

THE CHARTERED INSURANCE INSTITUTE
(“the Institute”)
INDICATIVE SANCTIONS GUIDANCE

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INDICATIVE SANCTIONS GUIDANCE

1. GENERAL

Introduction

1. This Indicative Sanctions Guidance document (“the Guidance”) provides guidance for the Case Examiner, the Disciplinary Panel and the Appeal Panel (“the Panel”) dealing with disciplinary complaints considering sanctions on Respondents as set out in Regulation 12.6 of the Disciplinary Regulations and the Disciplinary Procedure Rules.
2. Defined Terms used in this Guidance have the same meaning, unless the context otherwise requires, as set out in the Disciplinary Procedure Rules.
3. This Guidance illustrates current Institute sanctioning principles. Every case is fact specific and these are guidelines only – it is not intended to fetter the discretion of the Panel when deciding sanction. The exercise of the Panel’s powers and imposition of sanctions are solely for the Panel. This Guidance seeks to assist the parties, the public and the profession in understanding the Panel’s decision-making process.
4. The Panel deals with a wide variety of cases. Prescriptive, detailed guidelines for sanctions in individual cases are neither practicable nor appropriate. The Panel adopts broad Guidance. Its focus is to establish the seriousness of the misconduct and to determine a fair, consistent and proportionate sanction.

Equality and Diversity

5. The Panel is committed to promoting equality, diversity and inclusion in carrying out all its functions. It values and embraces difference and individuality. It aims to ensure that its processes and procedures are fair, objective and transparent and free from unlawful discrimination. Promoting equality is also a requirement under current and emerging equality legislation. Everyone who is acting for the Panel is expected to adhere to the spirit and letter of this legislation.

General

6. This Guidance is made by the Board under the Laws of the Institute which:
 - 6.1 empowers the Board to provide guidance concerning the exercise of its duties; and
 - 6.2 requires the Institute to have regard to any such guidance.
7. This Guidance establishes a framework for the imposition of sanctions in cases taking account of the wider context in which Members operate. Sanctions imposed in the past are not necessarily an appropriate benchmark for sanctions in future cases, though regard may be given to them.
8. The Guidance is intended to give the Panel a basis for considering what sanctions are appropriate in any given case and is intended to promote proportionality, clarity, consistency and transparency in decision-making. It also ensures that all parties are aware from the outset of the approach to be taken by the Panel in determining sanction. The Guidance is advisory and not binding on the Panel. The Panel remains the decision maker on sanction. Where it decides to depart from the Guidance it should explain its reasons for the departure.

9. The Guidance is subject to the Disciplinary Regulations and Disciplinary Procedure Rules. In the event of any conflict, Regulation 12.1 of the Disciplinary Regulations provides for its resolution. The procedure governing the Panel's consideration of the appropriate sanction is set out in The Disciplinary Regulations and Disciplinary Procedure Rules. Nothing in the Guidance is intended to be inconsistent with those provisions and the Guidance must be applied in accordance with the overriding principles of fairness and natural justice.
10. The Guidance is an evolving document. Periodically, it will be reviewed and (where appropriate) revised in the light of experience and new legislation. It cannot deal with every single situation and exceptions will sometimes arise. The Guidance should be considered alongside any precedents emerging from cases decided by the Panel.

Aims and Objectives of the Institute's Disciplinary Process

11. Sanctions are imposed where there is a finding by a Panel that a Member has committed a breach of the Laws of the Institute, or has failed to comply with any of his obligations.
12. In determining the appropriate sanction, a Panel should have regard to the purpose of imposing sanctions for breach in the context of professional discipline. Sanctions are imposed for a number of purposes, namely:
 - 12.1 to protect the public from Members whose conduct has fallen short of the standards reasonably to be expected;
 - 12.2 to maintain and promote public and market confidence in the insurance profession; and
 - 12.3 to declare and uphold proper standards of conduct amongst Members.

13. The primary purpose of imposing sanctions for breach of Laws is not to punish but to protect the wider public interest, although sanctions may have a punitive, deterrent or rehabilitative effect.
14. This Guidance has been developed to promote outcomes consistent with these purposes. This will be achieved by imposing sanctions which:
 - 14.1 aim to change the behaviour of the Member;
 - 14.2 aim to address any financial gain or benefit derived from a breach;
 - 14.3 are tailored to the facts of the particular case and take into account what is appropriate for the Member concerned and the complaint found;
 - 14.4 are proportionate to the nature of the complaint and the harm or potential harm caused;
 - 14.5 are rehabilitative, where appropriate;
 - 14.6 aim to deter misconduct by others.

2. PROCEDURE

Summary of Approach to Determining Sanction

15. The normal approach to determining sanction should be (in outline):
 - 15.1 Assess the nature and seriousness of the misconduct;
 - 15.2 Consider relevant aggravating or mitigating circumstances;

- 15.3 Consider any further adjustment for deterrence or rehabilitation;
- 15.4 Consider whether a discount for admissions is appropriate;
- 15.5 Decide which sanction(s) to order and the level/duration of the sanction(s) where appropriate;
- 15.6 Decide whether it is appropriate to make a costs order; and
- 15.7 Give an explanation at each of the six stages above, sufficient to enable the Respondent and the public to understand the Panel's conclusions.

Determination of Sanction

16. The Panel should consider the full circumstances of each case when determining which sanction or combination of sanctions it considers appropriate. This Guidance lists factors that may be relevant to the Panel's consideration. The factors are not listed in any particular order and it is for the Panel to decide on the weight to be allocated to each factor. The factors listed are not exhaustive, not all of the factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.
17. In deciding which sanction or combination of sanctions to impose, the Panel should have regard to the principle of proportionality. As a combination of sanctions can be imposed, all sanctions should be explicitly considered by the Panel.
18. In assessing proportionality, the Panel should consider whether a particular sanction is commensurate with the seriousness of the complaint found, the circumstances of the Member concerned and all the circumstances of the particular case.

19. A Panel that has found a complaint proved should therefore start by assessing the seriousness of the misconduct when deciding which sanction or sanctions to impose on the Member.
20. The seriousness of the complaint found should be determined by reference to a number of factors. These include the nature of the misconduct, the level of responsibility of the Member in committing the misconduct and the actual or potential loss or harm caused by the misconduct. The degree of responsibility is important when deciding sanction. The extent to which intent, recklessness, knowledge of the risks or likely consequences, negligence or incompetence are involved will vary.

Sanctions

21. The sanctions available to the Panel are set out at Rule 12.6 of the Disciplinary Regulations. The Panel may order such sanctions against the Member as it considers appropriate. These are reproduced below for ease of reference, in the same order:
 - (a) the Respondent be reprimanded;
 - (b) all or any of the Respondent's privileges of membership be withdrawn for a specified period;
 - (c) the Respondent's Statement of Professional Standing be suspended or withdrawn for a specified period and/or the Respondent be declared ineligible to apply for a Statement of Professional Standing for a specified period, subject also to the imposition of conditions on the issue/re-issue of the Statement of Professional Standing;

- (d) the Respondent at his own expense be required as a condition of membership to attend such additional training or to undertake such further tests of competence as the Disciplinary or Appeal Panel may determine;
- (e) the Respondent's employer and/or such appropriate Accredited Body (a body recognised as an Accredited Body by the FSA or any successor of that regulator) or regulatory body as the Disciplinary or Appeal Panel may determine be notified of such details of the decision as the Panel may determine as set out in Regulation 12.8;
- (f) a record of such details as the Disciplinary or Appeal Panel may determine be added to such electronic or other database as may from time to time be maintained or caused to be maintained by the Institute;
- (g) the Respondent be fined an amount not exceeding a maximum (currently £1,000) determined from time to time by the Board;
- (h) the Respondent be suspended from membership for a specified period of up to 3 years;
- (i) the Respondent be expelled from membership of the Institute (the Respondent may seek to have his status reviewed by a Panel after the expiry of 5 years commencing with the date the decision to expel is made);
- (j) the Respondent's membership be made subject to conditions;
- (k) the Respondent's examination candidature be rescinded, or script or paper or submission be disallowed;

- (l) the Respondent be excluded, for a specified period of up to 3 years, from examinations held by the Institute;
- (m) the Respondent be declared ineligible to apply for membership of the Institute for a specified period of up to 3 years;
- (n) where the Respondent is the Responsible Member for a corporate body which has Chartered status, he be removed from the role of Responsible Member for a specified period;
- (o) the Respondent be declared ineligible to be appointed as Responsible Member in a corporate body with Chartered Status for a specified period, subject also to the imposition of conditions on the eligibility to become or continue to be a Responsible Member;
- (p) such other sanction or order as the Panel considers reasonable and appropriate having regard to the objective of dealing with complaints justly and in ways which are proportionate within the context of securing and justifying the confidence of the public, employers and Members, including, where the Respondent is the Responsible Member for a corporate body which has Chartered status, referring that corporate body to the Institute's Corporate Chartered Title Committee;

Combination of Sanctions

- 22. The more serious the misconduct the more likely it will be to consider a range of sanctions.
- 23. Exclusion should ordinarily only be considered available as a sanction in relation to the most serious misconduct.

Common procedural issues affecting sanction

Admission, but dispute as to facts

24. A Respondent may admit the alleged misconduct, but dispute particular details. Where the dispute is such that it would materially affect sanction, the Panel decides the factual basis upon which sanction is based.
25. The Panel will only impose a sanction upon a Respondent where the particular misconduct is either admitted by, or proved against him.
26. If at a hearing to establish the facts on which sanction is to be based, the Respondent fails to adduce evidence in support of facts within his own knowledge, this entitles the Panel to draw such inference as it might see fit.
27. Once the factual basis has been established, the Respondent will have the chance to make representations as to the level of sanction before the Panel makes its decision.

Multiple/alternative allegations

28. Multiple allegations involving essentially the same wrongdoing committed concurrently, drafted in the alternative, or numerous similar examples of wrongdoing over a period of time, sometimes come before the Panel. When some or all of such allegations are found proved, it may be disproportionate and unjust to impose a sanction for each matter. In such a situation the Panel may in respect of matters found proved:
 - 28.1 impose a sanction, determined by the totality of the misconduct, which is specified as being in respect of all those matters; or
 - 28.2 impose a sanction on the more serious allegation/s, and make no separate order (or sanction) in respect of other more minor matters.

Sanction for each separate and distinct allegation

29. Where distinct and separate allegations are either admitted or proved the Panel may:

29.1 impose a particular sanction (determined by the totality of the misconduct) specified as being in respect of all matters; or

29.2 determine the individual seriousness of each separate and distinct proven allegation, and the appropriate sanction in respect of each. Sanctions imposed will be proportionate to the totality of the misconduct.

3. PARTICULAR SANCTIONS

No Order

30. Having regard to all the circumstances, where the Panel has concluded that the seriousness of the misconduct or culpability of the Respondent is low, the Panel may decide not to impose a sanction. This does not preclude the Panel from making an order for costs.

Reprimand (Reg. 12.6(a))

31. A Reprimand can be given in conjunction with another sanction. Circumstances in which a Reprimand either alone or in conjunction with a fine may be appropriate include where the misconduct was inadvertent or where the misconduct does not cast doubt on the general competence of the Member and where the misconduct is not so damaging to public and industry confidence in the standards of conduct of Members and in the profession that, in order to protect the wider public interest, ineligibility for membership, withdrawal of membership or exclusion would be the more appropriate sanction. Where the wider circumstances suggest a Reprimand is the appropriate sanction, the Panel should consider the seriousness of the

misconduct to determine whether a greater sanction is the more appropriate censure for the particular misconduct.

Withdrawal of Privileges (Reg. 12.6(b))

32. Withdrawal of privileges will be considered to deal with specific matters relating to the misconduct involved. Examples are not limited to but include removal of designations, exclusion from premises; access to website, CPD events.

Suspension or withdrawal of Statement of Professional Standing (SPS) (Reg. 12.6(c))

33. This sanction will be particularly considered when the Institute has been brought into disrepute.

Training (Reg.12.6())

34. Depending on the nature of the misconduct, the Panel may consider that preventative or educational training (for example an ethics course) may benefit the Member and require it to be undertaken at the Respondent's expense.

Notification (Reg.12.6(d))

35. The Panel may determine that it must or should notify any employer or relevant accrediting or regulatory body of the Panel's findings and decision.

Fines (Reg. 12.6(f))

36. A fine may be ordered, either alone or in combination with one or more other sanctions, where the Panel determines that the seriousness of the misconduct is such that a reprimand will not be a sufficient sanction on its own.
37. Some (but not prescriptive) examples of when the Panel may consider a fine to be appropriate are when the Respondent is deemed to have damaged the reputation, or

the public's perception of the Institute or its Members; or the Institute has suffered an economic loss; or if aggravating factors are present.

38. The current maximum fine is £1,000 and subject to review by the Board.
39. Before ordering a fine as the only sanction the Panel should consider whether this is in the wider interest given that it may be appropriate to censure the misconduct by ordering some other sanction as well.
40. In order to determine the appropriate level of fine to be paid the Panel will consider all the circumstances of the case including aggravating and mitigating factors. The Panel will fix the fine at a level which reflects the seriousness of and is proportionate to the misconduct and may act as an effective deterrent to future misconduct.
41. In considering proportionality and deterrence, in addition to the nature and seriousness of the misconduct, the Panel should take into account evidence of the Respondent's means.
42. In the absence of evidence of limited means, the Panel is entitled to assume that the Respondent's means are such that he can pay the fine which the Panel deems appropriate.

Suspension (Reg. 12.6(g))

43. The Panel's ability to suspend a Member's Statement of Professional Standing or membership should be considered as an appropriate sanction where the Member's misconduct has been so damaging that suspension should be imposed in order to safeguard the public interest and maintain public and market confidence in the standards of conduct of Members and in the profession. A period of suspension will be appropriate for misconduct that falls short of being fundamentally

incompatible with continued membership for which exclusion is likely to be the appropriate sanction.

44. In order to determine whether suspension is appropriate the factors to be considered should include:
 - 44.1 if the misconduct was dishonest;
 - 44.2 if the misconduct was deliberate;
 - 44.3 if the misconduct was reckless;
 - 44.4 the nature and importance of the standards breached;
 - 44.5 the duration and frequency of the misconduct;
 - 44.6 the amount of the financial benefit (including avoidance of loss) as a result of the misconduct;
 - 44.7 if the misconduct adversely affected a significant number of people in the United Kingdom (such as Members, investors, customers, employees, pensioners or creditors);if the misconduct involved or caused or put at risk the loss of significant sums of money;
 - 44.8 if the misconduct could undermine confidence in the standards of conduct in general of Members or the integrity of exams;
 - 44.9 if it is likely that the same type of misconduct will recur if suspension is not imposed;

- 44.10 if the Member concerned has failed to comply with any requirements or rulings of another regulatory or disciplinary authority relating to his conduct;
- 44.11 if the Institute (or any other disciplinary body) has taken any previous disciplinary action resulting in adverse findings against the Member;
- 44.12 if any other action or sanction (including sanctions for criminal offences) has been taken or imposed, either in or outside the United Kingdom, by any other regulatory, disciplinary or enforcement authority in relation to the same or similar matters.

Expulsion (Reg. 12.6(h))

- 45. The ability to exclude a Member from membership exists because certain misconduct is so damaging to the wider public and market confidence in the standards of conduct of Members and in the profession that removal of the Member's professional status is the appropriate outcome in order to safeguard the public interest.
- 46. Prior to exclusion from membership being ordered, all other available sanctions should be considered to ensure that the exclusion is the most appropriate sanction (either on its own or in conjunction with another sanction or sanctions) and is proportionate taking into account all the circumstances of the case.
- 47. Where the misconduct is fundamentally incompatible with continued membership, exclusion is likely to be the appropriate sanction. The factors set out above for determining whether an order of suspension would be appropriate will normally also be relevant considerations for the Panel considering whether to order exclusion. In addition to those matters, in order to determine whether to order

exclusion the Panel should consider whether any of the circumstances set out below are also present. If such circumstances are not present, the Panel can still order exclusion if the seriousness of the misconduct merits it. If such circumstances are present, a decision by the Panel not to exclude would require justification:

47.1 if the misconduct was dishonest, especially where persistent and/or covered up (dishonesty can amount to criminal dishonesty, even though no criminal charges may have been brought or personal or professional dishonesty that does not amount to a crime);

47.2 if the Member has been convicted of a criminal offence (save driving and minor offences) in the United Kingdom;

47.3 if the Member has been convicted outside the United Kingdom of an offence which would have constituted a criminal offence in the United Kingdom.

Rescinding candidature (Reg. 12.6(j)) and exclusion from exams (Reg. 12.6(k))

48. Where the misconduct relates to education or exams, such as plagiarism or cheating, the Panel will have particular regard to these sanctions either alone or in addition to other sanctions. Purely technical breaches will attract sanctions at the lower end, particularly reprimands. Any attempt to gain advantage will merit a higher sanction.

Declaration of ineligibility (Reg. 12.6(l))

49. Where the Panel orders an exclusion or suspension, it should have regard to the length of periods within which the Member may not apply for membership.

Removal as Responsible Member (Reg. 12.6(m, n))

50. The removal of the status of Responsible Member should be considered where the Member holds greater responsibility as the profession and public are entitled to higher expectations of integrity of such members.

Other sanction (Reg. 12.6(o))

51. The sanctions at Regulation 12.6 of the Disciplinary Regulations and above Guidance are not an exclusive list of sanctions which the Panel may consider. The variety of potential cases before the Panel requires that the Panel's discretion in determining the type and level of sanction should be unfettered save for 12(f).

Consensual Orders

52. Nothing in this Guidance prevents the Case Examiner from agreeing a Consensual Order at any time with the Respondent to dispose of the Complaint.

4. RELEVANT FACTORS

Intent

53. Factors tending to show whether the misconduct was deliberate include that the Member:
- 53.1 intended or foresaw that the likely or actual consequences of their actions or inaction would result in a breach of professional standards of conduct;
 - 53.2 knew that their actions were not in accordance with relevant rules, standards or procedures.
 - 53.3 sought to conceal their misconduct or took steps to conceal the misconduct or reduce the risk that it would be discovered;

- 53.4 was influenced to commit the misconduct believing it would be difficult to detect;
- 53.5 knowingly took decisions beyond his field of competence;
- 53.6 intended to gain advantage or benefit financially from the misconduct, either directly or indirectly;
- 53.7 repeated the actions.

Recklessnesses

54. Factors tending to show the misconduct was reckless include:

- 54.1 the Member appreciated there was a risk that their actions or inaction could lead to a falling short of professional standards of conduct; or
- 54.2 failed adequately to mitigate that risk; or
- 54.3 check if they were acting in accordance with relevant standards and/or codes of conduct.

Aggravating and Mitigating Factors

55. In addition to the above considerations, certain factors are likely, if present, to aggravate the misconduct or afford mitigation.

Aggravating Factors

56. Examples of aggravating factors include:

- 56.1 the Member failed to bring quickly, effectively and completely the misconduct to the attention of the appropriate regulatory, disciplinary or enforcement authorities, where relevant;
- 56.2 the Member failed to cooperate with or hindered the investigation of the misconduct by a relevant regulatory, disciplinary or enforcement authority;
- 56.3 no remedial steps have been taken since the misconduct was identified;
- 56.4 the misconduct involved an abuse of a position of trust;
- 56.5 the misconduct was committed with a view to profit (or avoidance of loss);
- 56.6 the Member's behavior is collusive;
- 56.7 the Member was acting without the necessary authorisations, licences or registrations;
- 56.8 the misconduct involved a significant public element, for example there is a risk of damage to public confidence in the profession, or significant numbers of people were affected;
- 56.9 if the Member has a poor disciplinary record, for example, if an adverse finding has previously been handed down against the Member by the Institute or any other disciplinary or regulatory body. The more serious and similar the previous misconduct or breach the more it will normally be regarded as an aggravating factor;

56.10 if a warning has previously been brought to the Member's attention, for issues similar or related to the conduct that constitutes the act of misconduct in respect of which the sanction is imposed;

56.11 if the Member held a senior position and/or supervisory responsibilities.

Mitigating Factors

57. Examples of mitigating factors include:

57.1 the conduct of the Member in bringing quickly, effectively and completely the misconduct to the attention of the Institute or the attention of other regulatory, disciplinary or enforcement authorities, where relevant. Self-reporting misconduct or breaches will warrant a higher discount than co-operation with an investigation which has been prompted by someone or something else;

57.2 the Member cooperated during the investigation of the misconduct by the Institute, or any other regulatory, disciplinary or enforcement authority. Earlier cooperation will attract greater credit;

57.3 remedial steps taken since the misconduct was identified;

57.4 if the Member has a good compliance history and disciplinary record;

57.5 if that Member held a junior position;

57.6 personal mitigating circumstances; and

57.7 the Member has demonstrated insight and/or apologised for the misconduct.

Adjustment for deterrence

58. If the Panel considers that the sanction arrived at, after determining the aggravating and mitigating factors as set out above, is insufficient to deter the Member who committed the misconduct, or other Members from committing further or similar misconduct, the Panel may take this into account in determining sanction. Circumstances where the Panel may do this include:

58.1 Where the Panel considers that previous Institute action in respect of similar misconduct has failed to improve standards of conduct of Members;

58.2 Where the Panel considers there is a risk of similar misconduct by the Member or by other Members in the future in the absence of a sufficient deterrent.

Discount for Admissions

59. Members subject to the Institute's disciplinary proceedings may be prepared to make admissions in respect of the facts of the case. The Institute recognises the benefits of such admissions and therefore the fine and/or other sanction that might otherwise be imposed in respect of any misconduct proved may be adjusted to reflect the extent, significance and timing of any admissions.

60. The Institute and the Member on whom a sanction is to be imposed may seek to agree an appropriate sanction including the amount of any fine and other terms, to be recommended to the Panel. In recognition of the benefits of such agreements, the Panel may agree to reduce the amount of the fine which might otherwise have been imposed to reflect the stage at which the Institute and the Member reached an agreement.

Costs

61. The Panel has the power to make such order as to costs as it thinks fit, including the payment by the Respondent of costs or a contribution towards costs of such amount (if any) as the Panel may consider reasonable. Such costs are those arising from or ancillary to proceedings before it.
62. The Panel may make an order for the payment of a fixed amount of costs. This will be the usual order where the parties are in agreement as to liability for, and the amount of, those costs. Otherwise the Panel will determine liability for costs and their amount.
63. In considering the Respondent's liability, the panel will have regard to the following principles:
 - 63.1 it is not the purpose of an order for costs to serve as an additional punishment of the Respondent, but to compensate the Institute for the costs incurred in bringing the proceedings;
 - 63.2 any order imposed must not exceed the costs actually and reasonably incurred by the Institute.
64. Before making any order as to costs, the Panel will give the Respondent the opportunity to adduce financial information and make submissions.
65. For completeness it should be noted that, if a complaint against a Respondent is not upheld, then the Respondent can ask the Panel to make an order for costs against the Institute. However, as is normal in disciplinary cases, the rules as to the award of costs against the Institute are more restrictive than in the case where the Institute claims costs against a Respondent: see *Baxendale-Walker v The Law Society* [2007]

EWCA Civ 233, [2008] 1 WLR 426. Costs will only be awarded in favour of a Respondent where the Institute has acted frivolously or vexatiously. Further the costs awarded must in any event be reasonable and proportionate.

5. REMINDER OF APPROACH TO DETERMINING SANCTION

66. The normal approach to determining sanction should therefore be (in outline):

66.1 Assess the nature and seriousness of the misconduct (questions at paragraphs 16 to 20);

66.2 Consider relevant factors and aggravating or mitigating circumstances (paragraphs 54 to 58);

66.3 Consider any further adjustment for deterrence (paragraph 59);

66.4 Consider whether a discount for admissions is appropriate (paragraphs 63 to 64).

66.5 Decide which sanction(s) to order and the level/duration of the sanction(s) where appropriate;

66.6 Decide whether it is appropriate to make a costs order; and

66.7 Give an explanation at each of the six listed stages, sufficient to enable the parties and the public to understand the Panel's conclusions.

This Guidance applies with immediate effect to all Panel determinations.

Issued by the Board on 20 March 2013