REGULATION & CONDUCT

REGULATORY COMMITTEES: MEASURES AND SANCTIONS GUIDANCE (MSG)

Investment Business Committee (IBC)

Effective from 4 January 2027

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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 Investment Business Committee plays an important role in supporting that objective through its regulatory functions in relation to exempt regulated investment business activities and exempt credit-related regulated activities.

The Committee's regulatory decisions contribute to the protection of the public and the public interest by maintaining appropriate standards among firms licensed under the Designated Professional Body arrangements and consumer credit firms. Its functions include considering applications, monitoring compliance, imposing or varying conditions or restrictions, withdrawing licences or status where appropriate, offering regulatory charges where breaches are admitted, and referring matters for disciplinary investigation where the Committee's regulatory powers are insufficient.

This Guidance was approved by the ICAEW Regulatory and Conduct Board on [date]. It applies to all matters considered by the Investment Business Committee on or after [date].

The purpose of this Guidance is to promote consistency, fairness and transparency in the Committee's approach to regulatory charges (referred to throughout this Guidance as financial penalties) and other regulatory measures, 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, licensed firms, consumer credit firms and their advisers by setting out the principles, methodology and indicative starting points that may be applied when considering regulatory charges, which are referred to as financial penalties and other measures within the Committee's powers.

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 Designated Professional Body (Investment Business) Handbook, the Designated Professional Body (Consumer Credit) Handbook, the Financial Services and Markets Act 2000 and any other applicable regulatory requirements.

2. REGULATORY FRAMEWORK AND FUNCTION

2.1 Regulatory framework

ICAEW is a designated professional body under the Financial Services and Markets Act 2000 and licensed firms to carry out exempt regulated activities relevant to a wider professional service, The Committee also exercises functions in relation to consumer credit firms.

The principal regulatory framework comprises the Designated Professional Body (Investment Business) Handbook and the Designated Professional Body (Consumer Credit) Handbook. The Committee carries out its responsibilities within that framework, its Terms of Reference, any applicable scheme of delegation and any guidance issued by ICAEW's regulatory governance bodies.

2.2 Oversight and accountability

The Committee operates within a wider regulatory oversight framework. Its functions are exercised on behalf of ICAEW in relation to investment business, exempt regulated activities and consumer credit activities. The Committee must therefore 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 Financial Conduct Authority may assess whether ICAEW is exercising its regulatory functions in accordance with the applicable statutory and regulatory framework. 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 recognise that its decisions are made within a wider framework of protecting the public and the public interest, maintaining confidence in ICAEW's regulatory arrangements for investment business and consumer credit activities, and supporting appropriate standards among licensed firms and relevant individuals.

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 of ICAEW member firms; 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 reveal ongoing risks arising from the conduct and whether regulatory action is necessary to mitigate those risks and maintain public confidence in investment business and consumer credit regulation and the professsion.

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 investment business and consumer credit regulation more generally.

3.3 Upholding proper and high standards of conduct

The Committee plays an important role in maintaining proper standards of conduct within 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 licensed firms 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 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, 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 licensed firm 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, where appropriate, may have particular deterrent value because they are ordinarily capable of publication and therefore communicate to licensed firms, 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, promoting compliance with the DPB (Investment Business) Handbook and the DPB (Consumer Credit) Handbook, supporting remediation where appropriate, and maintaining confidence in ICAEW's regulatory arrangements. 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 licensed firm or consumer credit firm.

Those risks may relate to eligibility to hold or retain a DPB licence, compliance with the applicable handbooks, the carrying out of exempt investment business or consumer credit activities, the handling of client communications and risk warnings, commission or fee arrangements, governance, supervision, reporting obligations, cooperation with ICAEW, or the firm's continued suitability to remain licensed or otherwise authorised. 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 licensed firms. 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 (RP) team in exercising its delegated responsibilities for the authorisation and monitoring of licensed firms and affiliates 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 is not limited to:

- refusing, renewing, or withdrawing a DPB licence;
- imposing conditions or restrictions;
- obtaining undertakings or assurances from a firm or individual; and/or
- offering regulatory charges or other regulatory financial penalties where permitted.

The Committee will ordinarily consider reports and recommendations prepared through the relevant regulatory processes, including findings arising from QAD monitoring visits, annual returns, regulatory declarations, and recommendations from Regulatory Practice. 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 charges or other regulatory financial penalties and may impose, vary or accept certain regulatory measures under the applicable handbooks and 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 charge or 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 charges and other regulatory financial penalties may only be imposed with the consent of the firm or individual concerned. Where consent is not provided, the matter may be referred to the Conduct Department (TCD) for consideration under the disciplinary framework.

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 investigation powers may be required;
- 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 the Conduct Department (TCD) and dealt with under the relevant disciplinary processes.

The Committee should also recognise that the QAD and RP perform monitoring and supervisory functions and do not exercise formal investigation powers. There may therefore be cases where the concerns identified through monitoring 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. 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 remedial training, conditions or restrictions, undertakings, 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 a significant regulatory measure with serious implications for the member firm concerned. It may also have a direct impact on clients, and the wider public. Accordingly, such action should only be taken where the Committee considers that there is a significant risk of harm and that withdrawal is necessary to protect the public and the public interest. It should not be imposed merely because it is considered desirable in the particular circumstances of the case.

In investment business matters, the Committee's assessment should be forward-looking as well as retrospective. The Committee should consider not only the seriousness of the breaches identified, but whether those breaches indicate that the licensed firm presents an ongoing risk to compliance with the DPB (Investment Business) Handbook, the DPB (Consumer Credit) Handbook, consumer protection, professional competence, governance, supervision, client communications, risk warnings, commission or fee arrangements, or public confidence in ICAEW-regulated investment business and consumer credit activities.

In assessing risk, the Committee may have regard to matters including:

- whether the breaches 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;
- whether the firm has demonstrated appropriate insight into the concerns identified and taken effective remedial action;
- whether the firm demonstrates an understanding of why the failures occurred and how similar failures will be prevented.
- the likelihood of similar breaches recurring if registration continues without restriction; and
- whether the identified risks can be adequately addressed by less restrictive regulatory measures, including conditions, restrictions, undertakings or enhanced monitoring.

Before deciding to withdraw registration, the Committee must be satisfied that there are proper legal and evidential grounds for doing so. The Committee must follow the applicable regulatory and procedural requirements and should obtain any relevant legal advice before reaching its decision.

This will ordinarily include:

- ensuring that the licensed firm has been notified of the matters under consideration and the potential regulatory outcome;
- ensuring that the licensed firm has been provided with a reasonable opportunity to make representations; and
- conducting a fair and impartial assessment of the evidence and any representations received.

Where no prior notification has been given, the Committee should consider whether the matter ought to be deferred to allow the licensed firm an opportunity to make representations before any final decision is taken.

Any decision to withdraw or restrict registration must be proportionate to the seriousness of the breaches or failures identified. In reaching its decision, the Committee should consider and record:

- whether less restrictive regulatory measures could adequately address the identified risks and, if so, why those measures are not considered sufficient;
- the likely impact of withdrawal or restriction on the licensed firm, balanced against the need to protect the public and the public interest; and
- any applicable review or appeal mechanism.

5.2 Conditions and restrictions

The Committee may impose conditions or restrictions on a firm's investment business or consumer credit registration, licence where it considers such measures necessary and proportionate to address identified risks, secure future compliance or protect 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 withdrawal of registration These may include deficiencies in investment business or consumer credit activities which gives rise to non-compliance with the DPB (Investment Business) Handbook or the DPB (Consumer Credit) Handbook, supervision, governance, client communications, risk warnings, commission or fee arrangements, or other relevant compliance procedures.

Conditions or restrictions may include, for example:

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

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 licensed firm 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.

5.2.1. Remedial training

The Committee may require a member to undertake additional training, or a licensed firm 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 the licensed firm 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.

5.3 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 licensed firm 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 licensed firm 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 charge/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 charges 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 charges may be offered according to the more detailed guidance provided in the tables below.

When determining whether to offer a regulatory charge and, if so, the appropriate level of that charge, 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 investment business and consumer credit 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 member or licensed firm 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 charge 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)

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3. Identify the breach specific and common aggravating factors present in the case. Then identify the 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.

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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 licensed **firm'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 licensed firm 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 charges 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 licensed firm's state of mind or 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 include deliberate, knowing or intentional conduct.

Serious – this will generally include reckless conduct, unjustified risk taking, conscious disregard of known or foreseeable risks, or conduct falling between the categories of very serious and less serious.

Less serious – this will generally include failures to comply with regulatory requirements, failures to take appropriate steps, breaches of strict liability obligations, or conduct where there is no evidence of deliberate, reckless or knowing behaviour.

6.3.1 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.

6.4 Aggravating and mitigating factors

Once the Committee has identified the appropriate starting point for the regulatory charges, 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 charge 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 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 profession;
- Evidence of a lack of acceptable/respectful behaviour/communication with ICAEW staff;
- The licensed firm 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.
- 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);
- Absence 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,
- 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.

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 as an alternative to the disciplinary process. 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 charge 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 and financial means

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.

When considering whether the regulatory penalty is proportionate, the Committee must first have regard to the income derived from the regulated activity to which the breach relates. Regulated income should be the primary financial reference point when assessing the proportionality of the penalty as proportionality requires a committee to be sure that the sanction is proportionate to the breach.

Only exceptionally, where the Committee is satisfied that there are particular circumstances which make it necessary in the public interest to look beyond regulated income, should it also have regard to wider firm income. This may include cases involving larger firms where reliance on regulated income alone would result in a penalty which would not be effective or dissuasive.

Where the Committee considers that wider firm income should be taken into account, it may, where appropriate, consider a percentage of overall firm income. The Committee should identify the particular circumstances which justify departing from regulated income as the primary reference point and be satisfied that doing so is necessary to achieve an appropriate regulatory outcome and make those reasons clear in any decision.

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.

6.6 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.

6.7 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 licensed firm 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 investment business and consumer credit regulation.

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

Indicative Sanctions table – Investment Business

INVESTMENT BUSINESS / LICENSED FIRMS UNDER DPB ARRANGEMENTS (INCLUDING CONSUMER CREDIT)

	Allegation	Starting Point	Aggravation	Mitigation
a.	**Carrying out regulated activity when ineligible to do so under Part 3 of Designated Professional Body (Investment Business) Handbook and Part 3 of the DPB (Consumer Credit) Handbook**			
i.	Very serious	Referral	• Breach not corrected • Significant work completed while in breach • Risk of harm • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Failure to make client aware of the risks • Failure to pass on risk warnings in product literature • Failure to document/ record justification for advice/ recommendation	• Immediate action taken once became aware of the breach • Procedures introduced to avoid recurrence • Up to date regulatory or monitoring information suggesting issues have been addressed
ii.	Serious	Referral or a category D financial penalty	• Breach not corrected • Significant work completed while in breach • Risk of harm • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Failure to make client aware of the risks • Failure to pass on risk warnings in product literature	• Immediate action taken once became aware of the breaching • Procedures introduced to avoid recurrence • Up to date regulatory or monitoring information suggesting issues have been addressed

			• Failure to document/ record justification for advice/ recommendation	
iii.	Less serious	A category E financial penalty	• Breach not corrected • Significant work completed while in breach • Risk of harm • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Failure to make client aware of the risks • Failure to pass on risk warnings in product literature • Failure to document/ record justification for advice/ recommendation	• Immediate action taken once became aware of the breach • Procedures introduced to avoid recurrence • Up to date regulatory or monitoring information suggesting issues have been addressed
b.	**Breach or breaches of Designated Professional Body (Investment Business or Consumer Credit) Handbooks**			
i.	Very serious	Referral or a category D financial penalty	• Breach not corrected • Significant work completed while in breach • Risk of harm • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Failure to make client aware of the risks • Failure to pass on risk warnings in product literature • Failure to document/ record justification for advice/ recommendation	• Immediate action taken once became aware of the breach • Procedures introduced to avoid recurrence • Up to date regulatory or monitoring information suggesting issues have been addressed

ii.	Serious	Referral or a category E financial penalty	• Breach not corrected • Significant work completed while in breach • Risk of harm • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Failure to make client aware of the risks • Failure to pass on risk warnings in product literature • Failure to document/ record justification for advice/ recommendation	• Immediate action taken once became aware of the breach • Procedures introduced to avoid recurrence • Up to date regulatory or monitoring information suggesting issues have been addressed
iii.	Less serious	A category F financial penalty	• Breach not corrected • Significant work completed while in breach • Risk of harm • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Failure to make client aware of the risks • Failure to pass on risk warnings in product literature • Failure to document/ record justification for advice/ recommendation	• Immediate action taken once became aware of the breach • Procedures introduced to avoid recurrence • Up to date regulatory or monitoring information suggesting issues have been addressed

c.	**Charging excessive fees**			
i.	Very serious	Referral	• Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Significant volume of transactions	• Procedures introduced to avoid recurrence
ii.	Serious	Referral or a category E financial penalty	• Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Significant volume of transactions	• Procedures introduced to avoid recurrence
iii.	Less serious	A category F financial penalty	• Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Significant volume of transactions	• Procedures introduced to avoid recurrence
d.	**Commissions – failure to obtain consent to retain commissions and/or notify clients of the amounts received (in accordance with Part 3 or Part 4 of the Handbook)**			
i.	Very serious	Referral	• Refusal to take action or correct • Number of clients • Number of instances • Deliberate act to gain personal advantage • Amounts involved substantial • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position	• Relied on someone else to notify of changes and/or deal with compliance matters[1]

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

ii.	Serious	Referral or a category D financial penalty	• Refusal to take action or correct • Number of clients • Number of instances • Deliberate act to gain personal advantage • Amounts involved substantial • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position	• Relied on someone else to notify of changes and/or deal with compliance matters[1]
iii.	Less serious	A category E financial penalty	• Refusal to take action or correct • Number of clients • Number of instances • Deliberate act to gain personal advantage • Amounts involved substantial • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position • Evidence that it has exploited or adversely affected a vulnerable client/abuse of position	• Relied on someone else to notify of changes and/or deal with compliance matters[1]
e.	**Quality of Investment Advice**			
i.	Advice that is seriously defective *This will generally mean where little or no*	Referral	• Failure to make clients aware of the risks • Failure to pass on risk warnings in product literature • Failure to document/record justification for advice/recommendation	• Steps taken to correct the advice/impact of the advice • Procedures introduced to avoid recurrence

	assurance work was performed and/or the assurance work related to a fundamental or highly significant area and/or where insufficient enquiries were completed		• High value of commission earned • Significant volume of transactions	
ii.	Less seriously defective *This will generally mean where the defectiveness of the assurance work was of a more technical nature and/or related to less significant areas*	Referral or a category E financial penalty	• Failure to make clients aware of the risks • Failure to pass on risk warnings in product literature • Failure to document/record justification for advice/recommendation • High value of commission earned • Significant volume of transactions	• Steps taken to correct the advice/impact of the advice • Procedures introduced to avoid recurrence
f.	**Failure to carry out and/or document an annual compliance review**			
	N/A	A category F financial penalty	• Breach remains uncorrected	• Breach corrected immediately following identification of the breach • Procedures introduced to avoid recurrence

g.	**Failure to obtain DPB affiliate status when required by regulations (Regulation 2.03b DPB (Investment Business Handbook))**			
	N/A	A category E financial penalty and fees saved	• Wilful failure • On notice of the requirement but failed to take action • Indication of systemic weaknesses • Breach not corrected or slow to correct breach	• Immediate action taken once became aware of the breach • Genuine oversight or administrative error rather than intention non-compliance • Relied on someone else to notify of changes and/or deal with compliance matters[1]
h.	**Breach of the eligibility requirements for DPB registration**			
	N/A	A category E financial penalty and any fees saved.	• Wilful failure • On notice of the requirement but failed to take action • Indication of systemic weaknesses • Breach not corrected or slow to correct breach	• Immediate action taken once became aware of the breach • Genuine oversight or administrative error rather than intention non-compliance • Relied on someone else to notify of changes and/or deal with compliance matters[1]

i.	**Failure to engage with and/or cooperate 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 or a category C financial penalty and/or Consider withdrawal of registration	• Deliberate or wilful refusal to cooperate or respond • Prolonged or repeated failure to engage with QAD or Professional Standards Department • Behaviour which has frustrated the regulatory oversight process • Attempts to obstruct or evade further regulatory scrutiny	• Relied on someone else to deal with compliance matters[1]
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]
ii.	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. • Prolonged or repeated failure to engage with the QAD or the Conduct Department. • Behaviour which has frustrated the regulatory oversight process. • Attempts to obstruct or evade further regulatory scrutiny	• Relied on someone else to deal with compliance matters[1]

j.	**Refusing to accept a visit from QAD**			
	N/A	Withdrawal of registration/licence and/or Referral	• Refusal to take action or correct • Evidence of deliberate frustration of attempts to organise/undertake visit	
k.	**Failure to comply with an assurance given following a QAD visit**			
	N/A	**Single breach** A category F financial penalty **Multiple breaches** A category F financial penalty per breach	• Member informed of requirement by ICAEW and continued to fail to comply • Period of time in excess of a year • Breach not corrected or slow to correct the breach	• Action taken once became aware of the breach • Period of time less than a year • Breach rectified as soon as it was brought to their attention

I.	**Failure to comply with a condition and/or restriction and/or decision imposed by the Investment Business Committee or an undertaking given to the Investment Business Committee**			
i.	There has been a failure to comply	Referral and/or withdrawal of registration and/or Category C financial penalty	• Blatant disregard, total absence of effort made to comply • Nature of original concerns and/or risk and/or effect on client • 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	• Significant time or opportunities to resolve	• Member is frustrated in complying by matters beyond their control
iii.	There has been full compliance but not within the required timescale	A category E financial penalty	• Significant time or opportunities to resolve	• Member is frustrated in complying by matters beyond their control