

# The Actuarial Profession

## The Disciplinary Board

### **GUIDELINES ON THE IMPOSITION OF SANCTIONS**

*(Version 2: August 2008)*

#### **1. General**

1.1 These guidelines are for Adjudication Panels, Interim Orders Panels, Disciplinary Tribunal Panels and Appeal Tribunal Panels.

1.2 For convenience the decision-making body is referred to in the guidelines as 'the panel'. Where reference is made to 'imposing' a sanction, this should be read as including the arrangement under rule 4 whereby an Adjudication Panel may invite the Respondent to accept a sanction.

1.3 The panel hearing a case is best placed as well as responsible for deciding what sanctions, if any, should be imposed once it is satisfied that a case of misconduct has been proved (or, in the case of an Adjudication Panel, satisfied that the case report discloses a prima facie case of misconduct)..

1.4 In the absence of sufficient past precedents the Disciplinary Board considers that it would be especially unwise for the Board to prescribe or suggest particular sanctions, including specific fines, for different types of case, although it may give further when there is more experience of cases. Meanwhile, the Board outlines an approach to imposing sanctions which is not meant to be exhaustive.

#### **2. The main considerations**

2.1 The purpose of the disciplinary proceedings

The panel must have uppermost in its mind the purposes of the disciplinary procedures: the protection of the public and the need for the public to have justified confidence in the work of members of the actuarial profession as well as in the role of the professional body.

2.2 Proportionality

In deciding what sanctions to impose the panel should apply the principle of proportionality, weighing the interests of the public against those of the Respondent, and taking into consideration the seriousness of the misconduct in question. In considering any mitigation put forward by the Respondent the panel needs to bear in mind that the predominant purpose of the disciplinary procedures described in paragraph 2.1. Having considered this, and taking into account the seriousness of the misconduct, it is then for the panel to consider what weight to attach to any mitigating circumstances put forward by the Respondent.

2.3 Action by other bodies

It is right to take into account the effect on the Respondent of action already taken by other bodies such as courts, regulators and other professional bodies. The panel should not be persuaded to take a less stringent line because of the prospect of action by another body; it might not happen. If the Respondent has been fined by a court then it is not usual to fine again for the same offence but it may still be appropriate to apply other sanctions such as reprimand, suspension or retraining .

### **3. Questions which the tribunal should consider before imposing sanctions**

Having decided that a case is proved to the appropriate standard of proof, or that a proper admission of guilt has been made, the panel should go on to consider the following, though this list is not exhaustive and the panel may include others relevant to the case under consideration:

- What was the nature of the complaint and how serious was it
- Were any breaches of Guidance breaches of Notes that were (1) recommended practice or (2) practice standard (in the latter case a breach would amount to prima facie evidence of misconduct)
- What was the impact on the client and/or relevant third parties
- What steps and how quickly did the Respondent take to deal with the complaint
- Has the Respondent apologised and, if so, when
- What explanation was offered
- Are there any extenuating circumstances in the Respondent's favour and, if so, bearing in mind the purposes of the disciplinary procedures, what weight should be attached to them.

### **4. Deciding that no sanction is needed**

4.1 All panels should bear in mind that not everything that goes wrong amounts to misconduct. The fact that errors have been made, or that a guidance note which is recommended practice has been breached, may not of itself amount to misconduct. If the panel does not make a finding of misconduct or does not impose a sanction it should state its reasons in the determination.

4.2 In view of the purposes of the disciplinary system, where there is a finding of misconduct, only in rare cases would it then be appropriate to impose no sanction at all. This might be so if it was clear, for example, that the Respondent was severely incapacitated at the time of the offence, or the impact on the client was minimal.

### **5. Imposing sanctions – what is available**

5.1 If the panel decides that there is a case for imposing some sanction(s), then it needs to decide which to impose. Listed below are the sanctions available to each panel:

Interim Orders Panels: Suspension of any Certificate of the Respondent for up to 6 months  
Suspension of the Respondent's membership for up to 6 months

Adjudication Panels: A period of education, retraining and supervised practice  
Reprimand  
Fine to a maximum set by the Disciplinary Board (currently £5,000)

Disciplinary Tribunal:  
Panels One or more of the following:  
A period of education, retraining or supervised practice  
Reprimand  
Fine  
Suspension of any Certificate of the Respondent  
Withdrawal of any Certificate of the Respondent  
Suspension of membership for up to 5 years

Expulsion from membership for up to 5 years  
Exclusion from readmission to membership for up to 5 years  
Together with the option to award costs against the Respondent or the Profession

Appeal Tribunal Panels: Affirm, vary or rescind any determination of a Disciplinary Tribunal Panel or an Interim Orders Panel  
Substitute any other determination(s) which either panel may have made  
Together with the option to award costs against the Respondent or the Profession

## **6. Deciding which to impose**

### 6.1 Reprimand

In the event of the panel making a finding of misconduct, and deciding that some sanction should be applied, then the least the panel can impose is a reprimand.

### 6.2 Fine

In addition, or as a substitute, the panel may impose a fine. A purely nominal fine might undermine public confidence that the profession took misconduct seriously. Equally a panel should only impose a fine at, or close to, the top of the scale if it is satisfied that the offence is as serious as might be envisaged for this type of offence. If there is a finding of guilt on several counts, which have been proved simultaneously, then an appropriate fine needs to be applied to each one, after which the level of individual fines should be reviewed in the light of the cumulative total as well as reassessed in terms of their seriousness relative to each other. The maximum fine at Adjudication stage is determined by the Board and is currently £5,000. There is no maximum for Disciplinary Tribunal or Appeal Tribunal Panels but the principle of proportionality applies.

The panel should also use its discretion to decide what evidence of means or of ill-health, if that arises, should be provided. Normally a letter from a registered medical practitioner, such as the Respondent's General Practitioner or other doctor currently treating him or her, will be sufficient.

### 6.3 A period of education, training or supervised practice

A period of education, training or supervised practice may carry some financial penalty for an actuary who cannot carry out all normal professional duties during the period. It is intended for cases where educational intervention is considered likely to be productive and in the best interests of the Respondent and the public. The onus is on the Respondent to show willingness to take the necessary remedial action and commitment to putting right any deficiency that has been identified. The panel must be careful to avoid raising the expectations of the Respondent or others that any employer is under an automatic obligation to provide training or supervised practice.

#### 6.4 Suspension or withdrawal of a Practising Certificate

Those presenting a case to a panel

- must inform the panel whether the Respondent holds or has at any time held a Practising Certificate and, if so, of which kind, with details of the period for which it has been held and must have inquired whether the Respondent is likely to wish to renew a current Practising Certificate or to apply for one if he or she does not hold one at present

Suspension and withdrawal of a Practising Certificate, should each be considered separately by the panel, together with their respective appropriateness as a sanction for the Misconduct in question.

Where a Respondent holds a current Practising Certificate, or has held one within the past year and Misconduct has been established, the panel should normally consider whether a sanction related to the Practising Certificate, in addition to other sanctions would be proportionate and, if appropriate, give reasons for its decision.

Suspension or withdrawal of a Practising Certificate carries a substantial financial penalty for the Respondent and the panel must bear in mind the effect on the Respondent's livelihood, but the paramount consideration is to take the action necessary for the protection of the public.

#### 6.5 Suspension of membership, and expulsion/exclusion

- exclusion applies only to a Respondent whose membership has lapsed for some reason since the events which form the basis of the Charge of Misconduct; such a member cannot be expelled from membership but is instead excluded from readmission to membership: the effect is the same as expulsion and this Respondent must also apply for readmission, following exclusion, as set out above.

These sanctions should be considered separately and in order of severity so that expulsion is not imposed unless suspension is considered insufficient to protect the public and maintain public confidence in the Profession.

Either sanction also carries a substantial financial penalty for the Respondent and the panel must bear in mind the effect on the Respondent's livelihood, but the paramount consideration is to take the action necessary for the protection of the public.

#### 6.6 Costs

See the Board's separate guidelines as to costs awards.

### **7. Notifying sanctions**

In addition to the publishing required by the Board's arrangements for the manner in which certain decisions and determinations under the disciplinary schemes shall be published, sanctions involving suspension or withdrawal of a Practising certificate or of membership are notified to other regulators including:

- The FSA
- The Inland Revenue

- The Pensions Regulator.

Such notification is not made until the end of any appeal process, and unless the sanction is confirmed on appeal.

## **8. Concluding**

The guidelines are not directives, nor do they limit the discretion under the schemes of a panel. They will be developed in the light of experience of cases under these schemes. All panels are encouraged to study, but not be dictated to by, decisions in other cases.

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