REGULATION & CONDUCT

# REGULATORY COMMITTEES: MEASURES AND SANCTIONS GUIDANCE (MSG)

## Audit Registration Committee (ARC)

**Effective from 4 January 2027**

icaew.com/regulation

## CONTENTS


**1. PREFACE** ..... 3

**2. REGULATORY FRAMEWORK AND FUNCTION** ..... 4

2.1 Regulatory framework ..... 4

2.2 Oversight and accountability ..... 4

**3. CORE PRINCIPLES OF SANCTION DETERMINATION** ..... 5

3.1 Protecting the public ..... 5

3.2 Maintaining the reputation of the profession ..... 5

3.3 Upholding proper and high standards of conduct ..... 5

3.4 Correction and deterrence ..... 6

**4. THE DECISION-MAKING PROCESS** ..... 7

4.1 Referrals to the conduct department ..... 8

**5. REGULATORY MEASURES** ..... 9

5.1 Withdrawal of registration ..... 9

5.2 Suspension ..... 10

5.3 Conditions and restrictions ..... 11

5.4 Undertakings ..... 12

**6. Regulatory financial penalties** ..... 13

6.1 The Flowchart ..... 14

6.2 Identify the relevant category of breach from within this guidance ..... 15

6.3 Determine the nature and seriousness of the conduct ..... 15

6.4 Aggravating and mitigating factors ..... 16

6.5 Insight ..... 17

6.6 Proportionality ..... 17

6.7 Publicity ..... 18

6.8 Previous ICAEW regulatory or disciplinary findings ..... 19

**INDICATIVE SANCTIONS TABLE - AUDIT** ..... 20

# 1. PREFACE

ICAEW carries out important public law functions in the exercise of its regulatory powers, some of which derive from statute. One of ICAEW's principal objects, as set out in the Supplemental Charter of 1948, is to maintain high standards of practice and professional conduct within the profession.

ICAEW's role as an improvement regulator is to strengthen public trust in the profession and in ICAEW membership as a whole. It does this by enabling, evaluating and enforcing high standards within the profession. The Audit Registration Committee (ARC) plays an important role in supporting that objective and in fulfilling ICAEW's duty to protect the public and the public interest.

Audit regulation plays a central role in maintaining confidence in statutory audit and financial reporting. The Audit Registration Committee's regulatory decisions contribute to maintaining appropriate standards within individual firms and to public confidence in audit quality, auditor independence, the reliability of statutory audit and the effectiveness of the audit regulatory framework.

This Guidance was approved by the ICAEW Regulatory and Conduct Board (IRCB) on [date] and applies to all matters considered by the Audit Registration Committee on or after [date].

The purpose of this Guidance is to promote consistency, fairness and transparency in the Committee's approach to sanctions, while preserving its discretion to determine the appropriate regulatory outcome on the facts and circumstances of each case. It is intended to assist the Committee, registered auditors and their advisers by setting out the principles, methodology and indicative starting points that may be applied when considering regulatory financial penalties and other regulatory measures.

This Guidance is not a tariff. The Committee may depart from it where the circumstances of a particular case justify doing so, provided that reasons are given.

The Guidance will be kept under review to ensure that it remains aligned with the applicable regulatory framework, regulatory practice and oversight expectations. Any amendments will be approved through ICAEW's appropriate governance arrangements before taking effect.
This Guidance should be read alongside the Audit Regulations and Guidance and any other applicable audit regulatory requirements.

For ease of reference this document refers to "registered auditors" as a collective term to include Responsible Individuals, Recognised auditors, ATOL Licensed Practices.

# 2. REGULATORY FRAMEWORK AND FUNCTION

## 2.1 Regulatory framework

ICAEW is a recognised supervisory body (RSB) under the Companies Act 2006. Registration for audit by ICAEW is governed by the Audit Regulations and Guidance (1 June 2025) as amended from time to time. ICAEW is also the recognised supervisory body for local audit in England under the Local Audit and Accountability Act 2014.

In addition, ICAEW conducts monitoring of market traded entities on behalf of the Crown Dependencies under memoranda of understanding between the Financial Reporting Council (FRC), ICAEW and each of the Crown Dependencies. The Crown Dependencies' Audit Rules and Guidance set standards that such auditors must follow and form part of the oversight framework for auditors of market traded entities within those jurisdictions.

ICAEW has also been approved by the Civil Aviation Authority as a professional body authorised to register and designate members as ATOL Reporting Accountants through its Licensed Practice scheme.

The principal regulatory frameworks include the Audit Regulations and Guidance, the Local Audit Regulations, the Crown Dependencies' Rules and Guidance, and the Licensed Practice Handbook.

## 2.2 Oversight and accountability

The Committee operates within a wider regulatory oversight framework. As the UK Competent Authority, the Financial Reporting Council (FRC) has ultimate responsibility for the oversight of audit regulation and delegates certain regulatory tasks to recognised supervisory bodies, including ICAEW.

The FRC periodically assesses whether delegated tasks are being exercised in accordance with the applicable delegation arrangement and may review aspects of ICAEW's monitoring and regulatory activity, including reviewing minutes of the relevant Committee meetings and/or such other documentation as it reasonably requires. The FRC may also attend Committee meetings to observe how decisions are made.

Under the FRC Registration Protocol, where a report relating to a firm or individual on the PIE Audit Register is due to be considered by the Committee, the FRC is given a copy of the report prior to the meeting and notified of the decision after the meeting. FRC representatives may also attend Committee meetings where reports relating to a firm or individual on the PIE Audit Register are being considered.

Accordingly, ICAEW and the Committee must be able to demonstrate decision-making that is robust, evidence-based, fair, transparent and consistent, with outcomes that are effective, proportionate and, where appropriate, dissuasive.

The Committee should bear in mind that regulatory decisions are made within a wider framework of promoting audit quality, maintaining auditor independence and ensuring confidence in statutory audit.

Oversight expectations also include effective cooperation with relevant regulators, appropriate record-keeping, clear reasons for decisions, and governance arrangements that support accountability and consistency.

This Guidance forms part of that framework by setting out the approach that the Committee is expected to follow, while preserving the ability to exercise appropriate judgment in the circumstances of individual cases.

# 3. CORE PRINCIPLES OF SANCTION DETERMINATION

When determining the appropriate regulatory outcome, the Committee should have regard to the following overarching principles:

- Protecting the public;
- Maintaining the reputation of the profession and ICAEW;
- Upholding proper and high standards of conduct; and
- Correction and deterrence of misconduct.

## 3.1 Protecting the public

The principle of protecting the public extends beyond consideration of any direct harm suffered by clients or third parties.

The Committee should consider whether any breaches identified reveal ongoing risks arising from the conduct, systems of quality management, governance, supervision, ethical compliance or culture of the registered auditor, and whether regulatory action is necessary to mitigate those risks and maintain public confidence in audit regulation and the profession.

## 3.2 Maintaining the reputation of the profession

In applying this principle, the Committee should recognise the importance of maintaining public confidence in the profession and in ICAEW's regulatory framework.

The Committee should bear in mind the relevant extracts from the leading judgment of Lord Bingham in *Bolton v The Law Society (1994) 1 WLR 512:*

*""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…. 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."*

This authority highlights the importance of a profession's collective reputation and the confidence it inspires among the public. The Committee should consider the broader implications of the breaches identified and the impact that its decision may have on public confidence in the profession and in audit regulation more generally.

## 3.3 Upholding proper and high standards of conduct

The Committee plays an important role in maintaining proper standards of conduct across the profession through its regulatory decisions. When determining the appropriate regulatory outcome, the Committee should consider whether its decision and any sanction and/or action taken appropriately reinforces the professional standards expected of ICAEW registered auditors and promotes accountability and compliance with the regulatory framework.

Regulatory financial penalties and other regulatory measures should communicate clearly that serious or repeated failures to comply with professional and regulatory standards may result in meaningful regulatory consequences.

The Committee should also consider whether remedial or educational measures, including requiring the firm to source and deliver additional training, enhanced monitoring, undertakings or restrictions, is sufficient to address the underlying causes of the breaches identified and reduce the likelihood of recurrence.

By adopting a proportionate and forward-looking approach, the Committee contributes to the maintenance of professional standards, the promotion of competent and ethical practice, the promotion of a culture of continuous improvement, and the protection of the integrity and credibility of the profession.

## 3.4 Correction and deterrence

In determining the appropriate regulatory outcome, the Committee should consider whether the overall measures imposed, including any regulatory financial penalty, are sufficient to achieve credible specific deterrence in relation to the registered auditor concerned and, where appropriate, wider general deterrence. Although sanctioning will not, in itself, improve conduct or competency, regulatory action may support remediation, secure future compliance and reduce the risk of recurrence.

Sanctions may have particular deterrent value because they are ordinarily capable of publication and therefore communicate to registered auditors, the profession and the wider public that breaches of the regulatory framework may result in meaningful regulatory consequences.

# 4. THE DECISION-MAKING PROCESS

In exercising its functions, the Committee makes regulatory decisions rather than disciplinary findings. Its decision-making approach is risk-based and informed by ICAEW's role as an improvement regulator. The Committee's focus is on protecting the public and the public interest, ensuring compliance with the audit regulatory framework including the Audit Regulations and Guidance, supporting remediation where appropriate, and maintaining confidence in audit regulation. The Committee is therefore concerned not only with what has gone wrong, but also with what the breaches or failures indicate about the risks presented by the registered auditor. Those risks may relate to auditor independence, professional competence, audit quality, governance, systems of quality management or the firm's continued suitability to hold audit registration. The Committee should determine what regulatory outcome is necessary and proportionate to address those risks, prevent recurrence and secure future compliance.

The Quality Assurance Department (QAD) of the ICAEW plays a key role by monitoring the work carried out by ICAEW registered auditors. It conducts monitoring reviews to assess compliance with the applicable rules, bye-laws and regulations. Regulatory concerns may also arise through the work of the Regulatory Practice team (RP) in exercising the Committee's delegated responsibilities for the authorisation and monitoring of registered auditors undertaking regulated work.

Where concerns are identified regarding compliance with ICAEW's regulatory requirements, the Committee may take regulatory action to address identified risks and support future compliance. Depending on the nature and seriousness of the issues identified, regulatory action may include (but not limited to):

- imposing conditions or restrictions;
- obtaining undertakings from a registered auditor;
- offering regulatory financial penalties; and or
- suspension or withdrawal of registration;

The Committee will ordinarily consider reports and recommendations prepared through the relevant regulatory processes, including findings arising from QAD monitoring visits and inspections and recommendations from RP. This information will usually identify the relevant regulations, rules and standards engaged, summarise the relevant facts and may include a recommended regulatory outcome.

Any recommendation is intended to assist the Committee but is not determinative. Decisions on breach, seriousness, regulatory outcome and any regulatory financial penalty remain matters for the Committee's independent judgment.

The regulatory process differs in important respects from the Disciplinary Scheme. The Committee may offer regulatory financial penalties and impose or accept certain regulatory measures under the applicable regulations, but it cannot impose disciplinary sanctions such as reprimands or severe reprimands.

Regulatory action is intended to provide an effective, proportionate and expeditious means of addressing regulatory concerns where the matter remains suitable for disposal within the Committee's powers and where any regulatory financial penalty is accepted. Matters involving potentially more serious misconduct, requiring formal investigation, or unsuitable for disposal by consent may instead require referral into the disciplinary framework.

Regulatory financial penalties may only be imposed with the consent of the registered auditor. There is no right of appeal against a regulatory financial penalty. Where a registered auditor does not consent to the proposed regulatory financial penalty, the matter will be referred to the Conduct Department (TCD) and dealt with under the relevant disciplinary processes.

A firm's removal from, or withdrawal from, the register of Registered Auditors does not prevent regulatory action being taken in respect of matters arising during the period of registration. A former Registered Auditor remains subject to ICAEW's regulatory jurisdiction in relation to acts, omissions or breaches occurring while it held Registered Auditor status.

The Committee must take into account any advice provided by the Secretary, including advice on the application of the relevant guidance and regulations, when reaching its decision.

## 4.1 Referrals to the conduct department

In many cases, regulatory action within the Committee’s powers will be sufficient to address the concerns identified and to protect the public and the public interest. However, the Committee should recognise that there will be cases where a regulatory financial penalty and/or other regulatory measures would not, on their own, provide an adequate or appropriate response to the nature, seriousness or circumstances of the conduct identified.

In considering whether referral is appropriate, the Committee should have regard to:

- the seriousness of the breaches identified;
- whether the conduct raises potential disciplinary concerns;
- the extent of any actual or potential harm;
- whether any further investigation may be required including circumstances where there is a clear dispute of facts between the registered auditor and ICAEW;
- whether the matter raises wider concerns regarding professional integrity, ethics or compliance; and
- the need to maintain public confidence in the profession and its regulatory framework.

If, on the evidence available to it, the Committee considers that the matter may warrant disciplinary investigation or that its own regulatory powers may be insufficient to address the concerns identified, the matter should be referred to TCD.

The Committee should also recognise that the QAD and the RP perform monitoring and supervisory functions and do not exercise formal investigation powers. There may therefore be cases where the concerns identified through monitoring and supervision require further enquiry and investigation by TCD.

Where the Committee refers a matter to TCD, it should consider whether there is information suggesting that there may be an ongoing risk to the public or the public interest. Any such concerns should be identified within the referral so that consideration may be given to whether interim measures or an interim order application may be appropriate. The Committee does not itself determine whether an interim order application should be made, but it may indicate, based on the information before it, that further risk assessment may be required.

Following referral, TCD will assess the matter in accordance with the disciplinary framework and determine whether further action is appropriate. Not all referrals will result in disciplinary proceedings or disciplinary findings. Equally, on assessment, TCD may also identify further matters for investigation. The fact that a matter may take longer to conclude following referral should not deter the Committee from making a referral where the public interest requires it.

# 5. REGULATORY MEASURES

The Committee can impose a number of other measures to protect the public and the public interest, promote ongoing compliance, reduce the risk of recurrence and ensure enhanced monitoring where regulatory concerns remain. In some cases, those objectives may be achieved through conditions or restrictions, undertakings, or suspension or withdrawal of registration. In others, a regulatory financial penalty may be necessary to provide an appropriate deterrent.

The Committee should be satisfied that the overall package of regulatory measures is necessary, proportionate and sufficient to address the risks identified.

## 5.1 Withdrawal of registration

Withdrawal of registration is the most significant regulatory measure available to the Audit Registration Committee and results in a firm ceasing to be a Registered Auditor and/or, where appropriate, an individual ceasing to hold Responsible Individual status.

The Audit Regulations set out the circumstances in which registration may or must be withdrawn. Some grounds for withdrawal arise from clear regulatory non-compliance, including failures relating to professional indemnity insurance, the submission of required returns or reports, or the payment of fees, charges, fines or costs. Where permitted by the Audit Regulations and applicable delegations, such matters may be determined under delegated authority and will not ordinarily require consideration by the Committee under the decision-making framework set out below.

Other grounds for withdrawal require the Committee to exercise regulatory judgement, including where there are concerns about continued eligibility, compliance with restrictions, conditions or undertakings, wider regulatory non-compliance, or the effect that continued registration may have on an audit client or any other person. Where the regulatory framework requires registration to be withdrawn, the Committee or delegated decision-maker must act in accordance with that requirement.

Where withdrawal is being considered by the Committee as a regulatory response, and is not required by the regulatory framework, it should only be imposed where there are proper legal and evidential grounds for doing so and where the Committee is satisfied that it is necessary and proportionate.

In cases concerning deficiencies in audit work or regulatory compliance, the Committee's assessment should be forward-looking as well as retrospective. It should consider not only the seriousness of the matters identified, but whether they indicate an ongoing risk to audit quality, auditor independence, compliance with the regulatory framework or public confidence in statutory audit.

Depending on the nature of the case, relevant considerations may include:

- whether the matters identified reveal systemic weaknesses in the firm's systems of quality management, governance or supervision;
- whether the deficiencies are isolated or indicate wider or repeated failures;
- the seriousness and extent of any actual or potential impact on audit clients or other persons;
- whether the firm or Responsible Individual has demonstrated appropriate insight into the concerns identified and taken effective remedial action;
- where relevant, whether root cause analysis demonstrates an adequate understanding of why the failures occurred and how recurrence will be prevented;
- the likelihood of similar breaches recurring if registration continues; and
- whether the identified risks can be adequately addressed by less restrictive regulatory measures, including conditions, restrictions, undertakings or enhanced monitoring.

Before withdrawing registration, the Committee should ensure that the applicable regulatory and procedural requirements have been met and that the registered auditor or Responsible Individual has had a reasonable opportunity to make representations on the matters under consideration and the potential regulatory outcome. Where there has been no prior notification that withdrawal is under consideration, the Committee should consider whether the matter should be deferred to provide an appropriate opportunity for representations before a final decision is made.

In reaching its decision, the Committee should consider and record why withdrawal is proportionate, including:

- whether less restrictive regulatory measures could adequately address the identified concerns and, if not, why they are insufficient;
- the likely impact of withdrawal on the registered auditor, audit clients and other stakeholders, balanced against the regulatory objectives to be achieved; and
- the applicable rights of review or appeal.

Where a firm's registration is withdrawn, it ceases to be a Registered Auditor. The Committee may require the former Registered Auditor to provide evidence that it has resigned from all audit appointments.

## 5.2 Suspension

Suspension is distinct from withdrawal, and the Committee should be clear about its regulatory effect when considering whether it will adequately address the risks identified. Under regulation 7.04, the Committee may suspend a Registered Auditor's registration for a period where specified grounds exist or may exist, where the firm is or may no longer be complying with the Audit Regulations, or where continuation of its audit activities could adversely affect an audit client or any other person.

Suspension may provide an appropriate regulatory response where the Committee considers that audit activity needs to be restricted for a period, including while further evidence is considered or concerns are addressed. Unlike withdrawal, however, suspension does not require the Registered Auditor to resign from its existing audit appointments. During the period of suspension, unless otherwise provided in a notice issued by the Competent Authority, the Registered Auditor:

- need not resign from existing audit appointments;
- may accept reappointment as auditor;
- must not accept new audit appointments; and
- may only sign audit reports with the permission of the Registration Committee.

Accordingly, the Committee should not assume that suspension prevents the firm from continuing all activity in relation to its existing audit portfolio. Where the risks identified relate to existing audit appointments, the Committee should consider whether suspension alone provides sufficient protection or whether additional conditions or restrictions are required to address those risks.

In determining whether suspension is appropriate and, if so, the period and any additional measures required, the Committee may consider:

- the nature and seriousness of the matters identified;
- whether the concerns relate to the firm's existing audit portfolio as well as its ability to accept new audit appointments;
- any actual or potential risk to audit clients or other persons;
- whether the deficiencies are isolated or systemic;

- the firm's insight, remediation and progress in addressing the concerns identified;
- the likelihood of recurrence during the period of suspension;
- whether additional restrictions or conditions are necessary in relation to existing audit work; and
- what evidence or improvement would be required before the suspension could appropriately be varied or brought to an end.

The Committee may vary or end a suspension imposed under regulation 7.04. Where suspension is imposed, the reasons should therefore make clear the regulatory concerns it is intended to address and, where appropriate, the matters the Committee will expect to be satisfied about before the suspension is varied or ended.

## 5.3 Conditions and restrictions

The Committee may impose conditions or restrictions on a registered auditor's registration where it considers such measures necessary and proportionate to address identified risks, secure future compliance or protect the public and the public interest. Conditions and restrictions may be appropriate where the Committee considers that the concerns identified can be adequately addressed without the need for suspension or withdrawal of registration. These may include deficiencies in audit quality, ethical compliance, independence and systems of quality management.

Conditions or restrictions may include, for example:

- requirements for remedial action, training or external review;
- restrictions on particular areas of work or regulated activity;
- enhanced monitoring or reporting requirements;
- requirements relating to supervision, quality control or compliance procedures; or
- limitations on the conduct of certain engagements.

Any conditions or restrictions imposed should:

- be relevant to the concerns identified;
- be proportionate and no more restrictive than reasonably necessary;
- be clear, workable and capable of effective monitoring;
- include appropriate timescales for compliance; and
- be objectively capable of assessment.

In determining whether conditions or restrictions are appropriate, the Committee should consider whether less restrictive measures could adequately address the identified risks, the impact on the registered auditor and clients, and whether review arrangements are appropriate. The Committee should provide reasons for imposing any conditions or restrictions.

Failure to comply with conditions or restrictions is a serious matter and may result in further regulatory or disciplinary action.

### 5.3.1. Remedial training

The Committee may require a registered auditor to arrange additional training for relevant individuals, where this is considered necessary to address identified deficiencies, secure future compliance or reduce the risk of recurrence.

Training requirements may be imposed as a standalone measure or as part of conditions or restrictions imposed by the Committee.

In determining whether remedial training is appropriate, the Committee may consider:

- the nature and seriousness of the concerns identified;
- whether the member or registered auditor has demonstrated insight into the deficiencies identified that would mean training could be effective;
- the need to improve competence, systems or compliance practices; and
- any relevant Continuing Professional Development requirements.

Any training requirement should be proportionate, relevant to the concerns identified, clearly defined and capable of effective monitoring or verification.

The Committee should specify any applicable timescales for evidence of completion to be provided to the ICAEW and/or the Committee and provide reasons for imposing the requirement.

## 5.4 Undertakings

A Committee may accept undertakings where it considers such action appropriate to address identified deficiencies, secure future compliance and reduce the risk of recurrence.

An undertaking is a formal commitment made by a registered auditor to fulfil specified obligations or requirements in response to concerns identified by ICAEW. Undertakings can provide a proactive and cooperative means of addressing actual or potential breaches and promoting accountability, transparency and public protection.

When inviting a registered auditor to provide an undertaking, the Committee should specify any applicable timescales for compliance and explain why it considers the undertaking appropriate in the circumstances. Any undertaking should be proportionate, relevant to the concerns identified, clear, specific, time-bound and capable of effective monitoring or verification.

Failure to comply with an undertaking is a serious matter and may result in further regulatory or disciplinary action.

# 6. REGULATORY FINANCIAL PENALTIES

A regulatory financial penalty may be appropriate where the matter is sufficiently serious to require a formal financial sanction but remains suitable for disposal within the Committee's regulatory powers.

The starting points for financial penalties are set out in the relevant categories and will either involve a multiplier or will refer to one of six separate categories, set out below. These will be subject to adjustment from time to time in line with inflation. The current categories are as follows:

Category A £25,000
Category B £20,000
Category C £15,000
Category D £10,000
Category E £5,000
Category F £2,000

These financial penalties may be offered according to the more detailed guidance provided in the tables below.

When determining whether to offer a regulatory financial penalty and, if so, the appropriate level of that penalty, the Committee should seek to reach an outcome that supports the protection of the public and the public interest, maintains confidence in the profession and audit regulation, upholds proper professional standards and promotes accountability.

Each case must be determined on its own facts and circumstances. The Committee must balance the interests of the registered auditor carefully against the need to protect the public and the public interest. Where the breach is significant and a financial penalty alone is deemed inadequate, the Committee should consider referring the matter to TCD.

The Committee should adopt a structured approach when determining regulatory financial penalties in order to promote consistency, fairness and transparency in decision-making.

The proposed regulatory financial penalty should be determined by following the steps set out in the following flowchart:

## 6.1 The Flowchart

1. Identify the correct category for the breach (or nearest category if it does not fit into any existing category)

2. Determine which starting point applies within the category (e.g. whether the matter is very serious / serious / less serious)

3. Identify the breach specific and common aggravating factors present in the case. Then identify the breach specific and common mitigating factors. Assess whether the identified aggravating and mitigating factors justify moving from the starting point by increasing or decreasing the financial regulatory penalty.

4. Proportionality – consider any aspects which contribute to whether the proposed financial penalty is appropriate and balanced in all the circumstances. Does it meet the misconduct found in the matter?

5. Consider the registered auditor's financial circumstances - determine whether it is appropriate to reduce the penalty accordingly and/or whether to provide a longer period to pay any financial sanction.

## 6.2 Identify the relevant category of breach from within this guidance

The Committee should consider the reports and recommendations prepared through the relevant regulatory process, including any proposed category or indicative regulatory financial penalty. Such recommendations are intended to assist the Committee and the registered auditor but are not determinative.

The decision on the appropriate category, regulatory outcome and any regulatory financial penalty remains a matter for the Committee's own independent judgment. The Committee may depart from any recommendation, indicative starting point or category where it considers it appropriate to do so, provided clear reasons are given.

Where no category directly corresponds to the matter under consideration, the Committee should identify and apply the category that most closely reflects the nature and seriousness of the breaches identified, with assistance from the Committee Secretary where appropriate.

## 6.3 Determine the nature and seriousness of the conduct

For many categories of breach or failure, this Guidance identifies different starting points for regulatory financial penalties according to the nature and seriousness of the conduct identified. The Committee should first determine the seriousness of the breaches or failures before considering any aggravating or mitigating factors. These are separate stages of the assessment, and the Committee should avoid conflating them or double counting relevant factors.

For each category of breach, and where applicable sub-category based on seriousness, this Guidance provides an indicative starting point for the Committee's consideration. The starting point is not the presumed or expected penalty for the breach. Rather, it indicates the point from which the Committee should begin its assessment before considering aggravating and mitigating factors and any issues of proportionality which may justify an increase or reduction in the proposed penalty.

Depending on the nature of the breaches or failures identified, seriousness may be assessed by reference to the registered auditor's conduct or the quality of work identified through monitoring or inspection.

The Committee should determine whether the conduct falls within one of the following categories:

- **Very serious** – this will generally mean where the conduct was deliberate and knowing.

- **Serious** – this will generally mean where the conduct was reckless or featured unjustified risk taking (a knowing and conscious disregard of the risks, potential risks, risk of harm or harm associated with the actions taken OR taking action inconsistent with responsibilities and expectations of the profession that one should reasonably be aware of leading to a risk of harm or harm associated with the actions taken), OR, if the conduct falls between 'Very Serious' and Less Serious'.

- **Less serious** – this will generally mean where the conduct resulted from failures to carry out certain required or expected acts or breaches of strict liability regulations or where there is no evidence of a deliberate act, unjustified risk taking or recklessness.

### 6.3.1 Audit-specific assessment of seriousness

When assessing the seriousness of a breach, the Committee should distinguish between the nature of the conduct itself and the consequences that flowed from it. A serious outcome does not necessarily mean that the underlying conduct was serious, just as conduct may be very serious even where no actual harm resulted.

For example, an inadvertent failure to identify an ethical conflict or independence issue may result in a firm acting where it ought not to have done. Whilst the consequences of that failure may be significant, the Committee should first determine the seriousness of the conduct itself by considering matters such as the firm's knowledge, state of mind, systems, controls and the steps that ought reasonably to have been taken to prevent the breach. The seriousness of the outcome should then be taken into account separately when considering aggravating factors, proportionality and the appropriate regulatory outcome.

## 6.4 Aggravating and mitigating factors

Once the Committee has identified the appropriate starting point for the regulatory financial penalty, it should consider any relevant aggravating and mitigating factors. The Committee should first identify any relevant breach-specific aggravating and mitigating factors identified within the relevant category of breach. The Committee should then consider whether any of the common aggravating or mitigating factors set out below are also relevant to the matter under consideration.

The Committee should attach appropriate weight to those factors and may increase or reduce the proposed penalty accordingly. The weight to be attached to any factor will depend on the circumstances of the case and there may be cases where aggravating and mitigating factors balance each other out.

The Committee should be mindful that certain factors may already be reflected within the nature or seriousness of the breaches identified and should avoid double counting such factors when adjusting the proposed penalty.

The lists below contain common aggravating and mitigating factors which may arise irrespective of the nature of the specific breaches identified. The lists are not exhaustive and are not arranged in any order of priority. The Committee may also identify other aggravating or mitigating factors arising from the particular circumstances of the case.

**Common aggravating factors**

- Repeated failures and/or over a prolonged period; (what may be considered lengthy will depend on the facts of each case);
- Evidence of a lack of insight and/or remorse into the seriousness of the breaches identified or their actual or potential consequences;
- Evidence of a lack of remedial action;
- Evidence of actual or potential adverse financial or other consequences for clients, third parties or the public;
- Previous regulatory and/or disciplinary sanctions for similar matters;
- Failure to engage and/or cooperate appropriately with ICAEW (particularly where this indicates a blatant disregard for regulatory obligations and/or a lack of respect for the regulatory process and/or an unwillingness to uphold the standards and transparency expected of accountants and/or undermine public confidence in both the regulatory and the procession);
- Evidence of a lack of acceptable/respectful behaviour/communication with ICAEW staff;
- The registered auditor was on notice of the concerns prior to the breaches occurring (e.g. correct advice given on what constitutes proper conduct by ICAEW, or knowledge gained from any other appropriate source, but was ignored);
- Firm size and/or number of principals is such that it gives rise to a heightened expectation of robust systems, controls and oversight arrangements; and
- Evidence of non-compliance at previous QAD visit on the same issue that has not been addressed.

**Common mitigating factors**

- Isolated failure and/or over a very short period of time (what may be considered short will depend on the facts of each case);
- No evidence of actual adverse consequences to clients, third parties or the public;
- Evidence of meaningful insight and/or remorse in respect of the concerns identified;
- Evidence of pro-active and/or timely and effective remedial action;
- The issue was identified through the individual's or firm's own compliance processes;
- Reprehensible conduct/ correspondence on the part of the client;
- Acted with an honestly held belief regarding the circumstances known to them at the time;
- Self-reported conduct;
- Previously unblemished regulatory or disciplinary record; and
- Evidence of relevant personal mitigation, where the wider public interest permits.

The Committee should ensure that any aggravating or mitigating factor relied upon is supported by evidence. Such factors should not be based on speculation or assumptions, behaviour or communication with ICAEW staff; and the matter having been reported by a third party.

## 6.5 Insight

Assessing insight into wrongdoing is a critical element in the Committee's decision-making. It involves a careful examination of a firm's ability to comprehend the nature and impact of its actions. Assessing insight goes beyond mere acknowledgment of wrongdoing; it delves into the depth of understanding displayed by the firm. This assessment seeks to answer questions such as whether the firm recognises the factors that led to its failings, comprehends the harm caused to others, itself or the reputation of the profession, and appreciates the necessity for change or corrective action. Insight is often regarded as an indicator of how a firm will act in future and therefore it is an important tool when considering the risk of future harm. It can significantly influence the determination of appropriate interventions and mechanisms put in place for support.

It is important to remember that following the Committee's consideration, a regulatory financial penalty is offered to the relevant firm. If a firm does not accept the breach, and consequently the regulatory financial penalty offered, then the matter is referred to TCD. Therefore, the Committee does not need to distinguish between a lack of insight and a firm's right to defend itself when arriving at what will be considered an appropriate penalty to offer, as that offer can be rejected if the firm wishes to continue to defend its position within the disciplinary framework.

## 6.6 Proportionality

Once the Committee has considered the appropriate breach category, level of seriousness, and any aggravating and mitigating factors, it should then consider whether the regulatory penalty reached is proportionate in all the circumstances of the matter.

The principle of proportionality requires that any infringement of individual rights be limited to what is appropriate and necessary to achieve a legitimate aim. The Committee should therefore remind itself of the purpose of regulatory penalties and consider proportionality by reference to public protection, maintaining the reputation of the profession and ICAEW membership as a whole, upholding proper and high standards of conduct within the profession, and the correction and deterrence.

In accordance with the Human Rights Act 1998 and the underlying principles reflected in Article 8 of the European Convention on Human Rights, the Committee must strike a fair balance between the rights of the member, licensed firm or contracted firm and the wider public interest. Before reaching a final decision on the penalty to be offered, it should ensure that the penalty is sufficient to achieve the intended purpose of regulatory action but does not exceed what is necessary to achieve that purpose.

The Committee may consider any information about the financial means and circumstances of the firm which, in its view, has an impact on the financial penalty to be offered. This is a separate consideration from proportionality and is connected to ability to pay rather than whether the penalty is appropriate. If no documentary evidence is provided, the Committee is entitled to assume that the firm can meet the penalty offered. If there is clear evidence of limited means, the Committee may reduce the penalty accordingly, but this should not negate the need for the penalty to act as a credible deterrent.

In cases involving larger firms, the Committee may adjust the penalty to account for the size of the firm so that the outcome remains effective and dissuasive. It may consider, where appropriate, a percentage of overall firm income. The Committee also has discretion to extend the timeframe for payment where appropriate.

### 6.6.1 Audit-specific considerations

In audit matters, the Committee must also have regard to the statutory factors set out in the Statutory Auditors and Third Country Auditors Regulations 2016 (SATCAR) and any applicable delegation arrangements between the FRC and ICAEW. Those arrangements require regulatory sanctions to be effective, proportionate and dissuasive.

Accordingly, in addition to the methodology set out in this Guidance, the Committee must have regard, where relevant, to:

- the gravity and duration of the breaches identified;
- the degree of responsibility of the registered auditor;
- the financial strength of the registered auditor, including, where appropriate, annual turnover;
- any financial benefit obtained or losses avoided as a result of the breaches;
- the level of cooperation with ICAEW, the FRC or any other relevant authority; and
- any previous regulatory or disciplinary findings.

Where financial information is available, the Committee should consider whether the proposed regulatory financial penalty remains effective, proportionate and dissuasive having regard to the financial strength of the registered auditor. Depending on the circumstances, this may justify an increase or reduction in the proposed penalty or, where appropriate, an extension of the period for payment.

These statutory factors supplement, rather than replace, the methodology set out in this Guidance. The Committee should record its consideration of the statutory factors and explain any adjustment made to the proposed regulatory financial penalty.

## 6.7 Publicity

Publicity serves an important role in maintaining transparency, accountability and public confidence in regulatory and disciplinary processes. It supports the principle of open justice. Accordingly, publication should be regarded as the normal outcome of regulatory action, unless the applicable regulatory framework or ICAEW's policy on publicity provides otherwise, or there are particular circumstances which justify a different approach.

Publicity informs the public, ICAEW stakeholders and the membership about the outcomes of regulatory actions and helps to foster trust in the fairness and effectiveness of those processes. Any decision in relation to publicity must be made in accordance with ICAEW's applicable policy on publicity and the relevant regulatory framework.

## 6.8 Previous ICAEW regulatory or disciplinary findings

The Committee should consider any relevant previous ICAEW regulatory or disciplinary findings only after determining the appropriate category of breach, the seriousness of the conduct and the indicative starting point for the proposed regulatory financial penalty.

This approach helps ensure fairness and avoids undue prejudice by ensuring that the Committee first assesses the current breaches or failures on their own facts and circumstances before it is informed of and considers any previous regulatory or disciplinary history.

When considering previous findings, the Committee should have regard to:

- the relevance of the previous findings to the current matter;
- the nature and seriousness of the previous breaches;
- the timing of the previous findings, including whether they demonstrate that the registered auditor was on notice regarding the standards expected;
- any remedial action or evidence of improved compliance following the previous findings; and
- the impact of the previous findings on public confidence in the profession and audit regulation.

The weight to be attached to any previous findings will depend on the circumstances of the case.

# Indicative Sanctions table - Audit

| | Allegation | Starting Point | Aggravating Factors | Mitigating Factors |
|---|---|---|---|---|
| a. | **Audit reports signed by a person who is not-a responsible individual** | | | |
| i. | Very serious | Referral | • Complex audit assignment<br>• Audit of a listed or a public interest entity<br>• Misrepresented position to client<br>• Took advice and chose not to apply it<br>• Firm had appropriate procedures in place which have been ignored<br>• Multiple number of audit reports signed | • Steps taken to rectify the issue<br>• Transparency about the breach |
| ii. | Serious | Referral or a category C financial penalty | • Complex audit assignment<br>• Audit of a listed or a public interest entity<br>• Misrepresented position to client<br>• Took advice and chose not to apply it<br>• Firm had appropriate procedures in place which have been ignored<br>• Multiple number of audit reports signed | • Steps taken to rectify the issue<br>• Transparency about the breach |
| iii. | Less serious | A category D financial penalty | • Complex audit assignment<br>• Audit of a listed or a public interest entity<br>• Misrepresented position to client<br>• Took advice and chose not to apply it<br>• Firm had appropriate procedures in place which have been ignored<br>• Multiple number of audit reports signed | • Steps taken to rectify the issue<br>• Administrative error caused by external third party<br>• Transparency about the breach |

| b. | **Registered auditor not independent from audit client** | | | |
|---|---|---|---|---|
| i. | Very serious<br><br>*This will generally mean threats to independence arising from business or personal relationships which are such that an objective, reasonable and informed third party would conclude that the firm or any covered person's independence has been, or there is a real possibility that it has been, significantly compromised.* | Referral | • Lack of independence where public interest issues are involved or associated with collapse of company<br>• Listed or other public interest audit client.<br>• Deliberate act to gain personal advantage<br>• Multiple audit clients affected<br>• Issues over a period over more than one audit<br>• Results in one party suffering to the detriment of another | • Took professional advice |
| ii. | Serious<br><br>*This will generally mean threats to independence which are such that an objective, reasonable and informed third party would consider there to be a material risk to the firm or any covered person's independence or objectivity and/or that audit judgements could be affected.* | Referral or a category C financial penalty (whichever is greater).<br><br>Financial penalty to be adjusted upwards if the audit fee was inadequate or if the company subsequently collapsed. | • Lack of independence where public interest issues are involved or associated with collapse of company<br>• Listed or other public interest audit client<br>• Deliberate act to gain personal advantage<br>• Multiple audit clients affected<br>• Issues over a period over more than one audit<br>• Results in one party suffering to the detriment of another | • Took professional advice |

| | | | | |
|---|---|---|---|---|
| iii. | Less serious<br><br>*This will generally mean threats to independence which an objective, reasonable and informed third party would consider capable of undermining confidence in an individual audit, but where, having regard to all the facts and circumstances, the threat is unlikely to have materially affected the firm or any covered person's objectivity or audit judgements and amounts to a technical breach.* | A category D financial penalty (whichever is greater).<br><br>Financial penalty to be adjusted upwards if the audit fee was inadequate or if the company subsequently collapsed. | • Lack of independence where public interest issues are involved or associated with collapse of company<br>• Listed or other public interest audit client.<br>• Deliberate act to gain personal advantage<br>• Multiple audit clients affected<br>• Issues over a period over more than one audit<br>• Results in one party suffering to the detriment of another | • Took professional advice |
| **c.** | **Failure to retain or loss of audit working papers for the period specified in the Audit regulations (Audit Regulation 3.11)** | | | |
| | N/A | Referral or a category D financial penalty | • Number of clients and audits files affected<br>• Indication of systemic weaknesses and/or insufficient processes<br>• Reasonable efforts made to locate and/or recreate audit files | • Circumstances outside the firm's control<br>• Inadvertent administrative error<br>• Self-identified conduct<br>• Efforts made to try to locate and/or recreate the audit working papers |

| | | | | |
|---|---|---|---|---|
| **d.** | **Failure to notify ICAEW of a change as required by regulations** | | | |
| | N/A | A category F financial penalty | • Wilful failure<br>• On notice of the requirement but failed to take action<br>• Use of the description 'Chartered Accountants' when not eligible to do so | • Immediate action taken once became aware of the breach |
| **e.** | **Failure to obtain affiliate status when required by regulations** | | | |
| | N/A | A category E financial penalty and fees saved. | • Wilful failure<br>• On notice of the requirement but failed to take action<br>• Failed to act appropriately<br>• Indication of systemic weaknesses<br>• Slow to correct the breach | • Immediate action taken once became aware of the breach<br>• Implementation of enhanced controls and training to prevent recurrence |
| **f.** | **Breach of the eligibility requirements for audit registration** | | | |
| | N/A | A category E financial penalty and any fees saved. | • Wilful failure<br>• On notice of the requirement but failed to take action<br>• Failed to act appropriately<br>• Indication of systemic weaknesses<br>• Slow to correct the breach<br>• Audit portfolio includes Audit of a listed entity or an entity of public interest | • Immediate action taken once became aware of the breach<br>• Implementation of enhanced controls and training to prevent recurrence |

| | | | | |
|---|---|---|---|---|
| **g.** | **Inaccurate annual return submitted to ICAEW (significant and/or multiple errors)** | | | |
| | N/A | A category E financial penalty | • Wilful failure<br>• On notice of requirement but failed to take action<br>• Breach not corrected or slow to correct the breach | • Immediate action taken once became aware of the breach<br>• Genuine oversight or administrative error rather than intentional non-compliance<br>• Relied on someone else to deal with compliance matters[1] |
| **h.** | **Failure to engage with and/or co-operate following a QAD visit, including failure to respond to correspondence following the closing visit and/or failure to engage with and/or co-operate with the Regulation and Conduct Department** | | | |
| i. | There has been a complete failure to co-operate | Referral and/or withdrawal of registration /licence and/or a category C financial penalty | • Deliberate or wilful refusal to cooperate or respond.<br>• Prolonged or repeated failure to engage with the QAD or ICAEW<br>• Behaviour which has frustrated the regulatory oversight process.<br>• Attempts to obstruct or evade further regulatory scrutiny. | • Relied on someone else to deal with compliance matters |
| ii. | Partial failure to comply | Referral or a category D financial penalty | • Still not complied with condition and/or restriction and/or requirement imposed | • Relied on someone else to deal with compliance matters |

[1] It will be a matter for the committee as to whether the reliance was appropriate in the particular circumstances of the case

| | | | | |
|---|---|---|---|---|
| iii. | There has been full co-operation but not within the required timescale | A category E financial penalty | • Deliberate or wilful refusal to cooperate or respond.<br>• Prolonged or repeated failure to engage with the QAD or the Conduct Department.<br>• Behaviour which has frustrated the regulatory oversight process.<br>• Attempts to obstruct or evade further regulatory scrutiny | • Relied on someone else to deal with compliance matters |
| **i.** | **Refusing to accept a visit from QAD** | | | |
| | N/A | Withdrawal of registration/licence and/or Referral | • Refusal to take action or correct<br>• Evidence of deliberate frustration of attempts to organise/undertake visit | |
| **j.** | **Failure to comply with an assurance given following a QAD visit** | | | |
| | N/A | **Single breach**<br>A category F financial penalty<br>**Multiple breaches**<br>A category F financial penalty per breach | • Member informed of requirement by ICAEW and continued to fail to comply<br>• Correct advice given by ICAEW or another and ignored<br>• Period of time in excess of a year<br>• Breach not corrected or slow to correct the breach | • Action taken once became aware of the breach<br>• Period of time less than a year<br>• Breach rectified as soon as it was brought to their attention |

| | | | | |
|---|---|---|---|---|
| **k.** | **Failure to comply with a condition and/or restriction and/or decision imposed by the Audit Registration Committee or an undertaking given to the Audit Registration Committee** | | | |
| i. | There has been a failure to comply | Referral and/or withdrawal of registration /licence and/or a category C financial penalty | • Blatant disregard, total absence of effort made to comply<br>• Nature of original concerns and/or risk and/or effect on client<br>• Still not complied with condition and/or restriction and/or requirement imposed | • Member is frustrated in complying by matters beyond their control |
| ii. | There has been partial compliance | Referral or a category D financial penalty | • Breach is still unresolved<br>• Significant time or opportunities to resolve | • Member is frustrated in complying by matters beyond their control |
| ii. | There has been full compliance but not within the required timescale | A category E financial penalty | • Breach is still unresolved<br>• Significant time or opportunities to resolve | • Member is frustrated in complying by matters beyond their control |
| **l.** | **Failure to comply with a Constructive Engagement Order of the Audit Registration Committee** | | | |
| i. | There has been a complete failure to comply | Referral | • Blatant disregard, total absence of effort made to comply<br>• Nature of inefficiency and effect on clients | • Member is frustrated in complying by matters beyond their control |
| ii. | There has been partial compliance | Referral or a category C financial penalty | • Blatant disregard, total absence of effort made to comply<br>• Nature of inefficiency and effect on clients | • Member is frustrated in complying by matters beyond their control |

| | | | | |
|---|---|---|---|---|
| iii. | There has been full compliance but not within the time frame set by the committee | A category E financial penalty | • Blatant disregard, total absence of effort made to comply<br>• Nature of inefficiency and effect on clients | • Member is frustrated in complying by matters beyond their control |
| **m.** | **Other breach of the Audit Regulations** | | | |
| i. | Very serious | Referral or a category D financial penalty | • Intention to mislead<br>• Indication of systemic weaknesses | • Isolated instance |
| ii. | Serious | Referral or a category E financial penalty | • Intention to mislead<br>• Indication of systemic weaknesses | • Isolated instance |
| iii. | Less serious | A category E financial penalty | • Intention to mislead<br>• Indication of systemic weaknesses | • Isolated instance |