearing and the covering letter explains that, if the complaint is found proved, an application will be made to the tribunal for an order for the costs to be paid. Orders for costs to be paid by a member or firm must reflect the costs reasonably incurred and must never be imposed as a penalty. The tribunal will only consider the costs element after it has reached its decision on the appropriate penalty for the complaint.

Members should always come to a hearing with some documentary proof of their financial circumstances. If members do not provide proof of financial means, a tribunal will assume that they are able to meet any financial penalty and/or costs that it orders. A tribunal may, in any case (including where the order is for exclusion), specify a time scale for paying financial penalties and costs, but this will normally be limited to a maximum of one year.

### 5.7 Costs against ICAEW

Tribunals also have power to require ICAEW to contribute a specified sum towards a defendant's costs if there is a finding of 'not proved' or 'proved in part only'. This power must be exercised in accordance with the DC regulations. Unlike litigation (where an award of costs normally follows the event), a finding of 'not proved in whole or part' will not automatically trigger an award of costs.

When it decides whether to make an award of costs, a tribunal will consider all the relevant facts including the conduct of ICAEW and the defendant throughout the proceedings including the investigation. The case law relating to costs against a regulator is consistent with this approach.

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.

This guidance is available at [icaew.com/publichearings](http://icaew.com/publichearings) and we are happy to provide a hard copy to members, member firms and their representatives on request. We review the guidance each year, in the light of experience and developments. The chairmen of the IC, DC, and AC agree revisions.

This guidance first became effective on 1 March 2000. It was revised and re-issued in full on 1 October 2002, 16 February 2004, 1 January 2005, 2 May 2006, 7 September 2007, 4 February 2010, 10 February 2011, 1 March 2012 and 1 August 2013. It applies to all complaints considered after 20 September 2007 unless powers of penalty have been limited (see page 44).



## 6 Glossary

<b>Affiliate</b>	A person who is not a member but who has been granted affiliate status under clause 12A of the Supplemental Charter of 21 December 1948; or granted audit affiliate status in accordance with the Audit Regulations 2008; or insolvency affiliate status in accordance with the Insolvency Licensing Regulations 2004; or granted probate affiliate status in accordance with the Probate Regulations 2013.
<b>Aggravating factors</b>	Any matter which, in the opinion of the tribunal, justifies increasing the suggested level of penalty
<b>Appeal Committee</b>	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
<b>Consent Order</b>	The sanctions order made by the IC with a member's agreement where liability is admitted
<b>Disciplinary action</b>	An adverse finding, plus a penalty and other order
<b>Disciplinary Bye-laws</b>	ICAEW's Disciplinary Bye-laws
<b>Disciplinary Committee</b>	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
<b>Disciplinary record</b>	In relation to any person or body, comprises all orders, findings, financial penalties and penalties to which he has at any time been subject, being orders, findings, financial penalties or penalties of any description prescribed for the purposes of this definition by regulations
<b>Investigation Committee</b>	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
<b>Mitigating factors</b>	Any matter which, in the opinion of the tribunal, justifies reducing the suggested level of penalty
<b>Panel</b>	Appointed under Disciplinary Bye-law 27(1) to hear an appeal
<b>Penalty</b>	An order made in accordance with Disciplinary Bye-law 22
<b>Provisional members</b>	<p>A person:</p> <ul style="list-style-type: none"><li>• who is training under a training contract; or</li><li>• who has trained under such contract and is eligible either to sit for ICAEW's professional examinations; or, having successfully sat those examinations, to apply for membership</li></ul> <p>For the purposes of this definition only, an order under bye-law 22(7)(d) of the Disciplinary Bye-laws (concerning eligibility to sit examinations) shall be disregarded.</p>
<b>Regulatory committee</b>	Either the Audit Registration Committee, Insolvency Licensing Committee, Investment Business Committee or the Probate Committee

<b>Regulatory penalty</b>	A financial penalty ordered by the Audit Registration Committee, Insolvency Licensing Committee, Investment Business Committee or Probate Committee for breach of regulation by an authorised or licensed firm, or licensed insolvency practitioner
<b>Regulated firm</b>	A DPB licensed firm or a registered auditor or an accredited probate firm
<b>Sanctions order</b>	The order made by the IC (by a consent order) or a DC tribunal comprising, as appropriate, any or all of the matters set out in Disciplinary Bye-laws 22, 23, 24A (expenses), 33 (costs), or 35 (publicity)
<b>Starting point</b>	An indication of where a tribunal will start when it considers its decision on penalty
<b>Tribunal</b>	Appointed under Disciplinary Bye-law 19(1) to hear a formal complaint
<b>Unpublicised caution</b>	An order made by the IC in accordance with Disciplinary Bye-law 16A

## 7 Categories of complaint

### 7.1 Tribunal questions

The tribunal will use the following questions to help it make a decision on a sanctions order.

- Which category and type of behaviour corresponds to the complaint (see category index below)?
- Where does the behaviour fall on the scale of seriousness?
- What are the penalties available?
- Are there factors that aggravate or mitigate the seriousness of the behaviour?
- The tribunal will then form a preliminary view on the appropriate penalty and consider any factors personal to the defendant that should alter the penalty. It will look at the totality of the complaint, what is the member or firm's status (member employed, a firm, a sole practitioner etc). Does the member or firm have a low, medium or high turnover? Has the member or firm produced evidence of financial circumstances?
- Are there any orders in addition to penalty to be dealt with (obtain advice, waiver or return of fees, publicity, costs)?

### 7.2 Categories of complaint and types of behaviour

Pages 12-37 set out the starting points for determining an appropriate penalty if the case involves any of the following complaints or types of behaviour.

Acts of dishonesty/criminal convictions	12
Audit	15
Breach of bye-laws and/or regulations	17
Clients' money offences	19
Ethical	20
Failure to comply	22
Failure to cooperate	23
Financial mismanagement	24
General accountancy failings	25
Insolvency	26
Investment business/licensed firms under DPB arrangement	31
Probate	33
Misconduct as a company director	36
Misconduct as trustee and other positions of trust	37

## 8 Acts of dishonesty/criminal convictions/adverse findings by regulatory/other bodies

There is separate guidance on page 13 for convictions if behaviour occurred outside a professional context or if another regulatory body has made an adverse finding.

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

### Complaint

### Starting point

#### Cases dealt with by the court

- |   |  |
|---|--|
| <b>a</b> Act(s) of dishonesty/breach of trust/money laundering  | <b>a</b> Exclusion # (except where followed by absolute discharge)   |
| <b>b</b> An offence other than <b>a</b> followed by a prison sentence (suspended or not) or community penalty   | <b>b</b> Exclusion #   |
| <b>c</b> An offence other than <b>a</b> or <b>b</b> committed in a professional capacity even though not followed by a prison sentence or community penalty   | <b>c</b> Exclusion #   |
| <b>d</b> An offence other than <b>a</b> , <b>b</b> or <b>c</b> not committed in a professional capacity or followed by a prison sentence or community penalty | <b>d</b> Reprimand. If conduct occurs outside professional work, see separate guidance on approach to sanctions. |

#### Adverse findings by regulatory body

- |   |                    |
|---|--------------------|
| <b>a</b> Adverse findings by other regulatory bodies where the underlying conduct involves dishonesty | <b>a</b> Exclusion |
| <b>b</b> adverse finding by regulatory body not covered by other categories of complaint              |                    |

# Where exclusion is the start point and in the previous proceedings the member has been fined or a Proceeds of Crime Act order has been made, an additional financial penalty will not be appropriate. Please see guidance on page 38.

#### + Aggravating factors

Very serious dishonesty; eg, systematic over long periods of time, for own gain  
Fraud  
Amount involved  
Defendant in a position of trust; eg, as employee  
Direct involvement in dishonesty, planned and calculated

#### - Mitigating factors

Offence not committed in a professional capacity  
Admission of guilt  
Insight into wrong doing  
Cooperation with prosecution authorities  
Restitution to victim.

**The starting point is not a tariff**

## 8.1 Criminal convictions where the behaviour occurs outside professional work

Conduct — not in a professional context but in a member's private life — which results in a conviction, presents issues which require a particular approach to sanctions.

When dealing with such cases, the tribunal will be aware that the defendant member has been dealt with for the offence and the criminal court has imposed its sentence. The severity of the sentence imposed by the court will not, however, be the only factor relevant to seriousness. Conversely, a lenient sentence will not necessarily lead the tribunal to view the matter less severely. On the contrary, it may well have been contemplated by the court that the member was bound to be dealt with by his or her professional body at a later date. The tribunal has to deal with the complaint because the member is in breach of the Disciplinary Bye-laws. The role of the tribunal is to balance the nature and gravity of the offence and its bearing, if any, on the member's fitness to practise as a chartered accountant; the need to protect the public and the good reputation of the profession against the need to impose further penalty and its consequential impact on the ability of the member to practise his or her profession.

When considering its decision on whether to impose a penalty and, if so, what, the tribunal will take into account the following questions.

- Does the offence and conviction affect the member's professional work or ability to practise as a chartered accountant in the future?
- Are future clients likely to be at risk of harm?
- Is the member's judgement sound?
- Has the member's type of work previously played a part in the conduct which led to the conviction?
- Does the public need to be protected from this member?
- Does the offence and conviction of the member diminish the good standing and reputation of ICAEW and the profession?
- Does the offence and the conviction give rise to a real probability that, if the member remains a chartered accountant, public confidence in the profession's ability and integrity to regulate itself will be undermined? If not, will an alternative, lesser penalty be appropriate?

## 8.2 The tribunal will take account of the value of the offence; for what offence has the member been convicted.

- theft
- offence against the person
- criminal damage
- sexual
- road traffic
- miscellaneous:
  - affray
  - possession/supply of drugs
  - firearms (possession of)
  - perverting the course of justice.

## 8.3 The tribunal will take account of the gravity of the offence.

- How serious?
- Is it gross?
- Is it shocking?
- Does it cause offence?

#### 8.4 The circumstances surrounding the offence

- Was it planned?
- Was it committed over an extended period of time, repeated?
- Was there a victim?
- Was the victim vulnerable?
  - a child
  - sick
- Has the victim suffered; are there any short-term or lasting consequences?
- What was the member's initial response to the offence at the time?
- What was the member's response to the prosecution for the offence?
- What sentence was imposed by the criminal court?
- Were there any particular aggravating factors before the court before sentencing?
- Is there a history of offending and a likelihood of further offences?
- In the light of all the circumstances, what is the proportional, appropriate penalty?

A financial penalty will rarely be appropriate, particularly if the court has imposed a financial penalty. Similarly, if action has been taken under the Proceeds of Crime Act for recovery and confiscation, this should be taken into account when deciding whether to impose a financial penalty as part of the sanctions order. The tribunal's discretion in relation to costs applies as in any other case.

## 9 Audit

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

### Complaint

- a Acting as auditor when not registered
- b Audit work of a seriously defective nature
- c Lesser forms of bad audit work
- d Failure to prevent firm taking audit appointment - when firm not registered
- e Audit reports signed by a non-RI
- e<sup>1</sup> Deliberate/knowning not authorised or reckless
- e<sup>2</sup> Uncertain/signs without making proper enquiries
- e<sup>3</sup> Some technical irregularity
- f Wrong, unqualified auditor's report
- f<sup>1</sup> Serious/defective audit work

- f<sup>2</sup> Less serious defective audit work
- g Annual return incorrect/mis-statement

#### Individual

- g<sup>1</sup> Deliberate
- g<sup>2</sup> Reckless/serious negligence

- g<sup>3</sup> Inadvertent

#### Firm

- g<sup>1</sup> Deliberate
- g<sup>2</sup> Reckless/serious negligence
- g<sup>3</sup> Inadvertent

### Starting point

- a Exclusion plus a financial penalty of £11,500 (if it is sole practitioner or responsible individual (RI))
- b **Firm**  
Severe reprimand and a financial penalty equal to 1.5 x audit fee. Adjust upwards if audit fee inadequate or if company subsequently collapsed.
- b<sup>1</sup> **RI/second review partner**  
Exclusion and a financial penalty of £5,750-£11,500
- c **Firm**  
Reprimand and a financial penalty equal to half audit fee
- c<sup>1</sup> **RI/second review partner**  
Reprimand and a financial penalty of £2,875-£6,350
- d Severe reprimand and 1.5 x audit fee or -£6,350
- e<sup>1</sup> Severe reprimand and financial penalty of £6,350 or 1.5 x the audit fee
- e<sup>2</sup> Reprimand and financial penalty of £3,450 or financial penalty equal to half the audit fee
- e<sup>3</sup> Reprimand and financial penalty of £2,350
- f<sup>1</sup> Severe reprimand and a financial penalty equal to 1.5 x audit fee. Adjust upwards if audit fee inadequate or if company subsequently collapsed.
- f<sup>2</sup> Reprimand and half the audit fee

#### Individual

- g<sup>1</sup> Exclusion
- g<sup>2</sup> Severe reprimand and a financial penalty of £3,450

- g<sup>3</sup> Reprimand and a financial penalty of £1,725

#### Firm

- g<sup>1</sup> Severe reprimand and a financial penalty of £12,000

- g<sup>2</sup> Severe reprimand and a financial penalty of £6,350

- g<sup>3</sup> Reprimand and a financial penalty of £3,450

<p><b>h</b> Refusing/failing to cooperate with or accept a QAD visit</p> <p><b>i</b> Failure to comply with restrictions/conditions</p> <p><b>Individual</b></p> <p><b>i<sup>1</sup></b> deliberate</p> <p><b>i<sup>2</sup></b> reckless/serious negligence</p> <p><b>i<sup>3</sup></b> inadvertent</p> <p><b>Firm</b></p> <p><b>i<sup>1</sup></b> deliberate</p> <p><b>i<sup>2</sup></b> reckless/serious negligence</p> <p><b>i<sup>3</sup></b> inadvertent</p> <p><b>j</b> Breach of undertaking</p> <p><b>Individual</b></p> <p><b>j<sup>1</sup></b> deliberate</p> <p><b>j<sup>2</sup></b> reckless/serious negligence</p> <p><b>j<sup>3</sup></b> inadvertent</p> <p><b>Firm</b></p> <p><b>j<sup>1</sup></b> deliberate</p> <p><b>j<sup>2</sup></b> reckless/serious negligence</p> <p><b>j<sup>3</sup></b> inadvertent</p> <p><b>k</b> Breach of eligibility requirements</p>	<p><b>h</b> Severe reprimand and a financial penalty of £6,350 (£6,350 to be used as a multiplier for each partner in the firm).</p> <p><b>Individual</b></p> <p><b>i<sup>1</sup></b> Exclusion</p> <p><b>i<sup>2</sup></b> Severe reprimand and a financial penalty of £6,350</p> <p><b>i<sup>3</sup></b> Reprimand and a financial penalty of £3,450</p> <p><b>Firm</b></p> <p><b>i<sup>1</sup></b> Severe reprimand and a financial penalty of £12,000</p> <p><b>i<sup>2</sup></b> Severe reprimand and a financial penalty of £6,350</p> <p><b>i<sup>3</sup></b> Reprimand and a financial penalty of £3,450</p> <p><b>Individual</b></p> <p><b>j<sup>1</sup></b> Exclusion</p> <p><b>j<sup>2</sup></b> Severe reprimand and a financial penalty of £6,350</p> <p><b>j<sup>3</sup></b> Reprimand and a financial penalty of £3,450</p> <p><b>Firm</b></p> <p><b>j<sup>1</sup></b> Severe reprimand and a financial penalty of £12,000</p> <p><b>j<sup>2</sup></b> Severe reprimand and a financial penalty of £6,350</p> <p><b>j<sup>3</sup></b> Reprimand and a financial penalty of £3,450</p> <p><b>k Firm</b> Reprimand and a financial penalty based on fees saved by failure to comply x number of years.</p>
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Lack of audit independence, **see Ethical**

**+ Aggravating factors**

Audit of plc or public interest entity  
Multiple accounts audited over extensive period of time  
Intention to mislead  
Whether anyone lost money  
Failure to follow recommendations after a QAD inspection

Refusal or failure to cooperate with the QAD and the Audit Registration Committee is likely to lead to regulatory action including withdrawal of audit registration.

**- Mitigating factors**

Inadvertent/breach of requirements which has no consequences  
Steps taken to put matters right  
Subsequent audits found to comply with the requirements

**The starting point is not a tariff**



## 10 Breach of bye-laws and/or regulations

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

Complaint	Starting point
<b>a</b> Engaging in public practice without a practising certificate	
<b>a<sup>1</sup></b> Deliberate	<b>a<sup>1</sup></b> Exclusion* and a financial penalty of £5,750
<b>a<sup>2</sup></b> Reckless	<b>a<sup>2</sup></b> Severe reprimand and a financial penalty of £2,300
<b>a<sup>3</sup></b> Inadvertent	<b>a<sup>3</sup></b> Reprimand and financial penalty of £1,500
<b>b</b> Failure to hold PII	
<b>b<sup>1</sup></b> Deliberate	<b>b<sup>1</sup></b> As in <b>a<sup>1</sup></b> above
<b>b<sup>2</sup></b> Reckless	<b>b<sup>2</sup></b> As in <b>a<sup>2</sup></b> above
<b>b<sup>3</sup></b> Inadvertent	<b>b<sup>3</sup></b> As in <b>a<sup>3</sup></b> above
<b>bb</b> Engaging in public practice without a practising certificate and failure to hold PII	
<b>bb<sup>1</sup></b> Deliberate	<b>bb<sup>1</sup></b> Exclusion and a financial penalty of £8,625
<b>bb<sup>2</sup></b> Reckless	<b>bb<sup>2</sup></b> Severe reprimand and a financial penalty of £3,450
<b>bb<sup>3</sup></b> Inadvertent	<b>bb<sup>3</sup></b> Reprimand and a financial penalty of £2,250
<b>c</b> Failure to declare CPD	<b>c</b> Reprimand and a financial penalty of £850 each year (up to a maximum of 4 years)
<b>c<sup>1</sup></b> Failure to notify the Member's registrar of change of address	<b>c<sup>1</sup></b> Reprimand
<b>d</b> Breach of the Money Laundering Regulations (not falling under category for dishonesty or criminal convictions; nb, the regulations are not made under the DBLs)	
<b>d<sup>1</sup></b> Failure to report	<b>d<sup>1</sup></b> Exclusion
<b>d<sup>2</sup></b> Tipping off Deliberate or reckless Inadvertent	<b>d<sup>2</sup></b> Exclusion Severe reprimand and a financial penalty of £10,000
<b>d<sup>3</sup></b> Failure to follow procedures, eg, maintain records	<b>d<sup>3</sup></b> Severe reprimand and a financial penalty of £5,750
<b>e</b> Practice Assurance	<b>e</b>
<b>e<sup>1</sup></b> Failure to cooperate with arranging or following a PA visit	<b>e<sup>1</sup></b> Severe reprimand and a financial penalty of £5,750 Consider withdrawal of practising certificate
<b>e<sup>2</sup></b> Failure to complete annual return	<b>e<sup>2</sup></b> Reprimand and a financial penalty of £3,250
<b>e<sup>3</sup></b> Errors in annual return	<b>e<sup>3</sup></b> Reprimand and a financial penalty of £1,300
<b>e<sup>4</sup></b> Failure to fulfil an assurance made to the PAC (single breach)	<b>e<sup>4</sup></b> Reprimand and a financial penalty of £1,725
<b>e<sup>5</sup></b> Failure to fulfil an assurance made to the PAC (several heads of complaint)	<b>e<sup>5</sup></b> Severe reprimand and a financial penalty of £1,725 per breach
<b>e<sup>6</sup></b> Failure to advise ICAEW of changes to a practice	<b>e<sup>6</sup></b> Reprimand and a financial penalty of £1,150
<b>e<sup>7</sup></b> Failure to comply with DBL11, firm to deal with complaints	<b>e<sup>7</sup></b> Reprimand and a financial penalty of £1,150
<b>e<sup>8</sup></b> Breach of Provision of Services Regulations 2009 (eg, failure to provide PII details to client)	<b>e<sup>8</sup></b> Reprimand and a financial penalty of £1,150

**+ Aggravating factors**

Extensive practice (repeated and on numerous occasions)  
Over significant period of time  
Continued offence after became aware  
Wilful failure

\* See guidance on page 40.

**- Mitigating factors**

Minimal work carried out, no fees charged/very short period of time  
Relied on another to ensure in place  
Steps taken after became aware, retroactive cover obtained

**The starting point is not a tariff**

## 11 Clients' money offences

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

### Complaint

**a** Money held in firm account which was in credit or not held in designated client account:

- a<sup>1</sup>** Small sums for short period
- a<sup>2</sup>** Small sums for long periods or repeated holding of any sums for a short period
- a<sup>3</sup>** Medium sums for short period
- a<sup>4</sup>** Medium sums for a long period
- a<sup>5</sup>** Large sum for a short period
- a<sup>6</sup>** Large sum for long period
- a<sup>7</sup>** Very large sum for short period
- a<sup>8</sup>** Very large sum for long period

**b** Client money held in overdrawn firm account

- b<sup>1</sup>** Small sums for short period
- b<sup>2</sup>** Small sums for long periods or repeated holding of any sums for a short period
- b<sup>3</sup>** Medium sums for a short period
- b<sup>4</sup>** Medium sum for a long period
- b<sup>5</sup>** Large sum for a short period
- b<sup>6</sup>** Large sum for long period
- b<sup>7</sup>** Very large sum for a short period
- b<sup>8</sup>** Very large sum for long period

### Starting point

- a<sup>1</sup>** Reprimand and a financial penalty of £1,300
- a<sup>2</sup>** Reprimand and a financial penalty of £2,000
- a<sup>3</sup>** Reprimand and a financial penalty of £2,600
- a<sup>4</sup>** Reprimand and a financial penalty of £4,000
- a<sup>5</sup>** Severe reprimand and a financial penalty of £5,200
- a<sup>6</sup>** Severe reprimand and a financial penalty of £8,000
- a<sup>7</sup>** Severe reprimand and a financial penalty of £10,400
- a<sup>8</sup>** Severe reprimand and a financial penalty of £16,000
- b<sup>1</sup>** Severe reprimand and a financial penalty of £2,650
- b<sup>2</sup>** Severe reprimand and a financial penalty of £4,000
- b<sup>3</sup>** Severe reprimand and a financial penalty of £5,200
- b<sup>4</sup>** Severe reprimand and a financial penalty of £8,000
- b<sup>5</sup>** Severe reprimand and a financial penalty of £10,400
- b<sup>6</sup>** Severe reprimand and a financial penalty of £16,000
- b<sup>7</sup>** Severe reprimand and a financial penalty of £20,800
- b<sup>8</sup>** Exclusion

### + Aggravating factors

Large numbers of clients involved  
 Failure to deal promptly with the matter following notification of the complaint  
 Significant benefit to the defendant resulting from improper retention of funds  
 Clients suffer consequential losses

### Key

Small sums	£20,000
Medium sums	£20,000 - £100,000
Large sums	£100,001 - £500,000
Very large sums	£500,001 upwards
Short period	Seven days or less
Long period	Seven days or more

### - Mitigating factors

Matters put right immediately following complaint  
 Procedures introduced to avoid recurrence  
 Clients compensated for lost interest

**The starting point is not a tariff**

## 12 Ethical

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

Complaint	Starting point
<b>a</b> Lack of independence due to personal/family relationship/previous material professional relationship/pecuniary interest	<b>Individual</b> <b>a<sup>1</sup></b> Exclusion and a financial penalty of £6,000 to £12,000 and consideration of withdrawal of licence or registration (if applicable)
<b>a<sup>1</sup></b> Very serious – blatant	<b>Firm</b> <b>a<sup>1</sup></b> Severe reprimand and a financial penalty of £28,750 or a financial penalty based on an appropriate percentage of the fees earned, if the fees were significantly higher or lower than £28,750 and consideration of withdrawal of firm's licence or registration (if applicable)
<b>a<sup>2</sup></b> Serious	<b>Individual</b> <b>a<sup>2</sup></b> Severe reprimand and a financial penalty of £4,000 to £8,000
<b>a<sup>3</sup></b> Less serious (tenuous link technical breach)	<b>Firm</b> <b>a<sup>2</sup></b> Severe reprimand and a financial penalty of £16,650 or a financial penalty based on an appropriate percentage of the fees earned, if the fees were significantly higher or lower than £16,650
<b>a<sup>3</sup></b> Less serious (tenuous link technical breach)	<b>Individual</b> <b>a<sup>3</sup></b> Reprimand and a financial penalty of £2,000 to £4,000
<b>b</b> Conflict of interest <b>b<sup>1</sup></b> Very serious/blatant <b>b<sup>2</sup></b> Serious <b>b<sup>3</sup></b> Less serious; eg, inadvertent	<b>Firm</b> <b>a<sup>3</sup></b> Reprimand and financial penalty of £6,600 or a financial penalty based on an appropriate percentage of the fees earned, if the fees were significantly higher or lower than £6,600  <b>b<sup>1</sup></b> As in <b>a<sup>1</sup></b> above <b>b<sup>2</sup></b> As in <b>a<sup>2</sup></b> above <b>b<sup>3</sup></b> As in <b>a<sup>3</sup></b> above
<b>c</b> Providing false or misleading information	<b>c</b> Exclusion* and a financial penalty of £6,600
<b>d</b> Breach of fiduciary duty (not otherwise covered):	<b>d<sup>1</sup></b> Exclusion* and a financial penalty of £28,750
<b>d<sup>1</sup></b> Very serious	<b>d<sup>2</sup></b> Severe reprimand and a financial penalty of £16,650
<b>d<sup>2</sup></b> Serious	<b>d<sup>3</sup></b> Reprimand and a financial penalty of £6,600
<b>d<sup>3</sup></b> Inadvertent	<b>e<sup>1</sup></b> Exclusion* and financial penalty
<b>e</b> Breach of confidentiality	<b>e<sup>2</sup></b> Exclusion* and financial penalty
<b>e<sup>1</sup></b> Misuse of confidential information	<b>e<sup>3</sup></b> Reprimand and financial penalty £6,600
<b>e<sup>2</sup></b> Wrongful disclosure	<b>f<sup>1</sup></b> Severe reprimand and financial penalty £4,000
<b>e<sup>3</sup></b> Any other disclosure/misuse, inadvertent	
<b>f<sup>1</sup></b> Failure to communicate/cooperate with existing appointment holder/failure to provide handover information, lien wrongly exercised	

<b>f<sup>2</sup></b>	Other departure from fundamental principles, Code of Ethics without justification	<b>f<sup>2</sup></b>	Reprimand and a financial penalty of £2,650
<b>g</b>	Persistent or repeated aggressive course of conduct and/or the use of obscene and grossly offensive language/similar	<b>g</b>	Severe reprimand and a financial penalty of £2,650
<b>h</b>	Unethical promotion practices	<b>h</b>	Reprimand and a financial penalty of £1,300

#### **+ Aggravating factors**

Lack of independence where public interest issues are involved or associated with collapse of company  
Significant level of public attention or high public importance

Business – occurred in the course of

Deliberate

Fraud

Amount involved substantial

Defendant in a position of trust, eg, as employee

Deliberate act to gain personal advantage

Whether any loss suffered as a result

If the breach is repeated over successive years, any financial penalty the committee considers it appropriate to impose should not normally be multiplied for each year the breach occurred, unless it is satisfied the member or firm had a clear opportunity to address the matter each year and wilfully failed to address it. Except in such circumstances, the committee should regard repeated failures as general aggravating circumstances.

#### **- Mitigating factors**

No loss suffered

Information provided accidentally rather than deliberately

Reprehensible conduct/correspondence on the part of the client

Action taken at request of client/took professional advice

Compensation paid to the client

\* See guidance on page 40.

**The starting point is not a tariff**

### 13 Failure to comply with an order of the IC, DC or AC

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

#### Complaint

- a Failure to take advice, for example from Practice Support Services
- b Failure to comply with an order made for waiver or repayment of fees
- c Failure to comply with a remedial order
- d Other cases where a member has failed to act or acted belatedly to obligations upon him

#### Starting point

- a Severe reprimand and a financial penalty of £6,600
- b Severe reprimand and a financial penalty of £6,600
- c Severe reprimand and a financial penalty of £6,600
- d Reprimand and a financial penalty of £1,300

#### + Aggravating factors

Blatant disregard, total absence of effort made to comply  
Nature of inefficiency and effect on clients  
Any other similar complaints in last five years

#### - Mitigating factors

Improvements made in the practice  
No client disadvantaged

**The starting point is not a tariff**

## 14 Failure to cooperate generally and to comply with DBL13 requirement

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

### Complaint

- a** Failure to respond at all or promptly to client letters, telephone calls, emails
- b** Delay/failure to pass information to succeeding accountant (see also Ethical)
- c** Refusal to provide information (blatant obstruction) without good cause
- d** Failure to reply to a letter sent in accordance with Disciplinary Bye-law 13 where:
  - ia** the response has been difficult and tedious rather than calculated to obstruct and the information has been provided between the date of the IC preferring the complaint and the date of the hearing
  - ib** there has been a response but not all the information has been provided
  - ic** there has been a response that the information will be provided but it is not
  - id** there has been no response at all
- ii** Second such complaint within five years but
  - iiia** the information has been produced between the date of the IC preferring the complaint and the hearing
  - iiib** there has been a response but not all the information is provided and
  - iiic** there has been a response that the information will be provided but it has not
  - iiid** no response at all
- iii** Third such complaint within five years
  - iiia** The information has been produced between the date of the IC preferring the complaint and the hearing
  - iiib** A response but not all the information is provided
  - iiic** there has been a response that the information will be provided but it has not
  - iiid** No response at all

### Starting point

- a** Reprimand and a financial penalty of £1,300
- b** Reprimand and a financial penalty of £1,300
- c** Exclusion\* and a financial penalty of £6,600
- ia** Reprimand and a financial penalty of £1,300
- ib** Severe reprimand and a financial penalty of £2,700
- ic** Severe reprimand and a financial penalty of £3,250
- id** Severe reprimand and a financial penalty of £4,000
- iiia** Severe reprimand and a financial penalty of £4,000
- iiib** Severe reprimand and a financial penalty of £4,600
- iiic** Severe reprimand and a financial penalty of £5,300
- iiid** Severe reprimand and a financial penalty of £6,600
- iiia** Severe reprimand and a financial penalty of £6,600
- iiib** Exclusion\*
- iiic** Exclusion\*
- iiid** Exclusion\*

### + Aggravating factors

The information is produced at the last possible moment.  
The investigation of a serious complaint; eg, fraud is frustrated and no adequate explanation is given.

\* See guidance on page 40.

### - Mitigating factors

Difficulty accessing information, dependent on another, efforts made in attempt to provide information or respond.

**The starting point is not a tariff**

## 15 Financial mismanagement

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

### Complaint

- a** Failing to account for VAT/income tax
- b** Multiple acts of financial mismanagement or second complaint in three years
- c** Failing to comply with terms of voluntary arrangements with creditors or other matters charged against a defendant in an individual voluntary arrangement
- d** Member or principal of a firm or body corporate engaged in public practice which enters into an insolvency procedure, as listed in DBL 4.2 (e) (i) (iii) or (iv) or DBL 4.2 (f) (i), (iii) or (iv)
- d<sup>1</sup>** as a result of member's gross financial mismanagement
- d<sup>2</sup>** as a result of misfortune
- e** Non-payment of judgment debt or dishonoured cheque
- f** Entry by a member into an IVA
- g** Member or principal of a firm or body corporate engaged in public practice which has entered into a CVA or PVA

### Starting point

- a** Exclusion\* and a financial penalty of £6,600
- b** Exclusion\* and a financial penalty of £6,600
- c** Exclusion\*
- d<sup>1</sup>** Severe reprimand
- d<sup>2</sup>** Reprimand
- e** Reprimand and a financial penalty of £2,650 (if solvent)
- f** No order but contribution to costs
- g** No order but contribution to costs

### + Aggravating factors

- Personal assets/income available
- Failure to disclose/or to disclose accurately assets to supervisor
- Making unfairly small contribution to IVA when substantial personal assets available
- Making substantial drawings in excess of profits in period prior to entry into IVA
- Preferring personal creditors to business creditors
- Preferring creditors of one business rather than another
- Disposing of assets at an under value with the object of personal gain
- Lack of integrity in business dealings

\* See guidance on page 40.

### - Mitigating factors

- Effective arrangements made to make good deficiency
- Problem resulted from deliberate act by properly supervised/trusted member of staff

The starting point is not a tariff



## 16 General accountancy failings

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

Complaint	Starting point
<b>a</b> Poor work on accounts	
i Serious	i Severe reprimand, financial penalty £6,600 or 1.5 x fee if greater than £6,600. Consider PRS referral
ii Other cases less serious	ii Reprimand, financial penalty £3,250 or 0.5 x fee if greater than £3,250
<b>b</b> Accounts not in statutory format	
i Serious	i Severe reprimand, financial penalty £2,700 or 1.5 x fee charged – if successive years fee x by number of years
ii Less serious	ii Reprimand, financial penalty £1,300
<b>c</b> Wrongly signed report/inaccurate report, accounts do not comply with Solicitor's Accounts Rules or similar	<b>c</b> Severe reprimand, financial penalty £2,700. Consider fees charged if greater for financial penalty and/or return or waiver
<b>d</b> Second offence <b>a</b> , <b>b</b> , or <b>c</b> within two years	<b>d</b> Severe reprimand, financial penalty £13,250. Consider withdrawal of practising certificate and consider fees charged if greater for financial penalty and/or return or waiver
<b>e</b> General neglect of client affairs	
i Single/first instance	i Severe reprimand and a financial penalty of £2,700. Consider fee waiver/return
ii Multiple clients or lengthy neglect	ii Severe reprimand and financial penalty of £6,600
iii Second finding of guilt in relation to i and/or ii above in three years	iii Exclusion or severe reprimand, financial penalty of £13,250. Consider fee waiver/return. Consider withdrawal of practising certificate or referral to Practice Support Services (PSS). Consider using fee charged as multiplier in all above
<b>f</b> Lack of attention/delay on client's affairs	<b>f</b> Reprimand, financial penalty £1,300 or fee charged if greater. Consider waiver/return of fees
<b>g</b> Bad advice on client's affairs/tax	<b>g</b> Reprimand, financial penalty £1,300 or fee charged if greater. Waiver return of fees, withdrawal of practising certificate, referral to PRS
<b>h</b> Failing to respond properly to professional enquiry or handover (also see Ethical)	<b>h</b> Severe reprimand, financial penalty of £4,000

### + Aggravating factors

Nature of inefficient or incompetent work, eg, failure to reconcile client ledger balances with funds available to meet them

Collusion to cover up deficiencies

The client has lost money

Effect on client, eg, subject to penalties, loss of business opportunity

### - Mitigating factors

Client deceived the defendant

Turnover on client account and proportion and size of deficiencies

Client unhelpful in providing records or information; gave misleading information.

Files lost through natural catastrophe, eg, fire, flood

**The starting point is not a tariff**

# 17 Insolvency<sup>1</sup>

## Common Sanctions Guidance

### Part 1

#### 1 Background

There are five recognised professional bodies (RPBs) that license insolvency practitioners. Once an RPB has investigated the conduct of any insolvency practitioner it licenses, it can (under its own disciplinary processes) impose sanctions on that licence holder. Such sanctions can follow an investigation of a complaint or as a result of a finding on a monitoring visit carried out by the RPB or following the receipt of any other intelligence.

The regulatory objectives introduced in 2015 provide the RPBs with a clearer, enhanced structure within which to carry out their functions of authorising and regulating insolvency practitioners.

A RPB will, when discharging regulatory functions, be required to act in a way which is compatible with the regulatory objectives.

The Common Sanctions Guidance aims to ensure consistency with the regulatory objectives so that it enables RPBs to have a system in place which secures fair treatment for people affected by the acts of insolvency practitioners, is transparent, accountable, proportionate, and ensures consistent outcomes.

The circumstances that lead to a complaint and the issues that arise as part of the complaint will vary, possibly significantly, on a case-by-case basis. Not all complaints about an insolvency practitioner lead to them being disciplined. For example, errors of judgement and innocent mistakes are not generally considered to be misconduct. If, however, an insolvency practitioner has made a serious error or a repeated number of less serious errors, this may mean they've performed their work inefficiently or incompetently to such an extent or on such a number of occasions as to have brought discredit to themselves, their regulator, or the insolvency profession.

The Common Sanctions Guidance is not intended to be a tariff and does not bind each RPB's processes to a fixed sanctions regime. Although it gives an indication of the level of sanction to be imposed, each disciplinary committee or tribunal will use its own judgement to set a sanction appropriate to the circumstances of the individual case.

When a disciplinary committee or tribunal considers what would be an appropriate sanction, it will refer to this guidance and may, within its discretion, vary the sanction depending on aggravating and mitigating factors. Where a decision varies from the guidance the reasons for this should be clearly documented and explained by the RPB.

#### 2 Sanctions

When a disciplinary committee or tribunal considers:

- whether to impose a sanction; and
- what sanction to impose,

it should consider the following factors:

- protecting and promoting the public interest;
- maintaining the reputation of the profession;
- upholding the proper standards of conduct in the profession; and
- correcting and deterring breaches of those standards.

When a disciplinary committee or tribunal decides that a complaint has been proved or where it is admitted, the committee or tribunal will decide the appropriate sanction. In doing so, the committee or tribunal will form its view based on the particular facts of the case. If the committee or tribunal decides a penalty (for example, exclusion, reprimand or a financial penalty) is necessary it will identify the relevant category of complaint and the relevant behaviour.

There are two types of sanction available to the disciplinary committee or tribunal: non-financial sanctions and financial sanctions. The indicative sanctions (an indication of the sanction an insolvency practitioner might be given for a particular type of wrong doing) are set out in the table in Part 2. The actual sanction will be determined by the RPB's own rules and regulations and having regard to any aggravating and mitigating factors (see below).

## Non-financial sanctions

These can range from a reprimand; severe reprimand; suspension of a licence or membership; withdrawal of a licence; to exclusion from membership, as set out in the RPB's bye laws.

The disciplinary committee or tribunal can use non-financial sanctions to indicate to the insolvency practitioner that their conduct falls short of the standards required. A non-financial disciplinary sanction will form part of that insolvency practitioner's disciplinary record. In some circumstances, a non-financial sanction (such as exclusion from membership or removal of the insolvency practitioner's licence) will affect an individual's ability to practise as an insolvency practitioner.

## Financial sanctions

For each type of complaint there is a suggested starting point for a financial sanction. This is not a tariff or a "going rate" for the complaint but it simply indicates where the committee or tribunal might start when it looks at all the factors relevant to deciding the penalty. Once the committee or tribunal has agreed the most appropriate starting point, it takes into account any aggravating and mitigating factors before deciding whether it is appropriate to reduce or increase the penalty. The committee or tribunal may decide on a more or less severe penalty than the starting point depending on all the circumstances of the case.

### 3 Aggravating and mitigating factors

The indicative sanction may need to be adjusted depending on the facts of particular cases.

A disciplinary committee or tribunal will normally consider the aggravating and mitigating factors summarised below before it decides on the appropriate level of sanction. The list is not exhaustive and not all the factors will apply to a particular case.

Once the disciplinary committee or tribunal has identified the factors it considers relevant, it should decide what weight to give to each of them.

### 4 Costs

Disciplinary committees and tribunals have the power to order the insolvency practitioner to pay the costs incurred during an investigation into a complaint. Orders for costs may reflect the costs reasonably incurred in investigating the complaint and are not imposed as a sanction. A disciplinary committee or tribunal will only consider the 'costs' element after it has decided the appropriate sanction for the complaint.

### 5 Publicity

When a disciplinary committee or tribunal makes an adverse finding and order, the RPB will publish the record of decision in the manner it thinks fit. The insolvency practitioner should be named in that publicity unless a disciplinary committee or tribunal orders no publicity or publicity on an anonymous basis, in which case reasons for not doing so will be provided by the disciplinary committee or tribunal. Disciplinary committees or tribunals will rarely order that there should be no publicity associated with an adverse finding.

From 1 November 2014, all published disciplinary sanctions are included on the [Insolvency Service's website](#) in an agreed format. The publication includes details of the IP, the nature of the complaint, the finding and any sanction together with reasons for the decision including aggravating and mitigating factors considered as part of that decision.

## Part 2 – Indicative sanctions for various breaches of the Insolvency Act 1986, other relevant legislation and Statements of Insolvency Practice

The table below gives an indication of the level of sanction which may be imposed but should not be regarded as a tariff. Each disciplinary committee or tribunal will use its own judgement to set a sanction appropriate to the circumstance of the individual case, depending on the seriousness of the breach and the aggravating and mitigating factors.

Each sanction is split into three categories depending on the seriousness of the misconduct:

**Very serious (a):** This will generally mean that the insolvency practitioner's conduct was deliberate and/or dishonest.

**Serious (b):** This will generally mean that the insolvency practitioner's conduct was reckless.

**Less serious (c):** This will generally mean the conduct by the insolvency practitioner amounts to an inadvertent breach. Where breaches are adjudged to be inadvertent, a financial or published sanction may not always be appropriate depending on the facts of the case and the aggravating and mitigating factors considered.

Where the conduct has resulted in a likely profit to the insolvency practitioner or their firm or any other connected party, the disciplinary/investigation committee or tribunal may issue a financial penalty equivalent to the likely profit gained. The starting point for determining the likely profit will be 30% of the total fees charged by the insolvency practitioner or their firm or any other connected party for the engagement in question. A financial penalty of this nature will only be adjusted (downwards) if the firm can produce cogent and reliable evidence that the financial benefit (profit) gained is less than the financial penalty proposed.

Where a disciplinary/investigation committee or tribunal proposes to issue a financial penalty for a breach that has led to a profit for the insolvency practitioner or their firm or any other connected party, the disciplinary/investigation committee or tribunal will issue a single financial sanction which will include both the financial penalty for the estimated profit gained explained above as well as a variable financial penalty listed in Part 3 below which will depend on seriousness of the misconduct, the facts of the case and be tiered alongside the appropriate non-financial sanction.

When considering allegations relating to unauthorised or excess remuneration, disciplinary committees or tribunals will in the first instance have regard to whether the unauthorised or excess remuneration has been repaid to the estate before deciding on an appropriate financial sanction.

	<b>Allegation</b>	<b>Non-financial sanction</b>	<b>Starting point for financial sanction</b>
1	Acts of dishonesty resulting in criminal convictions and/or adverse findings by regulatory and other bodies.	Exclusion and licence withdrawal	A financial penalty may not be appropriate in every case. Where a financial penalty is considered appropriate, the starting point should be £15,000
2	Misappropriation of funds into own account, other estates or third parties	<b>a</b> Exclusion and licence withdrawal	<b>a</b> Financial penalty of £20,000
3	Acting as an insolvency practitioner without a licence	<b>a</b> Exclusion <b>b</b> Severe reprimand <b>c</b> Reprimand	<b>a</b> Financial penalty of £10,000 <b>b</b> Financial penalty of £5,000 <b>c</b> Financial penalty of £1,500
4	Drawing unauthorised remuneration	<b>a</b> Severe reprimand <b>b</b> Severe reprimand <b>c</b> Reprimand	<b>a</b> Financial penalty equivalent to the level of the unauthorised fee drawn, or £10,000, whichever is greater <b>b</b> Financial penalty of £5,000 <b>c</b> Financial penalty of £2,000
5	Drawing of excess remuneration that has been deemed unfair or unreasonable	<b>a</b> Severe reprimand <b>b</b> Severe reprimand <b>c</b> Reprimand	<b>a</b> Financial penalty of £7,500 <b>b</b> Financial penalty of £5,000 <b>c</b> Financial penalty of £1,500
6	Failure to submit returns (eg, CDDA returns) or a delay in submitting returns where the delay is likely to impact on the conduct of the insolvency appointment	<b>a</b> Severe reprimand <b>b</b> Reprimand <b>c</b> Reprimand	<b>a</b> Financial penalty of £5,000 <b>b</b> Financial penalty of £2,000 <b>c</b> Financial penalty of £1,000
7	Failure to convene a creditor's meeting or a delay in convening a creditor's meeting where the delay is likely to impact on the conduct of the insolvency appointment	<b>a</b> Severe reprimand <b>b</b> Reprimand <b>c</b> Reprimand	<b>a</b> Financial penalty of £5,000 <b>b</b> Financial penalty of £2,000 <b>c</b> Financial penalty of £1,000

8	Accepted an appointment as administrator when no statutory purpose achievable	<b>a</b>	Severe reprimand	<b>a</b>	Financial penalty of £7,500
		<b>b</b>	Reprimand	<b>b</b>	Financial penalty of £2,000
9	Failure to comply with the principles of a SIP, the Insolvency Act and rules and regulations thereunder	<b>a</b>	Severe reprimand	<b>a</b>	Financial penalty of £7,500
		<b>b</b>	Severe reprimand	<b>b</b>	Financial penalty of £5,000
		<b>c</b>	Reprimand	<b>c</b>	Financial penalty of £1,500
10	Failure to take adequate steps to realise assets	<b>a</b>	Severe reprimand	<b>a</b>	Financial penalty of £7,500
		<b>b</b>	Reprimand	<b>b</b>	Financial penalty of £2,000
		<b>c</b>	Reprimand	<b>c</b>	Financial penalty of £1,500
11	Delay in progressing administration of an insolvency estate	<b>a</b>	Severe reprimand	<b>a</b>	Financial penalty of £5,000
		<b>b</b>	Reprimand	<b>b</b>	Financial penalty of £2,000
		<b>c</b>	Reprimand	<b>c</b>	Financial penalty of £1,500
12	Failure to respond at all, or a delay in responding to letters, telephone calls or emails	<b>a</b>	Severe reprimand	<b>a</b>	Financial penalty of £2,500
		<b>b</b>	Reprimand	<b>b</b>	Financial penalty of £1,500
		<b>c</b>	Reprimand	<b>c</b>	Financial penalty of £500

### Part 3 – Indicative sanctions for various breaches of the Insolvency Code of Ethics

	<b>Allegation</b>		<b>Non-financial sanction</b>		<b>Starting point for financial sanction</b>
1	Failure to comply with the fundamental principle of integrity	<b>a</b>	Exclusion and consideration of licence withdrawal	<b>a</b>	Financial penalty of £10,000
		<b>b</b>	Severe reprimand	<b>b</b>	Financial penalty of £5,000
2	Failure to comply with the fundamental principle of objectivity	<b>a</b>	Exclusion	<b>a</b>	Financial penalty of £10,000
		<b>b</b>	Severe reprimand	<b>b</b>	Financial penalty of £5,000
		<b>c</b>	Reprimand	<b>c</b>	Financial penalty of £2,000
3	Failure to comply with the fundamental principle of professional competence and due care	<b>a</b>	Exclusion	<b>a</b>	Financial penalty of £7,500
		<b>b</b>	Severe reprimand	<b>b</b>	Financial penalty of £5,000
		<b>c</b>	Reprimand	<b>c</b>	Financial penalty of £2,000
4	Failure to comply with the fundamental principle of confidentiality	<b>a</b>	Exclusion	<b>a</b>	Financial penalty of £5,000
		<b>b</b>	Severe reprimand	<b>b</b>	Financial penalty of £3,000
		<b>c</b>	Reprimand	<b>c</b>	Financial penalty of £1,500
5	Failure to comply with the fundamental principle of professional behaviour	<b>a</b>	Exclusion	<b>a</b>	Financial penalty of £5,000
		<b>b</b>	Severe reprimand	<b>b</b>	Financial penalty of £3,000
		<b>c</b>	Reprimand	<b>c</b>	Financial penalty of £1,500

#### Aggravating factors

- 1 Concealment of wrongdoing
- 2 Lack of cooperation with regulator
- 3 Repeated course of conduct
- 4 Re-occurrence of conduct previously subject of reminder, warning or other sanction
- 5 The conduct has caused or is likely to cause the loss of significant sums of money to the insolvency estate and/or any third party
- 6 Poor disciplinary or regulatory history
- 7 Lack of understanding or acceptance of charge

## Mitigating factors

- 1 Self-reporting, acceptance of conduct issues and prompt voluntary and immediate rectification
- 2 Self-reporting and prompt voluntary and immediate repayment of (unauthorised) fees
- 3 Personal mitigation: financial circumstances (when considering the financial part of the sanction only)  
Where the insolvency practitioner has difficulties in repaying a financial sanction, consideration should be given to offering payment in instalments
- 4 Personal mitigation; ill health
- 5 Age of issues under consideration in respect of less serious matters where there are no aggravating behaviours
- 6 Generally, minimal risk of re-occurrence or repetition where new procedures have been implemented and verified by the RPB
- 7 Absence of any loss of monies to the insolvency estate and/or any third parties

**The starting point is not a tariff**

## 18 Investment business/licensed firms under DPB arrangements

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

Complaint	Starting point
<b>a</b> Carrying on investment business without authorisation	<b>a</b> Exclusion* and a financial penalty of £11,500
<b>b</b> Breach or breaches of Investment Business Regulations or Designated Professional Body Handbook Regulations	<b>b</b> Severe reprimand and a financial penalty of £5,750. Consider order of waiver or return of related remuneration or commission
<b>c</b> Refusal to cooperate with or accept a QAD visit	<b>c</b> Severe reprimand and a financial penalty of £5,750 (with £5,750 as a multiplier for each partner in the firm)
<b>d</b> Failure to rectify faults discovered on QAD inspection	<b>d</b> Severe reprimand and a financial penalty of £5,750
<b>e</b> Failure to comply with an order of the Investment Business Committee	<b>e</b> Severe reprimand and a financial penalty of £8,650
<b>f</b> Failure by firm to investigate complaint concerning investment business	<b>f</b> Reprimand and a financial penalty of £5,750. Consider order of waiver or return of related remuneration or commission
<b>g</b> Charging excessive fees/commission	<b>g</b> Severe reprimand and a financial penalty of £5,750. Consider order of waiver or return of related remuneration or commission
<b>h</b> Seriously negligent/reckless investment advice	<b>h</b> Severe reprimand and a financial penalty of £5,750. Consider order of waiver or return of related remuneration or commission
<b>i</b> Annual return failure to submit, incorrect mis-statement	
<b>Individual</b>	<b>Individual</b>
<b>i<sup>1</sup></b> Deliberate	<b>i<sup>1</sup></b> Exclusion*
<b>i<sup>2</sup></b> Reckless/serious negligence	<b>i<sup>2</sup></b> Severe reprimand and a financial penalty of £2,875
<b>i<sup>3</sup></b> Inadvertent	<b>i<sup>3</sup></b> Reprimand and a financial penalty of £1,150
<b>Firm</b>	<b>Firm</b>
<b>i<sup>1</sup></b> Deliberate	<b>i<sup>1</sup></b> Severe reprimand and a financial penalty of £11,500
<b>i<sup>2</sup></b> Reckless/serious negligence	<b>i<sup>2</sup></b> Severe reprimand and a financial penalty of £5,750
<b>i<sup>3</sup></b> Inadvertent	<b>i<sup>3</sup></b> Reprimand and a financial penalty of £2,875
<b>j</b> Breach of eligibility requirements	
<b>Firm</b>	<b>Firm</b>
Pre-N2 complaints	Reprimand and a financial penalty based on annual fees saved x number of years
<b>k</b> Conduct of investment business outside authorisation category or licence	<b>k</b> Severe reprimand and a financial penalty of £5,750
<b>l</b> Holding investment business clients monies in excess of £50,000 without bonding	<b>l</b> Severe reprimand and a financial penalty of £5,750
<b>m<sup>1</sup></b> Pension advice without taking required steps	<b>m<sup>1</sup></b> Severe reprimand and a financial penalty of £5,750
<b>m<sup>2</sup></b> Failure to complete pension transfer and opt-outs review	<b>m<sup>2</sup></b> Severe reprimand and a financial penalty of £2,875

\* See guidance on page 40.

**+ Aggravating factors**

Advised numerous clients/conducted numerous transactions without authorisation  
Failure to make client aware of risks  
Failure to pass on risk warnings in product literature  
Failure to document/record justification for advice/recommendation  
High value of commission earned  
Breach repeated/continued over time

Refusal or failure to cooperate with the QAD or the Investment Business Committee is likely to lead to regulatory action including withdrawal of DPB licence.

**- Mitigating factors**

Steps taken on behalf of client to recover loss  
Steps taken to tighten up/improve office procedures  
QAD recommendations since implemented  
Technical breach, no clients involved

**The starting point is not a tariff**



## 19 Probate

Certain sanctions are split into three categories depending on the seriousness of the misconduct:

**Very serious (a):** This will generally mean that the insolvency practitioner's conduct was deliberate and/or dishonest.

**Serious (b):** This will generally mean that the insolvency practitioner's conduct was reckless.

**Less serious (c):** This will generally mean the conduct by the insolvency practitioner amounts to an inadvertent breach. Where breaches are adjudged to be inadvertent, a financial or published sanction may not always be appropriate depending on the facts of the case and the aggravating and mitigating factors considered.

Complaint	Starting point
Carrying out probate work without authorisation under the Probate Regulations	Exclusion and financial penalty of £11,500
Failure by the Accredited Probate Firm to ensure that individuals conducting or controlling the conduct of probate work are Authorised Individuals under the Probate Regulations	Severe reprimand and a financial penalty of £6,350 or 1.5 x probate fee
Failure by a licensed probate firm to ensure that it has at all times a Head of Legal Practice and a Head of Finance and Administration who are approved in that capacity by ICAEW	Withdrawal of accreditation and a financial penalty of £5,000
Failure by a licensed probate firm to ensure that at all times any non-authorised persons holding material interests in the firm are approved in that capacity by ICAEW	Severe Reprimand and withdrawal of accreditation and a financial penalty of £11,500
Breach by the Head of Legal Practice or Head of Finance and Administration of their duties under the Probate Regulations and the Legal Services Act 2007	<ul style="list-style-type: none"> <li>a Disqualification and a financial penalty of £5,000</li> <li>b Severe Reprimand and a financial penalty of £3,000</li> <li>c Reprimand and a financial penalty of £1,000</li> </ul>
Failure by the Accredited Probate firm to comply with the requirements of the Probate Regulations	<ul style="list-style-type: none"> <li>a Severe reprimand and a financial penalty of £5,750. Consider order of waiver or return of related remuneration or commission.</li> <li>b Severe reprimand and a financial penalty of £3,000. Consider order of waiver or return of related remuneration or commission.</li> <li>c Reprimand and a financial penalty of £1,000</li> </ul>
Probate work of a defective nature	<ul style="list-style-type: none"> <li>i Seriously defective nature – Severe reprimand and financial penalty of £5,000</li> <li>ii Less serious nature – Reprimand and financial penalty of £2,000</li> </ul>
Acts of dishonesty, criminal convictions, adverse findings by regulatory and other bodies where the underlying conduct involves dishonesty	Exclusion and withdrawal of accreditation
Failings/errors in administering the estate	<ul style="list-style-type: none"> <li>i Serious – Severe reprimand and financial penalty of £6,600</li> <li>ii Minor – Reprimand and financial penalty of £2,000</li> </ul>
Delays in progressing the administration of the estate	<ul style="list-style-type: none"> <li>i Serious – Severe reprimand and financial penalty of £5,000</li> <li>ii Minor – Reprimand and financial penalty of £2,500</li> </ul>

Breach of undertaking

**Individual**

**Individual**

**a**

Exclusion

**b**

Severe reprimand and a financial penalty of £5,500

**c**

Reprimand and a financial penalty of £3,000

**Firm**

**Firm**

**a**

Severe reprimand and a financial penalty of £10,500

**b**

Severe reprimand and a financial penalty of £5,500

**c**

Reprimand and a financial penalty of £3,000

Misappropriation of funds into own account, other estates or third parties

**i** Exclusion and licence withdrawal

Drawing unauthorised remuneration  
(1) Not subsequently authorised; (2) Subsequently authorised;

**i** Severe reprimand and a financial penalty of fee so drawn or £10,000 whichever is greater

**ii** Severe reprimand and a financial penalty of 50% of fee so drawn

Refusing/failing to cooperate with or accept a QAD visit

Severe reprimand and a financial penalty of £6,350 (with £6,350 as a multiplier for each principal in the firm)

Failure to rectify key issues identified in the QAD report

Severe reprimand and a financial penalty of £5,750

Failure to comply with restrictions or conditions on authorisation or any other decision or order of the Probate Committee.

**Individual**

**i** Deliberate

Exclusion

**ii** Reckless/severe negligence

Severe reprimand and financial penalty of £6,350

**iii** Inadvertent

Reprimand and financial penalty of £3,450

**Firm**

**Firm**

**i** Deliberate

Severe reprimand and a financial penalty of £12,000

**ii** Reckless/serious negligence

Severe reprimand and a financial penalty of £6,350

**iii** Inadvertent

Reprimand and a financial penalty of £3,450

**+ Aggravating factors**

Acting for multiple clients without authorisation

Repeated course of conduct

The conduct was dishonest or reckless or intentional

**- Mitigating factors**

Self-reporting, acceptance of conduct issues and prompt voluntary and immediate rectification

Self-reporting and prompt voluntary and immediate repayment of (unauthorised) fees

Concealment of wrongdoing  
The conduct has caused or is likely to cause significant financial loss to the estate or a third party  
Vulnerable client/abuse of position

No financial loss or loss reimbursed  
Steps taken to put matters right  
Isolated failure  
Age of issues under consideration in respect of less serious matters where there are no aggravating behaviours  
Personal mitigation: ill health, financial circumstances, good standing  
Up to date regulatory or monitoring information suggesting issues have been addressed

**The starting point is not a tariff**

## 20 Misconduct as a company director

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

### Complaint

**a** Disqualification including by undertaking as company director

i Disqualification 11-15 years

ii Disqualification 6-10 years

iii Disqualification 2-5 years

**b** Misuse of company funds

**c** Issue of post-dated cheques, dishonoured when presented

**d** Approving defective accounts

i Deliberate

ii Reckless or serious negligence

iii Inadvertent

### Starting point

**a**

i Exclusion\*

ii Exclusion\*

iii Exclusion/severe reprimand and a financial penalty of £6,600

**b** Exclusion\*

**c** Exclusion\*

**d**

i Exclusion

ii Severe reprimand and a financial penalty of £6,600

iii Reprimand and a financial penalty of £2,650

### + Aggravating factors

Misuse of company funds deliberate/for personal gain

Nature of conduct rendering member unfit to be concerned in the management of the company

Carrying on business with intent to defraud creditors

Making fraudulent preferences

Amount of deficiency of the insolvent company

Systematic failure to submit returns

Conduct during the insolvency, eg, giving false explanations, concealment of assets

Length of disqualification imposed by the court

### - Mitigating factors

Length of disqualification

Existence of dominant other director or proprietor of company

Periods of disqualification are divided into three levels:

1. Disqualification for periods over 10 years; reserved for particularly serious cases.
2. The middle level, 6-10 years, is applied to serious cases which do not merit the top level.
3. The lowest level, 2-5 years, is applied if a case is not very serious based on the decision in the case re Sevenoaks Stationers (Retail) Limited.

\* See guidance on page 40.

**The starting point is not a tariff**

## 21 Misconduct as trustee and other positions of trust

The tribunal works through the questions on page 11 to make its decision on a sanctions order.

### Complaint

- a Misappropriation of funds from trust or employer
- b Trustee acts contrary to beneficiaries' interests
- c Serious failings/errors in administration of a trust
- d Delay/lack of attention as executor

### Starting point

- a Exclusion\*
- b Severe reprimand and a financial penalty of £6,600
- c Severe reprimand and a financial penalty of £6,600
- d Severe reprimand and a financial penalty of £6,600

### + Aggravating factors

Distress caused to beneficiaries over a long period of time.

### - Mitigating factors

Contribution to delay by others or lack of attention.  
Errors corrected.  
No cost to estate/trust.

\* See guidance on page 40.

The starting point is not a tariff

## 22 Guidance to disciplinary tribunals – financial penalty and/or reprimand or severe reprimand

### 22.1 Financial Penalties

Where a financial penalty is considered by a tribunal to be appropriate, the first consideration will be seriousness of the misconduct and aggravating and mitigating factors. The second consideration will be the circumstances of the defendant and their means to pay a financial penalty. There are a number of specific matters which influence general approach and will be taken into account by a tribunal when deciding on the level of financial penalty:

- The extent to which the conduct has fallen below the required standard.
- The existence and amount of any economic gain resulting from the conduct.
- If the defendant is a corporate entity, all aspects of means to pay are relevant including profitability and liquidity.
- If no, or inadequate, information is produced to demonstrate financial circumstances, a tribunal can assume the defendant can pay whatever financial penalty is ordered.
- If a financial penalty is imposed with an order for exclusion and a request is made for time to pay, a tribunal can direct that the financial penalty be paid by instalments. Ideally an instalment plan should not extend beyond 12 months.

### 22.2 Reprimand or severe reprimand

A reprimand is equated by some other regulatory bodies to a warning or a ticking off (Brian Harris, Disciplinary and Regulatory Proceedings 2013). A severe reprimand is viewed very much as a final warning.

The GMC (Indicative Sanctions Guidance) suggests that if fitness to practice is found not to be impaired, a warning may be given. The following are relevant considerations when deciding whether to give a warning:

- evidence that behaviour would not have caused direct or indirect harm;
- insight into failings;
- isolated incident that was not deliberate;
- genuine expression of regret/apologies;
- evidence of duress;
- previous good record;
- no repetition of behaviour since incident;
- rehabilitative/corrective steps taken; and
- relevant and appropriate references.

Equally, the absence of such considerations may influence a decision to impose a severe reprimand or exclusion.

## 23 Guidance to disciplinary tribunals – withdrawal of practising certificates

In addition to penalty, tribunals may specify as part of its order, the time for which a member should remain without a practising certificate.

### 23.1 Practising certificates

The Disciplinary Bye-laws give tribunals the power to order:

- 22.3 b that his practising certificate be withdrawn either permanently or for a specified period
- 22.3 e that he be ineligible for a practising certificate, either permanently or for a specified period.

The Learning and Professional Development Board has responsibility for deciding whether or not a member should be given a practising certificate. In reaching their decision on an application where a practising certificate has been withdrawn, the board would find it helpful to have the minimum period for withdrawal specified. If a practising certificate is withdrawn for less than four years (unless the tribunal orders that the member be ineligible), it will be returned when a member signs a declaration that he has maintained competence in his area of practice, has PII cover and that he understands ICAEW's ethical code, in particular Fundamental Principle 3. If a practising certificate is withdrawn for more than four years, a member will have to satisfy the Board as to his competence before it can be returned.

If the tribunal withdraws a practising certificate for less than four years and are of the view that the member's competence should also be re-assessed before a practising certificate is issued, they should order that the member be ineligible for the same period fixed for withdrawal.

## 24 Guidance on exclusion

A tribunal does not have power under the Disciplinary Bye-laws to make an order for exclusion for a specified period. Disciplinary Bye-law 22(8) provides that where a member is excluded, the order may include a **recommendation** that no application for his readmission be entertained before the end of a specified period.

In most cases, a recommendation of a minimum term will dissuade a defendant from making an application for readmission too soon, and will also assist the Investigation Readmissions Sub-Committee if an application for readmission is made. However, in the most serious cases, where the tribunal believes that the nature and circumstances of the offence might make it difficult for the Readmissions Sub-Committee to approve any future application for readmission, the tribunal should consider carefully whether it should make any recommendation as such a period may set an unrealistic expectation for a defendant as to whether or when he or she might be readmitted. If the tribunal does not make a recommendation as to a minimum period of exclusion, the tribunal should make it clear that, save in the most exceptional circumstances, the defendant is unlikely to be readmitted.

Where a recommendation is given for a minimum period, the tribunal should take care to make it clear to the defendant, in announcing the order, and in the written record of the decision, that an application for readmission after the specified period will not necessarily be approved by the Investigations Readmissions Sub-Committee and that the Sub-Committee will consider all of the merits of the application, including, in particular, what steps the defendant has taken by way of rehabilitation during the period of exclusion. If it considers it appropriate to make a recommendation of a minimum period of exclusion, the tribunal should use the following starting points:

<b>Complaint</b>	<b>Recommended period/no application for readmission</b>
Dishonesty (whether or not prosecuted and whether or not followed by an immediate custodial sentence)	Ten years
Criminal offence followed by an immediate custodial sentence	Five years
Other exclusion orders	Two years

Where an order for exclusion is made on a complaint that a member has been disqualified from acting as a company director, any period of exclusion recommended should match the length of disqualification. In all cases, a tribunal will take account of the date of the disqualification and the expiration of the period of disqualification.

A tribunal does have the power to impose more than one penalty for the same offence. A financial penalty may be imposed in addition to an order for exclusion in appropriate circumstances, for example, where the defendant has clearly benefited financially as a result of the misconduct.

A financial penalty with exclusion will only be appropriate in the most exceptional cases where the misconduct is very serious so that in addition to loss of membership a financial penalty is necessary. In this narrow context a financial penalty is part of the punishment which in turn should be a deterrent. Before ordering a financial penalty with exclusion, a tribunal will need to consider not only whether a member has benefited financially from the wrong doing but whether he or she has the means to pay not only at the time of the hearing but following loss of membership. Where there have been criminal proceedings, a tribunal should enquire as to whether there have been confiscation and compensation orders made.



## 25 Publicity

When a tribunal makes an adverse finding and order, the record of its decision will be published in such manner as it thinks fit. This means there will be publicity in all cases where a finding and order are made (Disciplinary Bye-law 35(1)).

Where a tribunal dismisses a complaint, a record of that decision will be published only if the member requests (Disciplinary Bye-law 35(2)).

We publish details from the record of decision at [icaew.com/publichearings](http://icaew.com/publichearings). We send this information to *economia*, ICAEW's member magazine. It is a matter of editorial discretion whether case details are actually published.

Unless a tribunal directs otherwise, a record of decision includes the name of the defendant and describes the finding and order or orders (if any) made against them. There is a power available to the tribunal to direct the omission of the defendant's name (Disciplinary Bye-law 35(3)). The discretion not to publish the name of a defendant is rarely exercised.

There are a number of reasons why the name of the defendant will normally be included, namely:

- ICAEW members should be aware of the decision of the disciplinary tribunal;
- it is desirable that the public should have confidence in the disciplinary procedures employed by ICAEW; and
- such confidence is best promoted by openness in respect of the findings and orders made by disciplinary tribunals.

Although any application to omit the defendant's name from publicity must be considered on its merits, in fact such orders are rarely made by the tribunal. By reference to the few cases where no publicity has been ordered, it is possible to identify features which influenced the decision to treat them as exceptional, in particular:

- the conduct in question was not serious misconduct; and
- there may have been an adverse impact on innocent third parties; or
- the effect of publication on the defendant himself would have had an adverse impact on his health or safety such that publication would have been unduly harsh.

These features will also be relevant to consideration of whether a hearing should be held in private. But where a hearing or part of a hearing is held in private, it will not automatically follow that the defendant's name will not be published. This will always be considered as a separate matter by the tribunal if a request is made by a defendant for his name not to be published.

## 26 Disciplinary Bye-law 22

### Powers of tribunal

- 22.1 If the tribunal appointed to hear a formal complaint is of the opinion that the complaint has been proved in whole or in part, it shall make a finding to that effect; but if it is not of that opinion, it shall dismiss the complaint.
- 22.2 If the tribunal finds that the formal complaint has been proved in whole or in part, it may (unless it is of the opinion that in all the circumstances it is inappropriate to do so) make against the defendant such one or more of the orders available against him under the following provisions of these bye-laws, namely:
- a paragraph 3, 4, 5, 6 or 7 of this bye-law, as the case may be and
  - b bye-laws 23 (waiver etc. of fees), 24 (remedial action) and 24A (expenses), as it considers appropriate, having regard to the past disciplinary record, if any, of the defendant, the tribunal's views as to the nature and seriousness of the formal complaint (so far as proved), and any other circumstances which the tribunal considers relevant.
- 22.3 If the defendant is a member, the orders available against him are:
- a that he be excluded from membership
  - b that his practising certificate be withdrawn either permanently or for a specified period
  - c that any insolvency licence held by him be withdrawn
  - d that he be ineligible for an insolvency licence
  - e that he be ineligible for a practising certificate, either permanently or for a specified period
  - f that he be severely reprimanded
  - g that he be reprimanded
  - h that he be fined a specified sum.
- 22.4 If the defendant is a member firm, the orders available against it are:
- a that it be prohibited from using the description 'chartered accountants' for a specified period
  - b that it be severely reprimanded
  - c that it be reprimanded
  - d that it be fined a specified sum.
- 22.5 If the defendant is an authorised firm, the orders available against it are:
- a that it shall cease to be authorised by ICAEW to carry on exempt regulated services under the Financial Services and Markets Act 2000
  - b that it be severely reprimanded
  - c that it be reprimanded
  - d that it be fined a specified sum.
- 22.6 If the defendant is a registered auditor, the orders available against it are:
- a that its registration granted at the instance of ICAEW under the Companies Act 1989 be withdrawn
  - b that it be severely reprimanded
  - c that it be reprimanded
  - d that it be fined a specified sum.

- 22.7 If the defendant is a provisional member, the orders available against him are:
- a that he be declared unfit to become a member
  - b that he cease to be a provisional member and be ineligible for re-registration as a provisional member for a specified period not exceeding two years
  - c that the registration of his training contract be suspended for a period not exceeding two years
  - d that for a specified period not exceeding two years he be ineligible to sit for such one or more of ICAEW's examinations as may be specified or for any specified part of any of those examinations
  - e that he be disqualified from such one or more of ICAEW's examinations as may be specified or from any specified part of any of those examinations, not being an examination or part the result of which was duly notified to him by ICAEW before the date of the order
  - f that he be severely reprimanded
  - g that he be reprimanded.
- 22.8 An order under this bye-law may include such terms and conditions (if any) as the tribunal considers appropriate including, in the case of an order for exclusion from membership made against a member, a recommendation that no application for his readmission be entertained before the end of a specified period.
- 22.9 An order under this bye-law against a member, member firm or regulated firm may include a direction requiring him (at his own expense) to obtain advice from a specified source and to implement the advice obtained.
- 22.10 In this bye-law 'specified', in relation to any order or direction under this bye-law, means specified in the order or direction.

## 27 Table of disciplinary orders – powers of tribunals

Complaint relates to conduct before 19 December 1990	Exclusion Censure Reprimand Admonishment Financial penalty limited to £1,000 Costs
Complaint relates to conduct from 19 December 1990 to 18 December 1991	Exclusion Censure Reprimand Admonishment Financial penalty unlimited Costs
Complaint relates to conduct from 19 December 1991	Exclusion Severe reprimand Reprimand Financial penalty unlimited Costs

Date of PC allowance	Bye-law	Change
19 December 1990	Bye-law 83(a)(A)(x)	£1,000 limit on financial penalty changed to unlimited
19 December 1990	Bye-law 88(a)	£1,000 limit on costs changed to unlimited
19 December 1991	Bye-law 83(a)(A)(vi), Bye-law 83(a)(A)(vii), Bye-law 83(a)(A)(ix)	Removal of censure and admonishment substituted by severe reprimand, reprimand (members & students)

Since 8 February 1994, ICAEW has been able to discipline member firms as well as members.

## 28 Unpublicised cautions

Unpublicised cautions are only available to the IC.

When the IC finds that there is a prima facie case for disciplinary action it may, if it considers it appropriate in all the circumstances, offer to the member as a penalty, an unpublicised caution. If the offer is not accepted, and the IC is not prepared to alter its finding, the complaint will be preferred to the DC. The DC does not have power to impose an unpublicised caution.

The caution is intended to be a more serious step than 'no further action' but less serious than a consent order or referral to the DC. The IC may include in the order a requirement to pay a sum towards costs. This will be a figure for the actual costs incurred up to a maximum of £2,500.

A caution will constitute part of a member's record and result in cessation of eligibility to be a member of council. ICAEW will not pass details of the caution to the press for publication but it will be entitled to inform a complainant, other regulators and those making a specific request.

The procedure and form of notice relating to unpublicised cautions is set out in Disciplinary By-law 16.1 a and Investigation Committee Regulations 19, 20 and 21.