

1. Purpose of the guidance

This guidance aims to provide a framework to the Institute's (otherwise known as Institute of Financial Accountants (IFA)) Investigations, Disciplinary and Appeal Committees to make sentencing decisions regarding its Members, Students, Affiliates and Member Firms. The guidance covers the roles and sanctioning powers of the Conduct Committees as well as the decision-making process on sentencing. This guidance will help to ensure that IFA's disciplinary process is robust, fair, consistent and proportionate.

2. Key principles

The key principles which apply to sentencing are:

(i) Maintaining the reputation of the profession

Lord Bingham, in *Bolton v The Law Society* [1993] 2 All ER 486, emphasised the importance of protecting the reputation of the profession as a justification for a sanction. He said:

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

He concluded that:

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

(ii) Protecting the public

When considering sanctions, the Conduct Committees should consider the Member's clients and the public at large and whether the public can be properly protected.

(iii) Standards of professional conduct

The IFA demonstrates its commitment to high ethical and professional standards by having bye-laws, regulations and guidance for its Members, but also by monitoring adherence to those standards. The IFA's disciplinary process is a crucial part of the process for maintaining professional standards by imposing disciplinary and sentencing orders and also publishing its findings publicly.

3. Sanctioning powers of committees

The role of the Conduct Committees and the sanctions available to them are set out in the Disciplinary Regulations that took effect on 1 January 2018. The range of powers of sentencing varies for each Conduct Committee, as outlined below.

(i) Investigations Committee

In accordance with the IFA's Disciplinary Regulations, the sanctions available to the Investigations Committee by way of Consent Order are:

- (a) caution;
- (b) reprimand; and
- (c) a fine and/or costs.

In all cases, the Member, Student, Affiliate and Member Firm must agree to the terms of a Consent Order in writing within 21 working days. If there is no consent to the order the Complaint will be automatically referred to the Disciplinary Committee.

(ii) Disciplinary Committee

In accordance with the IFA's Disciplinary Regulations, the sanctions available to the Disciplinary Committee are:

- (a) caution;
- (b) reprimand;
- (c) severe reprimand;
- (d) impose conditions on the Member, Student, Affiliate or Member Firm;
- (e) if not holding a practising certificate, being deemed ineligible for the award of a practising certificate in the future (or for a stated number of years);
- (f) if in practice, their practising certificate being suspended or withdrawn;
- (g) suspension as a Member, Student, Affiliate or Member Firm with re-instatement being subject to conditions as decided by the Disciplinary Committee; and
- (h) expulsion from the IFA and/or other entities of the IPA Group.

More than one sanction may be imposed. As an alternative or in addition to the above sanctions, the Disciplinary Committee has the power to levy a fine and/or order that the Member, Student, Affiliate or Member Firm pay the costs incurred in investigating and considering the Complaint. There shall be no maximum fine and unlimited costs shall be recoverable at the discretion of the Disciplinary Committee.

(iii) Appeal Committee

The sanctions available to the Appeal Committee are that it:

- (a) may confirm, vary or rescind any sanction imposed by the Disciplinary Committee, as detailed above;
- (b) may impose any sanction that could be imposed by the Disciplinary Committee and likewise order costs that could be imposed by the Disciplinary Committee;
- (c) may also order the Member, Student, Affiliate or Member Firm, to pay the costs incurred in relation to the appeal proceedings even where an appeal is withdrawn. The Appeal Committee has also the power to levy a fine and/or order that the Member pay the costs incurred in investigating and considering the Complaint. There is no maximum fine and unlimited costs shall be recoverable at the discretion of the Appeal Committee;
- (d) may direct that the Complaint shall be re-heard by a new Disciplinary Committee.

4. General sentencing principles

These principles are for guidance only, and are not exhaustive. Each case will be considered and determined on its facts and merits.

(i) General objectives of the IFA

When a Conduct Committee considers whether to impose a sanction and what sanction to impose, it should consider a number of factors, in particular the general objectives of the IFA, outlined below.

The IFA exists to:

- (a) maintain the reputation of the accountancy profession;
- (b) protect the public interest; and
- (c) promote, encourage and maintain high professional standards.

(ii) Objectives of the Conduct Committees

The Conduct Committees carry out a public function in accordance with the duty to protect the public interest and in accordance with the principles set out in *Bolton v The Law Society* [1993] 2 All ER 486.

The Conduct Committees have important objectives to:

- (a) ensure that Members found guilty of serious professional misconduct do not have the opportunity to repeat the offence; and
- (b) maintain the high reputation of, and public confidence in, the IFA and the accountancy profession.

(iii) Principles

In deciding what sanctions to impose the committees should apply the principle of proportionality, weighing the interests of the public with those of the Member, as outlined in *Allister Walker v Bar Standards Board*.

The interests of the public include both protection of Members of the public and maintaining public confidence in the profession.

In accordance with the principles stated in *Bolton*, the primary purpose of disciplinary proceedings is not punitive and in considering the interests of the Member many of the traditional grounds of mitigation may be given less weight as a result. In assessing proportionality the committee's consideration will include the factors set out below. The committee will bear in mind the predominant purpose of the disciplinary proceedings as described above. Having considered this, it is for the Conduct Committees to consider what weight to attach to any aggravating factors or mitigating factors of the misconduct in question, the personal circumstances of the member and any mitigation given in support of the Member.

(iv) Aggravating factors

The following factors may be taken into consideration by the Conduct Committees in determining sanction. This is not an exhaustive list, nor will the relative position of an individual factor on the list below necessarily determine its importance in any particular case. The weight to be given to each factor is a matter for the individual committees to decide.

- A finding of dishonesty, fraud or intent to mislead including whether it involved breaches of criminal law or findings of dishonesty or fraud in a civil court. A very serious view will be taken of lack of honesty in the behaviour of professional accountants or those aspiring to become Members of the profession.
- Misconduct which is also a breach of criminal law. Regard may be had to the nature and seriousness of the offence.
- The nature and seriousness of the consequences of the breach of the IFA's Bye-law 13.1.
- Whether the Member intentionally or recklessly failed to meet the Institute's requirements.
- Any past Disciplinary Record, including date, nature, seriousness and penalty.
- The period over which the misconduct occurred or was repeated.
- Loss to third parties including the public generally.

- Improper direct or indirect gain to the Member.
- Obstruction or non-cooperation with the Institute during the investigation of the Complaint.
- A breach of trust in relation to the public and/or the employer and the extent to which this was planned.

(v) Mitigating factors

The Member will be given an opportunity to address the committee in mitigation of the penalty. The following may be treated as mitigating factors, depending on the facts and seriousness of the case. This is not an exhaustive list, nor will the relative position of a factor in the list below necessarily determine its importance in any particular case. The weight to be given to each factor is a matter for the committee.

Any admission of misconduct as defined in IFA's Bye-law 13. Regard will be had to when such admission is made. An earlier admission may have greater weight than one given later in the proceedings.

- Whether the conduct was inadvertent, or isolated.
- Whether the conduct/offence was committed in a professional capacity.
- Genuine indications of remorse or insight.
- Attempts by the Member to take corrective action such as correcting the work free of charge or mitigating any loss to third parties or the public generally.
- Delay by any Complainant in bringing a matter to the attention of the Institute or by the Institute in pursuing disciplinary action – but delay may have less weight than, for example, in the criminal jurisdiction as the primary consideration of the committee is protection of the public.
- Personal circumstances of the Member which affects their ability to work, such as ill health or family tragedy. However, personal circumstances may have less weight than, for example, in the criminal jurisdiction as the primary consideration of the conduct committee is protection of the public.
- Evidence of previous good character, including an unblemished Disciplinary Record.
- Testimonials by third parties.

5. Imposing sanctions

In considering the correct sanction to impose the Conduct Committee should consider first the least serious sanction. If this sanction is inappropriate, it should consider the next most serious and so on until the appropriate sanction is determined. The committee may impose one or more sanctions. In considering what sanctions to impose the committee shall have regard to any previous breaches of Bye-law 13 and any entry on the Disciplinary Record of the Member.

The Committee should give reasons why it arrived at the sanction imposed. Its rationale should explain what issues and evidence were considered such that its decision can be clearly understood by a third party.

The Member may appeal against any sanction imposed by the Disciplinary Committee to the Appeal Committee which may confirm, rescind or vary it and impose any sanction which could have been imposed by the Disciplinary Committee.

These principles are for guidance only, and are not exhaustive. Each case will be considered and determined on its facts and merits.

6. The process of determining a sentencing order

When a Conduct Committee decides that a Complaint has been proved or when a Defendant admits a Complaint, the Conduct Committee must then decide what to include in its sentencing order.

At the Investigations Committee neither Member, Complainant nor IFA staff appear in person. If the committee decides by majority decision that there is a liability to disciplinary action under Bye-law 13 the committee will decide first of all whether a referral to the Disciplinary Committee is appropriate (for example, as a matter of public interest, or if the matter warrants a more severe penalty than the Investigations Committee is empowered to impose). Otherwise, the Investigations Committee will impose by way of a Consent Order one or more of the sanctions set out in section 3(i). The Chair will be possessed of the Disciplinary Record of the Member and will add this to the discussion only if a liability to disciplinary action has been decided. The IFA's costs, and any application for a fine or costs order, will have been disclosed previously in the case manager's report.

The list below summarises the sequence of events at the Disciplinary Committee and Appeal Committee.

The Presenting Officer will:

- outline the relevant facts;
- tell the conduct committee about any previous Disciplinary Record;
- make an application for costs to be paid by the Defendant.

The Defendant or their representative will explain any mitigating factors relating to the facts of the Complaint and to personal circumstances.

The Conduct Committee will leave the room and consider its decision in private, including the sentencing order. The Institute's sentencing order covers sanctions, costs and publicity, as outlined in the disciplinary regulations.

7. The sanctions

(i) Caution

This is the least serious sanction. It constitutes an unpublicised entry placed on the record of the Member for a period of time. It may be regarded as a "warning sign" of potential problems rather than as a judgement and for this reason it is neither publicised nor permanent.

A Caution can be imposed by the Investigations Committee only with the consent of the Member. Where the Investigations Committee is considering imposing a Caution and the Member does not consent the matter will be referred to the Disciplinary Committee. The Disciplinary and Appeal Committees can impose a caution without the consent of the Member. The Conduct Committee imposing the Caution should specify the period the Caution should remain on the Member's record.

If the Member consents to a Caution by the Investigations Committee no further action will be taken against the Member in respect of the subject matter of the finding of misconduct unless similar Complaints or allegations are received and proved while the Caution remains on the Member's record. If this happens the Investigations Committee may refer the matter and any other matters to the Disciplinary Committee or, with the consent of the Member, issue an order for a reprimand, as appropriate. However, the existence of a Caution may nevertheless be relevant to any future decisions on sanctions in other misconduct cases.

This sanction may be appropriate where most of the following factors are present:

- the behaviour was not so serious as to indicate a fundamental incompatibility with continued membership of the Institute;
- the breach was an isolated incident which was not deliberate;
- there is a breach at the lowest end of the spectrum of seriousness;
- little or no appreciable harm has been caused to individuals, employers, the Institute or the general public;
- the Member has admitted their actions, particularly where admission is made early in the proceedings;
- the Member shows genuine insight or remorse;

- there have been steps to make good any loss;
- previous good character;
- relevant and appropriate testimonials;
- no repetition of the behaviour since the incident;
- exceptional personal circumstances; and
- where it might be appropriate to register a warning about the Member's conduct.

(ii) Reprimand

A reprimand may be imposed by the Investigations Committee, but only with the consent of the Member. If the Member refuses to consent the matter will be referred to the Disciplinary Committee.

The Disciplinary and Appeal Committees may impose a reprimand without the consent of the Member.

This sanction may be appropriate where most of the following factors are present:

- it might be appropriate to express formal and public disapproval of the Member's conduct;
- the breach was an isolated incident, which was not deliberate;
- the behaviour was not so serious as to indicate a fundamental incompatibility with continued membership of the institute;
- the behaviour is at the lower end of the spectrum of seriousness but is more serious than would be appropriate for a Caution;
- little or no harm has been caused to individuals, employers, the Institute or the general public;
- the Member shows genuine insight and remorse;
- the Member may have admitted his actions, particularly where admission has been made early in the proceedings;
- there have been steps to make good any loss;
- previous good character;
- relevant and supportive testimonials; and
- exceptional personal circumstances.

(iii) Severe reprimand

A severe reprimand may be imposed by the Disciplinary and Appeal Committees.

A severe reprimand may be appropriate where most of the following factors are present:

- the behaviour was above the lower end of the spectrum of seriousness and where a lesser sanction is not sufficient;
- the behaviour was not so serious as to indicate a fundamental incompatibility with continued membership of the Institute;
- the incident may not have been a single incident but the incidents taken together do not suggest a deliberate continuation of breaches of the Institute's bye-laws over a period;
- the Member has shown genuine insight and remorse;
- the Member may have admitted his actions but the admission may have been made late in the proceedings; and
- there may be exceptional personal circumstances.

(iv) Suspension

A Member may be suspended by the Disciplinary or Appeal Committees.

Suspension in relation to a Member or Student means an order that any application received from that Member or Student for re-admittance to membership or studentship during the definite period specified shall be rejected. The period of suspension should be specified.

A Suspension may be appropriate where many of the following factors are present:

- there is a serious breach of bye-laws which is of a nature or extent which cannot properly be met by a lesser sanction;
- there has been harm to an individual, employer, the Institute or the general public;
- there is no evidence of a fundamental incompatibility with membership of the Institute after the end of the Suspension and compliance with any conditions imposed;
- there is no significant evidence of continuing risk to the individuals or the general public after the end of the Suspension and compliance with any conditions imposed; and
- there may be exceptional personal circumstances.

(v) Loss of practising certificate

The Disciplinary and Appeal Committees can order the withdrawal of a member's practising certificate. The Institute will find it helpful to have the minimum period for withdrawal specified.

Withdrawal of a practising certificate may be appropriate where many of the following factors are present:

- there is a serious breach of the bye-laws which is of a nature or extent which cannot properly be met by a lesser sanction;
- there has been harm to a client or the general public;
- there is evidence of fundamental failings within the member's practice;
- there is evidence of continuing risk to clients or the general public.

(vi) Expulsion

A Member may be Expelled by the Disciplinary or Appeal Committees. Expulsion means expulsion from the Institute indefinitely.

Expulsion in relation to a Member or Student means an order that if that former Member or Student at any time applies to be re-admitted to membership or studentship of the Institute the application shall be treated in accordance with Bye-law 6.

An expulsion may be appropriate where any of the following factors are present:

- there has been a serious breach of the bye-laws and no lesser sanction is appropriate;
- there has been serious harm to an individual, employer, the Institute or the general public;
- there is evidence of a fundamental incompatibility with Membership of the Institute;
- the Member has shown little or no genuine insight or remorse into their behaviour;
- there has been dishonesty, fraud or intent to deceive;
- individuals, employers, the general public or the Institute remain at risk;
- there has been a deliberate course of conduct over a period of time.

(vii) Fine

A fine may be imposed as an alternative or in addition to any of the above sanctions. The amount of the fine has no upper limit. The Member should be given an opportunity to address the committee before imposing a fine if they are present at the hearing. The Member may be given a reasonable time to pay, normally limited to a maximum of one year, if necessary, by instalments. However, this is a matter for agreement between the IFA and the Member not for the conduct committees.

In considering whether to impose a fine and the amount of any fine the Disciplinary or Appeal Committee will take into account:

- the nature and seriousness of the misconduct;
- the nature and seriousness of the consequences of the misconduct;
- any other sanction imposed upon the Member and the value of any Cost Order made against the Member;
- any evidence before the committee or submissions made to the committee, including the Member's statement of means.

8. Costs

(i) Against the Member

In bringing disciplinary proceedings, the IFA exercises a public function which it is required to perform in the public interest. It has been said by the courts that in considering an award of costs against a Member the Conduct Committee must consider on the one hand the financial prejudice to the particular Member, weighed against the need to encourage public bodies to exercise their public function of making reasonable and sound decisions without fear of exposure to undue financial prejudice, if the decision is successfully challenged.

A summary of costs incurred is sent to a Member before the hearing together with a covering letter explaining that if the Complaint is found proven an application will be made by the conduct committee for an order for the costs to be paid. Costs against a Member may include the costs of investigating the allegation as well as the costs of the hearing(s). Accordingly, a Costs Order will not be imposed as any form of penalty against the Member. The amount of costs awarded against the Member has no upper limit.

Further, the IFA exercises various supervisory functions in accordance with legislation and its own bye-laws. Sometimes the disciplinary action in question will relate to the Member's evasion of the costs of such regimes (such as anti-money laundering (AML) supervision or practising without a practising certificate). In such cases the IFA may seek recompense for the fees lost to it by the Member's actions.

Members should attend any hearing of the Conduct Committees with a statement of means. This statement of means will be requested by the Institute as part of the disciplinary process. If the Member has been invited to provide information about their financial circumstances by way of a statement of means and has failed, or declined to do so, a Conduct Committee will assume that the Member is able to meet any financial penalty or costs that the Conduct Committee orders. The Member will be given an opportunity to address the Conduct Committee on the issue of costs as part of the disciplinary process, if they are present at the hearing.

The combination of fines and costs should not be beyond the ability of the Member to pay. If the combination of the two is above this level, the costs should be reduced, not the fine. The Member may be given a reasonable time to pay, normally limited to a maximum of one year, if necessary by instalments. However, this is a matter for agreement between the IFA and the Member, not for the Conduct Committees.

(ii) Against the IFA

Costs will not normally be awarded against the Institute where some or even all the allegations are successfully challenged. The courts have cited dishonesty or lack of good faith on the part of a regulatory body as the only circumstances where costs may be awarded against the regulator (on the application of *Murtagh v Solicitors Regulation Authority (2013)*).

9. Publicity

Apart from a Consent Order Caution, when a Conduct Committee finds a Complaint proven and makes a sentencing order the record of its decision will be published, unless an appeal has been made in the requisite time as outlined in the disciplinary regulations.

The IFA will publish the Conduct Committee's decision at ifa.org.uk/disciplinarydecisions and in the IFA bi-monthly magazine. Unless the Institute directs otherwise, a record of decision includes the name and address of the Defendant and describes the finding and sentencing order (if any) made against them.

GLOSSARY

“Affiliate” means an affiliate of the Institute in accordance with the bye-laws.

"Appeal Committee" means the Appeal Committee established by the Disciplinary Regulations to hear appeals from decisions of the Disciplinary Committee.

“Bye-laws” means the bye-laws of the Institute as amended from time to time.

“Caution” means an entry placed on the Disciplinary Record of the Member, Student, Affiliate or Member Firm. No further action will be taken in respect of the matter, unless further Complaints or allegations regarding the Member, Student, Affiliate or Member Firm are received. If this occurs, the original matter may be reconsidered alongside any new matter and taken into account by the relevant Conduct Committee in deciding what if any sanction to impose on the Member, Student, Affiliate or Member Firm.

“Complainant” means a person or body who has made a Complaint against a Member, Student, Affiliate or Member Firm of the Institute.

"Complaint" means an allegation regarding facts or matters indicating that a Member, Student, Affiliate or Member Firm may have become liable to disciplinary action in accordance with Bye-law 13 (liability to disciplinary action).

“Conduct Committees” means any one or more of the Investigations Committee, Disciplinary Committee or Appeal Committee.

"Consent Order" means an order made by the Investigations Committee in relation to a Complaint disclosed under these regulations by a Complainant, to which the Member, Student, Affiliate or Member Firm has agreed.

“Costs Order” means an award of costs to be paid by the Member, Student, Affiliate or Member Firm so as wholly or partly to reimburse the Institute such reasonable costs and expenses as are incurred in connection with the investigation and determination of the disciplinary action including any appeal.

“Defendant” means a Member, Student, Affiliate or Member Firm against whom a formal Complaint has been referred to the Disciplinary Committee.

"Disciplinary Committee" means the Disciplinary Committee established by the disciplinary regulations to adjudicate on matters referred to it by the Investigations Committee.

"Disciplinary Record" means all orders, findings, fines, penalties and sanctions whether made by the Investigations Committee, the Disciplinary Committee or the Appeal Committee, to which the Member, Student, Member Firm or Affiliate has at any time been subject.

“Expelled” means expulsion as a Member, Student, Affiliate or Member Firm of the Institute indefinitely.

"Institute" means the Institute of Financial Accountants.

"Investigations Committee" means the Investigations Committee established by these regulations which undertakes such functions relating to disciplinary proceedings allocated to it by these regulations.

“Legal Assessor” means a person appointed by the Institute to provide legal advice to the Disciplinary and/or Appeal Committees and who shall be independent from those committees.

"Member" means a Member of the Institute in accordance with the bye-laws.

“Member Firm” means a Member Firm in accordance with the bye-laws.

“Practice” means practice as a public accountant in the United Kingdom in accordance with the bye-laws.

“Practising Certificate” means a certificate issued to a Member under the Institute’s Public Practice regulations in force from time to time authorising the Member to engage in Public Practice in accordance with the bye-laws.

“Presenting Officer” means a person appointed by the Institute to present a Complaint to the Disciplinary Committee or Appeal Committee.

“Student” means a student of the Institute in accordance with the bye-laws.

“Suspension” means suspension of a Member; Student, Affiliate or Member Firm from the Institute for a definite period of time or suspension of a Member or Member Firm from engaging from public practice for a definite period of time.

APPENDIX

Categories of Complaint

The IFA wants Conduct Committee members to make consistent decisions and orders. It also wants the approach to sanctions to be consistent and proportionate. It is important that Members, Students, Affiliates and Member Firms who are the subject of complaints can see the range of penalties and orders likely to be imposed and know that the same approach, taking into account aggravating or mitigating circumstances outlined above, will be used in every case.

Criminal convictions, adverse findings by other regulatory bodies	Suggested starting sanction
Conviction involving dishonesty, breach of trust or money laundering	Expulsion and a fine of £5000
Conviction not involving dishonesty, breach of trust or money laundering where the member receives a custodial sentence (whether suspended or not)	Expulsion and a fine of £3000
Conviction not involving dishonesty, breach of trust or money laundering where the member does not receive a custodial sentence	Severe reprimand and a fine £1000
Disqualification as a company director, trustee or misappropriation of funds from another position of trust	Expulsion and a fine of £3000
Other misconduct as a company director, trustee or other position of trust	Severe reprimand and a fine of £1000
Failure to comply with the Money Laundering Regulations 2017	Severe reprimand and a fine of £2000
Adverse finding by another regulatory body involving dishonesty	Expulsion and a fine of £3000
Adverse finding by another regulatory body not involving dishonesty	Reprimand and a fine of £1500

Breach of IFA Bye-laws or Regulations	Suggested starting sanction
Practising without a practising certificate	Severe reprimand and a fine of £1500
Practising without carrying adequate professional indemnity insurance	Severe reprimand and a fine of £1500
Failure to cooperate with arranging or following a monitoring visit	Severe reprimand and a fine of £1000
Failure to cooperate with the disciplinary process	Reprimand and a fine of £1000
Failure to complete an annual membership/and/or firm practice return	Reprimand and a fine of £1000
Failure to notify of change of address	Reprimand and a fine of £500
Holding out to be in practice or using the IFA's designatory letters when not authorised to do so	Reprimand and a fine of £500
Failure to certify CPD compliance or provide evidence of such compliance	Reprimand and a fine of £500
Failure to make adequate arrangements for absence, incapacity or death	Reprimand and a fine of £500

Failure to comply with the Public Practice Regulations in respect of Clients Money	Reprimand and a fine of £1000
Failure to provide engagement letter to client	Reprimand and a fine of £1000
Failure to respond properly to professional enquiry or handover	Reprimand and a fine of 1000

Ethical	Suggested starting sanction
Serious breach of fundamental principles	Severe reprimand and a fine of £3000
Less serious breach of fundamental principles	Reprimand and a fine of £1000
Failure to communicate with successor or transfer information	Reprimand and a fine of £1000

Poor service	Suggested starting sanction
Lack of attention, poor service or delay on client's affairs	Reprimand and a fine of £1000
Bad advice	Reprimand and a fine of £1000
Errors in client's accounts, financial statements, payroll, assurance tax returns or other client service	Reprimand and a fine of £1000

Failure to comply with an order from the Conduct Committees	Suggested starting sanction
Failure to comply with the order and/or failure to take advice	Severe reprimand and a fine of £1000
Other cases where a member failed to act or acted belatedly on an order	Reprimand and a fine of £750