



# **GUIDANCE FOR DISCIPLINARY SANCTIONS**

**For use in disciplinary proceedings  
with effect from 1 August 2013**

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## **SECTION A: INTRODUCTION**

A0.1 ACCA has produced this guidance on the use of sanctions to assist both disciplinary tribunals and members. The Disciplinary Committee (Committee)<sup>1</sup> should refer to this guidance in every case when considering what sanction or combination of sanctions, if any, to impose on a member<sup>2</sup>.

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 member'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 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.

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<sup>1</sup> References to the Disciplinary Committee include the Appeal Committee where applicable.

<sup>2</sup> References to members include firms and students where applicable.

## **SECTION B: 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  
**and**
- 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 Abrahams) v General Medical Council [2004] EWCH 279 (Admin).

B2.2 The Court of Appeal in Raschid and Fatnani v The General Medical Council [2007] 1 WLR 1460, made it clear that the functions of a disciplinary tribunal are quite different from those of 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*”.

B2.3 In Bolton v the Law Society [1994] 2 ALL ER 486 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 These principles apply equally to the accountancy profession.

B2.5 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.

### **B3. Proportionality**

B3.1 The sanction in each case must demonstrate a considered and proportionate balance between:

- a. the public interest (which is not necessarily the same as the interests of the public)
- b. the interests of the ACCA membership as a whole
- c. the interests of the particular member in the case
- d. the seriousness of the case

- e. 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 should consider all available sanctions starting with the lowest. This is often referred to as the '**bottom up**' approach.

B3.3 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:

- a. sufficient  
**and**
- b. no more than is necessary to achieve the purpose of sanctions.

#### **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:

- a. 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
- b. 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):

- a. evidence of member's adherence to good practice
- b. evidence of insight and understanding and efforts made to address the particular failing and/or wrongdoing
- c. 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:

- a. lack of insight
- b. harm or adverse impact
- c. a pattern of misconduct over a period of time
- d. previous disciplinary history.

Again, this list is not exhaustive.

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 5 below in relation to references and testimonials.

## **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:

- a. has ACCA had an opportunity to verify the reference and/or testimonial, if considered appropriate
- b. is it signed by the author
- c. is it different in style and language from other references and testimonials produced
- d. is the author aware of the allegations under consideration and that the reference/testimonial is to be provided to the Committee
- e. is the author appropriately qualified to comment on the matters that have formed the basis of the allegations
- f. the extent to which the author actually addresses the matters that inform the factual allegations and concerns that flow from those allegations
- g. 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:

- a. the interests and factors the Committee took into consideration in arriving at its decision
- b. the weight it attached to those interests and factors
- c. 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).

## **SECTION C: THE SANCTIONS AVAILABLE AND RELEVANT FACTORS FOR CONSIDERATION**

C0.1 The relevant regulations are set out in Complaints and Disciplinary Regulation 5(9) which can be found in the ACCA Rulebook at [http://www.accaglobal.com/content/dam/acca/global/PDF-members/rulebook/acca\\_2013\\_rulebook.pdf](http://www.accaglobal.com/content/dam/acca/global/PDF-members/rulebook/acca_2013_rulebook.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 In addition, the Committee has a wide power under Complaints and Disciplinary Regulation 5(10(a) to make any of its orders subject to such terms and conditions it considers to be appropriate.

C0.4 The Committee should consider all possible sanctions and/or combinations of sanctions available to it in every case.

### **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 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* [2009] EWHC 2193 (Admin)).

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 SRA v Davis and McGlinchey [2011] EWHC 232 (Admin), 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 £5,000.

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 [1994] 3 ALL ER 848. 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

5(9)(h) 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 or 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.

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

C13.1 Other than as an automatic result of an order for Exclusion<sup>3</sup>, 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 5(9)(h) and described further in Section D.

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<sup>3</sup> Any certificate or licence held by the member is automatically removed when membership ceases.

## **SECTION D: 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 5(9)(h). In relation to any disciplined individual or firm, the Committee has the power to make 'any of the orders set out in regulation 5(9)(h) where applicable' (see Complaints and Disciplinary Regulations 5(9)(a) to 5(9)(g)).

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 3 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 5(9)(d) that the affiliate be declared ineligible for membership for a specified period.

## SECTION E: 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 be 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 GOC [2007] EWHC 2839 Admin, Mr Justice Sullivan referring to the statement of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 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 CHRE v (1) GDC and (2) Fleishmann [2005] EWCH 87 (Admin) 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".*

### 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 courts have consistently supported the approach to exclude members from their professions where there has been a lack of probity and honesty. Only in exceptional circumstances should a finding of dishonesty result in a sanction other than striking off:

*"...there is no room for a dishonest doctor";* Singh v General Medical Council [2000] UKPC 15

*"For all professionals, a finding of dishonesty lies at the top of the spectrum of misconduct";* Tait v Royal College of Veterinary Surgeons [2003] UKPC 34

*"...in the absence of remarkably good reasons in mitigation it should lead to erasure";* The Fifth Shipman Inquiry, Sir Donald Irvine, 2004.



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 worse 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 undue 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.

## Section F: Factors relevant to seriousness in specific case types

Case Type	Very serious	Serious	Aggravating Factors	Mitigating Factors
AUDIT	<ul style="list-style-type: none"> <li>• Acting as an auditor when ineligible</li> <li>• Responsible Individual signs audit report without conducting audit</li> <li>• Repeated seriously defective work</li> </ul>	<ul style="list-style-type: none"> <li>• Audit work of a seriously defective standard (eg breaches of Statements of Auditing Standards)</li> <li>• Lesser forms of poor audit work</li> </ul>	<ul style="list-style-type: none"> <li>• Whether any loss to clients or third parties</li> <li>• Consequences of incorrect/poor audit work</li> <li>• Number of accounts audited and the period of time involved</li> </ul>	<ul style="list-style-type: none"> <li>• Inadvertent/minor breach of the regulations</li> <li>• Steps taken to correct matters</li> <li>• Subsequent audit work satisfactory</li> </ul>
INSOLVENCY	See Section H			
BREACHES OF CLIENT MONIES REGULATIONS	<ul style="list-style-type: none"> <li>• Drawing remuneration from client monies without prior authorisation</li> <li>• Failure to properly/adequately account for client monies</li> <li>• Failing to repay client monies in accordance with terms of agreement</li> <li>• Client monies not held in designated client account</li> <li>• Paying a personal or business expense from client account</li> </ul>	<ul style="list-style-type: none"> <li>• Paying monies other than client monies into client account</li> <li>• Failure to account for interest on client monies</li> <li>• Failing to maintain accurate records and controls of client monies received</li> </ul>	<ul style="list-style-type: none"> <li>• Large number of clients involved</li> <li>• Repeated breach</li> <li>• Loss to clients/third parties</li> <li>• Account overdrawn</li> </ul>	<ul style="list-style-type: none"> <li>• No benefit to the practitioner resulting from the breach</li> <li>• Matters promptly rectified when brought to member's attention</li> <li>• Breach occurred only once</li> <li>• Sums held for a very short period</li> <li>• No loss to clients/third parties</li> <li>• Clients compensated for any loss</li> <li>• Procedures introduced to avoid recurrence</li> </ul>
STUDENT ISSUES	<ul style="list-style-type: none"> <li>• Misconduct relating to examinations, such as: <ul style="list-style-type: none"> <li>- Impersonation of another ACCA student</li> <li>- Obtaining improper assistance from another</li> <li>- Plagiarism</li> <li>- Unauthorised materials in the possession of the student with intention to cheat</li> </ul> </li> <li>• Student holding out as ACCA Member</li> </ul>	<ul style="list-style-type: none"> <li>• Failing to comply with instructions from invigilator</li> <li>• Unauthorised materials in the possession of the student with no intention to cheat</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to rectify conduct, where rectification is possible</li> </ul>	<ul style="list-style-type: none"> <li>• Rectified conduct immediately, where rectification is possible</li> </ul>
CRIMINAL CONVICTIONS	<ul style="list-style-type: none"> <li>• Dishonesty offences</li> <li>• Serious assault</li> </ul>		<ul style="list-style-type: none"> <li>• Nature and circumstances of the offence</li> <li>• Sentence imposed by the Court</li> </ul>	<ul style="list-style-type: none"> <li>• Nature and circumstances of the offence</li> <li>• No issue of integrity arises</li> <li>• Sentence imposed by the Court</li> </ul>
PRACTISING CERTIFICATE ISSUES	<ul style="list-style-type: none"> <li>• Engaging in public practice without holding a PC</li> <li>• Being a director, partner or sole proprietor in firm engaged in public practice without holding a PC</li> <li>• Falsely described/misrepresented the firm as Chartered Certified Accountants</li> <li>• Failing to hold (or hold adequate) PII</li> <li>• Students carrying on public practice</li> </ul>		<ul style="list-style-type: none"> <li>• Extensive practice</li> <li>• Over significant period of time</li> <li>• Continued conduct after became aware he was in breach</li> <li>• Wilful failure</li> </ul>	<ul style="list-style-type: none"> <li>• Minimal public practice work carried out</li> <li>• Short period of time</li> <li>• Rectified the conduct immediately</li> </ul>

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

SECTION G: TABLE OF SANCTIONS AVAILABLE

	Member	Former Member	Non-Member undertaken to be bound	Firm	Former Firm	Registered Student	Former Registered Student	Affiliate	Former Affiliate
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 be paid by member to complainant not exceeding £5,000	•	•	•	•	•				
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 specified exam(s) or parts of exam(s) for a specified period						•			
12. Disqualified from specified exam(s) or parts of exam(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. 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: • 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 be referred to the Admissions and Licensing Committee	•	•	•	•	•	•	•	•	•
15. Any future application for membership be referred to the Admissions and Licensing Committee						•		•	

# SECTION H: INSOLVENCY COMMON SANCTIONS GUIDANCE

## Part 1

### 1 Background

There are seven 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.

Each RPB follows its own disciplinary processes. These are set out in the rules, regulations and bye-laws of the organisation. Nevertheless, the RPBs apply a common approach when they impose sanctions to make sure that outcomes are as consistent as possible across RPBs.

The *Common Sanctions Guidance* aims to provide transparency and ensures that, if the findings against an insolvency practitioner are consistent, the outcome and sanction across the RPBs are comparable. The following RPBs are implementing this common guidance: ICAEW, IPA, ACCA, ICAS and CAI.

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 the same mistake several times, this may mean they've performed their work inefficiently or incompetently to such an extent or on such a number of occasions as to have brought discredit to themselves, their regulator, or the insolvency profession.

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

When a disciplinary committee or tribunal considers what would be an appropriate sanction, it will refer to this guidance and may, within its discretion, vary the sanction depending on aggravating and mitigating factors.

### 2 Sanctions

When a disciplinary committee or tribunal considers:

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

it should consider the following factors:

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

There are two types of sanction available to the disciplinary committee or tribunal: financial sanctions and non-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 having regard to any aggravating and mitigating factors (see below).

## Financial sanctions

The *Common Sanctions Guidance* sets out two approaches to arriving at a financial sanction:

- the starting point (the approach adopted by, ICAEW, ICAS and CAI); and
- the range (the approach adopted by ACCA (in relation to insolvency matters only), and the IPA).

**How the starting point operates:** 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. For each type of complaint there is a suggested starting point for the 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.

**How the range operates:** For each type of complaint there is a range of sanctions. These are indicative only and do not bind the disciplinary committee or tribunal. The committee or tribunal will decide the penalty by looking at all the relevant factors before determining which penalty is proportionate. After then taking into account any aggravating or mitigating factors the committee or tribunal may decide a more or less severe penalty. While the committee or tribunal will be guided by the range of sanctions, it does not bind the committee or tribunal therefore the penalty decided might fall below or above the range.

In both, the disciplinary committee or tribunal will be influenced by the mitigating and aggravating factors set out below. Financial penalties should not be regarded as setting either a maximum or minimum sanction. However, RPBs may have an upper limit on the financial sanction that can be imposed. If such a limit applies, this will be set out in the individual RPB's disciplinary rules.

## Non-financial sanctions

These can range from an unpublished caution or warning; reprimand; severe reprimand; suspension of a licence or membership; withdrawal of a licence; to exclusion from membership, as set out in the RPBs' 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.

## 3 Aggravating and mitigating factors

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

A disciplinary committee or tribunal will normally consider the aggravating and mitigating factors summarised below before it decides on the appropriate level of

sanction. The list is not exhaustive and not all the factors will apply to a particular case.

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

#### **Aggravating factors**

- 1 The conduct was dishonest, deliberate or reckless
- 2 The conduct was intentional
- 3 Concealment of wrongdoing
- 4 Lack of cooperation with regulator
- 5 Repeated course of conduct
- 6 Re-occurrence of conduct previously subject of reminder, warning or other sanction
- 7 The benefit derived or likely to be derived from the conduct by the insolvency practitioner or their firm
- 8 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
- 9 Poor disciplinary or regulatory history
- 10 Lack of understanding or acceptance of charge
- 11 Seriousness generally
- 12 Other relevant information

#### **Mitigating factors**

- 1 Prompt rectification
- 2 Prompt repayment of (unauthorised) fees
- 3 Personal mitigation: ill health, financial circumstances, good standing
- 4 Age of issues under consideration
- 5 Up-to-date regulatory or monitoring information suggesting issues addressed
- 6 Generally, risk of re-occurrence or repetition
- 7 Absence of adverse effect of conduct on insolvency assignment or third parties.
- 8 Self-reporting and/or acceptances of conduct issues
- 9 Single isolated issue
- 10 Other relevant information including references or testimonials from third parties

In the lists above, where any matter is listed as an aggravating factor, the converse should be treated as a mitigating factor and vice versa.

### **4 Costs**

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

### **5 Publicity**

When a disciplinary committee or tribunal makes an adverse finding and order, the RPB will publish the record of decision in the manner it thinks fit. The insolvency practitioner will usually be named in that publicity. Disciplinary committees or tribunals will rarely order that there should be no publicity associated with an adverse finding.

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

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 aggravating and mitigating factors.

	Allegation	Starting point for financial sanction	Range of financial sanctions	Non-financial sanction
1	Acts of dishonesty, criminal convictions, adverse findings by regulatory and other bodies where the underlying conduct involves dishonesty			Exclusion and licence withdrawal
2	Unauthorised diversion of funds into own account, other estates or third parties	Fine of £15,000 or equal to 150% of fee charged	Fine of £10,000 - £20,000	Exclusion or licence withdrawal
3	Acting as an insolvency practitioner without a licence	Fine of £10,000	Criminal matter Fine may not be appropriate in every case	Exclusion
4	Drawing unauthorised remuneration	Fine related to the level of the unauthorised fee drawn.	The full range of sanctions available to the RPB, taking into account the aggravating and mitigating factors above.	Severe reprimand
5	Material breach of the fundamental principles of the Insolvency Code of Ethics	Fine commensurate with the breach	Fine commensurate with the breach	Severe reprimand



6	Major failure to submit returns (eg, CDDA returns)	Fine of £5,000	Fine of £500 - £7,500	Severe reprimand
7	Failure to convene key creditor meetings	Fine of £5,000	Fine of £500 - £7,500	Severe reprimand
8	Accepted an appointment as administrator when no statutory purpose achievable	If a major failure, fine of £5,000	Fine of £500 - £7,500	Severe reprimand
9	Material failure to comply with the provisions of a SIP	Fine of £5,000	Fine of £500 - £7,500	Severe reprimand
10	Failure to take adequate steps to realise assets	If a major failure, fine of £5,000	Fine of £500 - £7,500	Severe reprimand
11	Delay in progressing administration of an insolvency estate	Fine of £2,500	Fine £500 - £5,000	Reprimand
12	Repeated failure to respond at all, or to respond promptly, to letters, telephone calls, emails	Fine of £1000	Fine £500 - £1,500	Reprimand
13	Minor delay in submitting returns	Fine of £500	Fine of £500 - £7,500	Reprimand
14	Delay in convening annual meetings	Fine of £500	Fine of £500 - £7,500	Reprimand