

Guidance for disciplinary sanctions

FOR USE IN DISCIPLINARY PROCEEDINGS
WITH EFFECT FROM 1 JANUARY 2018

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Section A: Introduction

INTRODUCTION

- A0.1 Association of Chartered Certified Accountants (ACCA) has produced this guidance on the use of sanctions to assist both disciplinary tribunals and members. The Disciplinary Committee (the Committee)¹ should refer to this guidance in every case when considering what sanction or combination of sanctions, if any, to impose on a relevant person².
- A0.2 This guidance:
- a Describes general principles the Committee should take into account when considering the appropriate sanction;
 - b Sets out the range of sanctions available;
 - c Describes relevant factors to be considered and/or decided in relation to the various sanctions;
 - d Suggests criteria to apply when considering the seriousness of a particular case.

A1 Status of this guidance

- A1.1 This guidance provides a crucial link between two key functions of ACCA as a regulatory body: setting standards for the accountancy profession and taking disciplinary action when a relevant person's conduct is called into question because those standards have not been met.
- A1.2 Not all departures from the standards set will result in disciplinary action. In the majority of cases, a disciplinary hearing is unlikely to be justified in the public interest unless the member's departure from standards is so significant that it amounts to misconduct. It is against that background that this guidance has been developed.
- A1.3 This guidance aims to promote consistency and transparency in decision-making by the Committee. It ensures that all parties are aware from the outset of the approach to be taken by a Committee to the question of sanction. It also provides guidance on mitigation evidence, references and testimonials.
- A1.4 Because of the nature of the role, members of the Committee must always exercise their own personal judgement in making decisions. However, to ensure a consistent approach those decisions should be made within the framework set out by ACCA in this guidance.
- A1.5 Nothing in this guidance should be treated as a source of legal advice to any user of the guidance. When appropriate, the independent Legal Adviser will advise the Committee on questions of law, including questions about the use of this guidance. Members are recommended to obtain their own legal advice.

¹ References to the Disciplinary Committee include the Appeal Committee where applicable

² Reference to relevant person includes members, students, affiliates and firms where appropriate

Section B: General principles

GENERAL PRINCIPLES

- B0.1 The Committee should always bear in mind that each case is different and should be decided on its own unique set of facts.
- B0.2 In considering what sanctions (if any) to apply, the Committee must have regard to both:
- a The public interest; and
 - b The member's own interest.

B1 The public interest

- B1.1 For the avoidance of doubt, the public interest includes:
- a The protection of members of the public;
 - b The maintenance of public confidence in the profession and in ACCA; and
 - c Declaring and upholding proper standards of conduct and performance.

B2 The purpose of sanctions

- B2.1 It is settled law that the purpose of sanctions issued by a professional regulatory body is not to be punitive but to protect the public interest – *R (on the application of Abrahaem) v General Medical Council*³.
- B2.2 The Court of Appeal in *Raschid and Fatnani v The General Medical Council*⁴ made it clear that the functions of a disciplinary tribunal are quite different from those of a "a court imposing retributive punishment". The Court of Appeal went on to confirm, "the panel is then concerned with the reputation and standing of a profession rather than the punishment of a doctor". The public interest must be at the forefront of any decision on sanction and this includes the collective need to maintain the confidence of the public in the accountancy profession and the particular need to declare and uphold proper standards of conduct and performance.
- B2.3 In *Bolton v the Law Society*⁵ the Court said "the reputation of a profession as a whole is more important than the fortunes of an individual member of that profession".
- B2.4 As the principal function of sanctions is not punitive but to protect the public interest, it follows that "considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction."⁶
- B2.5 These principles apply equally to the accountancy profession.
- B2.6 Although the disciplinary process looks back on a member's past conduct, the Committee also needs to have in mind the member's future conduct in order to ensure that the sanctions imposed will be effective to achieve their purpose. These will include considerations such as encouraging an improvement in standards and achieving a deterrent effect in relation to future conduct.

³ *R (on the application of Abrahaem) v General Medical Council* [2004] EWCH 279 (Admin)

⁴ *Raschid and Fatnani v The General Medical Council* [2007] EWCA Civ 46

⁵ *Bolton v the Law Society* [1994] EWCA Civ 32

⁶ *Bolton v Law Society* [1994] EWCA Civ 32

B3 Proportionality

- B3.1 The sanction in each case must demonstrate a considered and proportionate balance between:
- The public interest (which is not necessarily the same as the interests of the public);
 - The interests of the ACCA membership as a whole;
 - The interests of the particular member in the case;
 - The seriousness of the case; and
 - The mitigating and aggravating factors in the case.
- B3.2 Any interference in a member's professional standing and ability to practise must be no more than the minimum necessary to uphold the public interest. The Committee must strike a fair balance between the rights of the relevant person and the public interest⁷. This is necessary in order to comply with Article 8 of the European Convention on Human Rights, which protects the right to private and family life.
- B3.3 Acting proportionately requires the Committee to consider all sanctions available to them in ascending order of seriousness. This is often referred to as the 'bottom up' approach.
- B.3.4 Before finalising its decision on sanction, the Committee should always satisfy itself that the sanction, or combination of sanctions, it has decided to impose is both:
- Sufficient; and
 - No more than is necessary to achieve the purpose of sanctions.
- B3.5 It is also good practice for the Committee to explain why it is not necessary to impose a more serious sanction than the one they have chosen, and to refer to the next most severe sanction to satisfy themselves that the sanction they have chosen is proportionate and correct.

B4 Mitigating and aggravating factors

- B4.1 As part of a proportionate decision-making process, the Committee will need to pay due regard to the mitigating and aggravating circumstances in a case, and any evidence presented. They should be considered against the fundamental purpose of sanctions as set out above.

- B4.2 There are two types of mitigating and aggravating factors which will affect the sanction imposed in a particular case:
- Factors which pertained at the time of the misconduct, which should be taken into account when forming a view of the seriousness of the case;
 - Factors pertaining to current circumstances, which become relevant when the Committee goes on to consider which sanction or combination of sanctions is appropriate.
- B4.3 Mitigation can be considered under the following categories (these are not exhaustive):
- Evidence of member's adherence to good practice;
 - Evidence of insight and understanding and efforts made to address the particular failing and/or wrongdoing;
 - Personal mitigation, such as periods of stress, illness, level of support if in workplace.
- B4.4 Mitigation can be presented by way of personal evidence, references and testimonials.
- B4.5 Aggravating factors may include (again the list is not exhaustive):
- Lack of insight;
 - Harm or adverse impact;
 - A pattern of misconduct over a period of time;
 - Previous disciplinary history.
- B4.6 Examples of mitigating and aggravating factors which relate to specific case types can be found in Section F. Where any matter is listed as a mitigating factor, the converse should be treated as an aggravating factor, and vice versa.
- B4.7 The Committee will need to satisfy itself that there is evidence to support any findings it makes in relation to both mitigating and aggravating factors, and must assess the credibility of such evidence. Examples of the factors to take into account when assessing credibility are set out in Section B5 below in relation to references and testimonials.

⁷ Huang v Secretary of State for the Home Department [2007] UKHL 11

B5 Guidance on considering references and testimonials

- B5.1 In relation to mitigation presented by way of references and testimonials, Committees must first consider whether these are genuine and can be safely relied upon. Factors relevant to this consideration may include:
- Has ACCA had an opportunity to verify the reference and/or testimonial, if considered appropriate?
 - Is it signed by the author?
 - Is it different in style and language from other references and testimonials produced?
 - Is the author aware of the allegations under consideration and that the reference/testimonial is to be provided to the Committee?
 - Is the author appropriately qualified to comment on the matters that have formed the basis of the allegations?
 - To what extent does the author actually address the matters that inform the factual allegations and concerns that flow from those allegations?
 - Where appropriate, is the reference on headed paper?
- B5.2 The Committee will give such weight to references/testimonials as is appropriate in the circumstances of the case.

B6 Reasons

- B6.1 The Committee must give reasons for its decision on sanction. The reasons should clearly explain:
- The interests and factors the Committee took into consideration in arriving at its decision;
 - The weight it attached to those interests and factors;
 - How the balancing of those interests and factors led the Committee to its decision.
- B6.2 It is important that the Committee's determination on sanction makes clear that it has considered all the options and provides clear and cogent reasons (including mitigating and aggravating factors that influenced its decision).

B7 The Statutory Auditors and Third Country Auditors Regulations 2016 (SATCAR)

- B7.1 The Statutory Auditors and Third Country Auditors Regulation 2016 (SATCAR) came into force as of 17 June 2016. The legislation conveys specific duties on the Financial Reporting Council (FRC) as the Competent Authority. FRC delegates specific duties to ACCA as part of a delegation agreement signed in June 2016.
- B7.2 The SATCAR provisions are relevant to Disciplinary Committee, Admissions and Licensing Committee and Appeal Committee in cases concerning statutory auditors practising and/or operating in the United Kingdom.
- B7.3 Regulation 5(1) of SATCAR introduces a number of additional sanctions available to a Committee where an auditor has contravened a relevant requirement.
- B7.4 Regulation 5(3) of SATCAR requires that the [relevant] Committee:
- 'In determining the type and level of sanctions to be imposed under this regulation, the competent authority must take into account all relevant circumstances, including:
- the gravity and duration of the contravention;
 - the Auditor's degree of responsibility;
 - the Auditor's financial strength;
 - the amount, so far as can be determined, of profits gained or losses avoided by Auditor;
 - the extent to which Auditor has co-operated with the competent authority;
 - any previous contravention by Auditor of a relevant requirement.'
- B7.5 Regulation 6(3) of SATCAR provides four grounds where a relevant person's (an auditor practising and/or operating in the UK only) name should not be published.⁸
- B8 S.I. No. 312/2016 – European Union (Statutory Audits) Regulations 2016**
- B8.1 European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016, SI No 312 of 2016 ('The Statutory Instrument') were signed into law on June 2016.

⁸ Additional information available in ACCA's Guidance on Publicity document

- B8.2 The purpose of the statutory instrument is to transpose the EU Audit Directive into Irish law and to give effect to some provisions of the EU Audit Regulation in Ireland. It repeals and replaces the existing statutory instrument on audit, which are the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations (S.I. 220 of 2010).
- B8.3 The statutory instrument provisions are relevant to Disciplinary Committee, Admissions and Licensing Committee and Appeal Committee in cases concerning statutory auditors practising and/or operating in Ireland.
- B8.4 Regulation 24 of the statutory instrument amends the Companies Act 2014 to insert section 935C which introduces a number of additional sanctions available to the Committee in relation to a relevant contravention committed by the relevant person.
- B8.5 Section 935C(1) of the Companies Act 2014 introduces a number of additional sanctions available to the Committee in relation to a relevant contravention committed by the relevant person.
- B8.6 At the relevant stage of the hearing, the Case Presenter will invite the Committee to consider whether the statutory auditor's name should not be published. Section 935D(3) of the Companies Act 2014 provides three grounds where a relevant person's name should not be published.
- B8.7 Section 935C(5) of the Companies Act 2014 further requires that publicity of such sanctions are made available on ACCA's website for at least 5 years from the date of the sanction, or where the sanction has been appealed, at least 5 years from the conclusion of that appeal, or such longer period as is proportionate to the breach in question.⁹

⁹ Additional information available in ACCA's Guidance on Publicity document

Section C: The sanctions available and relevant factors for consideration

THE SANCTIONS AVAILABLE AND RELEVANT FACTORS FOR CONSIDERATION

- C0.1 The relevant regulations are set out in Complaints and Disciplinary Regulation 13 which can be found in the ACCA Rulebook at:
http://www.accaglobal.com/content/dam/ACCA_Global/Members/Doc/rule/ACCA%20Rulebook%202017.pdf
- C0.2 Having found a member guilty of misconduct or otherwise liable to disciplinary action, a range of sanctions and orders are available to the Committee.
- C0.3 The Committee should consider all possible sanctions and/or combinations of sanctions available to it in every case. As previously stated, the Committee shall consider the least serious sanction first (including the taking of no further action); the Committee may make one or more orders against the relevant person.

C1 No further action

- C1.1 The regulations do not require the Committee to impose a sanction in every case. It is open to the Committee to conclude a case without taking further action. This should always be the starting point.
- C1.2 However, if the Committee decides to take no action it must be satisfied that it is in the public interest to impose no sanction and must make it clear in its reasons how it came to that decision.
- C1.3 Having considered the general principles set out above, if the Committee decides that taking no action would be inappropriate, it should consider the lowest available sanction.

C2 Admonishment

- C2.1 This sanction may be appropriate where most of the following factors are present. It should be remembered that this list is not exhaustive.
- a Evidence of no loss or adverse effect on client/members of the public;
 - b Early admission of the facts alleged;
 - c Insight into failings;
 - d Isolated incident;
 - e Not deliberate;
 - f Genuine expression of remorse/apology;
 - g Corrective steps have been taken promptly;
 - h Subsequent work satisfactory;
 - i Relevant and appropriate testimonials and references.
- C2.2 Before making a final decision under this sanction and having considered the general principles and factors above, the Committee must decide whether an Admonishment is a sufficient sanction in all the circumstances of the case, either on its own or in combination with any other order available under the rules, such as a fine.
- C2.3 If it considers this sanction (on its own or combined with any other order it could impose) is sufficient, then the Committee must stop at this point and impose this sanction.

C2.4 If it considers, having regard to all the circumstances, that this sanction (combined with any other order it could impose) is insufficient; it should consider the next available sanction.

C2.5 It is not possible to say in what circumstances a sanction is to be regarded as insufficient, particularly if many of the relevant factors are present, but one example might be the seriousness of the allegation itself. This means that even though all of the above factors are present, the seriousness of the allegation means that an Admonishment is insufficient.

C2.6 For further information on matters ACCA considers to be serious, please see Section F.

C3 Reprimand

C3.1 This sanction would usually be applied in situations where the conduct is of a minor nature and there appears to be no continuing risk to the public. It would also be expected that there is sufficient evidence of an individual's understanding and genuine insight into the conduct found proved. This sanction may be appropriate where most of the following factors are present. It should be remembered that this list is not exhaustive:

- a Willingness to comply with directions and advice provided by ACCA;
- b Failure or conduct in question is the result of misfortune;
- c Conduct was not in deliberate disregard of professional obligations;
- d Period over which misconduct took place was short and it was stopped as soon as possible;
- e There has been early and genuine acceptance that misconduct had been committed;
- f There has been no or very little adverse consequence – it has not caused material distress, inconvenience or loss;
- g Early admission.

C3.2 Having considered the general principles and factors above, the Committee must decide whether a Reprimand is a sufficient sanction, either on its own or in combination with any other order available under the rules, such as a fine. If the Committee decides that a Reprimand (on its own or combined with any other order it could impose) is sufficient, it should stop at this point and impose this sanction.

C3.3 However, if the Committee considers having regard to all the circumstances that a Reprimand (combined with any other order it could impose) is insufficient, it should consider the next available sanction.

C3.4 It is not possible to say in what circumstances a sanction is to be regarded as insufficient, particularly if many of the relevant factors are present, but one example might be the seriousness of the allegation itself. This means that even though all of the above factors are present, the seriousness of the allegation means that a Reprimand is insufficient.

C3.5 For further information on matters ACCA considers to be serious, please see Section F.

C4 Severe reprimand

C4.1 This sanction would usually be applied in situations where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved. This sanction may be appropriate where most of the following factors are present. It should be remembered that this list is not exhaustive:

- a The misconduct was not intentional and is no longer continuing, though the member may have acted recklessly;
- b Evidence that the conduct would not have caused direct or indirect harm;
- c Insight into failings;
- d Genuine expression of regret/apologies
- e Previous good record
- f No repetition of failure/conduct — it was an isolated incident
- g Rehabilitative/corrective steps taken to cure the conduct and ensure future errors do not occur
- h Relevant and appropriate references
- i Co-operation during the investigations stage.

C4.2 Having considered the general principles and factors set out above, the Committee must decide whether a Severe Reprimand is a sufficient sanction, either on its own or in combination with any other order available under the rules. If the Committee decides that a Severe Reprimand (on its own or combined with any other order it could impose) is sufficient, it should stop at this point and impose this sanction.

C4.3 If the Committee considers a Severe Reprimand (combined with any other order it could impose) is insufficient, it should consider the next available sanction.

- C4.4 It is not possible to say in what circumstances a sanction is to be regarded as insufficient, particularly if many of the relevant factors are present, but one example might be the seriousness of the allegation itself. This means that even though all of the above factors are present, the seriousness of the allegation means that a Severe Reprimand is insufficient.
- C4.5 For further information on matters ACCA considers to be serious, please see Section F.

C5 Exclusion from membership/Removal from the student or affiliate registers

- C5.1 This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a member. This is the most serious sanction that can be imposed on a member. The Committee is also entitled to consider whether to impose a fine alongside this sanction and any other order available under the rules. Exclusion may be appropriate when the conduct involves any or all of the following circumstances (this list is not exhaustive):
- a Serious departure from relevant professional standards, such as repeated defective work;
 - b Actual loss or adverse impact on client and/or members of the public;
 - c Abuse of trust/position;
 - d Dishonesty;
 - e Lack of understanding and insight into the seriousness of the acts/omissions and the consequences thereof;
 - f Conduct continued over a period of time;
 - g Affected or had the potential to affect a substantial number of clients/ members of the public;
 - h Attempted to cover up the misconduct;
 - i Persistent denial misconduct;
 - j Breach of regulatory order;
 - k Convictions or cautions involving any of the conduct set out above;
 - l Collusion to cover up conduct.
- C5.2 For further information on matters ACCA considers to be serious, please see Section F.

Minimum period of exclusion

- C5.3 ACCA's Membership Regulations (Regulation 14(2)) currently require that where a member/student has been excluded/removed, he may not apply for readmission until a minimum of 12 months after the effective date of the exclusion/removal.

- C5.4 The Committee has the power to extend that period by combining an exclusion/removal order with an order that no application for readmission may be considered until a minimum period (of no more than five years) has expired. The period commences on the effective date of the Committee's order.
- C5.5 Note that this does not mean that the member/student is automatically readmitted after the expiry of the period, as it is not a suspension. The decision as to whether a disciplined member/student is suitable to be readmitted is within the sole discretion of the Admissions and Licensing Committee.
- C5.6 Note also that the Committee does not have the power to impose any additional conditions upon readmission, as that would be a matter for the Admissions and Licensing Committee which would consider any such application for readmission.

C6 Fines

- C6.1 This sanction is not available for matters involving students or affiliates.
- C6.2 A fine of up to £50,000 may be imposed. The level of fine will primarily reflect the gravity of the misconduct in question, but should also reflect any financial benefit obtained by the member.
- C6.3 Factors which should be considered in order to determine whether a fine is an appropriate sanction include:
- a If deterrence cannot be effectively achieved by issuing another sanction such as reprimand or severe reprimand alone;
 - b If the individual has derived any financial gain or benefit (including avoidance of loss) as a result of the misconduct;
 - c If the misconduct involved caused or put at risk the loss of significant sums of money;
 - d The value of the engagement, the size of the fee and any commission or any other reward;
 - e The amount of any costs or fees which the individual has avoided incurring or paying, which ought to have been incurred or paid had regulations or professional standards been complied with;
 - f Whether the individual caused or encouraged other individuals to commit reprehensible conduct.
- C6.4 A fine is a sanction which can be a stand alone sanction or can be made in conjunction with all other available and appropriate sanctions, including Exclusion, having regard to the nature and circumstances of each case.

The member's means

- C6.5 The means of the member should be a relevant consideration in calculating the appropriate level of fine (see *D'Souza v The Law Society*)¹⁰.
- C6.6 Before fixing the amount of fine, the Committee should invite the member to address the Committee on this matter. Whether a member wishes to do so or not is a matter for him/her, but in the absence of evidence the Committee is entitled to assume that the member's means do not justify a reduction in the amount of fine that would be otherwise imposed for an offence of the gravity in question.
- C6.7 In *Solicitors Regulation Authority v Davis and McGlinchey*¹¹, in a judgment which addressed the issue of costs orders, the Court held that once the allegations had been admitted or had been found proved (but not before), it was incumbent upon the member to indicate whether he will be contending that no financial order against him should be made, or should be limited in amount, by reason of his lack of means, and to supply the evidence upon which he relies to support that contention.
- C6.8 It should be noted that the amount of a fine should not be so punitive as to characterise the proceedings as 'criminal' rather than a determination of civil rights and obligations.

C7 Compensation

- C7.1 The purpose of an order for compensation is to reflect any inconvenience suffered by the complainant as a result of the members' or firms' failure to observe proper standards. The maximum sum payable is £1,000.
- C7.2 Disciplinary proceedings are not designed to compensate those who may have suffered financial loss or damage as a result of the acts or omissions of an individual, nor to punish the individual, but to compel the observance of prescribed professional conduct as enunciated in *Ridehalgh v Horsefield*¹². Accordingly, complainants should pursue financial claims not through ACCA's disciplinary process but through the appropriate legal channels.
- C7.3 The Committee should exercise care to ensure that an order for compensation is not made in relation to amounts already claimed through other channels such as the Courts.

- C7.4 Again, the means of the member are a relevant consideration in calculating the amount of compensation to be awarded. Although payment of compensation is normally routed through ACCA, ACCA will not make any payment to the complainant unless it has first been put in funds by the member.

C8 Waiver of fees

- C8.1 The Committee may order the member or firm to waive or reduce their fees to the complainant where appropriate.
- C8.2 Similar considerations apply in relation to amounts already claimed through other channels and the means of the member.

C9 Specified period not to be reckoned as part of approved accountancy experience

- C9.1 In order to become a member, a certain number of years of approved accountancy experience must be obtained. The Committee has the power to order that any part of an affiliate's or student's experience gained should not count towards such approved accountancy experience.

C10 Ineligible for membership for a specified period

- C10.1 The Committee may order that an affiliate is not granted membership status for a specified period, notwithstanding that he may be eligible for membership. This could be ordered in addition to or instead of an order under Complaints and Disciplinary Regulation 13(9) that any future application for membership be referred to the Admissions and Licensing Committee.

C11 Ineligible to sit ACCA examinations for a specified period

- C11.1 The Committee may order that a student is not eligible to sit any examination, or part of an examination, for a specified period. This sanction might be suitable where, for example, the student has not been removed from the register but the Committee is of the view that the student should not be permitted to sit examinations for a period of time.

C12 Disqualification from one or more examinations

- C12.1 This sanction is only available if the student has not already been given the examination result. It can be used in conjunction with an order that the student be removed from the register, so that if he were to apply for reinstatement in future he would have to re-sit the examination(s) in question.

¹⁰ *D'Souza v The Law Society* [2009] EWHC 2193 (Admin)

¹¹ *Solicitors Regulation Authority v Davis and McGlinchey* [2011] EWHC 232 (Admin)

¹² *Ridehalgh v Horsefield* [1994] 3 ALL ER 848

C13 Orders relating to certificates, licences and future applications for membership

- C13.1 Other than as an automatic result of an order for Exclusion¹³, the Committee has no power to order removal of a member's certificate or licence.
- C13.2 However, there may be cases where the Committee feels that Exclusion from membership is not warranted (or, in the case of a firm or non-member, is not available), but that for the protection of the public and the reputation of the profession the member ought to be prevented from carrying out certain activities. In such a case, the Committee should use its powers to refer the matters of concern to the Admissions and Licensing Committee for consideration and, if necessary, suspend or place conditions on the certificate or licence in the interim. These powers are set out in Complaints and Disciplinary Regulation 13(8) (a) and described further in Section D.

¹³ Any certificate or licence held by the member is automatically removed when membership ceases.

Section D: Referrals to Admissions and Licensing Committee

REFERRALS TO ADMISSIONS AND LICENSING COMMITTEE

- D0.1 The power to order that certain matters be referred to the Admissions and Licensing Committee is set out in Complaints and Disciplinary Regulation 13(8)(a). In relation to any disciplined individual or firm, the Committee has the power to make 'any of the orders set out in Regulation 13(8)(b) where applicable' (see Complaints and Disciplinary Regulations 13(1)(a) to 13(8)(c)).
- D0.2 As this gives the Committee a wide discretion, before making an order under this regulation, the Committee should satisfy itself that it would have the intended effect. The Committee should invite representations from the parties as to the workability, effect and any unintended consequences of the proposed order.
- D1 Member's fitness and propriety to hold a certificate or licence or to conduct ERA be referred to the Admissions and Licensing Committee**
- D1.1 This order is suitable where the member holds a current certificate. The Committee's order should state by which date the Admissions and Licensing Committee should receive the referral, which must be no later than twelve months from the effective date of the order.
- D1.2 The Committee's written reasons for the decision should make it clear what are the specific issues of concern it wishes the Admissions and Licensing Committee to take into account.
- D1.3 Where the Committee is concerned that the public may be at risk in the meantime, it may combine this order with an order to suspend or place conditions on the certificate in question. The Committee should not suspend a certificate unless it is satisfied that the public would not be adequately protected by placing conditions on the certificate.
- D1.4 The imposition of conditions allows the practitioner to continue to hold the certificate with certain restrictions, enabling him to remedy any deficiencies in his practice whilst at the same time protecting clients. An example may be a prohibition on holding client monies. Any conditions imposed should meet all of the following criteria:
- a Appropriate;
 - b Proportionate;
 - c Workable;
 - d Measurable.
- D2 Any future application for a certificate or licence or to conduct ERA be referred to the Admissions and Licensing Committee**
- D2.1 An example of a situation where such an order may be appropriate is where a member has voluntarily relinquished his certificate or licence since the disciplinary proceedings commenced and the Committee wishes any future application to be considered by the Admissions and Licensing Committee so that it can satisfy itself as to the applicant's fitness and propriety to hold the certificate. Absent such an order, where an applicant for a certificate meets all the eligibility requirements, the application is normally handled administratively.
- D2.2 Such an order could be made against a current or former student or affiliate as well as against current and former members and firms and non-members.

D2.3 Depending on the specific circumstances of the case, such an order may also be appropriate in combination with an order that any future application for membership be considered by the Admissions and Licensing Committee (see D3 below).

D3 Any future application for membership by an affiliate or student be referred to the Admissions and Licensing Committee

D3.1 Where an affiliate or student is not being removed from the register as a result of the disciplinary hearing, the Committee may nevertheless decide that the Admissions and Licensing Committee should satisfy itself as to the individual's general character and suitability for membership when/if in due course an application for membership is made.

D3.2 Where an affiliate is concerned, this could be ordered in addition to or instead of an order under Complaints and Disciplinary Regulation 13(4)(c) that the affiliate be declared ineligible for membership for a specified period.

Section E: Other issues relevant to sanction

OTHER ISSUES RELEVANT TO SANCTION

E1 Convictions and sanctions imposed by another professional body

- E1.1 It is not the purpose of sanction to punish a member for the second time in relation to a conviction or sanction imposed by another professional body.
- E1.2 The Committee should bear in mind that the sentence imposed in a criminal context is not necessarily a reliable or definitive guide to the seriousness of the offence. There may have been particular mitigation which led the court to its decision on sentence, which carries less weight in a disciplinary context because of the different public interests that apply.
- E1.3 In *R (on the application of Low) v General Osteopathic Council*¹⁴, Mr Justice Sullivan referring to the statement of Sir Thomas Bingham MR in *Bolton v Law Society*¹⁵ that “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 part of the price” said:
- “...because of these considerations, the seriousness of the criminal offence, as measured by the sentence imposed by the Crown Court, is not necessarily a reliable guide to its gravity in terms of maintaining public confidence in the profession”.
- E1.4 Similarly, the Committee is not fettered by the sanction imposed by another professional body and is free to impose whatever sanction it deems to be appropriate.
- E1.5 In *Council for Healthcare Regulatory Excellence v (1) General Dental Council and (2) Fleishmann*¹⁶, Mr Justice Newman outlined the following principle:
- “As a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for this principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in the profession must be earned if the reputation of the profession is to be maintained”.

¹⁴ *R (on the application of Low) v General Osteopathic Council* [2007] EWHC 2839 (Admin)

¹⁵ *Bolton v Law Society* [1994] 1 WLR 512

¹⁶ *Council for Healthcare Regulatory Excellence v (1) General Dental Council and (2) Fleishmann* [2005] EWCH 87 (Admin)

Section F: Factors relevant to seriousness in specific case types

E2 Dishonesty

- E2.1 Dishonesty, even when it does not result in direct harm and/or loss, or is related to matters outside the professional sphere undermines trust and confidence in the profession. The Committee should consider all possible sanctions and/or combinations of sanctions available to it in every case, nevertheless the courts have supported the approach to exclude members from their professions where there has been a lack of probity and honesty:
- “...there is no room for a dishonest doctor”; *Singh v General Medical Council*¹⁷;
- “For all professionals, a finding of dishonesty lies at the top of the spectrum of misconduct”; *Tait v Royal College of Veterinary Surgeons*¹⁸;
- “...in the absence of remarkably good reasons in mitigation it should lead to erasure”; *The Fifth Shipman Inquiry*¹⁹.
- E2.2 The public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. The reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances. It is a cornerstone of the public value which an accountant brings.
- E2.3 The Committee should bear these factors in mind when considering whether any mitigation presented by the member is so remarkable or exceptional that it warrants anything other than exclusion from membership or removal from the student register.

E3 Seriousness of allegation

- E3.1 The Committee should reach a view on the seriousness of the conduct which has been found proved before going on to consider sanction. It is important not to conflate those two stages of the decision-making process.
- E3.2 Section F sets out the factors which are relevant to the seriousness of the allegation in specific case types.
- E3.3 The Committee should assess the seriousness of the allegation in light of the potential worst case scenario (ie risk of harm) rather than whether any actual harm has resulted.

E4 Interim orders

- E4.1 In making the decision on sanction, the Committee should not give weight to whether or not an interim order has been imposed upon the member pending the outcome of the disciplinary proceedings, nor the length of time any interim order has been in place. When interim orders are imposed, no findings of fact are made in relation to any allegations and the test for whether an interim order is appropriate is very different from the considerations the Committee needs to bear in mind when deciding sanction.

¹⁷ *Singh v General Medical Council* [2000] UKPC 15

¹⁸ *Tait v Royal College of Veterinary Surgeons* [2003] UKPC 34

¹⁹ *The Fifth Shipman Inquiry* Sir Donald Irvine, 2004

FACTORS RELEVANT TO SERIOUSNESS IN SPECIFIC CASE TYPES

CASE TYPE	VERY SERIOUS	SERIOUS	AGGRAVATING FACTORS	MITIGATING FACTORS
PROFESSIONAL COMPETENCE AND DUE CARE		<ul style="list-style-type: none"> Defective accountancy work (e.g. poor quality, late filing, not in statutory format, not complying with rules/requirements of client's regulator such as Solicitors' Accounts Rules. For Audit work please see separate guidelines on page 20); Poor advice/delay in advising in relation to client's affairs/neglect of client's affairs; Failing to exercise adequate control and supervision over a practice; Failing to respond expeditiously or adequately or at all to professional correspondence. 	<ul style="list-style-type: none"> Nature of inefficient or incompetent work. Attempt to cover up errors; Financial loss to client or third party Period of time and number of sets of accounts; Deliberate/Reckless; Size of loss/error involved. 	<ul style="list-style-type: none"> No loss; Client promptly recompensed for any loss; Had taken professional advice; Client unhelpful in providing accounts; or gave insufficient or misleading information; Evidence of lack of cooperation by client.
INVESTMENT BUSINESS	<ul style="list-style-type: none"> Carrying on investment business without authorisation; Carrying on investment business outside the firm's authorisation category; Seriously negligent/reckless investment advice; Breach of investment business regulations. 		<ul style="list-style-type: none"> Number of clients/ number of transactions conducted; Failure to make clients aware of risks; Lack of documentation on advice; High value commission earned; Breach is a criminal offence. 	<ul style="list-style-type: none"> Improved office procedure immediately Steps taken on behalf of client to recover loss Level of seriousness of breach
CONDUCT AS A COMPANY DIRECTOR	<ul style="list-style-type: none"> Disqualification as a company director 		<ul style="list-style-type: none"> Length of disqualification; 	<ul style="list-style-type: none"> Length of disqualification;
OTHER LIABILITIES AND BREACHES OF BYE-LAWS OR REGULATIONS	<ul style="list-style-type: none"> Failure to comply with an Admissions and Licensing Committee order or an undertaking given to ACCA; Failure to co-operate with a disciplinary investigation; Failure to co-operate with ACCA's monitoring process; Bankruptcy. 	<ul style="list-style-type: none"> Being subject to an insolvency process other than bankruptcy; Failure to satisfy a judgment debt without reasonable excuse for a period of 2 months; Failure to inform ACCA of relevant matters indicating that member himself may be liable to disciplinary action (e.g. non-disclosure of criminal conviction); Failure to comply with CPD requirements; Failing to provide professional clearance or transfer information. 	<ul style="list-style-type: none"> Period of time involved; Deliberate/reckless disregard of order/regulations. 	<ul style="list-style-type: none"> Steps swiftly taken to rectify breach.
DISCIPLINED BY ANOTHER PROFESSIONAL BODY	<ul style="list-style-type: none"> The Committee should take into account the sanction imposed by the other body, although it is not constrained to follow it. 		<ul style="list-style-type: none"> Any matters which may have arisen since the disciplinary action taken by the other body. 	<ul style="list-style-type: none"> Any matters which may have arisen since the disciplinary action taken by the other body.
ETHICAL CONDUCT	<ul style="list-style-type: none"> Deceiving/misleading ACCA/a statutory regulator; Failing to act with integrity; Lack of objectivity/independence; Conflict of interest; Breach of confidentiality. 	<ul style="list-style-type: none"> Unprofessional behavior (a lack of courtesy and consideration). 	<ul style="list-style-type: none"> Deliberate /reckless; Position of trust held; Size of loss and/or error involved. 	<ul style="list-style-type: none"> Information provided carelessly/accidentally

Section G: Table of sanctions available

TABLE OF SANCTIONS AVAILABLE

SANCTION	
1	No further action
2	Admonished
3	Reprimanded
4	Severely reprimanded
5	Excluded/removed from register (which may be combined with an order that no application for readmission be considered until the expiry of a specified period of no longer than five years)
6	Fine not exceeding £50,000
7	Compensation to be paid by member to complainant not exceeding £1,000
8	Waive or reduce any fees charged to complainant which relate directly to the proven allegation
9	A specified period not to be reckoned as part of the individual's approved accountancy experience
10	Declared ineligible to be admitted to membership for a specified period
11	Declared ineligible to sit examination(s) for a specified period
12	Disqualified from specified examination(s) or parts of examination(s) which the student has sat, the results of which have not been notified to the student at the date of the Committee's order
13	<p>Fitness and propriety to hold a certificate/licence or eligibility to conduct ERA be referred to Admissions and Licensing Committee by a specified date to be no later than 12 months from the date of the order which may be combined with an order that:</p> <ul style="list-style-type: none"> a certificate or licence or eligibility to conduct ERA be suspended until an order of the Admissions and Licensing Committee has been made or: conditions be placed upon a certificate or licence or eligibility to conduct ERA until an order of the Admissions and Licensing Committee has been made
14	Any future application for a certificate or licence or to conduct ERA to be referred to the Admissions and Licensing Committee
15	Any future application for membership be referred to the Admissions and Licensing Committee

	MEMBER	FORMER MEMBER	NON-MEMBER UNDERTAKEN TO BE BOUND	FIRM	FORMER FIRM	REGISTERED STUDENT	FORMER REGISTERED STUDENT	AFFILIATE	FORMER AFFILIATE
	■	■	■	■	■	■	■	■	■
	■	■	■	■	■	■	■	■	
	■	■	■	■	■	■	■	■	
	■	■	■	■	■	■	■	■	
	■					■		■	
	■	■	■	■	■				
	■	■	■	■	■				
	■	■	■	■	■				
						■		■	
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	■		■	■		■	■		
	■	■	■	■	■	■	■	■	■
						■		■	

Section H: Insolvency common sanctions guidance

PART 1

Background

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

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

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

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

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

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

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

Sanctions

When a disciplinary Committee or tribunal considers:

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

The Committee should consider the following factors:

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

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

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

Non-financial sanctions

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

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

Financial sanctions

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

Aggravating and mitigating factors

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

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

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

Costs

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

Publicity

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

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

PART 2 – INDICATIVE SANCTIONS FOR VARIOUS BREACHES OF THE INSOLVENCY ACT 1986, OTHER RELEVANT LEGISLATION AND STATEMENTS OF INSOLVENCY PRACTICE

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

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

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

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

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

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

Where a disciplinary/investigation committee or tribunal proposes to issue a fine for a breach that has led to a profit for the insolvency practitioner or their firm or any other connected party, the disciplinary/investigation committee or tribunal will issue a single financial sanction which will include both the fine for the estimated profit gained explained above as well as a variable fine listed in Part 3 below which will depend on seriousness of

the misconduct, the facts of the case and be tiered alongside the appropriate non-financial sanction.

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

ALLEGATION		NON-FINANCIAL SANCTION	STARTING POINT FOR FINANCIAL SANCTION
1	Acts of dishonesty resulting in criminal convictions and/or adverse findings by regulatory and other bodies	Exclusion and licence withdrawal	A financial sanction may not be appropriate in every case. Where a fine is considered appropriate, the starting point should be £15,000
2	Misappropriation of funds into own account, other estates or third parties	a Exclusion and licence withdrawal	a Fine of £20,000
3	Acting as an insolvency practitioner without a licence	a Exclusion b Severe reprimand c Reprimand	a Fine of £10,000 b Fine of £5,000 d Fine of £1,500
4	Drawing unauthorised remuneration	a Severe reprimand b Severe reprimand c Reprimand	a Fine equivalent to the level of the unauthorised fee drawn, or £10,000, whichever is greater b Fine of £5,000 c Fine of £2,000
5	Drawing of excess remuneration that has been deemed unfair or unreasonable	a Severe reprimand b Severe reprimand c Reprimand	a Fine of £7,500 b Fine of £5,000 c Fine of £1,500
6	Failure to submit returns (e.g., CDDA returns) or a delay in submitting returns where the delay is likely to impact on the conduct of the insolvency appointment	a Severe reprimand b Reprimand c Reprimand	a Fine of £5,000 b Fine of £2,000 d Fine of £1,000
7	Failure to convene a creditor's meeting or a delay in convening a creditor's meeting where the delay is likely to impact on the conduct of the insolvency appointment	a Severe reprimand b Reprimand c Reprimand	a Fine of £5,000 b Fine of £2,000 c Fine of £1,000
8	Accepted an appointment as administrator when no statutory purpose achievable	a Severe reprimand b Reprimand	a Fine of £7,500 b Fine of £2,000
9	Failure to comply with the principles of a SIP, the Insolvency Act and rules and regulations thereunder	a Severe reprimand b Severe reprimand c Reprimand	a Fine of £7,500 b Fine of £5,000 c Fine of £1,500
10	Failure to take adequate steps to realise assets	a Severe reprimand b Reprimand c Reprimand	a Fine of £7,500 b Fine of £2,000 c Fine of £1,500
11	Delay in progressing administration of an insolvency estate	a Severe reprimand b Reprimand c Reprimand	a Fine of £5,000 b Fine of £2,000 d Fine of £1,500
12	Failure to respond at all, or a delay in responding to letters, telephone calls or emails	a Severe reprimand b Reprimand c Reprimand	a Fine of £2,500 b Fine of £1,500 c Fine of £500

PART 3 – INDICATIVE SANCTIONS FOR VARIOUS BREACHES OF THE INSOLVENCY CODE OF ETHICS

ALLEGATION		NON-FINANCIAL SANCTION	STARTING POINT FOR FINANCIAL SANCTION
1	Failure to comply with the fundamental principle of integrity	a Exclusion and consideration of licence withdrawal b Severe reprimand	a Fine of £10,000 b Fine of £5,000
2	Failure to comply with the fundamental principle of objectivity	a Exclusion b Severe reprimand c Reprimand	a Fine of £10,000 b Fine of £5,000 c Fine of £2,000
3	Failure to comply with the fundamental principle of professional competence and due care	a Exclusion b Severe reprimand c Reprimand	a Fine of £7,500 b Fine of £5,000 c Fine of £2,000
4	Failure to comply with the fundamental principle of confidentiality	a Exclusion b Severe reprimand c Reprimand	a Fine of £5,000 b Fine of £3,000 c Fine of £1,500
5	Failure to comply with the fundamental principle of professional behaviour	a Exclusion b Severe reprimand c Reprimand	a Fine of £5,000 b Fine of £3,000 c Fine of £1,500

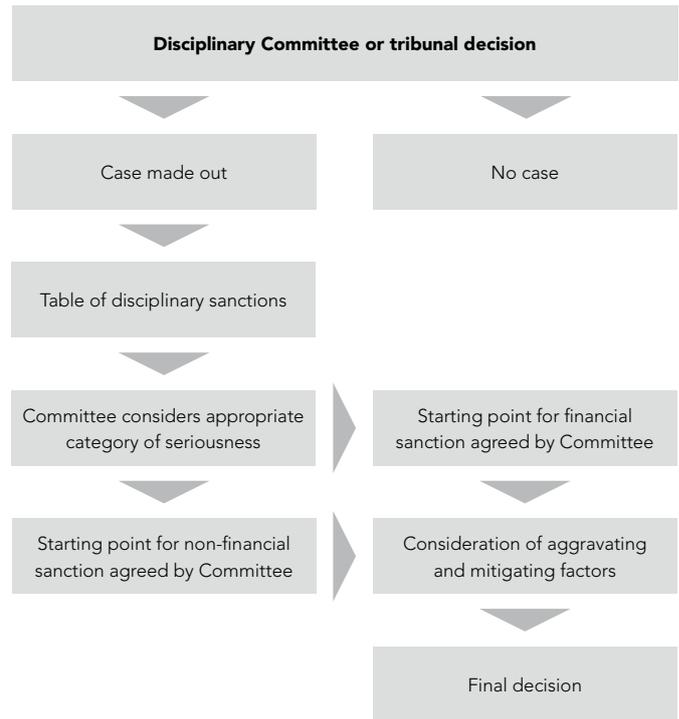
Aggravating factors

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

Mitigating factors

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

Flowchart of disciplinary process



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Think Ahead